A CRITICAL REVIEW OF THE STATE TRIALS.

CONTAINING,

I. The Subſtance of the Indictment, or Charge.
II. The Evidence.
III. The Priſoner's Defence.
IV. The Points of Law ariſing.
V. The Event of the Trial, or the Fate of the Priſoner.
VI. Remarks on the Whole.

By Mr. *SALMON.* (Thomas) Historical Writer.

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M.DCC.XXXV.

A

CRITICAL REVIEW

OF THE

STATE TRIALS,

CONTAINING

I. The Substance of the Indictment, or Charge.
II. The Evidence.
III. The Prisoner's Defence.
IV. The Points of Law arising.
V. The Event of the Trial, or the Fate of the Prisoner.
VI. Remarks on the Whole.

THE PREFACE.

THE CROWN LAW is no where ſo fully explained and illuſtrated, as in the STATE TRIALS: But, as every Man is not qualified to diſtinguiſh Caſes that have a near Reſemblance to each other, or diſcern the Force of every Argument advanced by the Learned Counſel in theſe Trials, it has been thought fit to draw up a Summary of them, and make ſuch Remarks on each Caſe, as may enable common Readers to collect what the Law antiently was, and how it has been altered, and ſtands at this Day, in criminal Matters; which is a Part of Learning, that every Man, who is a Subject of *England*, ought to have a general Knowledge of, ſince at one Time or other, he may poſſibly be concerned, either in proſecuting or defending Suits of this Nature, for himſelf or his Friends. But Gentlemen in the Magiſtracy, or Commiſſion of Peace, can never be qualified to exerciſe their reſpective Offices, or ſerve their Prince or Country with any tolerable Reputation, who are perfectly Strangers to this Branch of our Laws. Therefore the Digeſting theſe Trials, and reducing them within ſuch Bounds, as Gentlemen may be able to come at them on moderate Terms, will, probably, be of ſome Service to the Publick.

Another Deſign of this REVIEW is to enquire into the HISTORY and CHARACTERS of thoſe who have been thus brought upon the Stage, and in whoſe Fate all Mankind almoſt have intereſted themſelves. The Want of this Enquiry, has been held a material Omiſſion in the STATE TRIALS, and occaſioned ſome Reflections on the Compilers: Though it may very juſtly be ſaid in their Excuſe, That as their Deſign was Great and Noble, and of itſelf

itſelf of infinite Service to the Publick, ſo never any Thing was brought to Perfection at once. There will in Eſſays of every Kind, be Room left for Additions and Improvements; and I am ſatisfied the World will be pleaſed to ſee ſuch a Supplement to that Work as will render it ſtill more Uſeful and Entertaining, and accordingly afford it a favourable Reception, and the rather, as the Law is here exemplified by ſuch familiar Inſtances, as renders this Kind of Reading eaſy and pleaſant, which would otherwiſe prove a dry, laborious Study.

A CRI-

A CRITICAL REVIEW OF THE STATE TRIALS.

Proceedings in Parliament againſt ALEXANDER NEVIL Archbiſhop of *York*, ROBERT VERE Duke of *Ireland*, MICHAEL DE LA POLE Earl of *Suffolk*, ROBERT TRESILIAN Lord Chief Juſtice of *England*, and Sir NICHOLAS BRAMBRE ſome time Mayor of *London*, *Feb.* 3. 1388. 11 *Richard* II.

1388. 11 Rich. 2. *Trial of* Treſtilian, *&c.*

1388. 11 Rich. 2.

Imperfect.

THIS is a patched, up partial Narrative of a ſucceſsful Rebellion, rather than a Trial: However, as it is bound up with the ſecond Collection of Trials, it might be thought an Omiſſion not to examine it.

We are told, that the Nobility, ſeeing the miſerable State of the Kingdom under a profuſe and arbitrary Miniſtry, *Men of mean Extraction*, prevailed on the King (*then a Minor of about ſeventeen Years of Age*) to aſſemble a Parliament on the 1ſt of *October*, 1386. to redreſs their Grievances. In which Parliament, among other Acts, *John Fortham* Biſhop of *Durham*, was diſcharged of his Office of Treaſurer, and *John Gilbert* Biſhop of *Hereford*, appointed in his Place; and *Michael de la Pole* Earl of *Suffolk*, and Chancellor of *England*, was diſmiſſed, and immediately after impeached of the following High Crimes and Miſdemeanors, *viz.*

Miniſters diſplaced.

Earl of Suffolk *impeached.*

The Articles againſt him.

1. That being Chancellor, and ſworn to act for the Profit of the King, he had deceived his Majeſty in his Grants, and purchaſed Crown Lands at an under Value, not regarding the great Neceſſities of the King and Realm.

2. That whereas nine Lords were aſſigned by the laſt Parliament to examine the State of the King and Realm, and put it into better Order; this was not done, through the ſaid Earl's Default, who was the prime Officer or Miniſter.

3. That a Supply, given for the Defence of the Sea, had been miſapplied, by the Default of the ſaid Chancellor.

4. That he had obtained a Grant of fifty Pounds *per Annum* out of the Cuſtoms.

5. That whereas the Maſter of St. *Anthony*, by being a Schiſmatick, had forfeited his Revenues, amounting to 100 Marks *per Annum*, the Earl had farmed them of the King at 20 Marks *per Annum*, and kept the ſucceeding Maſter out of Poſſeſſion, till he had extorted a Sum of Money from him.

6. That, while he was Chancellor, he had ſealed divers illegal Charters and Pardons, for Treaſon, Murder, *&c.*

7. That he had miſapplied Money given for the Relief of the City of *Ghent*, which was loſt by his Default.

The Earl's Anſwer to Part of the Articles. The reſt omitted.

To which the Earl anſwered, that he neither purchaſed or accepted any Lands of the King while he was Chancellor, unleſs an hundred Marks *per Annum*, which he had by way of Exchange for a Revenue he was entitled to out of the Cuſtoms. The ſecond Article the Compiler of the Trials has omitted the Anſwer to: The third Article he denied, and they ſeem to allow it was not proved: Nor do they give us his Anſwer to the 4th Article; or to the 5th, 6th, or 7th. Only they tell us in general, that he denied ſome of them, and confeſſed and excuſed others.

The Commons Reply.

The Commons replied, That his having acknowledged the making an Exchange with his Majeſty, was a Confeſſion of his conſenting to alienate the Lands of the Crown, while he was Chancellor; which was contrary to his Oath and Duty. And the Lords thereupon adjudged, That the Grants the Earl had obtained ſhould revert to the Crown: That all his Lands ſhould

Adjudged that he ſhould be impriſoned, and his Eſtate confiſcated.

1388. 11Rich.2.

be confiſcated: That he ſhould pay a Fine to the Crown, and be impriſoned in the Caſtle of *Windſor*.

Lords Commiſſioners appointed, in whom both the legiſlative and executive Power is lodged.

That the Parliament afterwards by ſeveral Acts, appointed ſeven of the Lords Spiritual, five of the Temporal Lords, and Sir *John Devereux* Kt. Commiſſioners, to reform the State, and adminiſter the Government for a Year, *viz.* 1. *William* Archbiſhop of *Canterbury*, 2. *Alexander Nevil* Archbiſhop of *York*, 3. *Thomas Arundel* Biſhop of *Ely*, Lord Chancellor, 4. *William Wickham* Biſhop of *Wincheſter*, 5. *John Gilbert* Biſhop of *Hereford*, 6. *Thomas* Biſhop of *Exeter*. 7. *Nicholas* Abbot of *Waltham*, Lord Privy Seal, 8. *Edmund Langly* Duke of *York*, 9. *Thomas of Woodſtock* Duke of *Glouceſter*. 10. *Richard* Earl of *Arundel*, 11. *John* Lord *Cobham*, 12. *Richard* Lord *Scrope*, and, 13. Sir *John Devereux* Kt. enacting, That if any refuſed to obey their Ordinances, they ſhould forfeit their Goods for the firſt Offence, and their Lives for the ſecond; and on the 20th of *November* 1386. the Parliament was diſſolved.

The Earl of Suffolk *is charged with conſpiring againſt the Duke of* Glouceſter.

That ſoon after the Riſing of the Parliament, the ſaid Earl of *Suffolk* and his Confederates, inſinuated into the King, that the ſaid Statutes were prejudicial to his Honour, and derogatory to his Prerogative; and while they were in force, he was but the Shadow of a King: That the ſaid Earl being releaſed out of *Windſor* Caſtle, he, with the Duke of *Ireland*, and Chief Juſtice *Treſilian*, incited the King to deſtroy the Duke of *Glouceſter*. The Earls of *Arundel*, *Warwick*, *Derby*, and *Nottingham*, with others of their Party, and for that End, conſpired with *Alexander* Archbiſhop of *York*, and Sir *Nicholas Brambre*, to diſpatch the ſaid Lords; and wrote Letters to the *French* King, to aſſiſt them in ſeiſing the ſaid Noblemen; and alſo prevailed with the Judges, to declare them guilty of High Treaſon, in procuring the ſaid late Statutes.

The Duke of Glouceſter, *Earl of* Arundel, *&c. raiſe Forces in the King's Name againſt his Perſon.*

That the ſaid five Lords, keeping Spies in all Parts of the Kingdom, and intercepting ſome Letters from Court, diſcovered a Plot againſt them; and believing it to be agreeable to the Law of Nature to repel Force by Force, every one of them, according to his Ability, levied a power *for the Preſervation of the King and Kingdom* (which the Patriots of 41. made a Precedent, no doubt, for fighting in the King's Name againſt his Perſon.) And with theſe Forces the Earl of *Arundel* marched towards *London:* Whereupon the Earl of *Suffolk* and his Accomplices, adviſed the King to iſſue a Proclamation, commanding the Citizens to treat them as Rebels; and that he ſhould not meet the Parliament at *Candlemas* as the ſaid Commiſſioners had appointed, unleſs the Duke of *Glouceſter*, the Earls of *Warwick*, *Arundel*, and the reſt of the Commiſſioners, would ſwear, that neither they, nor any in their Name, ſhould accuſe the ſaid Earl of *Suffolk*, Duke of *Ireland*, and the reſt of the late Miniſtry.

The Duke of Glouceſter, *&c. impeach the Earl of* Suffolk, *and the reſt of the late Miniſtry, of High Treaſon before the King*

In the mean Time the Duke of *Glouceſter*, the Earl of *Arundel*, &c. being arrived with their Army at *Waltham-Croſs*, the 14th of *November*, ſent ſome of their Members to the King at *Weſtminſter*, to charge the Archbiſhop of *York*, the Duke of *Ireland*, the Earl of *Suffolk*, Chief Juſtice *Treſilian*, and Sir *Nicholas Brambre*, with High Treaſon. 1388. 11Rich.2.

The King demanded what they would have: They anſwered, That the Traitors which were about him, and filled his Ears with falſe Reports, might be puniſhed; for it was better ſome few ſhould die for the People, than the whole Nation ſhould periſh.

Whereupon his Majeſty ſent the Lords Commiſſioners a ſafe Conduct, and they appeared before his Majeſty at *Weſtminſter-Hall*; where they again impeached the Archbiſhop of *York*, the Duke of *Ireland*, &c. of High Treaſon, offering to maintain the Charge by ſingle Combat: But the King, having appointed the Parliament to meet the next Day after *Candlemas*, told them the Controverſy ſhould be heard and determined there.

The Earl of Suffolk *and ſome of the Miniſters fly.*

But the Earl of *Suffolk* fled to *Calais*, and the Archbiſhop of *York* and the Biſhop of *Durham* abſconded; while the Duke of *Ireland* went into *Cheſhire*, *Lancaſhire*, and *Wales*, to raiſe Forces for the King, and oppoſe thoſe of the diſaffected Lords. The Earl of *Arundel* afterwards engaging the Duke of *Ireland* at *Chipping Norton* in *Oxfordſhire*, as he was marching to *London*, part of the Duke's Forces revolted, and he was defeated, and forced to fly into *Flanders*.

The Duke of Ireland *raiſes Forces for the King.*

Is defeated, and fly to Flanders.

In the mean Time Alderman *Brambre* held the City of *London* for the King, and was in Expectation of being joined by the Duke of *Ireland*; but the Earl of *Arundel* having defeated the Duke (as before related) and appearing with his victorious Troops before the Gates, the Mayor and Citizens of *London* thought fit to deliver him their Keys. After which all Places ſubmitted to the diſaffected Lords, who compelled the King to give them Audience in the *Tower*. They appeared indeed in an humble, ſuppliant Poſture before his Majeſty; but brought ſuch Numbers of armed Troops with them, that he durſt deny them nothing; and here again they appealed (or impeached) the Duke of *Ireland*, and the reſt of the King's Miniſters, of High Treaſon: After which Proclamation was made, That a Parliament ſhould be held the Day after *Candlemas*, where the accuſed Lords ſhould appear and anſwer the Charge of the Malecontents. The King was alſo compelled by the Faction to iſſue Orders for the apprehending ſeveral Miniſters and Officers of his own Houſhold, and thoſe who had adhered to him; and Sir *Simon Burleigh*, Sir *William Elman*, Sir *John Beauchamp*, Sir *Thomas Trevet*, Sir *John Salisbury*, and Sir *Nicholas Brambre*, were thereupon taken up, with many others they ſuſpected to be in a different Intereſt; but the Duke of *Ireland*, the Archbiſhop of *York*, the Earl of *Suffolk*, and Sir *Robert Treſilian*, had withdrawn themſelves, and were not to be found.

London *ſubmitted to the Malcontents.*

They force the King to give them Audience.

And give Orders for apprehending his own Miniſters.

The Judges taken off the Bench.

The Parliament meeting the Day after *Candlemas*, the following Judges were taken off the Bench, and committed to the *Tower*, for anſwering ſeveral Queries that had been propoſed to them by the King at *Nottingham*, *viz.* Sir *Roger Fulthorp*, Sir *Robert Belknap*, Sir *John Carey*, Sir *John Holt*, and Sir *William Burleigh*, and

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and *John Locton* the King's Serjeant at Law, was alſo committed with them.

The Parliament opened with a Speech.

The Lord Chancellor, the Biſhop of *Ely*, opened the Parliament with a Speech, wherein he declared they were aſſembled to conſider how the Diſtractions of the Realm might be compoſed, the King better adviſed, the Mal-adminiſtration of the late Miniſters reformed and puniſhed, and the Kingdom defended by Sea and Land; declaring that all who had any Grievances to be redreſſed might be heard. Then the Duke of *Glouceſter*, and the other four diſaffected Lords, preſented themſelves before his Majeſty, and ſaid, they came to purge themſelves of the Treaſons laid to their Charge by the accuſed Lords, (of the late Miniſtry.) To whom the Lord Chancellor anſwered, That the King entertained ſuch honourable Thoughts of the Duke of *Glouceſter*, that he could not believe any one ſo near allied to him would be concerned in any treaſonable Attempt againſt his Majeſty: For which the Duke, and his four Companions (or rather Accomplices) returned the King their Thanks.

The Duke of Glouceſter and the malcontent Lords deſire to purge themſelves of the Charge of Treaſon.

The King obliged to acknowledge them innocent.

The Lords inſiſt on their Privileges.

The Lords Spiritual and Temporal afterwards declared, That all great Matters moved in Parliament, touching the Peers, ought to be diſcuſſed and adjudged by the Courſe of Parliament, and not by the Civil, or Common Law, in inferior Courts; which Claim or Declaration the King allowed.

The Malcontents exhibit 39 Articles againſt the King's late Miniſtry.

Then the five Lords Appellants (the Duke of *Glouceſter* and his Accomplices) exhibited thirty-nine Articles againſt the accuſed Lords, the King's late Miniſters and Officers of State.

1. And firſt, they charge them as falſe Traitors to the King and Kingdom, in taking Advantage of his Majeſty's tender Age, framing falſe Stories, and making him entirely their own: While they rendered ſuſpected his loyal Lords and Leiges, by whom he ought to have been governed. That theſe Traitors had accroached to themſelves royal Power, by enſlaving the King, and leſſening his Prerogatives, making him ſo obedient to their Will, that he was ſworn to be adviſed and governed by them.

2. The Second charges the Archbiſhop of of *York*, the Duke of *Ireland*, and the Earl of *Suffolk* again, with obliging the King to take the Oath, and thereby keeping him in a State of Servitude.

3. The Third charges, that the ſaid three Noblemen, by the Advice of Sir *Robert Treſilian* and Sir *Nicholas Brambre*, would not permit the great Men of the Kingdom to come near the King, or ſuffer them to ſpeak to his Majeſty, unleſs in their Preſence and Hearing; accroaching to themſelves Royal Power, and aſſuming a Sovereignty over the Perſon of the King.

4. That the ſaid five late Miniſters would not ſuffer the King to grant any Petitions without their Aſſent; thereby turning the Hearts of the great Lords from his Majeſty, with Deſign to eſtrange his Heart from the Peers, and have the ſole Government of the Kingdom.

5. That they adviſed the King to grant the whole Realm of *Ireland*, and divers other Caſtles, Lordſhips, and Manors, to the Duke of *Ireland*; and to make divers Grants to others of the Crown-Lands, whereby the King was ſo impoveriſhed, that he could not ſupport himſelf, without laying Taxes and Impoſitions on his Subjects. 1388. 11 Rich. 2.

6. That they cauſed the King to make other Grants of the Crown-Lands to their Relations and Friends, of whom they received great Bribes.

7. That they cauſed the King to grant the ſaid Duke of *Ireland* and others, the Jewels of the Crown, and the Treaſure of the Kingdom, with the Tenths and Fifteenths, given by Parliament for Defence of the Realm, to the Value of one hundred thouſand Marks; and cauſed many good Ordinances of Parliament to be interrupted.

8. That they put Governors into the Caſtles and Fortreſſes on the Frontiers of *France* and *Scotland*, who were not qualified for ſuch Poſts, without the Conſent of the Realm, whereby ſeveral Countries were loſt to the Enemy.

9. That they would not ſuffer the Laws to take their Courſe; but cauſed ſeveral Judgments of Parliament to be reverſed and annulled.

10. That they had cauſed ſeveral Pardons to be granted for Treaſons and Felonies.

11. That they adviſed the King to make the ſaid Duke King of *Ireland*, and excited his Majeſty to write Letters to the Pope to confirm the Grant, without the Knowledge or Aſſent of the Kingdoms of *England* or *Ireland*, in Diſheriſon of the Crown of *England*, and to the Deſtruction of the Nation of *Ireland*.

12. That the ſaid Sir *Nicholas Brambre* had taken two and twenty Perſons out of *Newgate*, ſome of them impriſoned for Debt, and others for Criminal Matters, and without any Proceſs of Law, cauſed all their Heads to be cut off (but one) at a Place called the *Foul Oak*, in *Kent*.

13. That the ſaid accuſed Miniſters had taken great Bribes for the Maintenance of Suits; and once took Bribes on both Sides.

14. That they cauſed ſome Lords, and others, to be put out of the King's Council.

15. That the laſt Parliament requiring the King to remove the five Miniſters from his Preſence, they cauſed the King to command the Mayor of *London* to kill ſuch of the Lords and Commons as were not of their Party; in which Execution the ſaid Miniſters were to have borne a Part.

16. That when the Mayor and Citizens of *London* had refuſed in the King's Preſence to murder the ſaid Lords and Commons, the ſaid five Miniſters prevailed on the King to leave the Parliament, and refuſe to treat with them on the Affairs of the Kingdom, unleſs they would promiſe not to proſecute the ſaid Miniſters.

17. That the Parliament having aſſigned twelve Lords to take upon them the Government of the Realm for one Year, with the King's Aſſent, againſt which no Man might adviſe his Majeſty, on Pain of Forfeiture of his Goods for the firſt Offence, and his Life for the ſecond; the ſaid five Miniſters inſinuated to the King, that the ſaid Ordinance or Statute, and Commiſſion in Purſuance of it, were made to defeat his Royalty; and that all thoſe, who adviſed or procured the framing of them, were worthy to be put to Death as Traitors.

18. That

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18. That they cauſed the King to aſſemble certain Lords Juſtices, and others, without the Aſſent of the Lords Commiſſioners; and demanded their Opinions of divers ſuſpicious Matters, by which the King, the Lords, and the common People were brought into great Trouble.

19. That they cauſed the King to ride through the Nation, and ſummon the Lords, Knights, Eſquires, and others of the ſeveral Countries before him; obliging them to give Bonds, or take Oaths, to ſtand by him againſt all People, and to effect his Purpoſe, which was then the Will and Purpoſe of the ſaid traiterous Miniſters.

20. That the Realm was put to great Trouble by the ſaid Bonds and Oaths.

21. That they cauſed the King to go into diſtant Parts of the Kingdom, ſo as the Lords Commiſſioners could not adviſe with him; and the ſaid Ordinance, or Statute, was thereby defeated.

22. That the ſaid Duke of *Ireland*, by the Advice of the ſaid other four Traitors, had without the King's Commiſſion, or other ſufficient Warrant, made himſelf Chief Juſtice of *Cheſter*, and held all Manner of Places there; and alſo, accroaching to himſelf Royal Power, had raiſed Forces in that County, in order to deſtroy the loyal Lords, and others the King's liege Subjects.

23. Alſo, that they had cauſed *John de Blois*, Heir of *Britany*, and the King's Priſoner, to be ſet at Liberty, without Aſſent of Parliament, or any ſufficient Warrant.

24. That they cauſed the King to have a great Retinue, to whom he gave Badges, to impower them to execute their ſaid Treaſons.

25. That they cauſed the King to ſummon before him, to the Caſtle of *Nottingham*, the Day after St. *Bartholomew* then laſt paſt, divers Juſtices and Lawyers, and there conſtrained them to ſet their Hands to the Anſwers of certain Queſtions; by means whereof thoſe about the King might have Colour to put to Death the Duke of *Gloceſter*, and the other Lords, who in the laſt Parliament were ordained to have the Governance of the Realm.

Queries reſolved by the Judges at Nottingham.

(1.) The firſt Queſtion was, Whether the New Statute, Ordinance, and Commiſſion, were hurtful to the Prerogative?

It was unanimouſly anſwered, *They were hurtful, becauſe againſt the King's Will.*

(2.) How they ought to be puniſhed that procured the ſame?

Anſwered unanimouſly, *They deſerved Death.*

(3.) How they ought to be puniſhed that moved the King to conſent to the making them?

Anſw. *They ought to loſe their Lives.*

(4.) How they ſhould be puniſhed that *compelled* the King to conſent to the ſaid Statutes, *&c.?*

Anſw. *They ought to ſuffer as Traitors.*

(5.) How they ought to be puniſhed who interrupted the King in exerciſing his Royal Prerogative?

Anſw. *They ought to be puniſhed as Traitors.*

(6.) Whether the King might oblige the Parliament to diſpatch the Buſineſs propoſed by him, before they proceeded to any other?

Anſw. *The King ought to have the Rule and ordering of all ſuch Articles as are preſented in Parliament; and if any one preſumed to go contrary to this Rule, he ought to be puniſhed as a Traitor.*

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(7.) Whether the King might not diſſolve the Parliament, when he pleaſed?

Anſw. *He might.*

(8.) Whether the Lords and Commons, without the King's Aſſent, might impeach his Officers and Juſtices in Parliament?

Anſw. *They might not; and he that did, ought to ſuffer as a Traitor.*

(9) How he was to be puniſhed who moved the Parliament, that the Statute wherein *Edward*, the Son of King *Edward*, Great Grandfather to the then King, was indicted in Parliament, might be ſent for? By Inſpection of which Statute the ſaid new Statute or Ordinance and Commiſſion was deviſed.

Anſwered unanimouſly, *That as well he that called for, as the other, who by Virtue of the ſaid Motion brought the ſaid Statute into the Houſe, ought to be puniſhed as publick Offenders and Traitors.*

10. Whether the Judgment given in Parliament againſt the Earl of *Suffolk* was erroneous and revocable?

Anſw. *That the ſaid Judgment was erroneous and revocable in every Part.*

Atteſted by *Alexander* Archbiſhop of *York*, *Robert* Archbiſhop of *Dublin*, *John* Biſhop of *Durham*, *Thomas* Biſhop of *Cheſter*, *John* Biſhop of *Bangor*, *Robert* Duke of *Ireland*, *Michael* Earl of *Suffolk*, *John Rippon* Clerk, and *John Blake*.

26. That ſaid five Traitors contrived that the ſaid five Lords Appellants (the Duke of *Glouceſter*, &c.) ſhould be privately indicted and attainted of High Treaſon in *London* or *Middleſex*; and for that End procured *Thomas Huſke* to be made Under-Sheriff of *Middleſex*, who undertook that the ſaid Indictments and Attainders ſhould be accompliſhed: That for the better effecting their ſaid Treaſons, they cauſed the King to ſend Letters by one *John Rippon* Clerk, to the Mayor of *London*, to arreſt the Duke of *Glouceſter*, and others; and one *John Blake* carried a Bill of Information to the Mayor againſt them, by which they were to be indicted and attainted; which Information ſet forth: "That the Appellants, and ſeveral other "of the Lords and Commons, had traiterouſly "conſpired and confederated to make a Statute "and Commiſſion againſt the Royalty of the "King, and in Derogation of his Crown, and "conſtrained the King to paſs it againſt his "Will; and had traiterouſly hindered the "King from exerciſing his Royalty, to the "great Diſheriſon of his Majeſty, and in "Derogation of his Crown:" And that the ſaid traiterous Miniſters ſet a Watch to give Notice of the Duke of *Lancaſter*'s landing, that he might be arreſted on his Arrival.

An Information drawn up againſt the Lords Appellants.

27. That the ſaid five Miniſters, the Duke of *Ireland*, &c. alſo poſſeſſed the King, that all who cauſed the ſaid Statute, *&c.* to be made, had thereby a Purpoſe to degrade him, and finally to depoſe him; and cauſed him to hold them as Enemies and Traitors.

28. That the ſaid five Miniſters adviſed his Majeſty, by his own Power, and by the Aſſiſtance of his Enemies of *France*, to deſtroy the

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said Lords, and others, who assented to the making the said Statute as privately as might be.

29. That they advised his Majesty to send Letters to the King of *France*, requesting that Prince with all his Power and Advice, to be aiding and assisting in destroying the said Lords, *&c.*

30. That the said Archbishop, Duke of *Ireland*, and Earl of *Suffolk*, accroaching to themselves Royal Power, caused his Majesty to promise the *French* King, for such Aid and Assistance, to surrender to him *Calais*, and all other Fortresses on the Confines of *Picardy* and *Artois*, with the Towns of *Cherburgh* and *Brest*.

31. That the said five Ministers had contrived an Interview between the said Kings of *France* and *England* in the Marches of *Calais*; where the said *Thomas* Duke of *Glocester*, *Richard* Earl of *Arundel*, and *Thomas* Earl of *Warwick*, with several others, were to have been treacherously murdered.

32. That they caused the King to send for safe Conducts from *France*, for Sir *John Salisbury*, Sir *John Lancaster*, and others, who were to go over to *France* to put the said Treason in Execution.

33. That the said Sir *Nicholas Brambre*, and others of the said Traitors, went into the City without the King's Knowledge; and, in his Name, caused all the Trades in the City to swear to perform divers Matters not lawful; and particularly, to keep and maintain the King's Will and Purposes to their Power against all Rebels; and that they would live and die with him against all those who should design any Treason against the King; and for that Purpose should appear on the Summons of the Mayor, and be ready to resist all such Traitors: *Their Design being to engage the People of* London *to raise their Power, to destroy the said loyal Lords and others.*

34. That the said Ministers caused to be proclaimed through *London*, That none of the King's Subjects should aid or assist the Earl of *Arundel*, but avoid all his Party, upon Pain of being proceeded against as Rebels.

35. That the said Sir *Nicholas Brambre*, by the Advice of the said other Ministers, caused it to be proclaimed, that none should speak ill of the said evil Ministers, upon Pain of forfeiting all they had.

36. That the said five Ministers caused Sheriffs to be made, that they might get such Persons returned Knights of the Shire as they should name.

37. That they caused to the King to send Letters to the Sheriffs and other Officers, to assemble all their Power to join the Duke of *Ireland* against the said Lords Appellants, and to make War upon them.

38. That they caused the King to write to the Duke of *Ireland*, that they were all appealed (impeached) of Treason, and that he had given a Day till next Parliament, and taken both Parties into his Protection: But that, if the Duke of *Ireland* should have sufficient Power, he should however march on and come to him, and that he would meet him with all his Forces, and venture his Royal Person; and that he and the whole Nation were in great Danger, if they were not relieved: This the Duke was to declare to the People, and to assure them, that the King would pay them all their Wages. By Virtue of which Letters the said Duke raised great Numbers of Men at Arms, and Archers, in *Lancashire*, *Cheshire*, *Wales*, and elsewhere, to destroy the said Lords, and all others who assented to the said Statute, Ordinance, and Commission.

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39. The last Article charges the Duke of *Ireland* with raising the said Forces, and marching with them from the County of *Chester* to *Radcote-Bridge* in *Oxfordshire*, in order to destroy the said Lords Appellants, viz. *Thomas* Duke of *Glocester* Constable of *England*, *Henry* Earl of *Derby* (who afterwards usurped the Throne) *Richard* Earl of *Arundel*, *Thomas* Earl of *Warwick*, and *Thomas* Earl *Marshal*, accroaching to himself Royal Power, and displaying the King's Banner in his Army, against the State of the King and his Crown.

The late Ministry summoned to appear and answer the Articles.

Then the Lords Appellants declared, they were ready to prove every Article; and the Persons appealed (the late Ministers) were solemnly summoned to appear and answer the Appellants: And the Parties accused not appearing, the Lords Appellants demanded, that they might be adjudged and convicted of the said Treasons: But the King ordered the Lords to examine the said Articles; and the Justices, Serjeants, and other Sages of the Law, were commanded to give their Advice to the said Lords of Parliament, how they ought to proceed in the said Appeal: Whereupon the said Justices, Serjeants, *&c.* declared, *That the said Appeal was not made, or brought, according as the one Law or the other required.*

The Judges declare, the said Appeal or Impeachment to be illegally brought.

The Lords resolve, it was legally brought.

However, the Lords, by the Assent of the King, resolved, That this Appeal was well and duly brought, according to the Laws and Course of Parliament, by which they would adjudge of it: Then the Appellants demanded again, that the Default of the Parties accused might be recorded; and the said Chancellor (the Bishop of *Ely*) in the Name of the Clergy, declared, that they could not by any Means be present at Proceedings where Sentence of Death was to be passed; and the Clergy delivered in a Protestation in Writing, importing, *That neither in respect of Favour, or for fear of any Man's Hate, nor in hope of Reward, they desired to absent themselves; but only as they were bound by the Canon, not to be present at any Man's Arraignment or Condemnation*; and they sent the like Protestation to the Commons, which was allowed of.

The Clergy protest they could not by the Canon be present where Sentence of Death was to be passed.

Four of the Ministers condemned as Traitors, unheard.

On the 13th of *February* the Bishop of *York*, the Duke of *Ireland*, the Earl of *Suffolk*, and Sir *Robert Tresilian*, being summoned a third Time, their Defaults were recorded; and the Lords declared fourteen of the Articles to be Treason, and by Assent of the King, did adjudge the said four Ministers to be guilty of High Treason, and that they should be drawn and hanged as Traitors to the King and Kingdom, and their Lands and Tenements, Goods and Chattels, forfeited.

Sir Nicholas Brambre *brought to his Trial.*

On the 17th of *February*, Sir *Nicholas Brambre*, the fifth of the said accused Ministers, being in Custody in the *Tower*, was brought before

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the Parliament, and charged with the Treaſons contained in the ſaid Articles, when he deſired Time to prepare for his Defence, which was denied, and the Judges required him to anſwer immediately and diſtinctly to the ſaid Treaſons. Whereupon he declared, he was ready to fight with any Man that ſhould brand him with that ignominious Mark; and the Appellants declared they were ready to accept the Challenge. But the Lords reſolved, that Battel did not lie in this Caſe, and that the Matter ſhould be determined in Parliament.

Offers to clear himſelf by ſingle Combat.

The Mob come down to the Parliament Houſe, to accuſe him.

In the mean Time the Rabble came down from *London*, and complained of manifold Injuries committed by Sir *Nicholas Brambre*; and while the Caſe of this Knight was under Debate, the Lord Chief Juſtice *Treſilian*, being apprehended in a Houſe in *Palace-Yard*, was dragged into the Hall by the Soldiers. It was demanded of him, what he could ſay, why Judgment ſhould not be executed upon him? But the Compiler of this Volume of Trials tells us, he had nothing to ſay for himſelf, and that thereupon he was ſent to the *Tower*, from whence he was dragged on a Hurdle to the Gallows; and that he refuſed to mount the Ladder till he was beaten with Clubs, and forced up, and then he told the Hangman he ſhould not die as long as he had any Thing about him: Whereupon he was ſtripped, and certain Images were found like the Signs in the Heavens, and the Head of a Devil painted, and the Names of many Devils written in Parchment; which being taken away, he was hanged naked for ſome Time, and then his Throat was cut; and his Body, having hung till Morning, was given to his Wife, who buried it in *Grey-Friers*.

Lord Chief Juſtice Treſilian *apprehended, and ordered to be executed. Uſed barbarouſly.*

Ridiculous Account of Charms about him.

Sir Nicholas Brambre *executed.*

Sir *Nicholas Brambre* being brought before the Parliament again the 20th of *February*, and being able to make no anſwer to the Articles (ſays the Compiler) the like Sentence was pronounced againſt him; and he was drawn upon a Hurdle from the *Tower* to *Tyburn*, where he ſhewed himſelf very penitent, and begged Pardon of all he had offended, particularly of one *Northampton*, who attended his Execution, and whoſe Father had been Mayor of *London*, and wrongfully accuſed by *Brambre* of a Conſpiracy againſt the State, for which *Northampton*'s Lands were confiſcated, and he very hardly eſcaped with his Life.

The Judges impeached, and tried.

After theſe Executions, *viz.* on the 2d of *March*, Sir *Robert Belknap*, Sir *John Holt*, Sir *Roger Fulthorpe*, Sir *William Burleigh*, and Sir *John Carey*, the Judges who had anſwered the King's Queries at *Nottingham*, together with *John Locton*, the King's Serjeant at Law, having been impeached by the Commons, were called to anſwer before the Lords. They ſaid in their Defence, that the Anſwers they were charged with were not the ſame they had given; and that they were threatened and forced to ſign them by the Archbiſhop of *York*, the Duke of *Ireland*, and the Earl of *Suffolk*; and deſired they might be mercifully dealt with. However, the Lords thought fit to adjudge them all to be Traitors, and paſſed Sentence on them to be drawn and hanged as ſuch.

Their Defence.

Condemned as Traitors.

This being reported to the Archbiſhop of *Canterbury* and the Biſhops, who were retired into the King's Chamber while theſe Cauſes were trying, they returned to the Parliament Houſe, and begged of the King and Peers, for the Love of God, the Virgin *Mary*, and all Saints, they would not put the Judges to death: The five Lords Appellants alſo thought fit to interpoſe, and deſire their Lives might be ſpared: Whereupon they were remanded to the *Tower*, and afterwards baniſhed to *Ireland*.

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The Lords Spiritual intrepoſe, and ſave their Lives.

John Blake, the King's Council, being impeached by the Commons for drawing up the ſaid Queries, and contriving the Death of the ſaid Lords Appellants; and *Thomas Uſke*, for procuring himſelf to be made Under-Sheriff, in order to get them indicted and attainted, were brought before the Lords, the third of *March*, to anſwer that Charge. They ſaid in their Defence, that what they had done was by the King's Command: But the Lords replied, this Excuſe made their Crime the greater; for they knew the Miniſters had accroached to themſelves Royal Power, and that it was theirs, and not the King's Command, and paſſed Sentence on them as Traitors; in purſuance whereof they were executed the ſame Day.

Blake *and* Uske *impeached, and tried.*

Condemned and executed.

On the 6th of *March Thomas* Biſhop of *Chicheſter*, being impeached by the Commons, for exciting and threatening the Judges, to make them ſign the ſaid Queries and Anſwers, and for concealing what they had done, was brought before the Parliament, and anſwered, that the Judges were not excited or charged to ſay any Thing but what the Law was; and as to his concealing the ſaid Treaſon, he was under Engagements not to diſcover it.

Biſhop of Chicheſter *tried.*

Avers the Judges were not threatened.

On the 12th of *March*, *Simon de Burleigh*, *John de Beauchamp*, *James Baroverſe*, and *John Salisbury*, were brought to the Bar of the Houſe of Lords, being impeached for the firſt of the ſaid Articles, and for concealing the ſaid Treaſons; and *Simon de Burleigh*, and *John Beauchamp*, were charged alſo as principal Actors in the ſaid Treaſons. To which they all pleaded Not guilty; and Sir *Simon Burleigh* being a popular Man, great Intereſt was made to ſave him: But at length, on the 5th of *May*, Sir *Simon* was condemned as a Traitor, and beheaded on *Tower-Hill*, the King pardoning the reſt of the Sentence. Sir *John Beauchamp*, Steward of the King's Houſhold, Sir *James Baroverſe*, and Sir *John Saliſbury*, Gentlemen of the Privy Chamber, alſo were condemned: The two firſt were beheaded on *Tower-Hill*, and Sir *John Saliſbury* was drawn to *Tyburn* and hanged there. The Biſhop of *Chicheſter* alſo was condemned; but, he being the King's Confeſſor, was only baniſhed to *Ireland*.

Burleigh, Beauchamp, *&c. tried.*

Condemned and executed.

Biſhop of Chicheſter *condemned, but pardoned as to Life.*

From theſe numerous Convictions and Executions, this was called the UNIVERSAL PARLIAMENT.

Theſe Proceedings have, ſince the Revolution, been mightily cried up, as Precedents for future Ages to imitate; but if we come to examine them with a little Attention, poſſibly there are few People that would deſire to ſee them copied in every Inſtance.

Remarks on the Trials of the Lord Chief Juſtice Treſilian, *and the reſt of the King's Miniſters and Officers.*

The diſaffected Lords had infuſed ſuch a Spirit of Diſcontent into the Members of Parliament

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liament againſt the Adminiſtration, that notwithſtanding the *French* King was upon the Point of invading the Kingdom with a prodigious Fleet and Army, and the Miniſtry had raiſed two hundred thouſand Men to oppoſe the Deſcent, the Parliament would not grant the King one Penny towards the Defence of their Country, unleſs he would conſent to the Ruin of thoſe Noblemen who had ſerved him with the greateſt Fidelity and Affection. *In* Rapin's *Words, So great was the Hatred they had entertained againſt the Lords in the Adminiſtration, that, in order to ruin them, the Parliament ſcrupled not to hazard the Loſs of the whole Kingdom*, telling the King, the Confiſcations of the Eſtates of his Miniſters, who had miſbehaved themſelves, were ſufficient to anſwer the Occaſions of the State; in which obſtinate and perverſe Temper, I preſume, no Body deſires to ſee future Parliaments imitate them.

They afterwards compelled the King to diſplace ſeveral of his Miniſters, and to transfer his Authority, (and indeed a greater Authority than ever any King of *England* exerciſed) to certain Lords; among which were the Duke of *Gloceſter*, the Earl of *Derby*, the Earl of *Arundel*, and other Malcontents, who were in a Conſpiracy to depoſe him: And when the King reſumed his Authority, and reſtored the Miniſters they had forced him to diſplace and puniſh, they raiſed an Army to compel his Majeſty to yield to their Demands, and eſtabliſh their Tyranny over himſelf and his Subjects, cauſing ſuch a Houſe of Commons to be retained by their Influence, as were abſolutely at their Devotion; and they had already made a Majority in the Houſe of Lords.

It was when the Kingdom was in the extremeſt Danger of a *French* Invaſion, *Anno* 1386. that they compelled the King to turn out his Treaſurer the Biſhop of *Durham*, and the Earl of *Suffolk* the Chancellor, and impeached the Earl of high Crimes and Miſdemeanors; but if we take a View of the Articles againſt the Earl, it is no ſmall Argument of his Innocence, that they could find ſo little to accuſe him of; and would the Compiler have favoured us with his whole Defence, probably it would have appeared no more than a malicious Proſecution, to deprive him of that Poſt, and put one of their own Creatures in his Room.

Certain it is, the King looked upon it as ſuch, and accordingly ſoon releaſed the Earl, and recalled him to the Council-Table, together with the Duke of *Ireland*, another Object of their Envy, whom they had driven from his Majeſty, and confiſcated his Eſtate; and his Majeſty's entertaining theſe Noblemen in his Service again, was held a ſufficient Ground for their breaking out into actual Rebellion, and raiſing ſuch a formidable Army, as neither the King or his Miniſters could afterwards promiſe themſelves any Security. No Wonder, therefore, that the Duke of *Ireland*, the Earl of *Suffolk*, and the reſt of the Miniſtry, fled from their Rage. What could they expect from a Parliament choſen and influenced by their mortal Enemies, and ſupported by an Army of forty thouſand Men?

We might juſtly expect, when the Malcontents were thus triumphant, All that Malice could ſuggeſt in the Proſecution of the King's Miniſters; and accordingly we find almoſt every poſſible Crime laid to their Charge in the thirty-nine Articles exhibited againſt the Miniſtry. But it is obvious, even from thoſe Articles, that the Treaſon they were proſecuted for, was Treaſon againſt the Malcontents, and not againſt the King. Their adviſing his Majeſty not to ſuffer himſelf and his Subjects to be tyrannized over by the diſaffected Lords, was the grand Offence, whatever elſe was pretended.

They charge the Miniſtry, indeed, with impoſing upon the King in his tender Age, inſinuating themſelves into his Favour, and keeping all others at a Diſtance they did not like; which are Arts poſſibly practiſed by moſt Miniſters: But as to the King's tender Age, he was now Eighteen or Nineteen, and might be allowed the Liberty ſure of chuſing his own Servants, and adminiſtring the Government, without delegating his Authority to others, much leſs to his Enemies. We find *Edward* III. his Grandfather, took upon him the Adminiſtration of the Government before he arrived at theſe Years; and by what Law then was King *Richard* to be treated as a Minor at a more advanced Age? Beſides, I do not know any Law that gives the Houſe of Lords the Guardianſhip of the King, if he was ſtill to be looked upon as an Infant. They charge the Miniſtry, indeed, with aſſuming, or accroaching to themſelves, Sovereign Power, and keeping the King in a State of Servitude, but it is evident, this was what they were aiming at and endeavouring themſelves; and their greateſt Quarrel with the Miniſters was, that they ſtood in the Way of theſe diſaffected Lords, and prevented their putting their Plot in Execution. And as to the principal Article, the Twenty-fifth, *That they had obliged the Judges to give their Opinions on certain Queries put to them*,

It ſeems they gave their Opinions voluntarily, and moſt of their Anſwers were very juſt. What ſhould we ſay to a parcel of diſcontented Lords, at this Time of Day, that ſhould compel the King to turn out his Miniſters, and puniſh them for obeying his Commands, and even to inveſt their factious Leaders with Legiſlative Authority? What is this ſhort of Treaſon?

And as to that Queſtion, *Whether the King can diſſolve the Parliament?* Does any one make a Doubt of it? And yet this is one of thoſe Queries, for the reſolving of which the Judges were impeached of High-Treaſon.

And when it was moved to bring the Proceedings againſt *Edward* II. into Parliament, as a Precedent for them to reſiſt and depoſe *Richard* II. What was this ſhort of Treaſon, as the Judges reſolved it? Eſpecially when it was notorious, that the diſaffected Lords intended to depoſe King *Richard*, and even *threatened* him with it to his Face, if he would not comply with them in the Ruin of his Miniſters.

The Malecontents, indeed, charge the King and his Miniſters with inviting over the *French*, to aſſiſt in making him abſolute;

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lute: But as it is acknowledged by all Hiſtorians, that no Miniſtry ever exerted themſelves more effectually in the Defence of the Kingdom, when the *French* were about to invade it, this ought to be looked upon as a malicious Calumny, raiſed only to captivate the People, and give them ill Impreſſions of the Court.

Another Article we find was, that the Miniſtry appointed ſuch Sheriffs as might be ſerviceable to them in Elections; and if this were Treaſon, I doubt every Miniſtry has been guilty of it from that Day to This: But, admitting that the Facts laid in the Articles were Treaſon, the Proceedings againſt theſe Miniſters were certainly illegal, unjuſt, and cruel. All the Judges (who were, at that Time, of the diſaffected Lords own chuſing) with the reſt of the Lawyers, called to their Aſſiſtance on this Occaſion, were unanimous in their Opinions, *That the Appeal* (or Impeachment) *of theſe Miniſters was not made or brought according to Law.* The Lords, indeed, influenced by the Faction, reſolved the direct contrary. But if the Judges and Lawyers do not underſtand what our Conſtitution is, who muſt we have recourſe to, for Satisfaction in ſuch Diſputes? I doubt we ſhall not find many in either Houſe that underſtand it much better; and, indeed, ſuch Preſentments are not at this Day, nor, as I remember, have ever been ſince, held to be legal: For theſe Miniſters were not appealed, or impeached, by the *Houſe of Commons*, but by the *five diſaffected Lords*. And it will be admitted by all, that have any Knowledge in parliamentary Affairs, that one Lord, or one Party of Lords, cannot impeach another. But theſe Noblemen went a Step further; for here were two Commoners, *viz.* Sir *Robert Treſilian* and Sir *Nicholas Brambre*, included in the ſame Impeachment; ſo that the Lords made themſelves both Proſecutors and Judges; and that of Commoners as well as Peers, which I believe the Commons, at this Day, would ſcarce acquieſce in.

There was this further Injuſtice and Irregularity in this Proceeding, that moſt of the Lords impeached were condemned *unheard*: But here was the *Name* of a Parliament, ſupported or influenced by an Army of forty thouſand Men, and that gave a Sanction to all their Proceedings, Right or Wrong. Indeed they compelled the King, afterwards, to paſs an Act in the ſame illegal Parliament, to confirm their Proceedings; but this could not warrant the Injuſtice of theſe Sentences, which were pronounced when there was no Act, or Law, to countenance them: And, beſides, we meet with an Act afterwards, in this very Reign, *viz.* 21 *Richard* II. *Cap.* 12. which declares all the Proceedings againſt the ſaid Miniſters, and others, in the 11th Year of the ſaid King, to be illegal and unjuſt, and reverſes the ſeveral Judgments given againſt them; and declares further, that the Judges, who had anſwered the Queries put to them at *Nottingham*, had given their Anſwers as good and lawful liege People of the King ought to do; and *that the ſaid Parliament holden in the 11th Year of this King, ſhould be clearly annulled, and holden for none, as a Thing made without Authority, and againſt the Will and Liberty of the King, and the Right of his Crown.*

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And Reſtitution was ordered to be made to thoſe, that were then living, who had ſuffered by thoſe unjuſt Sentences, and to the Heirs of thoſe that were dead.

It is obſervable the Compiler of this Volume of State Trials, *takes no Manner of Notice of this Act:* But if no ſuch Act had ever been made, all that have any Knowledge in parliamentary Affairs, muſt admit, that the Lords cannot impeach their own Members, much leſs Commoners; and that there are but two Ways ſuch Cauſes can come before them, *viz.* either by the Preſentment of the Grand Jury of the County where the Facts were committed, or by an Impeachment of the Commons; unleſs we reſort to that extraordinary Courſe, an Act of Attainder, which is uſually an Act of Parliament, to deſtroy ſome Perſon who has not offended againſt any Law in being.

1407. 8 Hen. 4. Thorpe *proſecuted for Hereſy.*

Proceedings againſt Maſter WILLIAM THORPE, Prieſt, for *Hereſy*, before Doctor *Thomas Arundel*, Archbiſhop of *Canterbury* and Lord Chancellor of *England*, *July* 3. 1407. 8 *Henry* IV.

1407. 8 Hen. 3.

The Charge.

THE Charge exhibited againſt the ſaid *William Thorpe* was, That in a Sermon preached at *Shrewsbury* he had declar'd, *Firſt*, That the Sacrament of the Altar after Conſecration was material Bread and Wine: *Secondly*, That Images ought not to be worſhipped: *Thirdly*, That Men ought not to go on Pilgrimages: *Fourthly*, That Prieſts have no Title to Tythes; and, *Fifthly*, That it is not lawful to ſwear in any Caſe.

The Evidence.

The Evidence of the Priſoner's preaching theſe Doctrines, was a Certificate under the Seal of the Bailiff of *Shrewsbury*.

His Defence.

To which he anſwered, That he never preached or taught theſe Doctrines openly or privately. But being examined, particularly by the Archbiſhop, as to theſe Points, he did declare, That he held the Bread after Conſecration ſtill remained Bread: That no body ought to worſhip or kneel before an Image; and that no Image ought to be made of God the Father, who was a moſt wonderful and incomprehenſible Spirit: That Pilgrimages, in which People waſted their Subſtance in Taverns and Inns, and upon lewd Women, could not be pleaſing to God: That neither Chriſt

1407. 8 Hen. 4. or his Apoſtles took Tythes, or commanded the People to pay any: That Pope *Gregory* X. was the firſt who ordered Tythes to be given to Prieſts; And that, whatever Dignity or Order any Prieſt was of, if he did not imitate *Chriſt* in wilful Poverty, and other heavenly Virtues, he was a Prieſt but in Name: That whatever a Prieſt took of the People, whether Tythe or Offering, he ought to have no more than his bare Living, and diſpenſe the Reſidue among the Poor of his Pariſh. But as to the laſt Article of the Charge, he abſolutely denied it, acknowledging, that it was lawful to take an Oath before a Magiſtrate for the determining of Controverſies.

Adviſed to ſubmit. The Archbiſhop hereupon adviſed the Priſoner to ſubmit himſelf to the Holy Church, and to renounce his Errors; and, on his Refuſal, threatned to lay him in Irons: And if that did not reclaim him, he ſhould be con-

Threatned to be burnt. demned as an obſtinate Heretick, and delivered over to the Civil Power to be burnt, as *Soutre* had been a little before for the like Hereſies. What became of the Priſoner afterwards does not appear; but moſt probably he died in Priſon.

This Proceeding is very imperfectly tranſmitted to us; but the Compiler of the firſt Volumes of *State Trials* thought fit, however, to publiſh it, that the preſent Generation might have ſome Notion of what was deemed Hereſy in thoſe Days, and of the Manner of proſecuting thoſe who were charged with it; which was, by ſummoning the Perſon accuſed to appear in the Court of the Archbiſhop or Biſhop of the Dioceſe, who were Judges of theſe Offences, and had Priſons in their Palaces, where Hereticks, or *Lollards*, (as they were called) were kept. And a Charge being exhibited againſt the Priſoner in the Biſhop's Court, and Proof made of it by Depoſitions, or otherwiſe, he was firſt dealt with in a friendly Manner to renounce his Errors; which if he refuſed, he was laid in heavy Irons, uſed hardly, and ſometimes put to the Torture; and if he could not be reclaimed by any of theſe Means, the Biſhop condemned him as an obſtinate Heretick, and delivered him to the Civil Magiſtrate to be burnt. But there is ſcarce any Inſtance of burning a Heretick that offered to renounce his Errors, unleſs he relapſed after a Recantation.

1407. 8 Hen. 4. *Remarks on the Proceedings againſt* Thorpe.

1413. 1 Hen. 5. *Sir* John Oldcaſtle *proſecuted for Hereſy.*

Proceedings againſt Sir JOHN OLDCASTLE, Lord *Cobham*, for *Hereſy*, before Doctor *Thomas Arundel* Archbiſhop of *Canterbury*, *Richard* Biſhop of *London*, *Henry* Biſhop of *Wincheſter*, *Benedict* Biſhop of *Bangor*, and ſeveral other reverend Doctors aſſociated with him, *Sept.* 23, *&c.* 1413. 1 *Hen.* V.

1 Hen. 5. 1413.

Preſented by the Convocation. SIR *John Oldcaſtle* had been preſented by the Clergy of the Province of *Canterbury*, aſſembled in Convocation, as the great Supporter and Encourager of ſeveral Hereſies, particularly with maintaining, 1. That in the Sacrament of the Altar, the Elements, after Conſecration by a Prieſt, ſtill remained Bread and Wine: 2. That Confeſſion to a Prieſt was not neceſſary: 3. That Images, or the Croſs, ought not to be worſhipped: 4. That the Pope, with the Biſhops and Friars, conſtituted a complete Antichriſt: and, 5. That it was not neceſſary to go on Pilgrimages.

The Charge.

Excommunicated for Contumacy. This Nobleman had been cited by the Archbiſhop to appear, and anſwer to theſe Articles; and for his Contumacy, in not appearing, ſtood excommunicated. However, depending on the King's Favour and Protection, he did not abſcond, but remained ſtill about the Court; till at length the Biſhops and Clergy obtained an Order from the King to apprehend Sir *John*, and carry him to the *Tower*.

He is taken, and avows his Principles. On the 23d of *September* Sir *John* was brought by the Lieutenant of the Tower, before the Archbiſhop and his Aſſociates, at the Chapter-Houſe of St. *Pauls*; when the Court let the Priſoner know, that, notwithſtanding he ſtood excommunicated, he might be abſolved and admitted to a Trial, on making his Submiſſion: But Sir *John* boldly avowed all the Doctrines he was accuſed of maintaining; and applying himſelf to the People, declared, that thoſe who ſat in Judgment on him would ſeduce them, and lead them all to Hell.

Adjudged an Heretick. The Court was ſo incenſed at this Inſult, that Sentence was pronounced againſt Sir *John* as an obſtinate Heretick and Apoſtate; and he was delivered over to the ſecular Arm to be burnt; and a Writ iſſued accordingly for his Execution.

He eſcapes out of the Tower. The Priſoner afterwards eſcaping out of the *Tower*, his Enemies ſuggeſted that he was not only an Heretick, but a Rebel and Traitor to the Government, and had appointed the *Lollards* to aſſemble in St. *Giles*'s *Fields* on a certain Night, in order to an Inſurrection, which the poor Proteſtants, or *Wickliffites*, had given ſome Colour to, by aſſembling for their Devotions in the Night-Time in St. *Giles*'s Woods. The King being perſuaded to come thither in perſon with a Body of his Troops, on a Night when it was known they would aſſemble there, apprehended about fourſcore of the *Lollards* in Arms; among whom was Sir *Roger Acton*, a Knight of ſome Reputation; which confirmed the King in the Belief that an Inſurrection was intended; and Sir *Roger*, with ſeveral more of the Priſoners, were tried, condemned, and executed. Though it did not appear that Sir *John Oldcaſtle* was at this

The Lollard's ſurpriſed in St. Giles's Fields.

1413. 1 Hen. 5. *Sir* John Oldcaſtle *concealed in the Mountains of* Wales.

Meeting in St. *Giles*'s *Fields*, he was outlawed for High Treaſon, as a Promoter of that Rebellion, as it was called, and taking Refuge in the Mountains of *Wales*, defended himſelf againſt all the Force and Stratagems of his Perſecutors, for three Years, and upwards; and might have remained there much longer, poſſibly, if he had not given the Clergy freſh Provocation, by defacing the Pictures and Images of the Saints wherever he came: Of which Complaint being made in a Parliament held by the Duke of *Bedford*, Regent of the Kingdom during the King's Abſence in *France*, *Anno* 1417. freſh Forces were ſent down againſt Sir *John*, and a Reward offered to any Perſon that ſhould take him. Whereupon the Lord *Powis* ſurrounded the Lord *Cobham* and his Friends; and after a deſperate Engagement, in which many were killed on both Sides, the Lord *Cobham* was made Priſoner. This Service was then thought of ſuch Importance, that the Lord *Powis* received the Thanks of the Parliament for it; and Sir *John*, according to our Hiſtorians, being brought before the Houſe of Lords, was ordered to be executed both as a Traitor, and an Heretick. In purſuance whereof it is ſaid he was hanged by the Middle in an Iron Chain, and burnt as an Heretick under a new Gallows erected at St. *Giles*'s for that Purpoſe; and while his Enemies curſed and reviled him, and ordered the People not to pity, or pray for him, he gloried in his Sufferings, and was not at all diſmayed at the complicated Execution.

He is taken.

and executed as a Traitor and Heretick.

The Proceedings againſt this noble Lord alſo are very imperfect; but they are the beſt the Compiler of the *State Trials* was able to procure. And in a Work of this Nature, he could not omit mentioning the Bravery and Sufferings of this Proteſtant Hero, who, in defence of Truth, defied all the Powers of Bigotry, and Superſtition; and for many Years ſkreened and ſupported the Diſciples of theſe Proteſtant Doctrines, againſt the Rage and Malice of their Adverſaries: And he might probably have brought about a Reformation, even in thoſe early Days, if the King, who was then engaged in a War with *France*, had not been in a manner compelled to ſubmit to the Dictates of the Popiſh Clergy, who ſupported him in that Enterprize, and indeed maintained him on the Throne, to which he had but a dubious Title.

1413 1 Hen. 5. *Remarks on the Proceedings againſt Sir* John Oldcaſtle.

I muſt confeſs, I am not ſatisfied with the Account our Hiſtorians give us of the Execution of this great Man. Methinks he ſhould either have been burnt as an Heretick, or hanged and quartered as a Traitor. How both Sentences were brought into one, is not eaſy to be conceived; or what Authority could pronounce ſuch a Sentence. Certain it is, there is no Inſtance of ſuch another Execution before or ſince: Beſides, neither the Sentence for Hereſy or Treaſon authorizes the Executioner to hang up the Priſoner by the Middle. Nothing ſhort of an Act of Parliament could appoint ſuch an Execution; and I do not find it pretended that any ſuch Act was ever made.

1535. 26 Hen. 8. *Sir* Thomas More's *Trial for High-Treaſon.*

The Trial of Sir THOMAS MORE, for *High-Treaſon*, before the Duke of *Norfolk*, and other Commiſſioners of *Oyer* and *Terminer*, the 7th of *May*, 1535. 26 *Henry* VIII.

1535. 26 Hen. 8.

The Charge.

THE Charge contained in the Indictment was, 1. That the Priſoner had ſtubbornly oppoſed the King's ſecond Marriage: 2. That he maliciouſly refuſed to declare his Opinion of the Act of Supremacy: 3. That he endeavoured to evade the Force of that Statute, and adviſed Biſhop *Fiſher* by his Letters, not to ſubmit to it; and, 4. That upon his Examination in the *Tower*, it being demanded, if he approved the Act of Supremacy, he anſwered, *That the Queſtion was like a two-edged Sword; if he anſwered one way, it would deſtroy his Body; and if the other way, his Soul*; and theſe were laid to be Open or Overt-Acts of the Treaſon of his Heart.

The Evidence.

As to the two firſt Articles, he did not deny that he adviſed the King againſt his ſecond Marriage, or, that he declined giving his Opinion concerning the Act of Supremacy; and his Letters to *Fiſher* were ſaid to prove the third, but they were not produced: *Rich*, the King's Solicitor, gave Evidence of the fourth, concerning his Anſwer on his Examination in the *Tower*.

His Defence.

Sir *Thomas* ſaid in his Defence, That he had no Malice or Treaſon in his Heart, when he adviſed the King againſt his ſecond Marriage, but gave his Opinion according to his Conſcience and his Duty, when his Majeſty required it; and that, if he had refuſed to deliver his Opinion, his Majeſty might juſtly have reſented it: 2. As to the ſecond Charge, he thought Silence was no Sign of the Malice of his Heart; for, according to the Civilians, he who held his Peace ſeemed to conſent, declaring, he had never caſt any Reflection on the Act before any Man: 3. As to the third, which charges him with maliciouſly adviſing *Fiſher* not to comply with the Act, he deſired his Letters, that were ſaid to prove it, might be produced, and he was confident they would acquit him of ever giving ſuch Advice: 4. And as to the fourth Article, the Words were no Reflection on the Act, if he had ſpoken them; but he had never ſaid any Thing like them, excepting to the Evidence of *Rich* the Solicitor, on whoſe Teſtimony he was charged with them; and appealing to the Memory of the Lords who

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who were preſent at that Examination, They all declared, *They heard no ſuch Words.*

He is convicted.

The Jury, however, was ſo managed, that within a quarter of an Hour after they were gone out, they returned with their Verdict, *That the Priſoner was* GUILTY *of High Treaſon.*

The Court demanding of Sir *Thomas*, What he had to ſay, why Judgment ſhould not be pronounced againſt him, he only obſerved, That an Act of Parliament could not give the King the Supremacy of the Church, of which *England* was but a Part; and further, that none but Heaven could confer that Supremacy on any Perſon: After which Sentence was pronounced on him as a Traitor; though all except the Beheading, was pardoned, on account of the Priſoner's having borne the Office of Lord Chancellor.

His Execution.

He was ordered to be executed on the ſixth of *July*, about a Month after his Trial. He preſerved his uſual facetious Temper to the laſt; for obſerving the Stairs of the Scaffold very weak, *he deſired a Friend to lend him a Hand to get up; but when I come down*, (ſays he) *let me ſhift for my ſelf.* And when the Executioner, as uſual, aſked him Forgiveneſs, *Friend* (ſays Sir *Thomas*) *you will get but little Credit in cutting off my Head, my Neck is ſo ſhort.* Then *he deſired the Executioner's Leave to lay his Beard aſide, for that had committed no Treaſon.*

Remarks on the Trial and Execution of Sir Thomas More.

It is not eaſy to conceive what there was in this Charge, if it had been all proved, that could amount to High Treaſon, or even to a Miſdemeanor; unleſs it be criminal not to think always as the King thinks. Very precarious was the Life of a Subject in this Reign. Whatever the Court were pleaſed to denominate Treaſon, was adjudged Treaſon; and whoever the Miniſtry thought fit to accuſe, were found guilty. No Jury, or Court of Juſtice, durſt refuſe to convict any Man the King intimated he would have condemed to Death: And Parliaments met only to execute the King's Decrees. We may therefore look upon this Reign of *Henry* VIII. to be the moſt tyrannical, arbitrary, and cruel, that is to be met with in our Annals. From this Proſecution of Sir *Thomas More*, it appears that neither Virtue, Parts, Learning, or even Innocence, and the moſt inoffenſive Behaviour, were any Protection. This great Man, who had arrived to a good old Age, was not ſuffered to go to the Grave in the natural and ordinary way. His ſteady and perſevering Virtue was a Reproach to the Tyrant, who ſeems determined to ſuffer no Man to live that would not fall down and worſhip him, and change his Creed as often as He changed his Mind.

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Sir *Thomas* is ſometimes cenſured for the Lightneſs of his Expreſſions at the Hour of Death; but to me it only ſhews his Innocence, and that he conſidered this but as the Paſſage to a better State, which made him more than uſually gay, at the Approach of his Execution; and as to his ſaying *His Beard had committed no Treaſon*, he certainly intended to intimate thereby, that his whole Perſon was equally innocent, and that nothing, how inoffenſive ſoever, could eſcape the Rage and Fury of that Adminiſtration.

1549. 2 & 3 Edw. 6.

The Attainder of THOMAS Lord SEYMOUR, Baron of *Sudley*, of High-Treaſon, in Parliament, *Feb.* 25. 1549. 2 & 3 *Edward* VI.

1549. 2 & 3 Edw. 6.

The Attainder of the Lord Seymour.

THE Protector, *Edward Seymour* Duke of *Somerſet*, on the 25th of *February*, 1549. cauſed the following 33 Articles, to be exhibited againſt his younger Brother, the Lord *Seymour*, then Lord High Admiral of *England*, before the Privy Council.

The Charge exhibited againſt him, before the the Privy Council.

1. The firſt Article recited, That, whereas the Duke of *Somerſet* had been made Governor of the King's Perſon, and Protector of the Realm, to which the ſaid Lord *Seymour* had conſented in Writing, he had, notwithſtanding, attempted to undo this Order, and endeavoured to obtain the Government of the King's Perſon, to the great Danger of his Majeſty, and the Subverſion of the State.

2. That he corrupted divers of the Privy Chamber, to perſuade the King to agree to his perilous Purpoſes.

3. That he indicted a Letter, for the King, to copy, to the Parliament, which he determined to have carried to the Houſe of Commons himſelf; and, with the Aſſiſtance of his Party there, which he had already prepared, to have cauſed a Diſturbance.

4. That he had laboured to bring over ſeveral of the Council, and the Nobility, to his Party, in order to procure an Alteration in the Adminiſtration.

5. That he had ſaid, he would make the blackeſt Parliament that ever was in *England*.

6. That being ſent for, to anſwer ſuch Things as were laid to his Charge (*by the Council, I preſume*) he refuſed to come.

7. That, notwithſtanding the Clemency that had been ſhewn him, he ſtill continued his miſchievous Purpoſes, and continually laboured to make the King diſlike the Lord Protector's Adminiſtration.

8. That the King not being of Age to direct his Affairs, he had endeavoured to perſuade his Highneſs to take the Government upon himſelf.

9. That he intended, and attempted, to get the King's Perſon into his Cuſtody.

10. That he had corrupted with Money certain of the Privy Chamber, to perſuade the King to have recourſe to him, and no Body elſe, for what he wanted, that he might have the Management of his Highneſs.

11. That

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11. That he had promiſed the Marriage of the King at his Will and Pleaſure.

12. That he laboured to confederate himſelf with ſome of the diſaffected Nobility, and others among them, to depart to their ſeveral Counties, and ſtrengthen themſelves, that he might have always a Faction in Readineſs for his Purpoſes.

13. That he had endeavoured to ſtrengthen himſelf, by creating Factions among the Nobility.

14. That he had employed Perſons to ingratiate themſelves with the Yeomen, and leading Commoners of certain Counties, that he might have the Multitude at his Devotion.

15. That he had alſo acquired the Stewardſhips of Noblemen's Manors, and Lands, to make his Party the ſtronger.

16. That he hired, and retained, abundance of young Gentlemen, and Yeomen, to his Service, more than the Law allowed, to ſtrengthen himſelf in his evil Deſigns.

17. That he had uſed ſuch Application, and Diligence, in this Matter, that he could raiſe ten thouſand Men of his own Adherents, beſides his Friends.

18. That he had coined Money enough to maintain the ſaid ten thouſand Men for a Month, and given Orders to have the ſaid Money in Readineſs.

19. That he had attempted to marry the Princeſs *Elizabeth*, the King's Siſter, before his Marriage with the Queen: That during his Marriage, he continued to make Court to the Princeſs; and after the Queen, his Wife, was dead, attempted to marry the Princeſs *Elizabeth* again.

20. That he married the late Queen Dowager ſo ſoon after the late King's Death, that if ſhe had been with Child, it would have been doubtful, whether the Iſſue had been the King's, or his own.

21. That he firſt married the late Queen privately, and concealed it; and then obtained a Letter from the young King, requiring the Queen to marry him; and likewiſe, he prevailed with the Protector to ſpeak to the Queen in his Behalf; and, it was to be feared, he intended to uſe the like Practice in marrying the Princeſs *Elizabeth*.

22. That he interrupted the King's Affairs in Parliament, and elſewhere, and withdrew himſelf from his Service; and that all the Practices, and Preparations, abovementioned, were intended to make his way to the Throne by ſome heinous Enterprize againſt his Majeſty's Perſon.

23. That he had gotten Poſſeſſion of the ſtrong Iſles of *Scilly*, and laboured to obtain *Londay*; and, confederating with Sir *William Sharington*, had gotten the Mint of *Briſtol* into his Hands; and with the Aid of that Money, and the Strength of thoſe Places, and the Shipping he was Maſter of, he propoſed to defend himſelf, if his traiterous Purpoſes did not ſucceed, and he ſhould be called to account for them.

24. That, knowing Sir *William Sharington* had committed Treaſon, and defrauded the King, he did aid and aſſiſt him, and bear him out in it.

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25. That, whereas he owed Sir *William Sharrington* Money, that he might have a Colour to protect the ſaid *Sharington*, and defraud the King, he pretended *Sharington* was indebted 2800 *l.* to him.

26. That he extorted Money from Ships bound to foreign Countries, to the Diſcouragement of Traffick, *&c.*

27. That he enriched himſelf by Goods that had been piratically taken, and diſtributed them among his Servants and Friends, refuſing to reſtore them to the Owners; whereby foreign Powers had been diſguſted.

28. That he had taken away the Prizes from thoſe who had taken Pirate Ships, and impriſoned the Captors.

29. That he had not only ſet Pirates at Liberty, but ſhared the Goods they had taken from honeſt Merchants with them, and was himſelf the chief Pirate.

30. That, when the Protector and Council (of which he was one) had given publick Orders for the Reſtoration of Goods piratically taken, he (the Admiral) hath ſent private Letters that ſuch Orders ſhould not be obeyed.

31. That, when foreign Merchants have had their Ships damaged upon the Coaſt (but not wrecked) and the Protector and Council have ordered their Ships and Goods to be preſerved, and reſtored to the Owners, he (the Admiral) hath given contrary Orders, and defrauded the Owners of them.

32. That he had not only revealed the King's Councils, but had prevented the Execution of Orders of Council that he himſelf had conſented to.

33. That in the County of *Denbigh*, his Stewards and Officers had amaſſed great Quantities of Proviſion, and vaſt Sums of Money; and given out that the King was dead, to the Amazement of the People, who expected ſome Diſturbance, if it had not been prevented by apprehending him.

Lord Seymour *examined by the Council on theſe Articles.*

The Lords of the Privy Council went to the *Tower*, to examine the Admiral upon theſe Articles; but he told them, he expected an open Trial, and that his Accuſers ſhould be brought Face to Face; and, being ſtill preſſed to anſwer them, he ſaid, If they would leave the Articles with him, he would conſider them, otherwiſe he would not anſwer them. This being refuſed, it was reſolved in Council to acquaint the King with the State of the Caſe, and know if he would have the Admiral proſecuted. To which the King, as he had been directed, anſwered, He perceived that treaſonable Matters were laid to the Charge of his Uncle the Admiral, and he thought it reaſonable they ſhould proceed againſt him as they deſired.

Examined by a Committee of both Houſes.

It being afterwards moved in Parliament, to bring in a Bill of Attainder againſt the Admiral, it was reſolved, That a Committee of both Houſes ſhould firſt attend the Admiral in the *Tower*, and require his Anſwer to the ſaid Articles.

Accordingly the Lord Chancellor, the Earls of *Shrewsbury*, *Warwick*, and *Southampton*; Sir *John Baker*, Speaker of the Commons; Sir *Thomas Cheney*, and Sir *Anthony Denny*, were ſent

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His Answer to both the Articles.

ſent to examine him; and, after a great deal of Perſuaſion, the Admiral anſwered to this Effect: That he had ſaid, he would be glad to have the Cuſtody, or Government, of the King's Perſon; but it was only in Mirth. He owned further, that he had ſearched for Precedents, and found, in the Minority of *Hen.* VI. one of his Uncles was Protector of *England*, and another had the Government of his Perſon; and, as his Brother was Protector, he had Thoughts of moving it to the Parliament, to be his Majeſty's Governor; but, it having been obſerved to him, that he had conſented his Brother ſhould be both Protector and Governor, he ſaid, he deſiſted from that Purſuit.

He acknowledged alſo, that he had ſent Money to the King ſeveral Times, at his Majeſty's Requeſt, and diſtributed ſeveral Sums to thoſe about him; particularly to Mr. *Cheek* and Mr. *Fowler*; but would give no further Anſwer, or ſubſcribe what he had ſaid; whereupon a Bill of Attainder was brought in againſt him, the 25th of *February*, read three Times in three Days, and paſſed the Houſe of Peers, who on the 27th ſent it down to the Commons, acquainting that Houſe, that if they thought fit, the Noblemen who had given Evidence againſt the Admiral, in the Houſe of Peers, ſhould give the ſame Evidence before the Commons.

A Bill of Attainder brought in againſt him.

But the Lower Houſe, it ſeems, were not in ſuch Haſte to paſs the Bill as the Lords had been. They thought it highly reaſonable the Admiral ſhould be heard in his Defence; with which they acquainted the Lords: Whereupon a Meſſage was procured from the King, to inform the Commons, that the Admiral's Preſence was not neceſſary; and they were prevailed on by the Court, to paſs the Bill, without hearing of him, on the 5th of *March*; and it afterwards received the Royal Aſſent.

It paſſes, without hearing the Lord Seymour.

In the Preamble of the ſaid Act, was recited the Subſtance of the thirty three Articles abovementioned; and it was enacted, *That the ſaid Sir* Thomas Seymour, *Kt. Lord* Seymour *of* Sudley, *High Admiral of* England, *for the ſaid traiterous Offences and Deeds, ſhould, by the Authority of that Parliament, be adjudged and attainted of Treaſon, and ſuffer and forfeit as a Traitor.*

The Tenour of the Act.

The Protector and Council preſs his Majeſty for his Execution.

The Council, on the 10th of *March*, with the Protector at their Head, preſſed his Majeſty that Juſtice might be done upon the Admiral. The young King, as he had been taught, thanked them for their great Care of his Safety, and directed them to proceed to Execution; whereupon a Warrant was ſigned by the Council, on the 17th of *March*, for the Execution of the Admiral, the *Wedneſday* following; the Protector's Hand being firſt ſet to the Warrant.

The Warrant ſigned.

Latimer's Invectives againſt Lord Seymour.

The Editor of this Proceeding concludes it with ſome Paſſages out of *Hugh Latimer*'s Sermons, containing moſt vile Invectives againſt the Admiral, with abundance of ill-natured Suggeſtions, to induce the People to believe, he was damned.

His Behaviour at his Execution.

The Admiral being brought to the Scaffold, erected on *Tower-Hill*, on the 20th of *March*, appeared not at all terrified at the near Approach of Death; but making a ſhort Speech to the People, who were charmed with his graceful Preſence, and intrepid Behaviour, he took that Opportunity to aſſure them, *That he had neither committed, or intended, any Treaſon againſt the King or Nation*; and then ſubmitting to the Block, his Head was ſevered from his Body.

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Remarks on the Attainder of Thomas *Lord* Seymour.

To underſtand the Reaſon of this Proſecution of the Lord *Seymour*, it is neceſſary to look back to the Beginning of this Reign. It is ſaid, he firſt diſcovered himſelf diſcontented on the opening of the late King's Will, (*Hen.* VIII.) who had appointed his Brother and ſeveral others Regents of the Kingdom, during the Minority of his Son; while he, (the Lord *Seymour*) who was alſo Uncle to the Infant King, was left out of the Number, and had only a Place aſſigned him in the Privy-Council.

However, being a fine Gentleman, of excellent natural Parts, and remarkable for the Beauty of his Perſon, he hoped to make himſelf ſome Satisfaction for this Slight, by matching with the Princeſs *Elizabeth*, Daughter to the laſt, and Siſter to the preſent King; but, not ſucceeding in his Addreſſes here, he made Court to Queen *Katherine*, Dowager of the late King, and carried her very ſecretly, and ſo ſuddainly, that it was made a doubt, whether ſhe was not then with Child by the King, her late Huſband. She was ſo much in haſte to poſſeſs this fine Gentleman, it ſeems, that ſhe did not obſerve the Rules of Decency: However, he managed Matters ſo as to get both the King's, and his Brother the Protector's Conſent to the Marriage, after it was done, and then he declared it publickly; and now, looking upon himſelf to be upon an equal Foot with his Brother, he murmured at the Duke's ingroſſing the Adminiſtration of the Government, and the Care of the King's Perſon to himſelf; ſuggeſting, that the Protector ought to be content with the Adminiſtration of the Government, and leave the Care of the King's Perſon to him, his other Uncle, as was practiſed during the Minority of *Henry* VI. However, his Brother having diſcovered his Views, and checked him for them, he ſeemed to wave the Purſuit for ſome Time; but the Protector marching with the Army into *Scotland*, the Admiral took that Opportunity to gain over the young King to his Intereſt, and obtained a Patent to enlarge his Authority of Lord High Admiral, with an Addition to his Pay; of which the Protector receiving Intelligence, haſtened back from *Scotland*; but the Admiral was now ſo much in the King's Favour, that he refuſed to deſiſt from his Pretenſions, and even procured a Meſſage, in writing, from his Majeſty to the Houſe of Commons, expreſſing his Deſire, that he (the Admiral) might be conſtituted Governor of his Perſon; and, the Council ſending to diſſuade him from delivering the Meſſage, he was ſo far from taking their Advice, that he threatened ſeveral of them, for interpoſing in the Matter: Whereupon an Order of Council was iſſued, for apprehending him; and he was given to underſtand, if he did not ſubmit himſelf, he would be proſecuted for High Treaſon; which had ſuch an Effect, that he feigned a Reconciliation with his Brother, the Protector,

1549. 2 & 3 Edw. 6. and was discharged. But having buried the Queen his Wife, and making Court again to the Princess *Elizabeth*, and at the same Time reviving his Pretensions to the Government of the King's Person; the Protector, who could bear no Rival in Power, determined to cut him off, by an Act of Attainder, without allowing him the Benefit of a Trial; which we see he found Means to accomplish.

It appears, by the Articles preferred against the Admiral, before the Privy Council, that his principal Crime was, his attempting to share the Administration with the Protector. Indeed his great Enemy, his Brother, suggested in some of the Articles, that his attempting to get the Government of the King's Person, was with a View of usurping his Throne, and that he had made a Provision of Forces and Money for that End; but from other Articles it appears, that he proposed no more than to gain the Government of the King's Person by the Consent and Concurrence of his Majesty, and the Parliament; which had been a more legal Way of arriving at that Honour, than his Brother, the Protector, had taken, to acquire the sole Administration of Affairs of State. The Protector had no more than a Grant, of his own framing, from an Infant King, to invest him with the executive Power; whereas the Admiral evidently proposed to have had an Act of Parliament to establish him the King's Governor; and it is a little amazing, that the Protector did not procure an Act of Parliament to support his Authority, at the Time he procured himself to be declared Protector: For, as the late King had appointed certain Noblemen to share the Regency with him, nothing less than an Act of Parliament could legally supersede and invalidate that Will, and transfer the Administration to the Protector. And, admitting that the King's Uncles had a Right to govern the State, during the Minority of their Royal Nephew, (from that Precedent in the Reign of *Henry* VI. and some others) which the late King's Will could not alter; yet those Precedents shew, that the Uncles of the Infant King divided the Executive Power amongst them. One was Regent of *England*, another of *France*, and a third Governor of the King's Person. There was no Precedent of one Uncle's engrossing the whole Administration, to the Exclusion of the rest. The Admiral therefore (supposing the late King's Will did not stand in his Way) had great Reason to demand the Government of the King, while his Brother held the Regency; and, as he attempted to invest himself in this Dignity with his Majesty's Consent, and in a Parliamentary Way, surely there could be no Treason in it: And it is evident, the true Reason, the Protector would not suffer the Admiral to be brought to an open Trial, or heard in Parliament, was, least his Claim should appear too specious, or his own Usurpation of the Royal Power too notorious.

He could suggest what Crimes he pleased against the Admiral, in either House; while that unfortunate Nobleman was not allowed to examine the Proofs he brought: He could make use of the Royal Name to support the defective Evidence, and in a Manner force the Odious Bill through both Houses, which he had Reason to apprehend could not have been carried, if he had suffered Matters to be fully discussed. There were many, probably, that would have been ashamed of giving their Voices for a Bill of Attainder, if it had appeared upon what trifling Suggestions, and slight Evidence, it was founded, who were willing to run blindfold into it; with a View, perhaps, of ruining the Protector, as well as his Brother. Most of the Regents, appointed by the late King's Will, were incensed to the last Degree, to see the Protector usurp the sole Government of the State; and they might look upon it as the readiest Way to destroy him, and recover their former Authority, to assist him first, in ruining his Brother. It is highly probable, that if the two Brothers had united their Interests, they would have been able to have borne down all Opposition. But when the Protector had so far contributed to the weakening the Interest of his Family, by cutting off his Brother, no Wonder his Enemies were inspired with Thoughts of depriving him of that Authority he had usurped. How suddenly they effected it, after the Death of the Admiral, will be shewn in the following Proceedings.

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But, before I dismiss this unrighteous and arbitrary Attainder, I cannot but observe, with what indecent Zeal the Protector hastened the passing, as well as the Execution, of it. We find him, first, making use of the Name and Authority of his Royal Nephew, the Infant King, to prevent the Admiral's being heard in his Defence. We see him, afterwards, at the Head of the Council, petitioning his Majesty that Justice (as he called the most arbitrary and unjust Proceeding that ever was) might be done upon his Brother; and lastly, we see his Hand first set to the Warrant, for his Execution, which, one would have thought, he should have avoided, how much soever he had forwarded the barbarous Sentence behind the Curtain. There is no doubt to be made, as has been observed already, that this unnatural Prosecution contributed more Ways than one to that Destruction which so suddenly overtook him.

It has been suggested, by some Historians, that this Misunderstanding, between the two Brothers, arose from a Dispute of their Wives, about Place: But, as one very well observes, there could be no Colour for such a Dispute. The Admiral's Wife was Queen; and the Wife of no other Subject, how great soever, could have any Pretence to dispute the Precedence with her. Though there is no doubt, but the Admiral's marrying the Dowager Queen, and making Court to the Princess *Elizabeth*, created in the Protector a Jealousy of his ambitious Views; and induced him to apprehend, that he might one Day be eclipsed by the Figure his Brother would make. I am satisfied, the Protector's Concern, lest his own Power should suffer some Diminution, was the grand Spring that gave Motion to this Prosecution, and not his Care for the King's Safety; though he made that the chiefest Pretence. And thus, we see, whenever the exorbitant Power of a great

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great Minister is attacked, he constantly flies for Refuge to his abused Master, and endeavours to persuade, both him and the World, that those who censure his Conduct, are, indeed, Enemies to the Prince he serves; and that he suffers only for his Fidelity to his Sovereign.

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Proceedings against EDWARD Duke of *Somerset.* for High-Treason, and other Misdemeanors, *Jan.* 1550. 3 & 4 *Edward* VI.

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Prosecution of the Duke of Somerset.

The Privy Council confederate against him.

PART of the Privy Council, on the 6th of *October*, 1550. sent to the Lord Mayor and Aldermen of *London*, requiring them not to obey any Letters, or Orders, of the Protector: And receiving Advice, that he had removed the King from *Hampton Court* to the *Castle* of *Windsor*, and assembled Forces there,

Issue a Proclamation against him.

they published a Proclamation, declaring, that the Protector, by his Administration, had been the Occasion of the Insurrections, and Disturbances, that had lately happened in the Kingdom, and the loss of several Places on the Frontiers of *France:* That his Ambition appeared, by the building such magnificent Palaces in the Time of War, and his having no regard to the Advice of Council: That he encouraged the Faction, and Division, amongst the Nobility, Gentry, and Commonalty: That he was unnatural, and ungrateful, and had traiterously slandered the Council to the King, and did what in him lay, to cause Variance between the King and his Nobility; and, lastly, That he was a Traitor; and therefore they required the Aid of the Nobility, the City, and Commons, to take the King out of his Hands.

Signed by the Lord Chancellor *Rich*; the Lord *St. John* President of Council; the Earl of *Warwick* Great Chamberlain; the Marquis of *Northampton*; and a Majority of the Council.

He and his Adherents taken into Custody.

The Duke afterwards dismissing his Forces, the whole Council assembled at *Windsor*; and, having taken the Duke, and his principal Adherents, into Custody, they caused twenty-nine Articles to be drawn up against him: Wherein

The Charge against him.

they charge, That he, having taken upon him the Office of *Lord Protector*, on Condition he should transact nothing without the Assent of the late King's Executors, assumed the Administration of the Government solely to himself, perverted Justice, subverted the Laws, released Persons imprisoned for Felony and Treason, appointed Generals, and other Officers, treated with Ambassadors, reprehended, and brow-beat the Privy Councillors, for giving the King their Advice, held a Court of Request in his House, and determined Suits relating to Freeholds there: That he disposed of Offices, Bishopricks, and Ecclesiastical Preferments, for Money; made Grants of Leases and Wardships, and alienated the Crown Lands, by his sole Authority: That he encouraged Alchymy, and Multiplication of Metals, and debased the Coin: That he gave out, the Nobility, and Gentry, were the only Cause of Dearth, and issued a Proclamation against the Advice of the Council concerning Enclosures, which occasioned divers Insurrections: That he gave out a Commission to determine Differences concerning Enclosures, Commons, Cottages, *&c.* whereby the Laws were subverted, and a Rebellion ensued: That he suffered Rebels to arm themselves against the Nobility, and Gentry, and did not suppress, but encouraged them; giving out, that the Avarice of the Gentry occasioned the Peoples Rising; and that it was better for them to die, than perish for Want; and as the Lords were loth to reform Enclosures, the People had good cause to reform them themselves: That he would not suffer the Places belonging to the Crown, in *France*, to be put into a Condition of Defence: That he published seditious Libels, at *Hampton Court*, in order to incite an Insurrection in his Favour: That he declared the Privy-Council to be Traitors; and, that the Lords at *London* intended to destroy the King, inciting the King to revenge it: That he had said, divers Times, *the Lords of the Council, at* London, *intend to kill me; but, if I die, the King shall die; and, if they famish me, they shall famish him:* That he moved the King to go to *Windsor*, whereby his Majesty was not only greatly terrified, but fell dangerously ill: That he armed his Servants, and Dependants, at *Windsor*, and disarmed the King's Servants, and Guards, leaving his Majesty's Person exposed in the Night-Time, while he was strongly guarded himself; and, lastly, that he intended to fly to *Jersey*, or *Wales*, and laid Horses, Men, and a Boat, for that Purpose.

He confesses the Charge, and makes his Submission to the Council.

The Duke, having read, and considered, these Articles, thought fit to confess his Guilt, and and make his Submission, in Writing, to the Lords of the Council; but intimated, that he hoped he should have the Benefit of his Majesty's Pardon (then lately passed); and that they would represent to his Majesty, that his Offences proceeded more from Ignorance, Negligence, or Folly, than from any malicious, or evil, Intention, tending to Treason against his Majesty, or the Realm: Begged his Majesty would take Pity upon him, his Wife, and Children; and not deal with him according to the Rigour of the Laws, but after his great Goodness and Clemency.

His second Submission.

Before the Council proceeded further, they deputed four Spiritual, and four Temporal, Lords, to examine the Duke in the *Tower*, whether he subscribed that Confession freely: To which the Protector answered, that he voluntarily made that

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that Confeſſion, on his Knees, before the King and Council, and ſigned it; proteſting, that his Offences flowed from Raſhneſs, and Indiſcretion, rather than Malice; and that he had no treaſonable Deſign againſt the King, or his Realms. *So* (ſays the Editor of this Volume of Trials) *both Houſes ſoon paſſed the Bill againſt him, and he was fined by Act of Parliament, entitled,* An Act touching the Fine and Ranſom of the Duke of *Somerſet*; *that is, for the Puniſhment of his late Miſdemeanors: Whereby he was fined* 2000 l. *a Year of Land, and loſt all his Goods and Offices.*

He is fined, and impriſoned.

This Matter was never brought before the Parliament, as the Editor of this Volume ſuppoſes.

But, I muſt confeſs, I never could meet with this Act, or the Title of it, in any of our Statute Books, which inclines me to believe this Matter was never brought before the Parliament: Beſides, this ſecond Submiſſion, which the Editor has given us, though it be directed to no Body, ſeems, from the Tenor of it, to be deſigned, either for the Lords of the Council, or the Star-Chamber. Had it been intended for the Parliament, it would, ſurely, have been addreſſed to one, or both, of the Houſes: But here the Priſoner is made to ſay, *I am full of Heavineſs, my very good Lords, to underſtand my laſt Letter* (of Submiſſion) *was no better accepted at your Lordſhips Hands, to whom I am bound, during my Life, for your moſt gentle and merciful Dealing with me, that it pleaſed your Goodneſs to bring my Caſe to a Fine.* And having repreſented, that the Fine was greater than his Circumſtances would bear, he deſires a Mitigation of it: *But, had the Fine been laid by Act of Parliament, what Lords could have mitigated it? He adds,* I ſubmit myſelf to the King's Majeſty, and to your good Lordſhips, appealing from the Rigour and Extremity of his Majeſty's Laws, to his Majeſty's great Mercy and Clemency. *Surely he would have ſaid, the Rigour of the* Act, *rather than the Rigour of his Majeſty's Laws; if this Fine had been juſt then inflicted by Act of Parliament.* He concludes, moſt humbly praying his Majeſty's and their Lordſhips Pardon, on his Knees; and that they would impute his Offences to the want of Diſcretion, truſting they would find him ſo ſubmiſſive to *their Honours*, and conformable to *their Lordſhips* Orders, that he ſhould make amends, and obtain Pardon for his former Folly: And this is dated from the Tower the 2d of *February*, which is the Day after the Parliament roſe; and conſequently, neither this, nor the former Submiſſion, mentioned in it, were addreſſed to the Parliament; but the whole Proceeding was certainly before the Council, or Star-Chamber.

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He is ſet at Liberty.

He was releaſed out of the *Tower* on the 6th of *February*, firſt giving 10000 *l.* Security, for his good Behaviour, and that he would reſide, either at the King's Palace of *Sheen*, or his own Houſe at *Sion*; and not depart from either of them, unleſs he knew that the King was within four Miles of theſe Places, and then he was to withdraw from thence: Nor was he to come to Council, unleſs called. However, he had the King's Pardon the 16th inſtant, and on the 8th of *April* following, was ſworn, again, of his Majeſty's Privy-Council; and in *June* the beſt Part of his Eſtate was reſtored him by Patent, *ſays the Compiler.*

He is pardoned, and ſworn of the Privy Council again.

I proceed now to give an account of the ſecond Proſecution of the Duke, in the Year 1551.

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Trial of the Duke of Somerſet.

The Trial of Edward Duke of *Somerſet*, for High-Treaſon and Felony, before the Lord Treaſurer, High Steward, and twenty-ſeven of his Peers, in *Weſtminſter-Hall, Decemb.* 1. 1551. 5 *Edw.* VI.

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The Charge againſt him.

THE Indictment was found by a *London* Grand-Jury, on the firſt of *November*, in the Mayoralty of *Richard Dobbes:* And ſet forth, that *Edward* Duke of *Somerſet*, late of *Sion*, in the County of *Middleſex*, at the Pariſh of St. *Andrew*'s *Holbourn*, within the ſaid City of *London*, on the 20th of *April*, then laſt paſt, and divers other Days before and after, did malicioufly, and traiterouſly, with divers other Perſons, conſpire, compaſs, and imagine to depoſe, and deprive, his Sovereign Lord, King *Edward* VI. of his Royal State, and Dignity; and, without any Authority, to aſſume the ſole Government of his Perſon, and the Adminiſtration of all Affairs of State: And that, to accompliſh his ſaid Treaſons, the ſaid Duke, together with Sir *Michael Stanhope*, Sir *Miles Partridge*, Sir *Thomas Holcroft*, and *Francis Newdigate*, Gent. with divers other Perſons, to the Number of an hundred, aſſembled themſelves, in order to take and impriſon the Duke of *Northumberland*, then Earl of *Warwick*, and one of his Majeſty's Privy-Council, againſt the King's Peace, his Crown, and Dignity, and contrary to the Form of the Statutes in that Caſe made and provided: And, further, that the ſaid Duke of *Somerſet*, on the 20th of *May* then laſt paſt, in the Pariſh aforeſaid, and at divers other Times, and Places, did feloniouſly move, and incite, ſeveral of his Majeſty's Subjects, to make an Inſurrection, and Rebellion, and to take, and impriſon, the aforeſaid Duke of *Northumberland*, againſt the King's Peace, *&c.* and contrary to the Form of the ſaid Statute.

Lords commiſſioned to try him.

His Majeſty having commiſſioned the Marquis of *Wincheſter* Lord Treaſurer, to be Lord High Steward, *pro hac vice*, and twenty-ſeven other Peers, for the Trial of the ſaid Duke, his Uncle, *viz.* The Dukes of *Suffolk* and *Northumberland*; the Marquis of *Northampton*; the Earls of *Derby*, *Bedford*, *Huntington*, *Rutland*, *Bath*, *Suſſex*, *Worceſter*, and *Pembroke*; the Lord Viſcount *Hereford*; the Barons *Abergavenny*,

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venny, Audley, Wharton, Evers, Latimer, Borough, Zouch, Stafford, Wentworth, Darcy, Sturton, Windsor, Cromwell, Cobham, and *Bray.*

The Duke was brought before them in *Westminster-Hall*, to take his Trial on the first of *December*; and the King's Counsel having opened the Evidence against him, which consisted of several written Depositions, these were read in Court.

Written Depositions read in Evidence.

And first, the Deposition of Sir *Thomas Palmer* was read, importing, that the Duke, being about to take a Journey into the North, proposed to have raised the People, if Sir *William Herbert* had not assured him, he should receive no harm; and, that he had contrived, to invite the Duke of *Northumberland*, the Marquis of *Northampton*, the Earl of *Pembroke*, and other Lords, to a Supper; and either to have murdered them in the Way, or at the Entertainment. He deposed also, that Sir *Ralph Vane* had 2000 Men in Readiness; that Sir *Thomas Arundel* was to secure the *Tower*; *Partridge* to raise *London*, and take the Great Seal; *Seymour* and *Hamond* were to attend him, and all the *Gendarmerie*, or Men at Arms, were to be killed. They were to be attacked by 2000 Men under Sir *Ralph Vane*; by an hundred Horse of the Duke of *Somerset*'s, besides his Friends: After which, the Duke was to proclaim Liberty in the City, in order to raise the Apprentices; and if he did not succeed, he was to retire to the *Isle of Wight*, or to *Poole*.

The Earl of *Rutland* deposed, that the Duke had made a Party, to get himself declared Protector in the next Parliament.

Crane confirmed the Deposition of Sir *Thomas Palmer*; adding, that the Lord *Paget*'s House was the Place, where the said Noblemen were to have been invited to an Entertainment, and murdered: And that the Thing had been done; but the Greatness of the Enterprize caused Delays, as well as some Diversity of Advice.

Hamond deposed, That the Duke of *Somerset*'s Chamber at *Greenwich* had been strongly guarded, in the Night, by armed Men.

The Lord *Strange* deposed, that the Duke desired him to move the King, to marry his third Daughter, the Lady *Jane*; and to be his Spy about the King, to inform him, when any of the Council spoke privately with him, and what they said.

The Duke's Defence.

The Duke said, in his Defence, That he never intended to have raised the Northern Parts; or to have killed the Duke of *Northumberland*, or any other Person; but only talked of it, without any Intention of doing it: That it was impossible, he, with a small Troop, should destroy the *Gendarmerie*, who consisted of nine hundred Men: That he never designed to raise any Stirs in *London*, but looked upon it as a Place where he was most safe: That his having Men about him at *Greenwich*, was with no ill Design; nor did he ever make any use of them, but surrendered himself a Prisoner without Resistance: He objected also, that the Witnesses were not brought into Court, Face to Face.

The King's Counsel Reply.

The King's Counsel replied, That his assembling Men with an Intent to kill the Duke of *Northumberland*, was Treason by the 3d & 4th of *Edw* VI. *Against unlawful Assemblies*, which enacts, That if twelve Persons should assemble to kill a Privy Councillor, and did not disperse themselves upon Proclamation, it should be adjudged High-Treason: Or, if twelve such Persons assembled, to commit a Riot, and being warned, did not disperse themselves, it was Felony, without Benefit of Clergy, or Sanctuary: That to raise *London*, or the Northern Parts, was Treason; and to have Men about him, to resist those that came to apprehend him, was Felony: That to assault the Lords, and to devise their Deaths, was Felony.

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The Lords consider the Evidence.

The Lords being withdrawn, were not satisfied with the Evidence of the Duke's Design, of raising the North, or the City, or of killing the *Gendarmes*: Some of the Lords also objected, that the Duke of *Northumberland*, the Marquis of *Northampton*, and the Earl of *Pembroke*, who were Parties in the Cause, ought not to be of the Number of the Lords Triers; because the Prisoner was principally charged with a Conspiracy against them. To which it was answered, that a Peer could not be challenged: On which Point, it seems, the Lords were pretty much divided in their Opinions; but in the End, it was agreed, they might sit in Judgment on him; and, by the Influence of the Duke of *Northumberland*, and the other two, a Majority found the Prisoner guilty of Felony, though they acquitted him of the Treason; and hereupon Judgment was given against him, that he should be hanged.

He is acquitted of Treason, and convicted of Felony.

He confesses a Design against the Duke of Northumberland, *&c.*

After the Trial, it is said, the Duke of *Somerset* acknowledged he had a Design against the Persons of the Duke of *Northumberland*, the Marquis of *Northampton*, and the Earl of *Pembroke*, and asked their Pardon; and desired the Lords would become Mediators, for him, to his Majesty; and that, if the King did not think fit to grant him his Life, he hoped he would have Compassion on his Wife and Children. But the Duke could expect to meet with but little Favour from the Court, now the King was surrounded by his mortal Enemies. Their feigned Intercessions were sure to be rejected, as they intended they should; and a Warrant was signed for the Duke's Execution on the twenty second of *January*.

A Warrant signed for his Execution.

His Speech, and Behaviour on the Scaffold.

The Duke being brought to the Scaffold on *Tower-Hill*, on the Day appointed, appeared with a composed Countenance; and having first kneeled down, and recommended himself to God, he made a Speech to the People, telling them, he was brought thither to suffer Death, though he never had offended the King, either in Word, or Deed, and had been always faithful and true to the Realm; but, as he was condemned by Law, he acquiesced in it, and thanked God, who had given him that Time of Repentance, when he might have taken him away by a sudden Death. He rejoiced that he had been instrumental in the Reformation of the Church, exhorting the People to embrace the pure Doctrines taught in it, and live accordingly; *Otherwise, great Calamities would befal them.* At the speaking which Words an Ear-Witness relates (says the Editor of this Trial) there was heard a terrible Noise, like that of a Storm, or Tempest; or rather

1551. 5 Edw. 6. the blowing up of a Magazine of Gun-Powder: At which the People were ſo terrified, that ſome ran away, tumbling over one another in Heaps; others fainted, and all were amazed; and before they were well recovered from their Conſternation, Sir *Anthony Brown* came riding haſtily towards the Scaffold: Whereupon the People, imagining he had brought a Pardon, ſhouted for Joy, ſo that the Air rung again; But this appearing to be a Miſtake, the Duke went on with his Speech, and ſaid, There is no ſuch Matter, dearly beloved Friends, as you vainly hope: It ſeems good to Almighty God, that I ſhould ſuffer Death; I deſire, therefore, you will all be quiet, and contented with it, and join your Prayers with mine, for the King's Majeſty, unto whom I have always ſhewn myſelf a moſt faithful and true Subject, and have always ſought the Welfare of the Kingdom. All the People anſwered, *It was moſt true.*

Then he went on, and ſaid, he wiſhed his Majeſty perpetual Health, and Felicity, and that his Counſellors might have Grace to rule the State uprightly, exhorting the People to be obedient to them; and begged Pardon of God, and of all Men, whom he might have offended. After which, he ſubmitted to the Block: But the Executioner, obſerving the Collar of his Waſtcoat to be in his Way, perſuaded him to get up again, and pull his Waſtcoat off; after which he lay down again, and his Head was ſevered from his Body at one Blow.

His Head ſevered from his Body.

His Son remained deprived of all his Titles, and Eſtate, till the firſt Year of Queen *Elizabeth*, when her Majeſty created him Earl of *Hertford*, and Baron *Seymour:* His Grandſon, *William*, was created Marquis of *Hertford*, in the Year 1640. and in the Year 1660. the Marquis made the following Repreſentation of his Caſe to the Houſe of Lords (*viz.*)

His Poſterity reſtor'd to their Honour in Part.

The Caſe of the Marquis of Hertford, *preſented to the Lords,* An. Dom. 1660.

Edward Earl of *Hertford*, (Great Grandfather of the ſaid Marquis) was by Letters Patents, bearing Date the 6th of *April*, 1 *Ed.* VI. created Duke of *Somerſet*; to hold to him and the Heirs Male of his Body, upon the Body of the Lady *Anne*, his then Wife, with Remainders over. The ſaid Duke, afterwards, in *Michaelmas* Term, 5 *Edw.* VI. was indicted of Felony, for procuring and ſtirring up others to take and impriſon *John* Earl of *Warwick*, (one of the King's Privy-Council). Which Indictment, though void in Matter and Form, was pretended to be grounded on the Statute of 3 & 4 *Edw.* VI. which makes it Felony to ſtir up, and procure others, to *take away the Life* of any of the King's Council. But this Indictment was only for ſtirring up others, *to impriſon a Privy Councillor* which was never reduced into Act) and the ſame, therefore, declared void by learned Judges. Yet the ſaid Duke was found guilty of Felony, and put to Death for this Fact, which was but a pretended Felony; and, if true, yet no entailed Eſtate was forfeitable thereby.

However, ſuch was the Malice of the Duke's Enemies, that in the Infancy of his Heir, who was acknowledged for Duke of *Somerſet* ſeveral Months after his Father's Deceaſe, they procured an Act of Parliament, in the ſaid Year (5 *Edw.* VI.) entitled, *An Act touching the Limitation of the late Duke of* Somerſet's *Lands*; wherein there is a Clauſe obliquely inſerted, to take away the ſaid Honours, ſo entailed as aforeſaid; which, by no Felony, how notorious ſoever, could by Law have been forfeited: It was humbly conceived, therefore, to be moſt agreeable to Juſtice, to reſtore the ſaid Marquis, who was Heir Male of the Body of the ſaid Duke, and the Lady *Anne* his Wife: *And thereupon the ſaid Marquis of* Hertford *was in the Month of* September, 1660. *reſtored to the Dukedom of* Somerſet, *by a Repeal of the ſaid Act of the 5th of* Edw. VI. 1551. 5 Edw. 6.

He is reſtored to the Honour of Duke, by Act of Parliament.

Remarks on the Duke of Somerſet's *Trial.*

Moſt of our Hiſtorians relate, (and I find the Editor of this ſecond Collection of State Trials of the ſame Opinion) that the firſt Proſecution of this Duke was before the Parliament; and I muſt confeſs, I was, for ſome Time, in the ſame Error, till I examined the Matter more cloſely; but I believe it is now very evident, from the Account I have already given of that Proceeding, that this Proſecution was either before the Council, or the Star-Chamber; and that the Duke was fined and impriſoned, by the Authority of one of thoſe Courts: To which I am aware it will be objected, that the Privy-Council have no ſuch Authority; and I will agree they have not now: But in thoſe Times they frequently aſſumed a Power equal to this; of which there are numerous Inſtances in the Council-Books: Particularly, we find, they have ordered Houſes to be pulled down, and have prohibited People building upon their own Lands, in and about the Cities of *London* and *Weſtminſter*; and done ſeveral other Things, that can now only be effected by Act of Parliament. But, beſides, had there been any Thing illegal, or irregular, in the Privy Council's taking Cognizance of this Matter, the Members of the Privy-Council were alſo Members of the Court of Star-Chamber, and might have cenſuerd him there, if he had objected to their Juriſdiction, as Privy-Councillors; and, indeed, I am in ſome doubt, whether his Fine was ſet by them, as Members of the Privy-Council, or, as Members of the Star-Chamber; but, whether by the one, or the other, I find no Footſteps, upon Record, of its being done in Parliament. But, to proceed: It is very remarkable, that the principal Article objected againſt the Protector, was, his aſſuming more Power than belonged to him; for the endeavouring of which, he had cauſed his Brother, the Admiral, to be deſtroyed by a Bill of Attainder the Year before: And, though he found the great Men then very ready to concur with him in ruining the Admiral, he found them no leſs ready to pull him down, when he had deprived his Family of that Support: Nor were they only incenſed againſt him, for his aſſuming the Regency, but for putting a Stop to the Encroachments of the Nobility, and Gentry, on the Commons; or, at leaſt, to their encloſing, and laying down their arable Lands, and converting them into Paſture; whereby the Poor were not only deprived of their Commons, but of an Opportunity of getting their Livelihoods by their Work, (Paſture Grounds not employing

1551. 5 Edw. 6. ing a fourth Part of the Hands that the arable do.) But, as this rendered him the Object of the Gentry's Hatred, he became thereby the Darling of the common People; and imagined, poſſibly, by their Aſſiſtance, he ſhould have been able to have ſupported himſelf againſt the Power of his Enemies. But the Gentry had no ſooner wheedled him out of the foreign Troops, he maintained for his Defence, and prevailed on him to diſmiſs them, but he found his Error; and that the common People, without ſtanding Forces, were, by no means, able to protect him againſt the united Influence of the Nobility and Gentry, and the Popiſh Intereſt. Finding therefore, when it was too late, that there was no ſtemming the Torrent, he endeavoured to ſave himſelf, we ſee, by a moſt abject Submiſſion; believing, probably, by yielding to the Times, he ſhould not only preſerve his Life, but one Day find an Opportunity of reſuming his Authority: Beſides, he had ſo lately ſhewn them, how eaſy it was to cut off an Enemy, by a Bill of Attainder, that he could not but expect, they would follow the Precedent he had ſet them, if he did not prevent it by a timely Submiſſion. And by this Conduct, it appears, he obtained his Liberty, had a great Part of his Eſtate reſtored him, and a Share once more allowed him in the Adminiſtration: But the Earl of *Warwick* (afterwards Duke of *Northumberland*) who had now formed a Scheme, to ingroſs the Adminiſtration of the Government into his own Hands, either finding the Protector gain ſo faſt upon the young King's Affections, that he was like to reſume his former Authority; or, at leaſt, that he would remain a perpetual Bar to his own ambitious Projects, confederated once more with the Protector's Enemies, againſt him; and never ceaſed perſecuting him, till he brought him to the Scaffold.

The Editor of the ſecond Collection of Trials, has put this Proceeding together very oddly. He firſt gives us the Record of the Conviction and Attainder of the Duke; ſentences him to be hanged, and then produces the Evidence, and his Defence, which the Bookſellers, no doubt, will ſee rectified, if ever they print another Edition.

As to the Indictment, it includes both a Charge of *Treaſon* and *Felony*, which is not *uſual*, if it be *legal*; however, the Duke, 'tis obſerved, had not Preſence of Mind to demand Counſel upon it. The Act he was indicted upon, was the Statute of the 3 & 4 *Edw.* VI. Cap. v. the firſt Paragraph whereof enacts, That if any Perſons, to the Number of twelve, or above, being aſſembled together, *to kill, take, or impriſon any of the King's Privy-Council*; or unlawfully to alter or change any Laws made or eſtabliſhed for Religion, by Authority of Parliament, or any other Laws of this Realm; the ſame Number of twelve, or above, being required by the Sheriff, or any Juſtice of Peace, by Proclamation in the King's Name, to depart to their Dwellings, and they, or any of them, notwithſtanding, ſhall continue together, by the Space of an Hour after ſuch Proclamation; or, after that, ſhall forcibly attempt to do, or put in ure, any of the Things above ſpecified, ſuch Offenders ſhall be adjudged guilty of *High Treaſon*. 1551. 5 Edw. 6.

And in the ſame Act there is another Clauſe, which ſays, *If any Perſon, or Perſons, by open Word, or Deed, ſhall* PROCURE, MOVE, OR STIR ANY OTHER *Perſon, or Perſons, to ariſe, or make any traiterous or rebellious Aſſembly, to the Intent, to do, exerciſe, or put in ure, any of the Things above-mentioned; then every Perſon, ſo procuring, moving, or ſtirring up any other, ſhall be deemed and adjudged a* FELON, *and ſhall loſe the Benefit of his Clergy and Sanctuary.*

The Indictment hereupon firſt charges the Duke with High Treaſon, in aſſembling, with other Perſons, to the Number of an hundred, to take and impriſon the Duke of *Northumberland*, then a Privy-Counſellor; which Charge, it ſeems, his Peers acquitted him of.

But the Indictment charging him alſo with *Moving and Inciting* others to take and impriſon the ſaid Duke, which is made *Felony* by the ſaid laſt recited Clauſe; this, it ſeems, a Majority of the Lords were of Opinion was well proved, and thereupon he was convicted and condemned.

By the Evidence of Sir *Thomas Palmer*, it appears, that the Duke of *Somerſet* had contrived and conſpired to invite the Duke of *Somerſet*, the Marquis of *Northampton*, and the Earl of *Pembroke*, to an Entertainment, and to have killed them there: And this Depoſition was confirmed by *Crane*.

This was the only Evidence, given at the Trial, the Lords could be governed by, to find the Duke of *Somerſet* guilty of Felony; and as the Indictment *does not charge him* with moving or inciting any People to kill the Duke of *Northumberland*; it was the Opinion of many, that this Evidence could not ſupport that Part of the Indictment, that charged the Priſoner with moving others to *take and impriſon* the Duke of *Northumberland*. The Act, indeed, makes it Felony to move others, either to *kill* or *impriſon* a Privy Councillor; but, as the Indictment does not *charge* the Priſoner with moving others to *kill* him, he could not be found guilty of that; and the Depoſition ſays not one Word of his moving others to *impriſon Northumberland*. But 'tis probable the Lords might think, that the Intention of *killing* him, comprehended a Deſign of *taking* him firſt, and thereupon convicted the Priſoner.

The Marquis of Hertford's Repreſentation of the Duke's Caſe.

William Marquis of *Hertford*, Great Grandſon to this Duke of *Somerſet*, in his Petition, to be reſtored to that Title at the Reſtoration, obſerves indeed, That the Statute of the 3 & 4 *Edw.* VI. makes it Felony to ſtir up and procure others to *take away the Life of* any of the Privy-Council; but that the Indictment was only for ſtirring up others to *impriſon* a Privy-Councillor, *which being never reduced into Act, was not Felony:* And, indeed, the moving and inciting others, either to *kill* or *impriſon* a Privy-Councillor, *unleſs ſome Act was done, in purſuance of ſuch Motion*, by the like Opinion, ought not to have been interpreted Felony; and conſequently the Duke ought to have been acquitted.

There were theſe further Hardſhips alſo in this Trial; that the Duke of *Northumberland*, the Marquis of *Northampton*, and the Earl of *Pembroke*,

1551. 5 Edw. 6. *Pembroke*, who were Parties in the Cauſe, were allowed to ſit as his Judges; and that the Witneſſes were not examined *Viva Voce* in Court, which might have given a different Turn to the Evidence: But the Duke could not complain of Hardſhips with a very good Grace, after he had put the greateſt Hardſhips upon his Brother, and cut him off by an Act of Attainder, without ſuffering him to be heard. 1551. 5 Edw. 6.

Give me leave to obſerve farther, that the Parliament were ſo far convinced of the Hardſhips that had been put upon the Admiral, that the Lady *Mary Seymour*, only Daughter and Heireſs of the Admiral, by Queen *Katherine*, was by Act of Parliament, in the 3d & 4th of *Edw.* VI. reſtored to Blood.

1554. 1 Mar. *Sir* Nicholas Throckmorton's *Trial.*

The Trial of Sir NICHOLAS THROCKMORTON, Knight, for *High-Treaſon*, before Commiſſioners of *Oyer* and *Terminer*, 17 *April*, 1554. 1 *Mariæ*. 1554. 1 Mar.

The Charge.

HE was charged with levying War againſt the Queen; being an Accomplice in *Wyat*'s Rebellion; intending to depoſe and deſtroy her Majeſty; and, in order to it, with conſpiring to ſeize the *Tower* of *London*.

The Evidence.

The Evidence to prove theſe Treaſons, was the written Confeſſion of —— *Winter*, one of the Conſpirators; wherein it is ſaid, that the Priſoner was intimate with *Wyat*, and had declared himſelf againſt the *Spaniſh* Match; and that *Wyat* had communicated his Deſign of ſeizing the *Tower* to the Priſoner.

The Confeſſion of one *Crofts* alſo was read againſt him, importing, that the Priſoner was an Accomplice of *Wyat*'s; that they often met, and conſulted concerning an Inſurrection; and that Sir *Nicholas* promiſed to go into the Weſt, and join the Earl of *Devon*. Sir *Peter Carew*, and other Malcontents there.

The Confeſſion of *Cuthbert Vaughan*, under Sentence of Condemnation for the ſame Treaſon, was likewiſe read, importing, that he had ſeveral Conferences with the Priſoner concerning *Wyat*'s Rebellion, and that Sir *Nicholas* declared his Intention of joining the Malcontents. This Witneſs was brought into Court, and atteſted the Truth of his Confeſſion upon Oath.

Part of the Priſoner's own Confeſſion alſo was read againſt him, wherein he acknowledged that he had a Conference with *Wyat*, *Carew*, *Crofts*, *Rogers*, and *Warner*, concerning the *Spaniſh* Match, and the Alteration of Religion; and that he (the Priſoner) had ſaid he would hinder the Match with *Spain* as much as he could by Perſuaſion; that he had alſo ſaid, The Diſcipline of the Clergy might now rather be reſembled to the *Turkiſh* Tyranny than to the teaching of the Chriſtian Religion; and had diſcourſed of the *French* King's hindering the *Spaniards* coming hither.

The Depoſitions of the Duke of *Suffolk*, who had been executed for the ſame Treaſon, were alſo read againſt the Priſoner, importing, that the Lord *Thomas Grey* inform'd the Duke that Sir *Nicholas Throckmorton* was privy to all the Devices againſt the *Spaniards*, and had agreed to go down with the Earl of *Devon*. and join the Rebels in the Weſt; and laſtly, it was urged, that *Wyat* himſelf had charged the Priſoner, as an Accomplice with him in his Treaſons.

His Defence.

The Queen's Counſel having produced all their Evidence, the Priſoner entered upon his Defence; and firſt he deſired, that the Counſel would uſe him like a Fellow-Chriſtian, and not endeavour to miſlead the Jury; for he was ſenſible that by Perſuaſions, Enforcements, Preſumptions, applying, implying, inferring, conjecturing, deducing Arguments, and wreſting of Law, unlearned Men might be induced to think and judge Things that were indifferent, or at worſt but Overſights, to be Treaſons.

He inſiſts there was no Evidence of Treaſon.

That as to *Winter*'s Confeſſion, which had been read as Evidence againſt him; if it were all true, there was no Treaſon in it. He had, indeed, converſed with *Wyat*, as he might with any other Man; but knew nothing of his Purpoſe. He acknowledged alſo, that he did diſlike the Queen's Match with *Spain*, and the coming of the *Spaniards* to *England*, and ſo did the whole Realm almoſt; but this was never yet conſtrued High-Treaſon. That as to the Confeſſion of *Crofts*, it ought not to affect him, unleſs he was brought Face to Face, as the Law required; and to *Vaughan*'s Teſtimony he objected, that he was a condemned Man, and became a Witneſs againſt him to ſave his own Life. That by 6 *Edw.* VI. No Man could be indicted or convicted of Treaſon, but by two lawful Witneſſes, brought Face to Face; that *Vaughan* was but one Witneſs, and a very exceptionable one, having been reprieved from Time to Time, in order to compel him to accuſe others.

That the Confeſſion of another was no Evidence.

That a condemned Man could not be a Witneſs.

That there ought to be two Witneſſes produced, Face to Face.

He thought it hard that only Part of his own Confeſſion was ſuffer'd to be read, which would have made more for him than againſt him, if it had been read through: That the Duke of *Suffolk*'s Depoſitions contain'd only what the Lord *Grey* told him concerning the Priſoner, which ought not to affect him, unleſs the Lord *Grey* were produc'd, and atteſted the ſame in Court: And whatever *Wyat* had ſaid in hopes of ſaving his Life, he had unſaid again at his Execution, acquitting the Lady *Elizabeth*, as well as others, with his laſt Breath; notwithſtanding he had accuſed them, in hopes of Favour.

That his whole Confeſſion ought to be read.

That what another had ſaid was no Evidence.

Then, applying himſelf to the Jury, he obſerved, that he could not be convicted of the Treaſons in this Indictment; becauſe all Treaſons were repealed, but thoſe Offences which were declared to be ſuch, by the 25th of *Edward* III. and deſired that the Statute of the

That the 25 Ed. III. *might be read, which the Court refuſed.*

25th

1554. 1 Mar.

Formerly no Witneſſes or Proof admitted againſt the Crown.

25th of *Edward* III. might be read. To which the Court anſwering, That no Books ſhould be brought there, the Priſoner replied, Do you bring me hither to try me by Law, and will you not ſhew me the Law? I have heard that her Majeſty charged you to adminiſter Juſtice indifferently; and, notwithſtanding the old Error amongſt you, which did not admit a Witneſs to ſpeak, or any Thing to be offered in Favour of the Priſoner, her Highneſs's Pleaſure is, that whatever can be brought in Favour of the Subject ſhall be admitted and heard: Therefore you ought of Right to hear the Statute read, and reject nothing that can be ſpoken in my Defence.

The Court ſtill inſiſting he ought to have no Books read there, for that the Bench were Judges of the Law, he obſerved, that they ſeemed to offer him Law, but indeed afforded him only the Form of Law; and ſince he could not have the Statute read, he would endeavour to repeat the Subſtance of it, deſiring the Aſſiſtance of the Court if he ſhould be miſtaken; and, having recited the Words, deſired the Jury to obſerve what were Treaſons at that Time, and how they were to be tried, namely, by open Deed, which the Law termed Overt-Act, and that there were no Overt-Acts that proved his being concerned in any of the Treaſons laid in the Indictment. To this the Queen's Counſel anſwered, There were ſtill divers Treaſons at Common Law, beſides thoſe enumerated in the 25 *Edward* III. but that there was Matter enough proved againſt him to bring him within the Danger of that Statute: This the Priſoner denied, and inſiſted again, that every Perſon, accuſed of High Treaſon, ought to be proved guilty thereof, by ſome open Deed, before People of their Condition.

The Counſel affirm, that there were ſtill Treaſons at Common Law.

The Court miſinterpret the Act.

The Court anſwered, *By People of their Condition*, was meant thoſe involved in the ſame Crime, diſcovering the Priſoner's Treaſons; as *Wyat*, already attainted, had declared him one of his Accomplices.

The Priſoner very juſtly replied, That *by People of their Condition*, was meant, of the State and Condition of the Inqueſt that were to try him; and that the Evidence of *Wyat*, or of the Rebellion he had raiſed, in which he (the Priſoner) was not concerned, could not affect him; and beſides, *Wyat* had acquitted him, and declared, he knew nothing of it, demanding, where was the open Deed that proved the Treaſon wherewith he was charged? He added, that he had heard *Stamford* and the reſt of the Queen's Counſel, declare, in the Parliament-Houſe, that it was a Maxim in Law, which ought never to be violated, *That no Penal Statute ought to be extended, or wreſted, beyond the plain Words and Letter of ſuch Statute*; for, conſidering the private Affections, many times, both of Princes and Miniſters, it would be very dangerous to the Subject to refer the Conſtruction of Penal Laws to any Judges Equity, which might either by fear of higher Powers be ſeduced, or through Ignorance or Folly be abuſed.

No penal Statute to be extended beyond the Letter.

The Queen's Counſel urged, that he had entered into a Conſpiracy with *Wyat*, to prevent the coming of the *Spaniards*; and promiſed to to his utmoſt againſt them, which encouraged *Wyat* to levy War againſt the Queen.

1554. 1 Mary.

The Priſoner anſwered, That it was no Treaſon to enter into Converſation how to prevent the coming of the *Spaniards*, or to declare he would endeavour to hinder it in a legal way; and there was no Evidence of his endeavouring to prevent it by Force, or his procuring any other to attempt it in that Manner.

Then the Court adjourned; and in the Afternoon the Jury brought in their Verdict NOT GUILTY. Whereupon the Attorney-General moved, that they might give 500 *l.* Security for their good Behaviour: But it does not appear that they were obliged to give ſuch Security; much leſs were they fined for acquitting the Priſoner, as ſome Hiſtorians have related. It is probable, they might be reprimanded and threatened; and this muſt be acknowledged illegal: But the Courts of Juſtice acted very arbitrarily in thoſe Days. They alſo remanded the Priſoner back to the *Tower* after he was acquitted, under pretence, the Government had other Matters againſt him; but I do not find he was proſecuted for any other Offence. This ſeems to be the ſame Gentleman that was afterwards Queen *Elizabeth*'s Ambaſſador in *Scotland*.

The Priſoner acquitted.

The Jury threatened.

This is the firſt Proceeding in the State Trials that has the Appearance of a regular Trial; and though the Judges miſinterpreted the Law, and put great Hardſhips on the Priſoner, reading the Confeſſions of condemned Men againſt him, not ſuffering the Act 25 *Edward* III. to be read, and refuſing to examine the Witneſſes. Yet Matters appear to be much mended ſince the Time of *Henry* VIII. to which the Statute of the firſt of Queen *Mary*, which reduced all Treaſons to the Standard of 25 *Edw.* III. greatly contributed. Before that Statute, every Thing, almoſt, was interpreted to be Treaſon the Government was pleaſed to call ſo; and the higheſt Preſumptions and Circumſtances were made Evidence of it. But this Gentleman, having the Skill and Courage to apprize the Jury, that nothing was then Treaſon but what the 25th of *Edward* III. made ſo; and that all Treaſons muſt be proved by ſome Overt or Open Acts, atteſted by two Witneſſes; and meeting with a Jury of equal Honeſty and Courage, had the good Fortune to come off; though the Court did all that lay in their Power to brow-beat the Jury, and wreſt the Law to his Deſtruction. A ſcandalous Practice which both Judges and Counſel in every Reign have ſhewed themſelves too much addicted to, hunting down unfortunate Men, and, as my Lord *Bacon* ſays, *playing Prizes for Blood at the Bar of Juſtice.*

Remarks on Sir Nicholas Throckmorton's Trial.

The next is a Proceeding called, The Trial of *James* Earl of *Bothwell*, for the Murther of *Henry* Lord *Darnley*, Husband of *Mary* Queen of *Scots*, at *Edinburg*, *April* 12. 1597. But, as *Bothwell* was only ſummoned before the Court, in order to be acquitted, and the Proſecutor, the Earl of *Lenox*, durſt not appear againſt him, it does not require any further Notice ſhould be taken of it here.

The Proſecution of Earl Bothwell, for the Murder of Lord Darnley.

1571. 14 Eliz.

The Duke of Norfolk's *Trial, for High-Treason.*

The Trial of THOMAS HOWARD Duke of NORFOLK before *George Talbot* Earl of *Shrewsbury* Lord High Steward, *Reynold* Earl of *Kent*, and twenty three other Peers, commissioned to try him, for *High-Treason*, *January* 16. 1571. 14 *Eliz.*

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The Charge against him.

THE Indictment charged the Duke with compassing and imagining the Death of the Queen, conspiring to raise a Rebellion to subvert the Government, and endeavouring a Change of the establish'd Religion: And the Overt-Acts, laid as an Evidence of these Designs, were, 1. His endeavouring, without the Consent of his Sovereign Queen *Elizabeth*, to be joined in Marriage with *Mary* late Queen of *Scots*, who laid claim to the present Possession of the Crown of *England*, and had assumed the Arms of *England*. 2. His corresponding with, aiding, and assisting, *Thomas* Earl of *Northumberland* and *Anne* his Wife, and *Charles* Earl of *Westmoreland*, &c. (in open Rebellion against her Majesty, and outlawed for the same) with divers Sums of Money. 3. His adhering to, aiding, and assisting, *James* Duke of *Castel-le-Roy*, the Earl of *Huntley*, and others, the Queen's Enemies. 4. His holding a traiterous Correspondence with the Pope, and the King of *Spain*, inviting them to invade this Realm, and promising to raise a Rebellion, and join the Enemy, in order to set the Queen of *Scots* at Liberty; to depose Queen *Elizabeth*, and join himself in Marriage with the said Queen of *Scots*. 5. That he had sent Letters by one *Rodolph* a Merchant, to the Pope, and King of *Spain*, desiring their Assistance, in perpetrating his said Treasons; and that he had received a Letter from Pope *Pius Quintus*, Bishop of *Rome*, promising him Aid and Assistance.

Overt-Acts.

He is denied Counsel.

The Duke desired he might have Counsel; but was answered, that was never granted in Cases of High-Treason; and having pleaded Not Guilty, the Evidence against him was produced.

The Evidence, written Depositions.

And first, the Examination of the Bishop of *Rosse* (formerly Ambassador from the Queen of *Scots* to Queen *Elizabeth*) taken in the *Tower*, the 5th of *November*, 1571. where that Prelate was detained Prisoner for practising against Queen *Elizabeth*'s Government, in Behalf of the Queen of *Scots*, was read. In this Examination the Bishop deposes, That the Duke of *Norfolk* had advised the *Scots* Commissioners at *York*, to suppress the Evidence against their Queen; and had also proposed to the Deponent, and to Earl *Murray*, to marry the said Queen.

To prove the Treaty of Marriage.

A Letter of Earl Murray's *read as Evidence.*

A Letter of Earl *Murray*'s also was read, being an Answer to another Letter, sent him by the *English* Ministry, to enquire what he knew concerning the Duke of *Norfolk*'s Practises, as to the Commission at *York*, and the intended Marriage.

In this Letter Earl *Murray* says, That the Duke advised him at *York*, to compromise Matters; to be tender of the Honour of the Queen of *Scots*, and to suppress her Letters, that she might not be defamed in *England*; but that, the Commission being adjourned to *London*, he (the Earl) was obliged to lay open the whole Matter; which the Duke resenting, he was apprehensive of being murdered in his Return to *Scotland*; and therefore, to appease the Duke, promised to promote the Marriage, and thereby saved his Life: He therefore entreated Queen *Elizabeth* to have a favourable Opinion of him, having pretended to assent to the Match out of pure Necessity.

A Letter of the Bishop of Ross's, *to the Queen of* Scots, *read.*

Then a Letter from the Bishop of *Rosse* to the Queen of *Scots* was read, wherein he tells her, That he had learned from the Duke of *Norfolk*, that Queen *Elizabeth* did not design to bring her Cause to any Determination; but to hear what Earl *Murray* could alledge against her, in order to bring her into Contempt and Disgrace with the People of *England*; for that Queen *Elizabeth* was in some Dread of her being supported by her Uncles in *France*, and therefore advised the Queen of *Scots* to write a submissive Letter to Queen *Elizabeth*, referring all her Concerns to Her, and declaring, she relied more on her Friendship, than upon her Uncles, or any other Princes whatever.

Other Depositions of the Bishop of Ross's.

Part of the Bishop of *Rosse*'s Examination, of the 6th of *November*, 1571. also was read, wherein he says, That Earl *Murray* was in fear of being murdered in his Return to *Scotland*: Whereupon he (the Bishop) did by the Duke of *Norfolk*'s Direction write to the Queen of *Scots*, that nothing might be attempted against *Murray*, beceause he had yielded to favour the Duke's Designs; and further deposed, that the Murder was to have been committed near *Northallerton*, by the *Nortons*, *Markenfield*, and others, as the Examinant was informed, by the Queen of *Scots* Servants.

A Copy of the Prisoner's Letter to Murray, *read.*

A Copy of a Letter, written by the Duke to Earl *Murray*, was also read, wherein his Grace says, He perceived the Earl was well-affected to the Advancement of the Commonweal, and the uniting of the Island; and had a good Inclination towards him, which was a great Satisfaction: That he (the Duke) had so far proceeded in the Marriage with his Sister, that he could not in conscience revoke what he had done, or ever designed it while he lived; but that he could not with Honour proceed further till he had removed some Stumbling-Blocks; and when this was done, all Things should be performed to the Satisfaction of the Earl; and desires he would use all Means to defeat the Designs of their Enemies, who opposed the Match; and for the rest, referred himself to the Lord *Boyd*, who was empowered by the

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A Diſcourſe of the Queen's related by her Counſel.

the Queen of *Scots*, and himſelf, to treat with the Earl.

To this the Queen's Counſel added, as from the Queen's own Mouth, that the Duke had complained to her Majeſty of the Rumour that was ſpread, of his Deſign to marry the Queen of *Scots*, and deſired it might be enquired into, and among other Expreſſions ſaid, *To what End ſhould I marry her, being ſo wicked a Woman, ſuch a notorious Adultereſs and Murderer? I love to ſleep upon a ſafe Pillow, and account myſelf as great a Prince, at home, at* Norwich, *as ſhe, though ſhe were in the Middle of her Kingdom: That the Revenues of the Crown of* Scotland *were inferior to his own.* And, *ſhould he ſeek to match with her, knowing ſhe pretended a Title to the preſent Poſſeſſion of the Crown of* England, *her Majeſty Queen* Elizabeth, *might juſtly charge him with ſeeking her own Crown.*

Part of the Priſoner's Examination, read.

Then part of the Duke's Examination the 6th of *November* 1571. was read, wherein he ſays, that, her Majeſty charging him at *Titchfield* with his intended Marriage with the Queen of *Scots*, he did acknowledge he had received Letters from her: That the Matter had been moved, but nothing concluded; and that thereupon her Majeſty commanded him on his Allegiance, not to deal any urther therein; and

A Letter from the Duke, and the Commiſſioners at York, *read.*

a Letter from the Duke, and the reſt of the Commiſſioners, to Queen *Elizabeth* from *York* was read, wherein they acquaint her Majeſty, that ſeveral Letters and Ballads had been produced, written with the Queen of *Scots* own Hand, diſcovering ſuch inordinate and filthy Love between her and *Bothwell*, ſuch loathing and abhorring of her Huſband that was murdered, and ſuch an Account of the Conſpiracy againſt his Life, as every good Man muſt deteſt and abhor: That they had encloſed a Paper with the principal Points contained in thoſe Letters, that her Majeſty might judge whether they were ſufficient to convict her of that deteſtable Crime, the Murder of her Huſband, which, in their Opinion and Conſciences, *if the ſaid Letters were written with her own Hand, as they believed they were*, was very hard to be avoided.

Banniſter's *Examination, read.*

The Confeſſion of *Banniſter* alſo was read, to ſhew, that the Duke had no Affection for the Queen of *Scots* Perſon, and was only moved by Ambition to attempt the Match.

And the Biſhop of Roſs's.

Then another Part of the Biſhop of *Roſs*'s Confeſſion was read; wherein the Biſhop depoſes, That, when he demanded of the Duke, what he intended to do in the Matter of the Marriage, if Queen *Elizabeth* would not conſent to it, the Duke anſwered, he knew ſhe would, though not at firſt; becauſe moſt of the Council, and the Nobility, were againſt it: And that afterwards, when the Queen appeared offended with the Duke, he told this Examinant, he would go into his own Country, with the Earls of *Arundel* and *Pembroke*, and there they would adviſe with their Countrymen, and Friends, of the likelieſt Means to advance the Cauſe: To which the Biſhop ſaying, the Queen would fetch them out of the Country by force, the Duke anſwered, No Nobleman in *England* would accept that Office: He knew their Minds; eſpecially thoſe in the *North*, who would aſſiſt him: And, if the Queen would firſt purſue him, he ſhould find Friends enough to aſſiſt him, and the *Scotiſh* Queen might be in Safety; for that was the principal Mark he ſhot at: And the Biſhop further depoſed, that *Liggons* told him, the Duke was reſolved to go through with the Matter by Force, if the Queen would not conſent; and that, at this Time, Meſſages frequently paſſed between the *Scotiſh* Queen, the Duke, and them in the *North*.

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What another ſaid, brought as Evidence againſt him.

Then the Duke's Examination, concerning his ſending Money to *Scotland*, was read, which he confeſſed in Court; as alſo, that a Deſign of ſeiſing the *Tower*, was moved to him; but, he ſaid, he did not conſent to it.

The Duke confeſſes part of the Charge.

Hickford, the Duke's Secretary's Examination, alſo, was read; wherein he ſaid, the Duke adviſed the Queen of *Scots*, not to deliver up her Son to Queen *Elizabeth*; nor certain ſtrong Places in *Scotland*, which the Queen of *England* demanded; or the *Engliſh* Rebels that had fled thither; and the Duke confeſſed the Truth of it in Court, except his adviſing her not to deliver up the Rebels.

His Secretary's Examination read againſt him.

Barker's *Examination read.*

Then the Examination of one *Barker* was read, importing, that the Duke was concerned in a Deſign of reſcuing the Queen of *Scots*.

He was alſo charged, with having made his Submiſſion to the Queen, and promiſing, on his Faith and Allegiance, not to proceed in the Marriage, or any other Matter relating to the *Scotiſh* Queen; and then ſending the Queen of *Scots* a Copy of his Submiſſion, before he ſigned it: *Which the Duke confeſſed.*

He confeſſes more of the Charge.

Caven-diſh's *Depoſitions.*

The Depoſitions of one *Cavendiſh*, a Dependant of the Duke's, alſo, was read, wherein he ſays, that the Duke ordered him to labour the Cauſe of his Marriage; and that he heard the Duke affirm, that he would loſe his Life before he would loſe that Marriage; adding, that nothing could undo him, but the Riſing of the Northern Lords; and he was afraid they would riſe.

Evidence of the Duke's treating with the Pope, and Spain.

The next Article the Queen's Counſel inſiſted on, was, the Duke's treating with the Pope, and the King of *Spain*, in Favour of the Queen of *Scots*: To prove which, another Part of the Biſhop of *Roſs*'s Examination was read, and the Examination of one *Barker*, importing, that the Duke ſent one *Rodolph*, a Foreign Merchant, to the Duke of *Alva*, and the Pope, in the Name of the *Scotiſh* Queen, and himſelf, to procure Money and Forces, to invade the Realm, and maintain the Queen of *Scots* Title; and, that the Duke promiſed to join them, with his Friends, when they landed; and received a Letter from the Pope, approving the Enterprize.

Other Examinations read againſt him.

Evidence of his aiding the Rebels in Scotland.

The next Thing the Queen's Counſel inſiſted on, was, the Duke's aiding, and aſſiſting, the Earls of *Weſtmoreland* and *Northumberland*, who had been in Rebellion, and were fled into *Scotland*: To prove which, other Parts of the Biſhop of *Roſs*'s and *Barker*'s Examinations were read, importing, that the Rebels, being reconciled to the Church of *Rome*, wrote to the Pope, for his Aſſiſtance, who ſent them a Supply of Money; which was conveyed towards them by the Duke's Means, but intercepted before it reached them. The Examination of *Banniſter* alſo was read, who depoſed, that the Duke had conveyed a Packet of Letters from

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from the *French* Ambaſſador, to the Duke of *Chateleroy*, and the Lord *Herries*, the Queen's Enemies in *Scotland*, and had alſo ſent them Money.

The Duke's Defence. That it was not Treaſon, to treat with the Scotiſh *Queen.*

The Duke, in his Defence, inſiſted, That it was not Treaſon to correſpond with the *Scotiſh* Queen, or to propoſe a Marriage with her; for, when ſhe laid claim to the Crown, and quartered the Arms of *England*, ſhe was married, and in the Power of her Huſband; and ſhe had made no ſuch Claim ſince ſhe was a Widow: Beſides, the Queen of *England* was in Amity with her, and had entered into ſeveral Treaties with that Princeſs; which ſhewed ſhe was not an Enemy to the State, and conſequently it could not be Treaſon to correſpond with her.

That the Scots *were not legal Witneſſes.*

He inſiſted alſo, that the *Scots*, who accuſed him, were not lawful Witneſſes; and that they, and the other Witneſſes, had confeſſed themſelves guilty of the Crimes they accuſed him; and gave their Evidence, to obtain Favour themſelves. But the moſt unanſwerable Part of his Defence was, that the Witneſſes were not produced Face to Face, as the Statute of the 5 & 6 of *Edw.* VI. requires.

That the Witneſſes did not give their Evidence Viva Voce.

That there was no Evidence of his Deſign to depoſe the Queen.

That, though it had been ſuggeſted, he propoſed this Match with the Queen of *Scots*, in order to depoſe the Queen of *England*, and uſurp her Throne; neither the Biſhop of *Roſſe*, or any other of the Witneſſes, could charge him with any ſuch Views; nor had he any Thoughts of altering Religion, as was ſuggeſted, being both in his Judgment and Profeſſion a Proteſtant.

That Earl Murray *was prejudiced againſt him.*

That Earl *Murray* was a prejudiced Perſon, and ſought his Life; and therefore his Teſtimony ought not to be admitted againſt him: Nor did their Miſunderſtandings ariſe from the Earl's oppoſing the Marriage, as had been ſuggeſted, but from other Cauſes. That he never heard of the Deſign of taking away Earl *Murray*'s Life, till the Time was paſſed, when it was to have been done; and then the Biſhop of *Roſſe* firſt acquainted him with it.

The Queen's Counſel affirm, it was not neceſſary to produce the Witneſſes; and do not ſuffer the Priſoner to bring Witneſſes for him.

The Duke frequently, and with a great deal of Juſtice, repeated his Complaint, That the Witneſſes were not brought Face to Face: To which the Queen's Counſel anſwered, That the Law was ſo, indeed, for a Time; but, it being too hard and dangerous for the Prince, that Law was repealed. The Duke alſo complained, That he had not been permitted to ſpeak with any Body during his Confinement, or to produce his Witneſſes or Proofs, in order to his Defence; to which no Anſwer was given.

Then he obſerved again, That no manner of Proof had been brought, of any Deſign he had againſt the Queen's Perſon, or Government; of his levying War, or committing any Treaſon, ſpecified in the 25 *Edw.* III.

Confeſſes, he was privy to the Queen of Scot's *Deſign, of ſoliciting foreign Aid.*

That he had treated with the *Scotiſh* Queen, he acknowledged; but this did not amount to High-Treaſon; and he confeſſed, the Biſhop of *Roſſe* did ſend him a Letter from the Queen of *Scots*, wherein ſhe complained of her Subjects, and ſaid, ſhe would ſeek other means for her Relief: But he diſliked all thoſe Devices, and adviſed her, to depend only on her Majeſty, or he, and all her Friends in *England*, would forſake her. He acknowledged alſo, that *Rodolph* had been brought to him, and diſcourſed with him concerning the *Scotiſh* Queen; particularly he ſaid, he would endeavour to procure Money of the Duke of *Alva*, for Neceſſaries for her, as he had done formerly; and that he deſired the Duke's Letters to the Duke of *Alva*, in that Princeſs's Favour; but he put him off, and would not write; nor did he ever give Inſtructions to *Rodolph*, to ſolicit the King of *Spain*, for Men or Money: And whereas it was ſaid, that ten thouſand Men were to invade *England*, four thouſand whereof were to be Horſe, and to be landed in *Eſſex*; he had not ſo little Skill in military Affairs, as to direct four thouſand Horſe to land in that County, full of Lanes, Ditches, and Marſhes: He ſhould have choſen ſome other County, if he had been engaged in any ſuch Enterprize: And, though he was charged with an Intention to join ſuch foreign Troops, it could not be proved, he had made any Proviſion for that End; that he had conſulted any of his Friends about it; levied Men, or provided Horſes, or Arms, for that Purpoſe.

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He confeſſes his treating with the Pope's Agent, to procure the Queen of Scots *Money.*

He inſiſts, he was unprepared for an Inſurrection.

Confeſſes his receiving a Letter from the Pope.

He confeſſed alſo, that *Barker* did bring him a Letter from the Pope, which begun with theſe Words, *Dilecte Fili, Salutem*, with which he was offended, and aſked what he had to do with him, who was an Enemy to his Religion and Country; and *Barker* excuſed himſelf, and ſaid, *Rodolph* had procured that Letter for his own Credit.

And his ſending Money to Scotland.

The Duke alſo acknowledged, his being concerned in ſending the Money that was intercepted; but ſaid, he did not know it was for the Rebel Lords; and that it could not be Treaſon to ſend Money to the Duke of *Caſtelle-Roy*, and the Lord *Herries*, Subjects of *Scotland*, which Kingdom was at Peace with the Queen of *England*. However, the Duke was found GUILTY OF HIGH TREASON, by the unanimous Opinion of his Peers.

Remarks on the Duke of Norfolk's *Trial.*

It is evident from the Duke's Confeſſion, that he had renewed the Treaty of Marriage with the Queen of *Scots*, after he had promiſed Queen *Elizabeth*, he would have no further Concern with her; that he had alſo treated with the proper Agent to procure Money for her from the Pope and *Spain*; and that he had received a Letter from the Pope, relating to that Affair; and laſtly, that he had been concerned in ſending Money to the *Engliſh* Rebels in *Scotland*; and this was interpreted both by the Queen's Counſel, and the Peers, his Judges, to be with an Intention to depoſe Queen *Elizabeth*, and to uſurp her Throne; which was certainly High Treaſon, if his Judges were ſatisfied that was his Intent. However, if the Duke had not confeſſed theſe Facts in Court, there was no Evidence produced againſt him ſufficient to convict him; for by the 5 & 6 of *Edw.* VI. two Witneſſes, at leaſt, ought to have given their Evidence, *Viva Voce*, in Court; though the Queen's Counſel denied there was any ſuch Law in Force. The Duke alſo had very hard Meaſure, that his Friends were not ſuffered to come near him while he was in Priſon, nor any Opportunity allowed him to prepare for his Defence; neither was he permitted to produce any Witneſſes or Proofs of his Innocence.

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nocence. This ſhews, that the Court acted very arbitrarily, even in Queen *Elizabeth*'s Reign, and that the Subject had ſcarce any Chance for his Life, where he was accuſed of High Treaſon. Even Acts of Parliament in the Priſoner's Favour were not regarded by the Court: Every Thing was to be urged in Behalf of the Crown, and nothing ſuffered to be offered in Behalf of the Priſoner.

Other Peoples Letters, and Copies of Letters, were read againſt him, in which he had no Concern; and that, without any Proof being made that thoſe Letters were written by the Perſons they were pretended to be written by. Nay, the Counſel were permitted to repeat the Queen's Converſation, and to apply it as Evidence againſt the Priſoner, without the Solemnity of an Oath; and hearſay Evidence, what the Witneſſes had heard other People ſay of the Priſoner, was admitted as Evidence; all which is held illegal at this Day; and the Law was much the ſame in that Reign as it is now: Nothing but the different Opinions of the Lawyers of thoſe Days, and ours, in *interpreting* the Laws and Statutes of the Realm, ſeems to make that wide Difference there appears between the Proceedings of the Courts of Juſtice, at that Time and this.

As to that Objection of the Duke's, That a *Scot* ought not to be admitted a Witneſs againſt an *Engliſhman*, or an *Engliſhman* againſt a *Scot*: It ſeems this was the Practice upon the Borders, where the two Nations were in perpetual Hoſtility, and therefore they were not deemed competent and impartial Witneſſes againſt each other there; but this Rule does not appear to have been extended to the whole Nation by either Side.

As to the Occaſion of proſecuting the Duke with this Violence; Hiſtory informs us, That the *Scotiſh* Queen, finding there was little Hopes of obtaining her Liberty from the Queen of *England*, ſent Letters to the Duke of *Norfolk*, the Pope, and the King of *Spain*, to endeavour to procure her Enlargement by Force, or otherwiſe; which Letters were copied over by *Hickford*, the Duke of *Norfolk*'s Secretary, and then forwarded to *Spain* by *Ridolph*, or *Rodolph*, the Pope's Agent, who had continued ſeveral Years in *England*, under the Character of an *Italian* Merchant; and this Man, 'tis ſaid, had propoſed to the Duke of *Norfolk*, the bringing about a Revolution in *England*, and the procuring Money and Forces of the Pope and the King of *Spain*, to effect it.

The Biſhop of *Roſſe*, who reſided at *London*, as Ambaſſador of the Queen of *Scots*, propoſed to the Duke of *Norfolk*, about the ſame Time, the ſeizing of Queen *Elizabeth*'s Perſon, and making her their Priſoner; on which he ſuggeſted, a Majority of the Nation would declare for the Queen of *Scots*; and, though the Duke rejected this Motion, he thought fit to conclude the Treaty of Marriage, however, with the Queen of *Scots*; and thereupon *Rodolph* was diſpatched to the Pope, and the King of *Spain*, to deſire their Aid, as has been related. *Rodolph*, arriving in *Flanders*, and meeting one *Bayliff*, a Servant of the Queen of *Scots*, going to *England*, ſent ſeveral Letters by him to the Duke of *Norfolk*, the Biſhop of *Roſſe*, and others in the Secret; and *Bayliff*, with his Packet, being ſeized at *Dover*, on his Return, the Government thereby diſcovered there was a Plot on Foot; and, apprehending the Biſhop of *Roſſe*, and *Hickford*, the Duke's Secretary, they were more fully convinced of it, by their Confeſſions, and the Copies of the Letters that had been ſent to the Pope, and the King of *Spain*, which the Secretary produced.

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It appeared alſo, that the Duke's Secretary had been employed in tranſmitting 1500 *l.* to the Rebels in *Scotland*, which was intercepted; ſo that the Miniſtry did not want ſufficient Proof againſt the Duke. All that they are cenſured for, is the illegal Manner of proſecuting him for a Crime, which might very eaſily have been proved againſt him in a legal Way. The Duke, himſelf, did not deny his ſoliciting foreign Aid; only ſaid, in his Excuſe, he had no Deſign againſt Queen *Elizabeth* and the Realm; that he only intended to deliver the Queen of *Scots*, and reſtore her to the Throne of *Scotland*.

Conſpiracies to ſet the Duke at Liberty.

However, though there was little Room to doubt of the Duke's Guilt, and he had been convicted by his Peers, without one diſſenting Voice, the Queen ſeemed inclined to ſpare him, and reſpited his Execution for ſeveral Months; till ſome Conſpiracies having been diſcovered, to reſcue the Duke, and ſet him at Liberty, which were fomented by the *Scotiſh* Queen, her Majeſty thought fit to call a Parliament, and adviſe with them, concerning her own and the national Security; and the Houſes immediately reſolved, That the Execution of the Duke of *Norfolk* was now become neceſſary, and addreſſed her Majeſty accordingly: Whereupon the Duke was ordered to be beheaded, on the 2d of *June*, almoſt five Months after his Sentence.

The Parliament addreſs the Queen for his Execution.

He acknowledges his Guilt.

When he came to the Scaffold, he acknowledged, he had been juſtly condemned by his Peers, and that he had treated with the Queen of *Scots* a ſecond Time, after he had ſolemnly promiſed her Majeſty, he would not; for which, his Conſcience, he ſaid, was diſturbed; but declared, he never approved the Deſigns of the Pope, and King of *Spain*, or the Rebellion in the North; and was ſo far from attempting to introduce Popery, that he was never popiſhly affected, ſince he had any Taſte for Religion. Having ended his Speech, he prepared himſelf for the Block, without any Signs of Fear; and his Head was ſevered from his Body.

Dies a Proteſtant.

Soon after the Duke's Execution, her Majeſty ſent Commiſſioners to the *Scotiſh* Queen, to expoſtulate with her, concerning her repeated Practices againſt her Government; and, particularly, for treating of a Marriage with the Duke of *Norfolk*, and endeavouring to reſcue him out of Priſon.

The Queen of Scots affirms ſhe was his Wife.

To which that Princeſs anſwered, She was actually contracted to the Duke of *Norfolk*, and thought herſelf obliged to endeavour to obtain his Freedom, *as ſhe was his Wife*.

The Trial of ROBERT HICKFORD.

1571. 14 Eliz.

Hickford, *the Duke of* Norfolk's *Secretary arraigned.*

THE next Thing we meet with in the State Trials, is the Arraignment of *Robert Hickford*, the Duke of *Norfolk*'s Secretary, on the 9th of *February*, 1571. 14 *Eliz.* for High Treaſon, in being concerned in the Treaty with the Pope, and the King of *Spain*, and diſpatching *Rodolph* to them, to demand Supplies for the Queen of *Scots*; and alſo for tranſmitting Money to the Rebels in *Scotland*: Both which *Hickford* confeſſed, and his Confeſſion being recorded, Judgment was pronounced againſt him as a Traitor; but, as he had been made an Evidence againſt his Lord, his Life was ſpared.

Condemned, but pardoned.

1571. 14 Eliz.

The Trial of Doctor WILLIAM PARRY.

1584. 26 Eliz.

The Arraignment of Doctor Parry, *for a Conſpiracy againſt the Queen's Life.*

THEN follows the Arraignment of *William Parry*, Doctor of Laws, for *High Treaſon*, the 25th of *February*, 1584. 26 *Eliz.*

The Indictment ſet forth, that the Priſoner had traiterouſly conſpired the Death of the Queen, and the Subverſion of the Government, and the true Religion; that he had begged Abſolution of the Biſhop of *Rome*, and received Letters from Cardinal *de Como*, ſignifying, that the ſaid Biſhop of *Rome* approved his Intentions, abſolved him from all his Sins, and encouraged him to proceed in his Enterprize; and that the Priſoner had moved *Edmund Nevil*, to aſſiſt him, in aſſaſſinating the Queen.

To this Indictment the Priſoner pleaded GUILTY. At which Time, alſo, his Confeſſion before the Lord *Hunſdon* was read, wherein he declared, that he looked upon the Reſolution he had taken, of killing the Queen, to be lawful, and even meritorious; and his Confeſſion being recorded, Judgment was pronounced againſt him as a Traitor.

Pleads Guilty.

The Priſoner, being a Member of Parliament, was executed in the Palace-Yard, in the Preſence of both Houſes.

His Execution before the two Houſes of Parliament.

His Deſign of murdering the Queen, was firſt diſcovered by *Edmund Nevil*, whom he deſired to aſſiſt him in the Aſſaſſination.

1584. 26 Eliz.

The Trial of ANTHONY BABINGTON, &c.

1586. 28 Eliz.

Babington, &c. *arraigned for High Treaſon.*

THE next Proceeding in the State Trials, is the Arraignment of *Anthony Babington*, *Chidiock Titchburne*, *Thomas Saliſbury*, *Robert Barnwell*, *John Savage*, *Henry Donn*, and *John Ballard*, for *High Treaſon*, the 13th & 14th of *Sept.* 1586. 28 *Eliz.*

The Charge againſt them.

They were charged with a Conſpiracy, to aſſaſſinate her Majeſty; with attempting to deliver the Queen of *Scots* out of Cuſtody, procuring foreign Enemies to invade the Realm, and inciting an Inſurrection, to join the Enemy.

They plead Guilty.

To which Indictment they all pleaded GUILTY, and Sentence was pronounced againſt them as Traitors.

More of the Conſpirators tried.

The following Day, *viz.* the 15th of *September*, 1586. 28 *Eliz.* their Accomplices, *Edward Abington*, *Charles Tilney*, *Edward Jones*, *John Travers*, *John Charnock*, *Jerome Bellamy*, and *Robert Gage*, were arraigned for the like Treaſon, *viz.* conſpiring the Death of the Queen, the releaſing the Queen of *Scots*, inviting Foreigners to invade the Realm, and inciting an Inſurrection; and were all convicted on their own Confeſſions, or the Confeſſions of their Accomplices: But we find no more than Minutes of theſe Trials, which were very imperfectly taken; only it appears they were all condemned as Traitors; and that *Jones*, *Travers*, *Bellamy*, and *Gage*, were convicted only of concealing and harbouring the Aſſaſſins, and were to have had no Share in the intended Aſſaſſination themſelves.

The Conſpirators condemned.

Since theſe Proceedings are ſo very deficient, I ſhall endeavour to ſupply, in ſome meaſure, what is wanting, in relation to the Diſcovery of this Plot, and the Trials of the Conſpirators, from Hiſtory.

1586. 28 Eliz.

Remarks on theſe Proceedings.

The Prieſts in the *Engliſh* Seminary at *Rheims*, had, we are informed, inculcated into their Pupils, that it would be a meritorious Act to aſſaſſinate an excommunicated Prince; and that thoſe, who loſt their Lives in ſuch an Attempt, ought to be deemed Martyrs; and had ſo inſpired *Savage*, a bold, enterprizing, young Fellow, with theſe Principles, that he vowed to kill Queen *Elizabeth*.

About the ſame Time, *John Ballard*, a Prieſt of the ſame Seminary, having viſited the *Catholicks* in *England* and *Scotland*, to ſee how they ſtood affected; and returning to *France*, propoſed to *Mendoza*, the *Spaniſh* Ambaſſador there, and to the *Engliſh* Exiles, the invading *England* with a Body of *Spaniſh* Troops, while the Queen's Forces were abſent in *Holland*; which being approved by all, *Ballard* was ſent to *England* again, to ſee what Forces the *Engliſh Catholicks* could raiſe, to join the *Spaniards*.

Babington, *the chief Conſpirator.*

Ballard, on his Arrival in *England*, meeting with *Anthony Babington*, a Gentleman of Quality and Fortune, and entirely devoted to the Intereſt of the Queen of *Scots*, acquainted him with the intended Invaſion. To which *Babington* anſwered; The Invaſion would ſignify nothing, as long as Queen *Elizabeth* lived.

To

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To which *Ballard* replied; She would not live long; for *Savage* had vowed to kill her: But *Babington* ſaid, ſo weighty a Buſineſs ought not to be truſted to *Savage* alone, and propoſed ſix Gentlemen, of whom *Savage* ſhould be one, to perform this tragical Execution, as he called it, and made ſome Improvements alſo, in the Project, for an Invaſion, and the ſetting the Queen of *Scots* at Liberty; and, ſoon after, wrote a Letter to that Princeſs, wherein he gave her an Account, of his Conference with *Ballard*, and of the ſix Gentlemen, that were pitched upon for the intended Aſſaſſination; telling her, that he, with an hundred more, would, at the ſame Time, ſet her at Liberty: and deſired the heroical Actors, in this Enterprize, or their Poſterity, if they did not ſurvive, might be well rewarded.

Six Gentlemen vow to aſſaſſinate the Queen.

Queen of Scots *Letter to* Babington.

To this Letter *Babington* received an Anſwer, from the Queen of *Scots*, wherein ſhe adviſes him, to uſe great Caution; and that the Aſſociation, they propoſed to enter into, ſhould be under Pretence of their Fears of the *Puritans*: She adviſes alſo, that there might be an Inſurrection in *Ireland*, at the ſame Time; that the Earls of *Arundel* and *Northumberland* ſhould be prevailed on to engage in the Affair; and, that Lord *Paget*, and the Exiles, ſhould come over to *England*; and, having propoſed ſome feaſible Ways to reſcue her from her Impriſonment, ſhe ordered *Babington*, to promiſe the ſix Gentlemen Rewards for their Service.

The Conſpirators betrayed by a Spy.

Babington, afterwards, drew the Lord *Windſor*'s Brother, and ſeveral other Gentlemen of Quality, into the Conſpiracy; but among them, it ſeems, was one *Polly*, a Spy of Secretary *Walſingham's*, who is thought to have revealed their Secrets from Time to Time, and to have puſhed theſe young Gentlemen upon this deſperate Attempt. The ſix, who were ſelected for the Aſſaſſination, took an Oath, to perpetrate it; and the Conſpirators met frequently in St. *Giles's Fields*, and in St. *Paul's Church*; and ſometimes at Taverns, where they had Entertainments, encouraged each other, and gloried in the Enterprize they were about to undertake; applauding thoſe Gentlemen who had lately ſurpriſed the King of *Scots* at *Sterling*, and *Gerard*, the *Burgundian*, who had aſſaſſinated the Prince of *Orange*; and the Aſſaſſins had the Vanity to have their Pictures drawn, with *Babington*, the prime Mover of the Plot, in the Middle of them; from whence it obtained the Name of BABINGTON'S CONSPIRACY.

The Pictures of the Conſpirators drawn, and ſhewn the Queen.

Theſe Pictures, it is ſaid, being privately ſhewn the Queen, before the Painter had finiſhed them, ſhe ſaid, ſhe did not remember to have ſeen any of the Gentlemen, they were drawn for, except *Barnwell*, who had often attended her on a Suit of the Earl of *Kildare*'s; and, ſeeing him afterwards, as ſhe was taking a Walk, ſhe beheld him, ſays *Cambden*, with an undaunted Countenance, and, turning to *Hatton*, Captain of her Guard, ſhe ſaid, *Am not I finely guarded, that have not a Man in my Company that wears a Sword?* And *Barnwell*, afterwards, acquainted his Accomplices, how eaſily the Queen might have been taken off, if the reſt of the Conſpirators had been there.

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In the mean Time, the Government, being acquainted with every Step they took, ſet Spies, to obſerve their Motions: Which the Conſpirators, by ſome Means, diſcovered, and fled into the Country; but were ſoon after taken, and brought to Town again; and being arraigned (as has been related above) ſix of them confeſſed their Guilt, declaring, that they were perſuaded by *Ballard*, the Prieſt, to believe, that it was lawful to kill the Queen, becauſe ſhe ſtood excommunicated by the Pope. But, to proceed: On the 27th of *September*, 1586. about ten Days after Sentence pronounced againſt them, *Anthony Babington*, *Chidiock Titchburne*, *Thomas Saliſbury*, *Robert Barnwell*, *John Savage*, *Henry Donn*, and *John Ballard*, ſeven of the Conſpirators, were hanged on a Gallows, erected for that Purpoſe, in St. *Giles's Fields*; and, being cut down alive, their Bowels were taken out with unuſual Cruelty, ſays *Cambden*. Six of them died very penitent, and begged Pardon of God, and the Queen; but *Babington* endeavoured to terrify the People, by threatening them, that his Blood would ſoon be revenged on them. The next Day, *Edward Abington*, *Charles Tilney*, *Edward Jones*, *John Travers*, *John Charnock*, *Jerome Belamy*, and *Robert Gage*, were executed; but the Queen, having been acquainted how cruelly the former Priſoners had been uſed, gave Orders, that theſe ſhould have more Mercy ſhewed them; and, accordingly, they were all ſuffered to hang till they were dead, before they were cut down: Theſe, alſo, expreſſed their Sorrow for their Crimes, and exhorted the *Roman* Catholicks, not to endeavour the Reſtoration of their Religion by Force of Arms. Moſt of the Sufferers, it is obſerved, were Gentlemen of good Families.

The Conſpirators fly, and are taken.

The Execution of Babington, *and the reſt of the Conſpirators.*

Pro-

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The Trial of the Queen of Scots.

Proceedings againſt MARY Queen of *Scots*, for a Conſpiracy againſt Queen ELIZABETH, before the Lord Chancellor *Bromley*, and other Commiſſioners, appointed by her Majeſty to ſit in Judgment on the ſaid *Scotiſh* Queen, at *Fotheringay* Caſtle, in *Northamptonſhire*, 12 *Octob.* 1586. 28 *Eliz.*

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The Occaſion of it.

THERE having been ſeveral Conſpiracies, ſet on Foot by the *Roman* Catholicks, againſt Queen *Elizabeth*, with a View of advancing the Queen of *Scots* to the Throne, and, thereby, reſtoring their Religion, the

An Aſſociation entered into.

Nation had voluntarily entered into an Aſſociation, for the Safety of the Queen's Perſon, obliging themſelves, by their Oaths, to revenge her Majeſty's Death, on thoſe who ſhould be Authors of it. Which Aſſociation was ap-

Confirmed by Parliament.

proved, and confirmed, by a Statute made the 27th of *Eliz. Anno* 1585. And it was alſo, fur-

An Act to authoriſe this Trial.

ther enacted, That, if any Invaſion, or Rebellion, ſhould happen in any Part of her Majeſty's Dominions; or any Attempt ſhould be made, to the Hurt of the Queen's Perſon, by, or for, any Perſon, that ſhould pretend a Title to the Crown, after her Majeſty's Deceaſe; or, if any Thing ſhould be compoſed, or imagined, tending to the Hurt of her Majeſty's Perſon, with the Privity of any one, that might pretend a Title to the Crown: Her Majeſty, by her Commiſſion under the Great-Seal, directed to the Lords, and others, of her Privy-Council, and to ſuch other Lords as ſhould be named by her Majeſty, amounting to twenty-four, at leaſt, might authoriſe them to examine all, and every, ſuch Offences, and to give Sentence therein, on the Evidence that ſhould be produced before them. And the Queen of *Scots* being ſuſpected to be at the Bottom of *Babington*'s (Conſpiracy, already mentioned) a Com-

A Commiſſion to try the Queen of Scots.

miſſion was iſſued, for the Trial of the *Scotiſh* Queen, by Virtue of the ſaid Act; being directed to the Archbiſhop of *Canterbury*, the Lord Chancellor, the Lord Treaſurer, and above forty Noblemen more, to whom were added five of the Judges.

The Commiſſioners meet at Fotheringay.

The Archbiſhop did not act in this Commiſſion: But the Lord Chancellor, and thirty-ſix of the Commiſſioners, aſſembling at *Fotheringay* Caſtle, the 11th of *October*, gave notice to the *Scotiſh* Queen, of their Arrival, the next Day, requiring her to appear before them. To which Meſſage ſhe anſwered, She was an Independant Princeſs, and the Commiſſioners could have no Juriſdiction over her: However, having made a Proteſt, that ſhe owed no Subjection to the Crown of *England*, ſhe did, at length, agree to appear before them (ſhe ſaid) to manifeſt her Innocence to the World, and, that ſhe might not lie under ſo foul an Aſperſion, as the Conſpiracy to aſſaſſinate the Queen of *England*.

The Charge againſt the Queen of Scots, *and the Proofs of it.*

Then the Queen's Counſel charged her, with being privy to *Babington*'s Conſpiracy, and, with approving and encouraging it: For Proof whereof, they produced Copies of *Babington*'s Letters, and his Examination, wherein he declares, ſhe wrote Anſwers to them; in one of which, ſhe commended, and approved, his Deſign: A Copy of a Letter, from the Lord *Charles Paget*, to her, alſo was read (which *Curl*, one of her Secretaries, had atteſted, ſhe received) reciting a Conference between the ſaid *Paget*, *Mendoza* the *Spaniſh* Ambaſſador, and *Ballard* the Prieſt, one of the Conſpirators, importing, that an Invaſion was intended, in order to ſet the Queen of *Scots* at Liberty: The Examinations of her Secretaries, *Naw*, and *Curl*, alſo were read, to prove the Letters that paſſed between her and *Babington*, relating to the Conſpiracy.

The Depoſitions of her Secretaries, the principal Evidence.

She was charged alſo, with allowing a Penſion to *Morgan*, who ſent over *Parry* (already mentioned) to kill the Queen.

Her Letters to the Lord *Charles Paget*, alſo, were read, wherein ſhe declares, That the *Spaniard* had no other Way to reduce the *Netherlands*, but by ſetting a Prince on the Throne of *England*, that might be ſerviceable to him; and entreats *Paget*, to haſten the Forces that were to invade *England*: A Letter of Cardinal *Allen*'s, to the Queen of *Scots*, alſo was read, wherein he ſtiles her, *His Dread Sovereign*; and acquaints her, that her Affairs were committed to the Care of the Prince of *Parma*.

Then ſhe was charged, with a Deſign of transferring her Right to the Succeſſion of the Crown to the *Spaniard*: Upon which the Queen's Counſel harangued for ſome Time; obſerving, how precarious all their Honours, Liberties, and Properties, muſt be, if ſuch a Conveyance ſhould take Place. To which the Lord Treaſurer anſwered, that the Kingdom of *England* could not be ſo transferred to a Foreigner; but muſt deſcend according to the Laws of Succeſſion.

The Queen of Scots *Defence.*

To this Charge the *Scotiſh* Queen anſwered, That ſhe knew not *Babington*, or ever wrote to, or received Letters from him; nor, had ſhe ever plotted the Deſtruction of the Queen: That they ought to produce ſomething under her own Hand, to make good the Charge: That many Letters, indeed, had been ſent to her, by People unknown, offering their Aſſiſtance; but ſhe had excited no Man to commit any Offence; and, being ſhut up in Priſon, could neither know, or prevent, what others attempted: That *Babington* might have confeſſed ſuch Things, to ſave himſelf: That ſhe had, indeed, done her beſt Endeavour to recover her Liberty, which Nature, itſelf, allowed; and ſolicited

Inſiſts, that they ought to have proved her Hand to the Letters.

And that the Witneſſes ought to have given their Evidence in her Preſence.

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cited her Friends for that End: But that ſhe would not purchaſe the Kingdom with the Death of the meaneſt Man, much leſs of the Queen: That it was an eaſy Matter, to counterfeit the Cyphers, and Characters, of others; and, ſhe feared, this had been done by *Walſingham*, to deſtroy her, who had practiſed both againſt her Life, and her Son's, as ſhe was informed: Whereupon *Walſingham* proteſted, he had no Malice againſt her; but had acted as the Duty of his Poſt required.

Then ſhe inſiſted, that her Secretaries, *Naw* and *Curl*, ought to have been produced in Court, and given their Evidence in her Preſence; ſince the whole Streſs of the Proof ſeemed to reſt upon their Teſtimony: They might alſo, ſhe obſerved, have written what ſhe never dictated; and Letters might come to them, which ſhe never ſaw: However, were they produced, ſhe was confident, they would acquit her of all Guilt.

As to her allowing a Penſion to *Morgan*, who ſent over *Parry* to kill the Queen, ſhe ſaid, ſhe always forbad him encouraging any ſuch Attempts; though, ſhe confeſſed, ſhe had given him a Penſion, on Account of ſome Services he had done her: And, on the other Hand, ſhe obſerved, that the Queen of *England* made no Scruples of allowing Penſions to her Enemies in *Scotland*.

She laments, Queen Elizabeth *would accept of no Expedients.*

She lamented, that the moſt reaſonable Conditions ſhe could propoſe, to Queen *Elizabeth*, had always been rejected; even, when ſhe offered to deliver her own Son, and the Duke of *Guiſe*'s Son, for Hoſtages and Pledges, that neither the Kingdom of *England*, or the Queen, ſhould receive any Damage from her being at Liberty. She complained, that her Honour and Reputation had been called in Queſtion, and inſulted, by Foreign Lawyers; who, by wretched Concluſions, drew every Circumſtance into a Conſequence: But, that Princes, anointed and conſecrated, were not Subject to the Laws of any particular Country, as private Perſons were.

The Lord Treaſurer's Reply.

To this the Lord Treaſurer replied, That ſhe, or the *Scots*, were the Occaſion, that all ſhe had propoſed to the Queen failed of Succeſs; for the *Scotiſh* Lords abſolutely refuſed to deliver up her Son, as an Hoſtage; and, while the laſt Treaty was negotiating, *Morgan*, a Dependant of her's, privately ſent over *Parry* to murder the Queen: And aſſerted, that the Commiſſioners had full Authority, to call her to an Account, for her Practices againſt the Queen and Kingdom.

She proceeds in her Defence.

Then the Queen of *Scots* proceeded in her Defence, and ſaid, That, as to Cardinal *Allen*, ſhe held him to be a Reverend Prelate of the Church; but in what Quality ſhe was eſteemed by the Pope, or foreign Princes, ſhe knew not; nor could ſhe prevent their ſtiling her *Queen of England*, in their Letters: She did not deny her treating with the *Spaniards*, to convey her Right in the Kingdom to him; but ſaid, all her Hopes in *England* being deſperate, ſhe was fully reſolved not to reject Foreign Aid; and concluded, with requiring, ſhe might be heard in full Parliment, or, ar leaſt, that ſhe might ſpeak with the Queen in Perſon; not doubting but ſhe

Requires to be heard in Parliament. Or, before the Queen.

would have ſome Regard to a Sovereign Princeſs, her near Relation.

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Then the Commiſſioners adjourned to the 25th of *October*, to the Star-Chamber in *Weſtminſter*, when they pronounced the following Sentence.

Sentence pronounced againſt her.

That, after the firſt Day of *June*, in the 27th Year of the Queen, and before the Date of their Commiſſion, divers Matters had been compaſſed, and imagined, by *Anthony Babington*, with the Privity of *Mary* Queen of *Scots*, pretending a Title to the Crown of *England*, and tending to the Hurt, Death, and Deſtruction of the Royal Perſon of the Queen: And, that the ſaid *Mary*, pretending a Title to the Crown of *England*, had alſo, herſelf, within the Time aforeſaid, compaſſed, and imagined, divers Matters, tending to the Hurt, Death, and Deſtruction, of the Royal Perſon of the Queen, contrary to the Statute of the 27th of *Eliz.*

The Parliament addreſs the Queen, for the Execution of the Queen of Scots.

The Parliament, meeting the 29th of the ſame Month of *October*, approved the Sentence of the Commiſſioners, and addreſſed her Majeſty, that, as well in reſpect of the Continuance of the true Religion, and the Safety of her Royal Perſon, as in regard to the Preſervation and Defence of her Subjects, ſhe would be pleaſed to give her ſpeedy Orders, that the ſaid Sentence might be publiſhed by Proclamation, and Directions given, for farther Proceedings againſt the *Scotiſh* Queen, in Purſuance of the aforeſaid Statute; for that, upon adviſed and great Conſultation, they could not find there was any poſſible Means of providing for her Majeſty's Safety, but by the juſt and ſpeedy Execution of the ſaid Queen. And that, if the ſaid Sentence was not ſpeedily executed, they deſpaired of the Continuance of the true Religion, of her Majeſty's Life, and the Safety of her faithful Subjects.

The Queen's Anſwer.

To this Addreſs, the Queen anſwered, That, if her Life alone depended upon it, and not the Safety, and Welfare, of her People, ſhe would moſt willingly pardon her. Nay, if *England* might, by her Death, attain a more flouriſhing Eſtate, and a better Prince, ſhe would moſt gladly lay down her Life; for, it was only for her People's Sake, ſhe deſired to to live. They had, ſhe ſaid, by the laſt Act of Parliament, brought her to a very great Strait, that ſhe muſt give Orders for her Death, who was a Princeſs moſt nearly allied to her in Blood, and, whoſe Practices againſt her had ſo overwhelmed her with Sorrow, that ſhe had been glad to be abſent herſelf from this Parliament, leſt ſhe ſhould encreaſe her Grief by hearing it ſpoken of, and not out of Fear of Danger, as ſome thought; though it was not long ſince, ſhe had ſeen, and read, an Oath, wherein ſome had bound themſelves to kill her within a Month. However, ſhe hoped they did not expect any preſent Reſolution; for, in Matters of leſs Moment, ſhe uſed to deliberate long.

A ſecond Addreſs, for the Execution of the Queen of Scots.

About a Fortnight after, her Majeſty ſent a Meſſage to both Houſes, deſiring, they would deviſe ſome Means, that the Queen of *Scots* Life might be ſpared: Which, occaſioned a ſecond Addreſs; wherein they again repreſented to her, that her Majeſty's Safety could not

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possibly be secured, so long as the *Scotish* Queen lived; and, therefore, renewed their Instances for her speedy Execution.

The Sentence against the Queen of Scots, *proclaimed all over* England.

Still the Publication of the Sentence was deferred, on the Intercession of the *French* Ambassador: But, at length, on the Instance of some Courtiers, it was proclaimed in *London*, and in all the Counties of *England*; and the Lord *Buckhurst*, and *Beal*, one of the Clerks of the Council, were sent to the Queen of *Scots*, to acquaint her with it, and persuade her to acknowledge her Offences, and expiate them before her Death by Repentance: They let her know, at the same Time, that, as long as she lived, the established Religion in *England* must be precarious; at which she triumphed, and gave God Thanks, that she was esteemed capable of restoring the true Religion in this Island.

The Queen under great Difficulties, in Relation to her Execution.

The Queen, *Camden* observes, was extremely perplexed, how to act in this Affair, News being brought her, daily, of intended Invasions, Assassinations, or Insurrections: Whereupon she thought fit to give orders to *Davison*, one of her Secretaries of State, to draw a Warrant for the Queen of *Scots* Execution, and have it passed under the Broad-Seal, to lie in Readiness, in case of any further Attempts against her Life, or the Peace of the Kingdom. But the Queen, it is said, altering her Mind the next Day, told *Davison*, she would not have the Warrant drawn. To which he answered, it was already drawn; and had passed the Great-Seal, in pursuance of her Commands; at which she seemed surprised, and checked him for making so much Haste, ordering him, not to communicate the Warrant to any one: But *Davison*, a great Zealot in Religion, imagining the Fate of the Kingdom depended on the Execution of the Queen of *Scots*, acquainted the rest of the Council, that the Warrant for her Execution had passed the Great-Seal, without informing them, that her Majesty had since altered her Mind: Whereupon, the Lords, to whom the Warrant was directed, were ordered by the Council, to repair to *Fotheringay*, and see it executed: And the Queen of *Scots* was accordingly executed in the Hall of the Castle of *Fotheringay*, on the 8th of *February*, $158\frac{6}{7}$. in the 46th Year of her Age; when she expressed a great Contempt of Death, and even looked upon it as her great Happiness, that she was brought to suffer for her Steadiness to Religion; still denying she had ever practised any Thing against the Life of the Queen.

A Warrant, for the Execution of the Queen of Scots, *passes the Broad Seal.*

The Privy-Council order the Execution of the Queen of Scots, *without the Knowledge of of Queen* Elizabeth.

They are banished her Presence.

When her Majesty heard of the Execution of the Queen of *Scots*, she appeared to be in a great Consternation; but, having, after some Time, recovered herself, she reprimanded the Council severely, and commanded them out of her Sight. Even the Lord Treasurer *Burleigh*, was banished the Court; as appears by several Letters in *Strype*'s Collections, wherein he begs to be readmitted to Favour: And *Davison*, the Secretary, was tried in the Star-Chamber, for a Misdemeanour, before the two Archbishops; the Earls of *Worcester* and *Cumberland*; the Lord *Grey*; the two Chief Justices; the Chief Baron, and several other Commissioners, who sentenced him to pay a Fine of ten thousand Marks, and to be imprisoned during the Queen's Pleasure.

Davison, *the Secretary of State, fined for his Presumption.*

1586. 28 Eliz.

Remarks on the Trial, and Execution, of the Queen of Scots.

As to the Justice, or Equity, of these Proceedings, against the Queen of *Scots*, it seems generally admitted, that, as she was a Foreigner, a Sovereign Princess, and fled to Queen *Elizabeth* for Protection, she was unjustly imprisoned, and more unjustly tried and condemned, by the Laws of *England*, to which she could not be subject, owing neither a natural, or local Allegiance to this Crown, but detained Prisoner here against her Will: And, that it was lawful, after this Violence to her Person, to endeavour by all Means, to free herself from her Imprisonment: Nor is there any doubt, but she endeavoured to obtain her Freedom, by inviting Foreign Powers to invade the Realm, and inciting Insurrections against Queen *Elizabeth*; which must have ended in the Destruction of the Queen, and the Protestant Religion, if they had succeeded. The Nation, therefore, purely for Self-Preservation, without considering, whether the Fact was strictly just, seem to have been almost unanimous, in taking away the Life of this Princess, to prevent their own unavoidable Ruin, in case she survived Queen *Elizabeth*.

Neither was it agreeable to the Laws of *England*, by which the Court pretended to try the Queen of *Scots*, to convict her upon the Depositions of Witnesses, without producing them to her Face, that she might have cross-examined them: However, this seems to have been the Practice in other Trials: Neither *Throckmorton*, or the Duke of *Norfolk*, had the Witnesses brought into Court to give their Testimony, but were condemned upon Depositions; though the 5th and 6th of *Edw.* VI. expressly requires, that there should be two Witnesses examined, *Viva Voce*, in Court, in the Prisoner's Presence, where they are charged with Conspiracies against the Government.

As to the executing the Queen of *Scots*, without Queen *Elizabeth*'s Knowledge, I am apt to think the Privy-Council were content to take the Odium of it from the *Queen*, and bear it themselves; and, knowing *Davison* to be zealous for the Execution, put him into that Post, on purpose to serve their Turn, conscious that he would not use all those Precautions a Wise Man ought, on so critical an Occasion. And though, I believe, the Queen did not care to to give Orders, directly, for the Execution of the Queen of *Scots*, yet, she was not displeased in her Heart, perhaps, that the Privy-Council had caused her to be executed without her Knowledge: Nor, is there any doubt, but the Privy-Council knew her Majesty's Mind, and did not despair of recovering her Favour; though it was but decent for her Majesty to reprimand them, and banish them her Presence, for a Time, for their officious Haste in a Matter of that Moment.

The

1587. 30 Eliz. Davison's *Trial.*

The Trial of WILLIAM DAVISON, Esq; late one of her Majesty's Principal Secretaries of State, for a Misprision, and Contempt, in the Star-Chamber, before Sir *Christopher Wraye* Knight, Lord Chief Justice of *England*, the President; the Archbishops of *Canterbury* and *York*; the Earls of *Worcester*, *Cumberland*, and *Lincoln*; the Lords *Grey* and *Lumley*; Sir *James Croft* Comptroller; Sir *Gilbert Gerrard* Master of the Rolls; Sir *Edmund Anderson* Lord Chief Justice of the Common Pleas; Sir *Roger Manwood* Lord Chief Baron; and Sir *Walter Mildmay* Chancellor of the *Exchequer*, 28 *March*, 1587. 30 *Eliz.* 1587. 30 Eliz.

Defective. THE Editor of this Trial has not given us Part of the Bill, or Articles, that were preferred against Mr. *Davison*, in the Star-Chamber, or his Answer; but barely some Minutes of the Speeches of the Attorney-General, and the rest of the Queen's Counsel, against him, on the Day of Trial; with a Summary of his Defence in Court.

The Charge. The Queen's Counsel, he tells us, charged Mr. *Davison*, with communicating the Warrant, for the Execution of the Queen of *Scots*, to the Privy-Council, contrary to her Majesty's Directions; and, with informing them, that it was her Majesty's Intention, it should be speedily executed; when he was conscious, the Queen had no Intention she should be executed; at least, till further Orders: That her Majesty particularly sent Mr. *Killegrew* to him, commanding him, if the Warrant was not already sealed, that it should not be sealed; and that, when he informed her, it was sealed, she checked him for his Haste; and yet, he contemptuously caused a Warrant to be sent down, for the Execution of the Queen of *Scots*, without her Majesty's Privity.

The Evidence. The Evidence to prove this Charge was, Part of *Davison*'s Confession, at his Examination, and the Lord Treasurer's Testimony.

At his Examination he had acknowledged, that, when her Majesty charged him to be Secret, he answered, he would be as careful, and as secret, as was necessary: He confessed also, that Mr. *Killegrew* came to him, and told him, if the Warrant were not sealed already, it should not be sealed; and that, after it was sealed her Majesty said, What haste? and, that he did not make her Majesty privy to the sending down the said Warrant.

The Testimony the Lord Treasurer gave, was, that he asked Mr. *Davison*, on his communicating the Warrant to him, if he knew what her Majesty's Mind was, as to the Execution, and he answered, she would have it go forward; and, that he told the rest of the Council the same Thing, and thereby procured a Warrant to be sent down, for the immediate Execution of the Queen of *Scots*.

Davison's *Defence.* *Davison* said, in his Defence, that he had ever been faithful to her Majesty, and never wittingly or willingly offended her: That the whole Realm had addressed her Majesty, for the Execution of the Queen of *Scots:* That he considered the Danger her Majesty was in, while she lived: That the Instrument was complete, and had passed the Great-Seal, by her Majesty's Directions; and, when she delivered it to him, she said, *Now you have it, let me be troubled no more with it*; which, he thought, was a sufficient Intimation of her Meaning; and, there being no direct Countermand, he thought the Instrument irrevocable: As to the Charge of Secrecy, he conceived her Majesty's Meaning to be, that it should be kept from the common and publick Knowledge, in Regard of the violent Attempts that might be made by the Queen of *Scots* Adherents, at such a Time, if they knew the Warrant was signed for her Execution: He could not think she designed to conceal it from the Council, when she had ordered him to communicate it to Sir *Francis Walsingham*; and when she had, herself, made the Lord Admiral privy to it.

And, as to his sending down the Warrant, he did it not without the Opinion of the Council: Besides, in his own Judgment, the Times were very dangerous; and he should have been severely censured; at least, if her Majesty had come to any Misfortune, while he had concealed the Warrant: It was reported, that Forces were landed in *Ireland* and *Wales*; and, that there were Insurrections in several Parts of the Kingdom: That *Fotheringay* Castle was broke open, and the Prisoners escaped: That *London* was fired, and her Majesty assassinated; and, while the People were in the greatest Consternation at these Reports, her Majesty might in reality have been murdered; and he should have been held the principal Occasion of it, if he had not communicated the Warrant for executing the Queen of *Scots* to the Council.

Besides, as her Majesty had signified her Royal Assent, that she should be executed, it was not usual to trouble the Queen about the Time and Place, and other Circumstances:

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These Matters were always left to the Council, and ought to be ſo, more eſpecially in this Caſe, becauſe ſhe had ſaid expreſly, *She would be troubled no more with it.*

The Opinion of the Court in this Caſe.

The Court, in delivering their Opinions, generally agreed, that *Daviſon* had acted ſincerely, and according to the beſt of his Underſtanding; but ſtill held, that he had been guilty of a great Miſpriſion and Contempt, in communicating the Warrant to the Council, and cauſing the Queen of *Scots* to be executed, without her Majeſty's Privity. The Lord *Grey* ſeemed to excuſe his Conduct, and, in ſome meaſure, juſtified him. Had her Majeſty miſcarried, this Lord obſerved, and the Warrant been afterwards found ſigned and ſealed in Mr. *Daviſon*'s Hands, they ſhould have looked on him as a Traitor, and have torn him to Pieces; adding, that he ſhould then have thought him more worthy of ten thouſand Deaths, than now of the leaſt Puniſhment; and yet he agreed with the reſt in their Sentence, *viz. That Mr.* Daviſon *ſhould be fined ten thouſand Marks, and be impriſoned during her Majeſty's Pleaſure.*

The Sentence.

The Paper called Daviſon's Apology.

The Editors of this Trial have added a Paper to it, which they tranſcribed from *Camden*, and is uſually called *Daviſon's Apology*; but, whether it be genuine, or the Allegations in it deſerve to be credited, *Camden* does not inform us.

In this Apology *Daviſon* makes the Queen ſay, That the Reaſon of her deferring the Execution ſo long, was, leſt ſhe might ſeem to have been violently, or maliciouſly, drawn thereto, though ſhe was not ignorant, how neceſſary it was; and that ſhe blamed *Pawlet* and *Drury*, the Queen of *Scots* Keepers, that they had not eaſed her of that Care; and wiſhed, that *Walſingham* would feel their Pulſes, touching that Matter; telling him, that, in the Judgment of ſome wiſe men, another Courſe might be taken; to which he *(Daviſon)* replied, that That Courſe was always beſt and ſafeſt, which was moſt juſt; but fearing ſhe would lay the Fault upon him (as ſhe had laid the putting of the Duke of *Norfolk* to Death upon the Lord *Burleigh*) he acquainted *Hatton* with the Matter; proteſting, that he would not plunge himſelf any deeper in ſo great a Buſineſs: That *Hatton* imparted it to the Lord *Burleigh*, and Lord *Burleigh* to the reſt of the Council, who all conſented to have the Execution haſtened; and every one vowed to bear an equal Share in the Blame, and ſent *Beal* (Clerk of the Council) down with the Warrant and Letters: That the third Day after, when her Majeſty, by a Dream, which ſhe told, of the Queen of *Scots* Death, ſeemed to waver in her Reſolution, he *(Daviſon)* aſked her Majeſty, if ſhe had altered her Mind; to which ſhe anſwered, No; but another Courſe might have been deviſed; and demanded, at the ſame Time, whether he *(Daviſon)* had received an Anſwer from *Pawlet*; and that, having ſhewn her Majeſty *Pawlet*'s Letter, wherein he flatly refuſed to undertake that which ſtood not with Honour and Juſtice, ſhe waxed angry, accuſing him, and others (who had bound themſelves by the Aſſociation) of Perjury, and Breach of their Vows, as having promiſed great Matters for their Princes Safety, and would perform nothing: *Yet*, ſaid ſhe, *there are, that will do it, for my Sake*; that he *(Daviſon)* thereupon ſhewed her Majeſty, how diſhonourable and unjuſt a Thing this would be, and into how great Danger ſhe would bring *Pawlet* and *Drury* by it: For, if ſhe approved the Fact, ſhe would draw upon herſelf, both Danger and Diſhonour, not without Cenſure of Injuſtice; and, if ſhe diſallowed it, ſhe would undo Men of great Deſert, and their whole Poſterity: And afterwards ſhe gave him a light Check, the ſame Day that the Queen of *Scots* was executed, becauſe ſhe was not yet put to Death.

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The Editors obſerve farther, that *Freebairn*, in his Life of *Mary* Queen of *Scots*, p. 269. ſays, Queen *Elizabeth* ſent Orders to *Pawlet*, on whoſe Obedience ſhe could reckon with Certainty, for committing of any Act of Barbarity, to make away with his Priſoner; and p. 270, 271, 272. inſerts a Letter from *Walſingham* and *Daviſon*, her two Secretaries, to Sir *Amias Pawlet* and *Drury*, with their Anſwer, which were found, as 'tis ſaid, among Sir *Amias Pawlet*'s Papers; Copies of which, tranſcribed from the Originals, were ſent to Doctor *Mackenzie*, by Mr. *John Urry* of *Chriſt's-Church-College*, *Oxford*, as it is ſaid.

Freebairn's Account of this Matter.

The Letter to Pawlet *aud* Drury.

Letters ſaid to be found among Pawlet's *Papers.*

" AFTER our hearty Commendations; we find, by a Speech lately made by her Majeſty, that ſhe doth note in you both, a Lack of that Care and Zeal for her Service, that ſhe looketh for at your Hands, in that you have not, in all this Time (of yourſelves, without other Provocation) found out ſome Way, to ſhorten the Life of the *Scots* Queen, conſidering the great Peril ſhe is hourly ſubject to, ſo long as the ſaid Queen ſhould live; wherein, beſides a kind of Lack of Love towards her, ſhe wonders greatly, that you have not that Care of your own particular Safeties; or, rather, the Preſervation of Religion, and the publick Good, and Proſperity of your Countries, that Reaſon and Policy commandeth; eſpecially, having ſo good a Warrant and Ground for the Satisfaction of your Conſciences towards God, and the Diſcharge of your Credit and Reputation towards the World, as the Oath of Aſſociation, which you have ſolemnly taken, and vowed; eſpecially the Matter, wherewith ſhe ſtandeth charged, being ſo clearly and manifeſtly proved againſt her: And therefore ſhe taketh it moſt unkindly, that Men profeſſing that Love towards her, that you do, ſhould in a kind of ſort, for Lack of the Diſcharge of your Duties, caſt the Burthen upon her; knowing, as you do, her Indiſpoſition to ſhed Blood, eſpecially of one of that Sex, and Quality, and ſo near to her in Blood, as that Queen is. Theſe Reſpects, we find, do greatly trouble her Majeſty, who, we aſſure you, hath ſundry Times proteſted, that if the Regard of the Danger of her good Subjects, and faithful Servants, did not more move her, than her own Peril, ſhe would never be drawn to aſſent to the ſhed-

" ding

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" ding of her Blood. We thought it meet, " to acquaint you with these Speeches, lately " passed from her Majesty, referring the same " to your good Judgments: And so we com- " mit you to the Protection of the Al- " mighty."

Your most assured Friends,

London, Feb. 1. 1586.

FRA. WALSINGHAM,
WILL. DAVISON.

In two other Letters, we are told, Mr. *Davison* desires *Pawlet*, to burn his Letters, and complains, it was not already done. Then they give us the following Letter, from *Pawlet* and *Drury*, to the Secretaries, *Walsingham* and *Davison*, as an Answer to the former.

SIR,

" YOUR Letters of Yesterday coming " to my Hands, this present Day, at " 5 *p. m.* I would not fail, according to your " Directions, to return my Answer with all " possible Speed; which I shall deliver unto " you with great Grief and Bitterness of Mind, " in that I am so unhappy, as living to see " this unhappy Day, in which I am required, " by Direction from my most gracious Sove- " reign, to do an Act, which God and the " Law forbiddeth. My Goods, and Life, are at " her Majesty's Disposition, and I am ready " to lose the next Morrow, if it shall please " her; acknowledging, that I do hold them, " as of her meer and most gracious Favour, " and do not design to enjoy them, but with " her Highness's good liking. But God for- " bid I should make so foul a Shipwreck of " my Conscience, or leave so great a Blot to " my poor Posterity, and shed Blood with- " out Law, or Warrant; trusting, that her " Majesty, out of her accustom'd Clemency, " and the rather, by your good Mediation, " will take this my Answer in good Part, " as proceeding from one, who never will be " inferior to any Christian Subject, living in " Honour, Love, and Obedience, towards his " Sovereign; and thus I commit you to the " Mercy of the Almighty."

Your most assured poor Friend,

Fotheringay, Feb. 2. 1586.

A. PAWLET.

" *P. S.* Your Letters, coming in the plural " Number, seem to be meant to Sir *Drew* " *Drury*, as well as to myself; and yet, because " he is not named in them, neither the Letter " directed unto him, he forbeareth to make any " particular Answer, but subscribeth in Heart " to my Opinion."

D. DRURY.

Remarks on Davison's Trial.

The Reader, no doubt, observes, that most of these old Trials are extremely defective. Every one knows, that the Method of proceeding in the *Star-Chamber*, was by Bill and Answer; and here the Editor gives us neither the one, or the other; or so much as an Abstract of them. All that we have is, only some short Notes, taken by one of the Audience in Court, at the Time of the Trial; or, perhaps, what he depended purely on his Memory for: At best, we meet with nothing more than an ordinary Memory might have retained; and what Alterations, or Omissions, there may be, I won't be answerable for: However, it is observed, if we cannot have the Trial as perfect as we would, it is better to have these Minutes, than none at all. Something may be learnt from them, imperfect as they are: But 'tis well, if some of them do not give us a wrong Bias, and furnish us with unreasonable and unwarrantable Prejudices.

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Here we find a great Monarch, perhaps the best that ever reigned, either in this or any other Kingdom, if we consider the Wealth and Happiness of her Subjects, during so long an Administration, basely reviled and calumniated, and charged with the most detested Crimes, upon such slender Evidence, as would not be admitted against a common Person.

Davison is made to insinuate, in his Defence, that every Tittle of the Charge against him was false; though he had not the ill Manners to contradict, either the Queen, or the Lord Treasurer, *directly*, he said. Nay, he goes so far, as to endeavour to make his Readers believe, that her Majesty shewed no Reluctance at putting the Queen of *Scots* to Death; and that she would have had her privately assassinated and murdered; which cannot be credited by impartial Men, on many Accounts; for, first, there was no manner of Necessity for such a private Assassination, when that Queen lay under Sentence of Death, and the whole Nation pressed her Majesty continually to let her be executed, in pursuance thereof. Queen *Elizabeth* had nothing to do, but to suffer the Sentence to be executed, if she wanted to have the Queen of *Scots* out of the Way. To what End, or Purpose, therefore, should she endeavour to have her murdered in secret, unless she was fond of having her Memory traduced. Besides, we meet with several Contradictions in the Accounts, *Davison* is made to give of this Matter. In some Places he insinuates, that the Queen did command the Execution, wondered it was not done, and incited him to hasten it; and in others, he evidently shews, that she did not know of it; particularly when she told her Dream, and spoke of the Queen of *Scots*, as living, after she was dead.

It will be observed further, that the Letters, at the End of the Trial, if they were genuine, make *Walsingham* and *Davison*, the two Secretaries of State, the principal Instruments, to procure the Assassination of the Queen of *Scots*; whereas *Davison*, and his Friends, declare their Detestation of it, and pretend, that *Davison* represented to the Queen, the Foulness of the Fact, and would have no Concern in it; so that *Davison*'s Representation of the Matter, and these Letters, cannot both be true; and if the Letters are to be credited, which were said to be found among *Pawlet*'s Papers, both *Walsingham*'s and *Davison*'s Reputations must be given up, as well as the Queen's. But is it equitable to blast the Fame of so great a Queen, and her Ministers, upon two Letters,

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found, no Body knows where, or how; and without any Pretence of proving the Hands that wrote either of them? As Biſhop *Burnet* obſerves, a Lie, or Calumny, recorded in Hiſtory, is much worſe than a Lie in common Diſcourſe; as it is like to be more generally diffuſed, and of a longer Duration: The Slander is continued down to Poſterity. We act as if it was of no Moment, whether ſovereign Princes, and great Men, ſuffered in their Characters, or not: But ſhall we rob a great and good Queen of her Fame, on ſuch Evidence, as a Jury would reject, in the Caſe of a common Perſon; a Queen who revived and eſtabliſhed the Reformation; a Queen, who governed her People with the greateſt Equity and Goodneſs; and during whoſe Reign, the Nation flouriſhed, and made a greater Figure, than in any Reign, recorded in Hiſtory? Shall we, lightly, and upon incompetent Evidence, entertain an ill Opinion of ſuch a Princeſs? eſpecially, if we conſider from what Quarters the Slander probably came, *viz.* either from the Papiſts, or Puritans, both of them her inveterate Enemies; and that too, upon account of her eſtabliſhing the Church of *England* on ſuch a Foundation, that it has been able to bear up to this Day againſt the open Attacks, and ſecret Malice of both.

It ſhall ever be a Rule with me, to judge, both of Princes and private Men, according to the general Tenor of their Actions, and not from ſome ſingle Event; eſpecially where there is ſufficient Room to doubt, that even That has not been fairly repreſented: But, I don't know how it comes to paſs, People are ready to arraign their Superiors upon every ſlight Surmiſe, and ſwallow greedily, whatever is ſuggeſted to their Prejudice; when they cannot but acknowledge the Iniquity of ſuch a Proceeding, in a private Caſe. For my Part, I find fewer Blemiſhes in the long Reign of Queen *Elizabeth*, and more Advantages accruing to her Subjects, than in any Reign of the like Duration; and muſt have better Proof, therefore, than I have ever yet met with, before I give any Countenance to the Tales that have been framed, concerning her, in relation to the Execution of the Queen of *Scots*.

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Give me leave to obſerve further on the Letter, ſaid to be ſent from the Secretaries of State, to *Pawlet* and *Drury*, to murder the Queen of *Scots*: That they firſt tell thoſe Gentlemen, that the Queen abhorred the Thoughts of ſhedding Blood, eſpecially the Blood of ſo near a Relation, or to that Effect; and then, uſe all the Arguments they could think of, to incite them to aſſaſſinate the Queen of *Scots*, ſuggeſting, that nothing could give her Majeſty greater Satisfaction: Thus making her, they repreſent ſo extremely tender in Caſes of Blood, as thirſting to ſhed that of the Queen of *Scots*: And, methinks, *Pawlet* and *Drury*'s ſubſcribing themſelves, *your moſt aſſured Friends*, in their Letter, to the two principal Secretaries of State, is hardly reconcileable to good Manners. If there were no other Marks of Forgery, this alone would induce me to believe, that Letter was not genuine.

1588. 31 Eliz.

Trial of Knightly, &c.

The Trial of Sir RICHARD KNIGHTLY, Mr. HALES, Mr. WICKSTONE, and his Wife, for Countenancing and Promoting, the Printing and Publiſhing certain ſeditious Libels, before the Court of *Star-Chamber*, the 13th of *February*, 1588. 31 *Eliz.*

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Bill and Anſwers wanting.

THE Editor of this Proceeding has given us, neither Bill, Articles, or Anſwers, in this Cauſe; but only ſome Scraps of Speeches of the Queen's Counſel, at the Trial, and of the Evidence; with ſuch a ſhort Abſtract of the Priſoner's Defence, that it ſcarce deſerves a Place in the State Trials: However, ſuch as it is, I ſhall endeavour to give ſome Account of it.

Charge by the Queen's Counſel.

The Attorney-General *Popham*, it ſeems, opened the Charge; wherein he obſerved, the Happineſs of the Queen's Subjects, under her Adminiſtration, which the Papiſts and ſeditious Sectaries endeavoured to diſturb: Firſt, the *Preſbyterians*, then the *Browniſts*, and now a third ſort of Diſſenters; who were for ſubverting all Eccleſiaſtical Government, and for eſtabliſhing ſeparate and independant Congregations, in every Pariſh. Nor were they content with railing at the Church; but attacked the Court and the civil Powers, preaching againſt the Laws, and confounding all Property. That theſe Sectaries were, generally, compoſed of the Refuſe and Scum of the People, who endeavoured to reduce all to Confuſion, that they might give Law to their Governors: The evil Tendency of whoſe Deſigns appearing in Swarms of ſeditious Pamphlets and Libels, her Majeſty had wiſely iſſued ſeveral Proclamations, for ſuppreſſing and burning ſuch Books and Papers; requiring, that no Printing ſhould be uſed, but in *London*, *Oxford*, or *Cambridge*: Whereupon they fell to Printing in Corners, and obſcure Places; in which they were aſſiſted and countenanced by the Priſoners at the Bar: Particularly, Sir *Richard Knightly* cauſed a Printing-Preſs to be brought into one of his Houſes, and ſuffered a ſeditious Pamphlet of *Penry*'s * to be printed there: And, when he was told the Danger of it, by the Parſon of the Pariſh, he ſtill concealed it, and read the Book, though he ordered the Preſs to be removed: That *Walgrave*, the Printer, was recommended by Sir *Richard*, to Mr. *Hales*, who gave him Entertainment;

* *Afterwards hanged for Sedition.*

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tainment; and there the Libel, entitled, *A Supplication to the Parliament*, was printed, and afterwards publiſhed by Sir *Richard*'s Man, as well as another Book, entitled, *Have you any Work for the Cooper*: That this Preſs was afterwards conveyed to Mr. *Wickſtone*'s Houſe, where *Martin Senior*, and *Martin Junior*, were both printed; wherein they declare, their Reſolution to eſtabliſh their Sect; and that all Laws that were oppoſite to their Diſcipline, ought not to be obeyed; ſuggeſting, that this was the proper Time to attack and diſtreſs the Government, while the Nation was threatened with an Invaſion from *Spain* (as it was this very Year, 1588.) and that *Wickſtone*, by the Influence of his Wife, harboured and aſſiſted the Printers of theſe Libels, with Money and Proviſions.

The Defence of Knightly.

Sir *Richard Knightly* ſaid, in his Defence, that Matters were greatly aggravated againſt him; that he was no Sectary, but of the Religion of the reſt of her Majeſty's Subjects; and deſired his Judges to intercede for him to her Majeſty, againſt whom, he ſaid, he had committed no Offence, nor againſt the State. He denied he had any Knowledge of the Books above mentioned, or any Acquaintance with the Writers of them: That, indeed, there was a Book of *Penry*'s, that had been printed before at *Oxford*, and never called in, which he ſuffered to be printed at his Houſe, on *Penry*'s Requeſt, in reſpect of the Want of Learning, he knew, to be in the Miniſtry; and for that, he thought, there were forty bad Men to one good Man, among the Clergy; yea, ſo bad, that he thought them not worthy to ſweep a Church; and he allowed, therefore, of this Book, for the Furtherance of God's Glory: That, however, the Preſs was not in his own Houſe, but in another, at the further End of the Town: That *Walgrave* afterwards deſired, he might remove his Preſs; and told him, that *Cartwright* had wrote a Book againſt the Jeſuits, which he was to print; concluding, that he hoped her Majeſty would forgive him, as ſhe had forgiven greater Offences.

Hales's *Defence.*

Mr. *Hales* acknowledged the Happineſs of the Nation, under her Majeſty's Adminiſtration; and diſclaimed his Knowledge of the Books, or the Authors: He ſaid, it was true, he had, at the Requeſt of his Uncle, Sir *Richard*, lent his Houſe to a poor Man; but knew not the Man, or his Intentions: That, indeed, he met *Penry* at *Coventry*, who gave him *the Supplication to the Parliament*, and told him, he would print Mr. *Cartwright*'s Book *againſt the Romiſh Teſtament*: That he was privy there was a Preſs in the Houſe, but to nothing elſe.

Wickſtone's *Defence, and his Wife's.*

Wickſtone confeſſed, that at his Wife's Deſire, he had permitted the Printers to reſide at his Houſe; and Mrs. *Wickſtone* acknowledged, that her Zeal for the Reformation of the Church, cauſed her to entertain them, not thinking it could be hurtful, or dangerous, to the State; and whatever her Offence was, ſhe deſired her Huſband might not be puniſhed for it; ſince what he had done, was at her Requeſt.

The Queen's Counſel reply.

Then the Queen's Counſel replied, and ordered ſeveral Paſſages out of the above-mentioned printed Libels to be read; obſerving, that they tended no leſs to the Subverſion of the State, than the Eccleſiaſtical Government; and, indeed, of all Laws whatever, whether Eccleſiaſtical or Civil.

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Paſſages cited out of the Libels.

Particularly that Paſſage, where *Penry* ſays, *They would never give over, though the* Spaniards *were overthrown and diſcomfited by Famine and Hunger; yet the Lord would raiſe them up again, and make a week and feeble Generation to overthrow us.*

In another Paſſage it is ſaid, That *No Truth is to be found in our Parliaments, or Councils*: That *if the Government of the Sectaries was not received, thoſe of the Parliament-Houſe, or their Seed, ſhould never proſper, or bear Rule in* England. *And I* (Penry) *will never leave, till either this be performed; or that the Lord, in Vengeance and Blood, do plague and puniſh us.*

In the Book, entitled, *Have you any Work for the Cooper*, it is affirmed, That *Our Church Government is utterly unlawful; and although this Form of theirs might be inconvenient, in many Points, yet every Chriſtian was bound to receive their Paſtors, Doctors, Elders, and Deacons.*

In *Martin Junior*, it is declared, *to be unlawful to have any other Government, but theirs: That all human Laws, maintaining any other Forms, were ungodly, and not to be obeyed*: That *the Warrant that Biſhops have to maintain their Authority, is no better than that which did maintain the Stews*: That *Antichriſt was the Head of their Doctrine, and they Part of his Body.*

In *Martin Senior*, *They ſpeak reproachfully of the Common Prayer: Declare, that a hundred thouſand Hands would ſign to their Poſitions, and the Government they ſeek: That they are the Strength of the Land; and that it were no Policy to reject their Suit at ſuch a Time, when the Land was invaded.*

The Books cenſured.

The Lords, having taken the Matter into their Conſideration, all agreed, That the Books were moſt leud, dangerous, ſeditious, and pernicious to the State; moſt ſcandalous, in reſpect to our Adverſaries the Papiſts, who took occaſion to ſerve their Intereſt by our Diſſentions. Mr. Vicechamberlain added, that they were ſlanderous to her Mejeſty; accuſing her of not ſupporting Religion, though ſhe had, in Defence of Religion, bravely defeated, both the Enemies of our Religion, and of the State, when the Sword of War was drawn againſt her.

And the Principles of the Sectaries.

That theſe Sectaries took away her Majeſty's Regal Power; diſinherited the Nobility and Gentry; took away all Property, and aboliſhed the reverend Eſtate, and Calling, of Biſhops, which were one of the three antient Eſtates of the Land; and thus they intended to pick out one Stone after another, till they pulled the whole Houſe upon their Heads.

Cenſure of the Priſoners.

That Sir *Richard*, who countenanced and encouraged theſe Libels, had been greatly favoured by the Queen, which aggravated his Crime: That ſome of the reſt pretended Ignorance; but Ignorance was no Excuſe, where it was wilful and malicious, and only affected, to avoid the Puniſhment of the Law: That it was ſtill a ſillier Anſwer of Mr. *Wickſtone*, to ſay, *his Wife deſired him*: A great Folly, to be ruled by her; and, not agreeable to the Modeſty of her Sex, for her to pretend to govern her Huſband.

The

1588. 31 Eliz.

The Lord Chancellor obſerved, that indeed the Priſoners were not the Deviſers, or Makers of theſe Books; for, if they had, they would have been proſecuted in another Place (capitally.) That the County of *Northampton* then ſwarmed with Sectaries; and in one Place a Preſbytery was planted among them, till one of the Brethren offending, whom they would have puniſhed, he fled to a Juſtice of Peace for Protection, whereby their Deſign of erecting Tribunals was diſcovered, and a Period put to their Dominion; and that they appeared to be ſo divided among themſelves, in ſome Places, that they were ready to riſe in Arms againſt each other, to the Diſturbance of the Government.

Sentenced to be fined, and impriſoned.

After which, all the Lords agreed in the following Sentence, *viz.* that Sir *Richard* ſhould be fined Two thouſand Pounds; Mr. *Hales* One thouſand Marks; Mr. *Wickſtone*, for obeying his Wife, and not diſcovering the Preſs, Five hundred Marks; Mrs. *Wickſtone*, One thouſand Pounds; and that all of them ſhould be impriſoned during her Majeſty's Pleaſure.

Remarks on the Trial of Knightly, *&c.*

Here we diſcover the Affection of the Puritans and Sectaries, for the Church of *England*, ſo early as the Reign of Queen *Elizabeth*. They were then conſpiring the Ruin of our Eccleſiaſtical Eſtabliſhment, and even the Deſtruction of the Queen and State, becauſe ſhe ſupported it, and would not ſubmit to their Plan of Government: And, notwithſtanding their Cries againſt Popery, were ready to join even the *Spaniſh Armada* againſt their Country; though they knew the avowed Deſign of the *Spaniards*, in the Year 1588. when they fitted out that prodigious Fleet, was to deſtroy the Proteſtant Religion, and re-eſtabliſh Popery; nay, to deſtroy entirely our civil Conſtitution, and make us Vaſſals to the Pope, or their own bigotted Monarch: Yet were the Puritans ready to join thoſe Enemies of our Nation and Religion, and actually endeavoured to foment Inſurrections, when their Fleet was upon the Coaſt, in order to favour their Deſcent; and all this, in hopes of eradicating the Church of *England*, and introducing their own wild Whimſies, and impracticable Schemes, in the room of it: And will the Church of *England* ever be ſuch *Dupes*, to admit their Succeſſors in Iniquity, Men of the ſame Principles, who have not only thus declared their Good-will, to the Eſtabliſhment, but have actually ſubverted both Monarchy and Epiſcopacy, when it was in their Power? Shall we, I ſay, ever admit ſuch Men into Power, and give them an Opportunity to inſult and ruin the State, as well as the Church again? Shall we make thoſe the Guardians of our Religion and Liberties, whoſe Intereſt it is to deſtroy both? Shall we, becauſe they have the Aſſurance to demand a Share in the Government, as *their natural Right*, be ſuch Fools and Naturals, to give them another Opportunity to deprive us of all our Rights and Properties? Can any one believe, after what we have ſeen, that they will even *tolerate* the Church of *England*, if they had the Power in their Hands? No: Nothing can be expected from the admitting the Diſſenters into the Adminiſtration, but the total Subverſion both of Church and State? We are now too well appriſed, what they mean by that terrible Word *Perſecution*. They declare, they ſhall always look upon themſelves to be in a perſecuted State, till we compliment them with the Power to extirpate our Antichriſtian Hierarchy, as they ſtile it; and that all Laws are impious, null, and void, that tend to keep the Saints out of the Adminiſtration. As to their ſtale Pretence, of being Friends to the preſent Royal Family, Infidels and Hereticks pretend the ſame. No doubt but they would be glad of any Aſſiſtance, to exalt them to the Dominion they aim at: But when this was once accompliſhed, they would tell us, all Things muſt ſubmit to their adored Idol, *Preſbytery*: And if the King would not obey their Dictates, he muſt expect to be anathematized, and depoſed, if not arraigned, and condemned, for High Treaſon, againſt theſe his ſovereign Subjects, as one of the beſt of his Predeceſſors was in the laſt Century.

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I ſhall conclude theſe Remarks, with a Paſſage out of *Camden*, who relates, that, while the Nation was then ſtruggling with the Power of *Spain*, and defending itſelf from the formidable Attacks of the Papiſts, it was diſturbed by thoſe domeſtick Enemies, the Schiſmaticks, who loved to fiſh in troubled Waters. Never was there a Time, ſays that celebrated Hiſtorian, when the Diſcipline of the Church was run down, with that ſaucy Pertneſs; and the Authority of her Officers ſo rudely and baſely inſulted, on the Queen's refuſing to liſten to any Changes in Religion, or to encourage theſe new Modellers, who endeavoured to eſtabliſh their *Geneva* Platform, by loudly railing at the *Engliſh* Forms and Rites, rendring the Names of *Biſhop* and *Prelate*, as odious as they could to the common People: To which End, they daily publiſhed ſcurrilous Pamphlets againſt the Church, among which ſeveral went by the Name of *Martin Mar-Prelate*. The Authors whereof appeared rather to have learned their Language at *Billingſgate*, than to ſpeak the Senſe of any Chriſtian Community; for which, ſome of them were fined in the *Star-Chamber*, though, *at the Interceſſion of the Archbiſhop, their Fines were remitted, and they were ſet at Liberty.*

Camden's *Account of theſe Puritanical Libellers.*

They are pardoned.

In another Place, he ſays, *Cartwright*, and ſome of their Chiefs, were called before their Superiors; but with what a ſtrange Petulancy, and ſullen Haughtineſs, theſe Congregational Teachers managed themſelves, maugre all the Tenderneſs and prudent Forbearance of the Archbiſhop, I leave, ſays that Hiſtorian, to the Obſervation of Eccleſiaſtical Writers.

See Camden's *Hiſtory of the memorable Year* 1588.

The

1589. 31 Eliz.
The Trial of the Earl of Arundel.

The Trial of PHILIP HOWARD Earl of *Arundel*, for *High Treaſon*, before the Earl of *Derby* Lord High Steward, and three and twenty other Peers, the 18th of *April*, 1589. 31 *Eliz.*

1589. 31 Eliz.

The Charge againſt him.

HE was charged with holding a Correſpondence with Cardinal *Allen*, an arch Traitor, that had ſolicited the Pope, and King of *Spain*, to invade the Realm. He was alſo charged with ſuggeſting, the Queen was an Heretick, and not fit to govern; and procuring one *William Bennet*, a ſeminary Prieſt, to ſay Maſs, for the Succeſs of the *Spaniſh Armada*, at which the Priſoner aſſiſted: That he had been reconciled to the Church of *Rome*, contrary to the Statute, which made it High Treaſon; and endeavoured to make his Eſcape over beyond Sea, in order to ſerve under the the Prince of *Parma*, againſt his Country; and that he was a Procurer of the late Bull againſt the Queen.

The Evidence.

To prove his praying for the Succeſs of the *Spaniſh* Fleet, the Depoſitions of Sir *Thomas Gerrard*, —— *Shelley*, and *Bennet*, the Prieſt, were read, who alſo confirmed their Evidence in Court. *Walton* alſo depoſed, that one *Hill*, a Dependant of the Priſoner's, brought over Letters to *Rheims*, in *France*, importing, that the Earl was to have been General of the Catholicks; and that the *Tower* was to have been ſeized.

His Defence.

To which the Earl anſwered, he had been a Priſoner in the *Tower*, four Years, and upwards, and ſick moſt Part of the Time: That he had been confeſſed by a Prieſt, but not reconciled to the Church of *Rome:* That there was no Proof of great Part of the Charge; and that the reſt was endeavoured to be proved by Perſons attainted, or Priſoners, who had confeſſed Crimes that rendered them incompetent Witneſſes.

He is convicted.

The Peers being withdrawn for an Hour, returned, and unanimouſly declared the Priſoner GUILTY: Whereupon the Lord High Steward pronounced Judgment of High Treaſon againſt him; but, after ſeveral Reprieves, he died a natural Death, in the *Tower*, *Oct.* 19. 1595. having been Priſoner there ten Years and ſix Months.

Condemned. *Reprieved.*

Remarks on the Earl of Arundel's *Trial.*

This Trial, alſo, is very imperfectly taken: However, from what we have, there does not ſeem to have been any formed Deſign againſt the State proved againſt this Lord: And there is ſcarce any Inſtance of the Queen's ſuffering any Perſon to be put to Death, purely on Account of Religion, or being reconciled to the Church of *Rome*; though this was High Treaſon by the Statute; and thus much was ſufficiently proved againſt the Priſoner.

1590. 31 Eliz.
Udall's *Trial, for Felony. Refuſes to be examined by the Council.*

The Trial of JOHN UDALL, Clerk, for *Felony*, at the Aſſizes of *Surrey*, the 24th of *July*, 1590. 31 *Eliz.*

1590. 31 Eliz.

IN *January*, 15$\frac{89}{90}$. *Udall* was examined before a Committee of Council, concerning a ſeditious Libel, entitled, *The Demonſtration of Diſcipline, which Chriſt had preſcribed in his Word, for the Government of the Church*; of which he was ſuppoſed to be the Author: But he would give no other Anſwer to the Queſtions propoſed, than that he was not obliged by Law to accuſe himſelf: Whereupon he was committed to the *Gate-Houſe*, till the following Summer Aſſizes, held at *Croydon*, for

The Charge.

the County of *Surrey*, where he was indicted on the 23d of *Eliz. Cap.* 2. which made it Felony to write, or publiſh, any Book, or Writing, containing falſe, ſeditious, and ſcandalous Matter, to the Defamation of the Queen's Majeſty, or to the encouraging, ſtirring, or moving, any Inſurrection, or Rebellion; as this Book of the Priſoners was held to do, by reviling the Biſhops and Clergy, and inciting the People to promote the Subverſion of the eſtabliſhed Church, which was a Part of the Conſtitution; eſpecially as they were exhorted to bring this about by Force, if they could not otherwiſe accompliſh it.

Counſel denied. *The Court refuſe to adviſe him.*

The Priſoner being brought to the Bar, deſired he might have Counſel, which was denied him. Then he deſired the Court to inform him, how many of the Jury he might challenge by Law: To which it was anſwered, they ſate there to judge, and not to give him Counſel.

The Charge opened, and enforced.

The Queen's Counſel, in opening the Indictment, charged the Priſoner with Blaſphemy; and obſerved, that he, and his Sect, aſſumed an Authority, even over her Majeſty; and that he was an intimate Acquaintance of *Penry*, a ſeditious Puritan Preacher, Author of a Libel, entitled, *Martin Mar-Prelate:* And it was urged againſt him, that her Majeſty, being the ſupreme Governor of all Perſons, and Cauſes, and having eſtabliſhed that Government by Biſhops, which the Priſoner arraigned; his ſtirring up the People againſt the Epiſcopal Government, was ſtirring them up againſt her Majeſty, by whoſe Authority they exerciſed their Juriſdiction; obſerving, that he, who pretended to be a Preacher of Peace, ſhould have learned not to have railed on the Rulers of the People, and threatened them with Force and Violence, which all the Judges had reſolved was Felony by the ſaid Statute of the 23d of *Eliz.*

1590. 31 Eliz.

Depoſitions produced as Evidence.

Then the Evidence was produced; and firſt, the Depoſition of *Stephen Chatfield* was read; importing, that he ſaw certain Papers in the Priſoner's Study, at *Kingſton*, of the like Tenor with the Priſoner's Book; and that, talking with *Udall* of his being ſilenced, he ſaid, he would give the Biſhops ſuch a Blow, as they never had.

His Examination read.

The Priſoner's Examination alſo was read: Wherein he ſaid, that if the Biſhops put him to Silence, they would give him Occaſion and Leiſure to be employed in writing againſt them. The Depoſition of *Nicholas Tompkins* alſo was read, who teſtified, that the Priſoner told him, he was the Author of the Book, called, *The Demonſtration*; and that he had ſeen it in the Catalogue of his Books.

An Offer made, if he would deny his being the Author, he ſhould be acquitted.

Then the Court offered him, if he would take his Oath, that he did not make the Book, he ſhould be acquitted: Nay, if he would ſay, upon his Honeſty, he did not make it, they would believe him; which the Priſoner refuſing, it was urged as a full Proof, that he was the Author of it: And the Jury were told by the Court, they were not to enquire, whether the Priſoner was guilty of Felony, but whether he was the Author of the Book: For all the Judges had already reſolved, that whoever was the Author of the Book, was guilty of Felony, by the Statute.

Directions to the Jury.

His Defence.

The Priſoner entering on his Defence, ſaid, as to the Witneſſes Teſtimony, that they had ſeen Papers of the ſame Tenor in his Study; This was no Evidence againſt him, unleſs they had recited the Words. He alſo objected, that Depoſitions ought not to be read againſt him, in a Capital Caſe, but the Witneſſes produced to his Face; much leſs ought the Evidence of what another had ſaid, be admitted: And the Priſoner offered to bring Witneſſes, to ſhew that the Witneſſes againſt him had contradicted themſelves: But he was not ſuffered to produce any Witneſſes in his Behalf, againſt the Crown.

Depoſitions no Evidence.

Not ſuffered to call his Witneſſes.

Then he inſiſted, that the Statute of the 23d of *Eliz.* was made againſt Papiſts, who ſlandered the Queen as an Heretick, and not againſt the Puritans; and urged, that the writing his Book, could not be Felony, unleſs it had been written with a malicious Intent: And that they taught the People to yield Obedience to her Majeſty, and the Religion received in her Dominions. The moſt the Author could be charged with, he ſaid, was too much Vehemency againſt Abuſes. To bring him within the Danger of that Statute alſo, the Matter muſt be falſe: But this Book, he affirmed, was written in Behalf of a moſt true Cauſe: And, laſtly, that the End muſt be, the defaming her Majeſty, or ſtirring up Rebellion; neither of which could be proved againſt this Author, or his Party; appealing to the Court, if it was their Opinion, that the Statute was made againſt Puritans.

Juſtifies the Book.

The Court tell him, the reſiſting the Eccleſiaſtical Government, was reſiſting the Queen.

It was anſwered; that the Intent of the Statute was againſt all Offenders; and he could not deny his having written it, with a malicious Intent, againſt the Biſhops, and the Eccleſiaſtical Government, which was eſtabliſhed by the Laws and Statutes of the Realm, as well as the Civil Government; and that the Biſhops exerciſing their Juriſdiction by the Queen's Authority, who was ſupreme in all Cauſes, Eccleſiaſtical and Civil, in oppoſing their Government, he oppoſed the Queen; and that when he wrote againſt them, he wrote againſt the State: And where he ſaid, it was more eaſy to live in *England* a Papiſt, an Anabaptiſt, or of the Family of Love, than a Puritan, what did he but revile the Queen's Adminiſtration, who was the ſupreme Governor of the Realm?

1590. 31 Eliz.

He inſiſts, that oppoſing the Biſhops, was not oppoſing the Queen.

To which *Udall* replied, this was not ſpoken by the Author, in reſpect of her Majeſty's Government and Laws; but in reſpect of the Biſhops, whom their Lordſhips knew to be wholly employed in finding them out, and puniſhing them, not regarding, in a manner, the puniſhing of any Thing elſe. The Book touched only the Corruptions of the Biſhops, and not the Perſon of her Majeſty.

To which it was again anſwered; that, her Majeſty being the ſupreme Governor of all Perſons and Cauſes, and having eſtabliſhed that Government by Biſhops, which he and his Party oppoſed, they oppoſed her Majeſty, rather than the Biſhops, who could not alter the Eccleſiaſtical Laws the Queen had made for them to act by.

Then the Priſoner proceeded in his Defence, and ſaid, that they held it unlawful for a Miniſter to be a Civil Magiſtrate: And, if the Queen made them ſo, they ought not to accept ſuch Employments.

Paſſages in his Book cited againſt him.

The Court obſerved to him hereupon, that there was a Paſſage in his Book, where he ſays, *This Saying will not ſerve their Turn, the Queen and Council will have it ſo*: Which could be levelled only againſt the Queen and State. Another Paſſage alſo was cited, wherein it is ſaid, *They are not ſafe, though they have human Authority on their Side: For he that is on our Side, is mightier than they:* Which the Court interpreted, a reviling her Majeſty, and threatening her with Force and Violence.

To this *Udall* replied; it was true, whoever did unjuſtly, was not ſafe, though all the Powers in the World defended him in it: But they had no Thoughts of uſing Force or Violence.

He is convicted.

Then the Court adjourning, the Jury, in the Afternoon, brought the Priſoner in *Guilty of Felony.*

Sentence reſpited on his Submiſſion.

The next Day, being the 25th of *July*, the Priſoner was called to Judgment; when the Court informed him, that, if he would acknowledge his Offence, they would endeavour to obtain his Pardon. To which he anſwered, he would ſubmit himſelf to her Majeſty; but could not forſake the Cauſe, which he held to be the undoubted Truth of God.

The Judge replied, I hold your Doctrine to be an undoubted Falſhood: And if the Preſbytery, you ſeek for, were once eſtabliſhed, it would overturn the Government: And you tell us in your Book, if you cannot have your Diſcipline with her Majeſty's Conſent, you will have it, though you make our Hearts ake: You will bring the Queen and the Crown under your Girdles. Some of you have gone ſo far as to ſay, we have no Church, no Sacraments, no Miniſters, nor any Worſhip o God among us. What Confuſion muſt this create, if not looked to in Time?

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He relapſes. Sentence paſſed.

At length *Udall* promiſed, he would ſubmit himſelf to her Majeſty: Whereupon Sentence was deferred, and he petitioned the Queen for a Pardon: But relapſing into his former Obſtinacy, Sentence was pronounced againſt him the next *Lent* Aſſizes. While he lay under Sentence of Death, he petitioned her Majeſty again; and King *James*, of *Scotland*, was pleaſed to intercede in his Behalf: And the Queen referring the Matter to Archbiſhop *Whitgift*, his Grace conſented to his Enlargement, on Condition he would leave the Kingdom.

He is ſet at Liberty.

Remarks on Udal's *Trial.*

It ſeems a little hard upon the Priſoner, that, when the Court denied him Counſel, they would not inform him, how many of the Jury he might challenge. The reading the Depoſitions of Witneſſes againſt him, and the denying to examine his own Witneſſes, were ſtill greater Hardſhips: But in this he had the ſame Uſage as other Priſoners in thoſe Days had. The Duke of *Norfolk* had no better Treatment: Nothing was permitted to be offered that made for the Priſoner, and againſt the Crown, as they termed it; which was certainly very high Injuſtice, notwithſtanding it was then the general Practice: And the ſucceeding Age ſeemed to be aſhamed of it; though it was not till after the Revolution, that the Priſoner's Witneſſes were allowed to be ſworn, and conſequently very little Credit was given to them.

Now, indeed, the Priſoner, has all the fair Play he can deſire: No Depoſitions are read againſt him in Capital Caſes, where the Witneſs can be produced; and he may have the Proceſs of the Court, to bring in his Witneſſes; though ſtill no Counſel is allowed in Felony: And, if the Proof be ſufficient to ſatisfy the Jury, two Witneſſes are not required, to convict a Perſon of Felony.

As to the Charge the Court gave the Jury, to find the Priſoner Author of the Book, and leave the Law to them: This was no more than ordering them to give a ſpecial Verdict, which is ſometimes done to this Day: But the Jury may, if they think fit, take the Law, as well as the Fact, upon themſelves, and find, generally, *Guilty*, or *Not Guilty*.

1590. 31 Eliz.

Some are apt to think, the Law was ſtretched; and that the Priſoner had hard Uſage, in being indicted on the 23d of *Eliz.* which made it Felony to revile the Queen, and incite the People to Rebellion; inſinuating, that the abuſing the Biſhops, the oppoſing the Eccleſiaſtical Laws, and threatening, by Force, to ſubvert the Church, did not bring him within the Danger of that Statute: But, as it appears to have been reſolved by all the Judges of *England*, that theſe Things were Felony by that Statute; and that the inciting the People, to deſtroy the Eccleſiaſtical Government, which was a Part of the Conſtitution, was as criminal, as if he had incited them to oppoſe her Majeſty's Civil Government, ſhe being ſupreme in all Cauſes, Eccleſiaſtical and Civil, the Law does not ſeem to have been much ſtrained in this Caſe. Was a Party of Men, in *Scotland*, to preach againſt the Kirk, and incite the People to deſtroy the Preſbyterian Diſcipline there, at this Day, I queſtion whether it would not be deemed Treaſon againſt their Conſtitution. They would inſiſt, that their Kirk was Part of the Eſtabliſhment; and that it was no leſs Penal to deſtroy their Eccleſiaſtical than Civil Government. However, notwithſtanding the Miniſtry thought fit to proſecute this turbulent Preacher, for his ſeditious Diſcourſes and Writings, to deter others from the like Attempts, we find he was very mercifully dealt with at laſt, and ſuffered no other Puniſhment, than a few Months Impriſonment.

1592. 34 Eliz.

Perrot's Trial.

The Trial of Sir JOHN PERROT, late Lord Deputy of *Ireland*, for *High Treaſon*, before Commiſſioners of *Oyer* and *Terminer*, at *Weſtminſter*, the 27th of *April*, 1592. 34 *Eliz.*

1592. 34 Eliz.

Two Indictments for the ſame Species of Treaſon.

THERE were two Indictments preferred againſt him: The firſt Indictment charged him with High Treaſon, in compaſſing and imagining the Death and Deſtruction of the Queen: And to that End, with correſponding with the King of *Spain*, and ſeveral Traitors there, to procure an Invaſion of the Kingdoms of *England* and *Ireland*; and with inciting and encouraging ſeveral Traitors and Rebels at Home, to raiſe an Inſurrection in *Ireland*.

The ſecond Indictment alſo charged him with High Treaſon, in compaſſing the Death of the Queen; and to that End, correſponding with the Duke of *Parma*, and adviſing with Sir *William Stanley*, a Rebel to the Queen, concerning his traiterous Purpoſes.

The Evidence.

The firſt Part of the Evidence charged Sir *John*, with ſeveral diſreſpectful Speeches of her Majeſty; from whence the Queen's Counſel inferred the Treaſon of his Heart: Particularly, it was teſtified, that, when the Queen ſent him Orders to *Dublin*, he ſaid in Council, *Stick not ſo much upon the Queen's Letters of Command, for ſhe may command what ſhe will, but we will do what we liſt:* That the Queen ſending him her Orders, to make Mr. *Errington* a Clerk of the *Exchequer*, he ſaid, *This fidling Woman troubles me out of Meaſure; God's Wounds, he ſhall not have the Office, I will give it to Sir* Thomas Williams: That the Queen adviſing him, in her Letters, to look well to his Charge, at the Time of the *Spaniſh* Invaſion, he ſaid, *Ah, ſilly Woman! Now ſhe ſhall not curb me: She ſhall not rule me. Now, God's Lady dear, I ſhall be her white Boy now again. Doth ſhe think to rule me now?* That *John Garland* bringing him a Letter from the Queen, that vexed him, he ſaid, *God's Wounds, this it is to ſerve a baſe Baſtard, piſs-kitchin Woman. If I had*

ſerved

1592. 34 Eliz. *ſerved any Prince in Chriſtendom, I had not been ſo dealt withal.*

To ſhew that he had been guilty of direct Treaſon, Witneſs were brought, to prove that he had harboured and protected Traitors. The principal Witneſſes whereof was one *Dennis*, an *Iriſh* Prieſt. *Dennis* alſo depoſed, that Sir *John* gave him Letters to the King of *Spain*, to invite him to invade the Kingdoms of *England* and *Ireland*; ſtipulating for himſelf, that if his Catholick Majeſty ſucceeded, he (Sir *John*) might be made Sovereign of *Wales*; and that Sir *John* gave the Deponent fifty Pounds.

Other Witneſſes teſtified, that Sir *John* correſponded with the Duke of *Parma*; and with Sir *William Stanley*, when he was in actual Rebellion.

Sir John's *Defence.*

Sir *John*'s Defence conſiſted chiefly in Proteſtations of his Innocence, and Declarations of his Loyalty; or of Exceptions to the Witneſſes, who were either his Enemies, he obſerved, or perjured *Iriſh* Villains, of no Conſcience, or Character; particularly *Dennis*, the Prieſt, he ſaid, had changed his Religion five Times in ſix Years; had counterfeited his Hand ſeveral Times; was a common Drunkard, and a Liar; and had been perjured a thouſand Times. Sir *John* acknowledged, indeed, that he was paſſionate, and might have been guilty of haſty Speeches; but that he ſerved her Majeſty faithfully; particularly in that Year of Danger, 1588. And it was not likely, afterwards, he ſhould promote Invaſions and Inſurrections in her Kingdoms. However, there being ſeveral Miniſters of State upon the Bench, particularly, the Lord Chamberlain, the Lord *Buckhurſt*, and Sir *Robert Cecil*, who laboured to get him convicted, the Jury found him GUILTY; and he was condemned as a Traitor. But he was reprieved from Time to Time, and died, at length, a natural Death in the *Tower*; when the Queen, as it is ſaid, was about to have granted him a full Pardon.

He is convicted.

1592. 34 Eliz.

Remarks on Perrot's *Trial.*

Here we have an Inſtance of the Danger of being too free with the Characters of Princes; and, how eaſy is it, where a Court gives any Encouragement to the Suggeſtions of a Great Man's Enemies, to get him condemned, as guilty of the moſt heinous Offences. There is little Room to doubt, but that Sir *John Perrot* had, in the main, been true to his Truſt. It is not to be ſuppoſed, the Queen would have made him Governor of *Ireland*, in the moſt dangerous Times, if ſhe had ſuſpected his Integrity; and there muſt have appeared a great deal more againſt him, at his Trial, if he had been in a Conſpiracy to bring in the *Spaniard*.

Probably, when he found himſelf at a Diſtance from the Court of *England*, he might be guilty of ſome Indiſcretions, and aſſume a more arbitrary Power than his Commiſſion would juſtify; and, by his own Confeſſion, he ſeems to have been guilty of ſome raſh and diſreſpectful Speeches of the Queen; for which, we ſee, ſhe found an Opportunity to humble him: But, probably, never deſigned to take his Life; eſpecially, if it be conſidered, that ſhe reſtored his Eſtate, which was a great one, to his Son, after his Death.

What could be the Reaſon of preferring two Indictments againſt Sir *John*, for the ſame Species of Treaſon, is not eaſy to be conceived, unleſs it was to add the greater Terror to the Proſecution; and, at laſt, I do not perceive, that the Jury gave more than one Verdict, or took any Notice, there was more than one Indictment. But in theſe old Trials, which ſeem to be taken at random, by People of very little Judgment, we muſt be content with ſuch Lights as they could give us. When we come nearer our own Times, we meet with them more perfect.

1600. *Earl* Gowrie's *Attainder.*

The Attainder, in the Parliament of *Scotland*, of JOHN late Earl of *Gowrie*; ALEXANDER RUTHUEN his Brother; HENRY RUTHUEN, HUGH MONCREIF, and PETER EVIOT, their Accomplices, for *High-Treaſon*, the 15th of *November*, 1600.

1600.

THE Subſtance of the Depoſitions of the Witneſſes, examined before the Lords of the Articles, (a Committee that prepares Matters for the Parliament) *is as follows*:

Depoſitions of the Witneſſes.

The Duke of *Lenox* depoſed, that he attended his Majeſty to the Chaſe, on the fifth Day of *Auguſt* then laſt paſt, together with *Alexander Ruthuen*, Brother to Earl *Gowrie*, and others: And that, having killed a Buck, *Alexander* invited his Majeſty to dine with his Brother, the ſaid Earl, at *Perth* (or *St. John's Town*); and, to induce his Majeſty to go thither, acquainted him, that a certain Perſon there, had found a Pitcher full of Gold, of various Coins; but deſired, he would take none of his Attendants with him; which creating ſome Suſpicion in his Majeſty, he deſired the Duke to follow him wherever he went with the ſaid *Alexander*, and not to leave him.

That, when they came near *Perth*, Earl *Gowrie*, accompanied by divers Perſons, met his Majeſty on Foot, and conducted the King to his Houſe; and, that the Earl of *Mar*, Sir *Thomas Ereſkin*, and ſeveral other Noblemen and Gentlemen, followed his Majeſty into Earl *Gowrie*'s Hall: That, the King going to Dinner in another Room, the Deponent (the Duke) and the reſt of the Court, afterwards ſet down to Dinner in the Hall; and Earl *Gowrie* came to them, and ſaid, his Majeſty deſired they would drink his Health; and, as ſoon as they had drank, he (the Duke) got up, and went to find

out

1600. out his Majeſty; but the Earl told the Company, the King was gone to repoſe himſelf; and led them into the Garden, where Mr. *Thomas Cranſtoun* came to them, and ſaid, the King was on Horſeback: Whereupon Earl *Gowrie* called, to Horſe, and they came to the Fore-gate, and the Porter telling them, his Majeſty was not paſſed that Way, Earl *Gowrie* aſſured them, he was gone out at the Back-Gate: Whereupon the Company paſſed through the Foregate; and, while they were ſtanding before it, debating which Way the King was gone, he (the Duke) heard a Voice, and ſaid to the Earl of *Mar*, *This is the King's Voice that cries, be where it will*; and ſo they all looked up to the Lodging, and ſaw his Majeſty look forth of the Window without his Hat; his Face red, and a Hand griping his Cheek and Mouth; and the King cried out, *Murder! Treaſon! my Lord* Mar, *help, help!* And immediately the Lord *Mar* and the Company, ran up the Stairs of the Gallery-Chamber, where his Majeſty was, to relieve him, but found the Door faſt; and, notwithſtanding they got large Hammers to break it open, they did not enter the Chamber, till Earl *Gowrie* and his Brother were both ſlain.

The Earl of *Mar*'s Depoſition was of the ſame Tenor as that of the Duke of *Lenox*'s.

Andrew Henderſon, Chamberlain of *Schoon*, depoſed, that on *Monday* Night, the 4th of *Auguſt* then laſt paſt, being in Company with Earl *Gowrie* and Mr. *Alexander Ruthuen*, within the Earl's own Chamber, the Earl ordered the Deponent to ride with his Brother *Alexander* to *Falkland*, at four the next Morning, and take *Andrew Ruthuen* with him; and, that he (the Deponent) ſhould haſten back with his Brother's Orders, leaving *Andrew Ruthuen* with them; and, that they all went to *Falkland* together, where they met with his Majeſty: That Mr. *Alexander* thereupon ordered the Deponent to ride back to *Perth*, to his Brother the Earl, and acquaint him, that his Majeſty would be there with a few People, and that a Dinner ſhould be prepared for him: That, when he arrived at *Perth*, the Earl enquired, privately, of the Deponent, how his Brother was received by the King, and what Number of People his Majeſty brought with him: And bid him (the Deponent) put on his *Secret* (his Armour under his Cloaths) for he had a *Highland* Man to take; and that he accordingly did put on his *Secret*: That the Earl alſo ordered him to ſend for his (the Earl's) Steel Bonnet and Gantlet; and that afterwards, his Majeſty, the Duke of *Lenox*, and the Earl of *Mar*, with ſeveral other Noblemen and Gentlemen, came to Earl *Gowrie*'s Houſe in *Perth*: That the Earl, *Alexander Ruthuen*, and the Deponent, being in the outer Chamber, where the King dined, Earl *Gowrie* ſpoke to him (the Deponent) privately, and bid him do what his Brother ordered him; and then locked him in the Room; where he had not remained above half an Hour, when *Alexander Ruthuen* opened the Door, and entered the Room, dragging in the King by the Arm: That then he put his Hat on his Head, and and drawing out the Deponent's Sword, ſaid to his Majeſty, *Sir, you muſt be my Priſoner: Remember on my Father's Death*: And, as he held the Sword to the King's Breaſt, his Majeſty being about to ſpeak, *Alexander* ſaid, *Hold your Tongue, Sir, or, by Chriſt, you ſhall die*; and his Majeſty anſwered, *Mr.* Alexander, *ye and I were very great together*; *and as touching your Father's Death, Man, I was a Minor: My Council might have done any Thing they pleaſed. And farther, Man, albeit ye bereave me of my Life, ye will not be King of* Scotland; *for I have both Sons and Daughters*; *and there are Men in this Town, and Friends, that will not leave it unrevenged*: That, while *Alxander Ruthuen* held the Sword at the King's Breaſt, the Deponent wrenched it out of his Hand; and *Alexander* ſaid, *It was not his Life, or his Blood, that he craved*; and the King anſwering, *What is it you crave Man, if you crave not my Life?* *Alexander* replied, *It is but a Promiſe*; *and my Lord my Brother will tell you*: Then the King ſaid, fetch your Brother; which *Alexander* ſaid he would, provided the King would not cry out, or open the Window, till he came again; and the King promiſed he would not: Then *Alexander* went out, and locked the Door after him: Whereupon the King ſaid to the Deponent, How came you here, Man? and he anſwered, As God lives, I am ſhut in here like a Dog. Then the King ſaid, Will my Lord *Gowrie* do me any Evil, Man? and the Deponent anſwered, I vow to God I will die firſt; and the King bidding the Deponent open the Window, *Alexander Ruthuen* came in again, and ſaid to his Majeſty, *By God there is no Remedy*, endeavouring to bind his Hands with a Garter: Whereupon the King ſaid, *I am a free Prince, Man, I will not be bound*, and thereupon he got his Hand away; and the Deponent took the Garter from *Alexander*, who then threw his Left Arm about the King's Neck, and thruſt his Right Fiſt to his Mouth: Whereupon, the Deponent having opened the Window, his Majeſty cried out *Treaſon, Treaſon!* and *Alexander* ſaid to the Deponent, *Am I to have no Help from thee? Thou Villain! we all die*; and laying his Hand on his Sword, the King ſtayed his Hands, and prevented his drawing of it; and, in the mean Time, the Deponent opened the Door, and let the King's Servants in; and *John Ramſay*, entering firſt, laid about him with his Sword; but the Deponent made his Eſcape into the Yard, where he ſaw Earl *Gowrie* with his Head-piece on, and his two drawn Swords in his Hands, accompanied by ſeveral Perſons; but the Deponent went home to his own Houſe, and told his Wife, if he had not been at the Earl's, the King had been ſtabbed twice that that Night. 1600.

The Abbot of *Inchechaffrey* depoſed, that, on the 5th of *Auguſt* laſt, ſtanding before Earl *Gowrie*'s Gate, in *Perth*, with the Duke of *Lenox*, and the reſt of the Company above-mentioned, they heard a Voice, and ſaw his Majeſty looking out of a Window, without his Hat, his Face red, and crying, Fy, Help, my Lord *Mar!* Treaſon! Treaſon! I am murder'd! That, in an Inſtant, they perceived, he was pulled by Force from the Window; and that they thereupon ran up into the Gallery, to reſcue his Majeſty, as the Duke of *Lenox* and the Earl of *Mar* had depoſed.

1600. The Abbot of *Lindores* confirmed the Duke of *Lenox*'s Depoſition; and depoſed further, That, after Dinner, it being given out, that his Majeſty was departed towards *Falkland*, and they were come down to the Gate, the Porter aſſured them, his Majeſty was not paſſed forth; and Earl *Gowrie* affirming, he was gone out at the Back-gate, the Porter ſaid, *That cannot be, my Lord, for I have the Key of the Back-gate*; and his Majeſty crying out of the Window, *Treaſon! Treaſon!* &c. ſoon after, this Deponent ſaw *James Ereſkin*, and Sir *Thomas Ereſkin*, lay Hands upon Earl *Gowrie*, ſaying, *Traytor! this is thy Deed, and thou ſhalt die:* But Earl *Gowrie*'s Men reſcued him from them; and the Earl with two drawn Swords, and accompanied by thirty Perſons, ran into the Houſe where his Majeſty was.

Sir *Thomas Ereſkin* confirmed *Lindores*'s Depoſition; and added, That, Sir *John Ramſay* calling upon them, to come up and aſſiſt his Majeſty, they ran up; and, meeting *Alexander Ruthuen*, all bloody, they ſaid, This is the Traitor, and fell upon him, and killed him; and, that they afterwards entered the Chamber, where they ſaw only the King, and Sir *John Ramſay*; but that, ſoon after, *Thomas Cranſtoun*, followed by the Lord *Gowrie*, and ſeveral more, entered the Room, with their Swords drawn, and fought with the King's Friends, till Sir *John Ramſay* gave Earl *Gowrie* a mortal Wound; and, upon his falling, *Cranſtoun*, and the reſt of *Gowrie*'s Party, fled.

Sir *John Ramſay* depoſed, That, hearing his Majeſty cry out, he run up to the Chamber, burſt open one of the Doors, and ſaw the King, and *Alexander Ruthuen*, ſtruggling together: He thought his Majeſty had *Alexander*'s Head under his Arm; and that *Alexander*, who was almoſt down on his Knees, had his Hand upon his Majeſty's Mouth: That his Majeſty, ſeeing the Deponent, cried, Fy! ſtrike him, he has Armour on; and the Deponent, thereupon, ſtriking *Alexander* with his Sword, the King ſhoved him out of the Door, down the Stairs; after which, the Deponent called out of the Window to Sir *Thomas Ereſkin*, and the reſt of the King's Servants, who came up: The reſt of his Depoſition confirmed that of Sir *Thomas Ereſkin*.

John Graham confirmed the Depoſition of the Duke of *Lenox*, and the Earl of *Mar*; adding, That, as he was at Dinner in the Hall, with the reſt of the Company, he ſaw the King, and *Alexander Ruthuen*, paſs through the Hall towards the Gallery; and as this Deponent, *John Hamilton*, and others, were following, *Alexander* cried back, Gentlemen, ſtay, for ſo is his Highneſs's Will.

Andrew Roy, one of the Baillies of *Perth*, depoſed, That he dined with the Company in Earl *Gowrie*'s Hall, the 5th of *Auguſt*; and that, ſtanding with the reſt before the Gate afterwards, and hearing the King cry out Murder, Treaſon, *&c.* he raiſed the Town, to reſcue his Majeſty, and the Multitude aſſembled about Earl *Gowrie*'s Houſe; but, the Encounter being over, his Majeſty ordered them to diſperſe: However, it was ſome time before the People would be pacified, their Provoſt, Earl *Gowrie*, being killed.

Robert Chriſtie, Porter to the late Earl *Gowrie*, depoſed, That on the 5th of *Auguſt*, the Duke of *Lenox*, the Earl of *Mar*, and his Maſter, coming after Dinner to the Gate, my Lord Duke aſked, if his Majeſty had paſſed the Cloſe; to which the Deponent anſwering, He had not, Earl *Gowrie* was angry, and ſaid, he lied, he was gone out at the Backgate; to which the Deponent anſwered, That cannot be, my Lord, for I have the Key; and afterwards he ſaw his Majeſty looking out of the Window, and heard him cry Treaſon! Treaſon! Help, Lord *Mar!* Whereupon the Duke, the Earl of *Mar*, and the reſt, ran up Stairs to the Gallery; and that Earl *Gowrie* coming from the Street, with a Steel Helmet on his Head, and two naked Swords in his Hands, accompanied by *Alexander* and *Harry Ruthuen*, *Patrick Eviot*, *Hugh Moncrief*, and *Thomas Cranſtoun*, all with drawn Swords, ran into the Houſe alſo; but what was done there, he knew not. 1600.

Alexander Blair depoſed, That on the ſaid 5th of *Auguſt*, he ſaw *Alexander* and *Harry Ruthuen*, and *Hugh Moncrief*, come down the little Stair-Caſe, where they and Lord *Gowrie* went up with naked Swords in their Hands.

William Reynd depoſed, That on the ſaid 5th of *Auguſt*, he ſaw, within Earl *Gowrie*'s Cloſe, after the Fray, *Patrick Eviot*, and *Hugh Moncrief*, both bloody, with their naked Swords in their Hands.

Thomas Burrell, Burgeſs of *Perth*, depoſed, That on the ſaid 5th of *Auguſt*, at the Time of the Fray, entering Earl *Gowrie*'s Cloſe, he ſaw there, with drawn Swords, *Alexander* and *Harry Ruthuen*, and *Hugh Moncrief* bloody in his Face; that, at the ſame Time, he ſaw *Thomas Cranſtoun* come down the Back-Stairs, and took his Sword out of his Hand; and he heard *Alexander Ruthuen* cry out, for Fire and Powder.

Robert Brown, one of his Majeſty's Servants, confirmed the Depoſitions of the Duke of *Lenox*; and the Earl of *Mar*, adding, that he followed them to the Room where his Majeſty was, up the Stair-Caſe; and at his firſt Entry he ſaw Earl *Gowrie* lie dead; and there were at that Time with his Majeſty, Sir *John Ereſkin*, Sir *Hugh Herries*, Sir *John Ramſay*, and *George Wilſon*.

Theſe Depoſitions were confirmed by ſeveral more of the like Tenor.

Sentence, to forfeit their Lands and Honours, as Traitors.

The Parliament, thereupon, decreed and declared, that the ſaid Earl *Gowrie*, and ***Alexander Ruthuen*** his Brother, were guilty of open and manifeſt Treaſon; and thereupon adjudged, that their Lands, Eſtates, and Honours, ſhould be forfeited.

The like Sentence paſſed againſt *Alexander* and ***Harry Ruthuen***, Sons of the late ***Alexander Ruthuen***, ***Hugh Moncrief***, Brother to ***William Moncrief***, and ***Patrick Eviot***, Brother to ***Colin Eviot*** of ***Balhouſie.***

Several Acts paſſed againſt the Ruthuens.

An Act alſo was made, to diſinherit the Brethren, and all the Poſterity of Earl *Gowrie*, from enjoying any Heritage, Place, or Office, in *Scotland*; and forbidding all Perſons to move or interceed for them, upon High P ins.

By another Act, the Surname of *Ruthuen* was extinguiſhed; and ſuch of them as were innocent of this Treaſon, were ordered to take other Names.

By

1600. By a third Act, the 5th of *Auguſt* was appointed to be kept as a Thankſgiving annually, for the King's Deliverance: And by a 4th Act, the Lands and Eſtate of *Ruthuen* were annexed to the Crown; and by ſeveral other Acts Sir *Thomas Ereskin*, afterwards Earl of *Kelly*, Sir *John Ramſay*, Sir *Hugh Herris*, and the reſt, who were more immediately concerned in the King's Preſervation, had Rewards conferred upon them by Parliament.

Remarks on Gowrie's Conſpiracy.

The Reaſon of Compiling theſe Proceedings with the *State Trials*, I preſume, was, to acquaint us with the Loyalty of the *Scotch* Preſbyterians, who made it a common Practice, at the Time of the Reformation, to impriſon their Princes, and threaten to depoſe and put them to Death, whenever they refuſed to ſubmit to their Dictates: Thus they treated both *James* VI. and his Mother, Queen *Mary*; and none were more active and zealous, in theſe treaſonable Attempts and Uſurpations, than the Family of the *Ruthuen*'s, deemed the Chiefs of the Fanatick Faction.

In the Year 1582. *William Ruthuen*, whom King *James* VI. had lately created Earl *Gowrie*, with the Earls of *Mar*, and *Lindſay*, and ſeveral other Lords of the Faction, ſeized on his Majeſty's Perſon, then about ſixteen Years of Age; made the Earl of *Arran*, his prime Miniſter, Priſoner, and compelled the Duke of *Lenox*, the Regent, to fly the Kingdom: After which they ſummoned and packed an Aſſembly of the States; where they compelled the Minor King to approve their Proceedings. Of which, *Camden* relates, that even *Buchanan* declared his Abhorence.

The King having diſengaged himſelf, and got out of the Power of the diſaffected Lords, offered them a Pardon; which they were ſo far from accepting, that they entered into another Conſpiracy, to ſeize his Perſon: Whereupon they were commanded to depart the Realm; and ſeveral of them went to *Ireland*, the *Low-Countries*, and *France*; but Earl *Gowrie* endeavoured to conceal himſelf in the Country. And now, the King having aſſembled a free Convention, the ſeizing of his Perſon was declared to be a treaſonable Act; while the Preſbyterian Clergy, on the other Hand, being *convocated, by their own Authority, decreed the ſeizing of the King to be juſt; and declared, that thoſe, who did not approve of it, deſerved to be excommunicated.*

In the mean Time, the exiled Lords, having concerted Meaſures with Earl *Gowrie*, returned on a ſudden to *Scotland*, in the Beginning of the Year 1584. and ſuprized the Town and Caſtle of *Sterling*: But the Miniſtry having ſome Intimation of the Plot, and making Earl *Gowrie* Priſoner, the reſt of the diſaffected Lords were defeated, and forced to fly their Country again; and Earl *Gowrie*, being brought to his Trial, for this third Conſpiracy againſt the King and Government, for making War on his Majeſty, and ſeizing the Fortreſſes of *Sterling* and *Perth*, was convicted, condemned, and beheaded, the ſame Day; for the Miniſtry were ſo well apprized of his Majeſty's merciful Diſpoſition, that they knew he would pardon the Earl again, if they did not diſpatch him, before the King had notice of his Condemnation; though his repeated Conſpiracy againſt the Government, made his Death in a Manner neceſſary. 1600.

His Majeſty did not only expreſs his Diſlike, of this haſty Execution, afterwards; but reſtored *John*, the late Earl's eldeſt Son, to his Honours and Eſtate; made his Brother *Alexander* one of the Gentlemen of his Bedchamber; and their Siſter was a Maid of Honour to the Queen. But the Fathers of the Preſbyterian Faction had ſo inſpired them with a Spirit of Revenge, that no Careſſes, or kind Uſage, could make any Impreſſion on the two Brothers. Their Father, indeed, was executed in the King's Minority, and, evidently, without his Conſent: Yet, as it was tranſacted in his Reign, they were taught, that it argued an ignoble and puſillanimous Spirit, not to revenge it on the King; and, thus, fourteen Years after their Father's Death, we find, they conſpired to ſeize, and murder his Majeſty, in the Manner above-related; and, as *Rapin*, himſelf, obſerves, Vol. 9. p. 195. of the *Octavo* Tranſlation, his Eſcape was, in a Manner, miraculous: But let us ſee, how the Preſbyterian Clergy behaved themſelves on this Diſappointment.

The Behaviour of the Preſbyterian Clergy on this Conſpiracy.

Archbiſhop *Spotſwood* relates, that the News of this laſt Attempt on the King's Perſon, at *Perth*, being brought to *Edinburgh*, the Privy-Council ordered the Miniſters of the Town, to call their Pariſhioners to Church, and return God Thanks for his Majeſty's Deliverance; but they endeavoured to excuſe themſelves, as not being acquainted with the Particulars of what had happened. To take off which Pretence, it was anſwered, An exact Information of every Circumſtance was not neceſſary: Their Buſineſs was only to ſignify, the King had eſcaped a great Danger, and exhort the People, to thank God for ſo merciful a Providence. To which they replyed, *That nothing ought to be delivered from the Pulpit, without preciſe Certainty of the Truth; and, that every Thing mentioned in that Place, ſhould be ſpoken in Faith.* And, when no Arguments could move them to do their Duty, the Council went in Proceſſion to the Market-Croſs; where the Biſhop of *Roſs* gave a Narrative of the Conſpiracy, and cloſed his Diſcourſe with a Thankſgiving. The next Week, when the King came to *Edinburgh*, there was a Sermon, on the Occaſion, preached by Mr. *Patrick Galloway*; and in *November* following, when the Parliament met, the Act above-mentioned was made, for obſerving the 5th of *Auguſt*, annually, as a Day of Thankſgiving; and thoſe Miniſters, who refuſed to ſolemnize it in *Edinburgh*, were ordered to depart the Town within eight-and-forty Hours, and not to preach, under Pain of Death, in his Majeſty's Dominions: Whereupon three of their Number, *viz. Balcanqual*, *Watſon*, and *Hall*, thought fit to reconcile themſelves to the Government, and declare, *They were fully convinced of the Truth of* Gowrie's *Conſpiracy:* But, before they returned to *Edinburgh*, they were obliged, publickly, (in the Churches aſſigned them) to declare their Belief of the treaſonable Attempts at *Perth*; and aſk God and the King's Pardon, for queſtioning the Matter of Fact.

Rapin, Vol. 9. p. 195. of the *Octavo* Tranſlation, gives this ſhort Account of the Matter, (*viz.*) 1610.

1600. (*viz.*) Some found out a Way more ready, and effectual, to prevent the King of *Scots* aſcending the Throne of *England*. The *Ruthuens*, Sons to Earl *Gowrie*, beheaded in 1584. conſpired againſt him; and, inviting him to their Houſe, on one Pretence or other, deſigned to murder him; *but he eſcaped by a ſort of Miracle:* The two *Ruthuens* were killed in the Attempt, and their Accomplices condemed to Death.

The ſame *Rapin*, indeed, p. 250. of the ſame Volume, relates, that, in the Year 1604. the 5th of *Auguſt* was ordered, by Proclamation, to be obſerved annually, in *England*, as a Day of Thankſgiving, for the King's miraculous Deliverance from the Conſpiracy of the *Ruthuens*; but then, he ſneers upon us, and ſays, *There were People in* Scotland, *and* England, *who had the Malice to affirm, It was only a Fiction of the King's, to cover a real Conſpiracy of his againſt the* Ruthuens, *who were killed on this Occaſion.*

And this Practice is very frequent in *Rapin*, and other Fanatick Writers, when they find a Fact, which bears hard upon their Party, proved inconteſtably, they will own it in very ſtrong Terms; but then you will find them, afterwards, inſinuating, that there is not one Word of Truth in all they have admitted before; knowing, that their Party will give much more Credit to ſuch Suggeſtions, than to what they have affirmed, on the other Side, never ſo poſitively. 1600.

I ſhall only obſerve, on this Occaſion, That, as there are Preſbyterians, and Fanaticks, who, notwithſtanding the fulleſt Evidence of the Fact, ſtill doubt of the *Gowrie*'s Conſpiracy againſt King *James*; ſo there are *Roman* Catholicks, who deny the Reality of the Gunpowder-Plot, againſt the ſame Prince: But I preſume theſe wilfully-incredulous and prejudiced Mortals, will both be treated with the Contempt they deſerve.

1600. 43 Eliz. *Trial of the Earls of* Eſſex *and* Southampton, *for Treaſon.*

The Trial of ROBERT Earl of *Eſſex*, and HENRY Earl of *Southampton*, for *High-Treaſon*, before the Lord *Buckhurſt* High-Steward, and twenty-five other Peers, the 19th of *Feb.* 1600. 43 *Eliz.*

1600. 43 Eliz.

The Charge. THE Priſoners were indicted for High-Treaſon, in compaſſing, and imagining, the Death of the Queen, and the ſubverſion of the Government, and raiſing an Inſurrection and Rebellion, for that End; particularly, they were charged with conſpiring, to ſurprize her Majeſty in her Palace; with impriſoning ſeveral Members of the Privy-Council; inciting the Citizens of *London*, to Sedition and Rebellion; aſſaulting the Queen's Forces in the Streets; and, holding out *Eſſex-Houſe* againſt her Majeſty.

The Evidence. The Evidence, produced againſt the Priſoners, was, firſt, *Henry Witherington*, who depoſed, That the Priſoners defended *Eſſex-Houſe*, and impriſoned the Privy-Councillors.

Sir *Walter Raleigh* depoſed, That he met Sir *Ferdinando Gorges*, upon the *Thames*, who told him, that the Earl of *Eſſex* had a ſtrong Guard in his Houſe, and it was like to be a bloody Day's Work.

Sir *Ferdinando Gorges* Examination alſo was read, who depoſed, That the Earl of *Eſſex* ſent for him up to Town; complained of his Diſgrace at Court, which he could not endure; ſaid, that great Numbers of Noblemen, and Perſons of Quality, were diſcontented, and would join him; and deſired the Deponent's Aſſiſtance: That they had ſeveral Conſultations, concerning ſurprizing the Court, ſeizing the *Tower*, and making an Inſurrection in the City: That the Deponent diſuaded the Inſurrection; and the Earl of *Southampton* ſaid, *It was three Months ſince the Plot began, and ſhould they reſolve on nothing?*

The Examination of Sir *Charles Danvers* alſo was read, who depoſed, That the Priſoners conſulted to ſurpriſe the Court, and ſeize the *Tower:* That the Guards alſo, were to be ſecured, in order to get Acceſs to the Queen: And, that afterwards, the Earl of *Eſſex* reſolved to call a Parliament to redreſs Grievances: And Sir *John Davies* gave the like Evidence.

Sir *Chriſtopher Blunt* confirmed the Evidence of the two laſt Witneſſes; and added, that the Earl intended to have altered the Government.

The Earl of *Rutland* depoſed, he heard the Earl of *Eſſex* cry out in the Streets, *England is bought and ſold to the Spaniards*; and, that the Earl of *Southampton* was a Malcontent, and confederated with *Eſſex*.

The Lord *Sands* depoſed, That the Earl of *Eſſex*, being repulſed at *Ludgate*, ordered his Followers to Charge: And there were other Witneſſes produced, that confirmed the Evidence already given.

The Earl of Eſſex's *Defence.* To this, the Earl of *Eſſex* anſwered, That what he had done, was, in order to his own Defence, without any diſloyal Intentions to her Majeſty: He only deſigned to preſent himſelf before her, with eight or nine Perſons, to entreat her to remove ſome evil Counſellors, who had abuſed her with falſe Informations; particularly, *Cobham*, *Cecil*, and *Ralegh*; concluding with Proteſtations of his Innocence, and, that he had never any Deſign upon the Crown of *England*, as the Attorney-General (*Coke*) had affirmed: And ſaid, he was no Favourer either of Papiſts or Sectaries.

1600. 43 Eliz.

The Earl of Southampton's *Defence.*

The Earl of *Southampton* acknowledged, their going through the City was a fooliſh Action; and, that their Deſign of going through the City with an armed Force, to Court, was only, that their Enemies might not hinder their Paſſage to the Queen; before whom they intended to proſtrate themſelves, and ſubmit to her Mercy: And, that he never heard the Proclamation, ſaid to be made by the Lord *Burleigh*.

They are both convicted.

Then the Lords, withdrawing for about half an Hour, returned, and brought in both the Priſoners GUILTY of High-Treaſon; and Sentence was pronounced againſt them accordingly.

Earl of Eſſex *beheaded,* Southampton *reprieved.*

On the 25th of the ſame Month, the Earl of *Eſſex* was beheaded, on a Scaffold within the *Tower*: He acknowledged, when he came to die, that his Puniſhment was juſt; and ſeemed moſt concerned, that he had drawn ſo many of his Friends into the ſame Guilt! As to the Earl of *Southampton*, he was ſuffered to live; but remained a Priſoner for ſome Time.

Remarks on the Trial and Execution of the Earl of Eſſex.

There appears to have been abundant Evidence againſt thoſe two noble Priſoners; and, indeed, the Facts were ſo notorious, that there was no denying them: Therefore, the Evidence that was given by their Accomplices, and the Depoſitions read againſt them, which were, certainly, not legal Evidence, were altogether unneceſſary: But, much more, the Teſtimony Sir *Walter Raleigh* gave, *That he heard another ſay*, that the Earl of *Eſſex* had got a ſtrong Guard, to defend his Houſe; and, there would be bloody Work. Sir *Walter* was thought to be too forward in giving his Voice, againſt an Enemy, when there was no Occaſion for it; and his being at being at the Execution of this Lord, was cenſured alſo, as an Indecency; it looking like a Triumph over an unfortunate Nobleman, with whom he had been at Variance.

1600. 43 Eliz.

As to the Story, of the Queen's heſitating on the Execution of this Lord, and varying her Orders frequently, which has been the Foundation of ſo many Plays and Romances; if it be conſidered, that her Majeſty was in the Decline of Life, before *Eſſex* came upon the Stage, and near ſeventy, at the Time of the Conſpiracy, ſhe will, ſurely, be acquitted of any amorous Paſſion for him: Though it may be very innocently ſuppoſed, ſhe had a great Regard for this Nobleman, and would, gladly, have pardoned him, if he had not declared, it was inconſiſtent with her Safety: For he had been bred up in her Court from his Infancy; and was General in that popular Expedition, when *Cadiz* was taken by Storm, and ſo much Treaſure brought to *England*, as rendered him the Darling of the Court, as well as of the People. It was, therefore, with the utmoſt Regret, that the Queen found herſelf under a Neceſſity, to take away his Life; which ought to be remembered to her Honour, rather than made an Argument of a Criminal Paſſion.

1600. 43 Eliz.

Lea's Trial.

The Trial of Captain THOMAS LEA, for *High-Treaſon*, at the *Old-Baily*, *London*, the 26th of *Feb.* 1600. 43 *Eliz.*

1600. 43 Eliz.

The Charge.

THE Indictment charged him with High-Treaſon, in compaſſing, and imagining, the Death of the Queen: The Overt Acts, laid in the Indictment, were, his applying himſelf to Sir *Robert Croſts*, on the 12th of the ſame Month of *February*, and endeavouring to perſuade him, to aſſiſt, in forcing the Queen to Releaſe the Earl of *Eſſex*, then a Priſoner in the *Tower*; and, his repairing to the Queen's Palace the ſame Evening, in order to have executed his traiterous Purpoſes.

The Court refuſes his Challenges.

The Jurors being called over, the Priſoner challenged one of them peremptorily; but, the Court told him, they would not allow of ſuch Challenges: Whereupon, finding he was denied this Piece of Juſtice, he bid them proceed as they would; and twelve being ſworn, the Attorney-General opened the Indictment, and the Evidence; and, among other Things, obſerved, that the Priſoner had offered his Service to the Lord Admiral, and Mr. Secretary, to kill the Earl of *Eſſex*; and, they refuſing to be concerned in ſuch a Deſign, he would have made the ſame Offer to the Queen; but the Attorney inſinuated, that this was in order to get an Opportunity of attempting ſomething againſt her Majeſty. To which *Lea* anſwered, he would have been the firſt Man to have gone againſt *Eſſex*, while he thought him a Traitor; and would have ventured his Life againſt any Man, in Defence of the Queen.

Then Sir *Robert Croſts*, being ſworn, depoſed, That on *Thurſday*, about four in the Evening, Captain *Lea*, the Priſoner, came to him, as he was going abroad, and told him, he ſhould not go out; he muſt needs ſpeak with him; and, taking the Deponent aſide, ſaid, it would be a brave Act, to ſet the Lords *Eſſex* and *Southampton* at Liberty: That Sir *Walter Raleigh* might gain himſelf eternal Honour, and Love, if he would procure her Majeſty's Warrant, to free them, which he might compaſs by undertaking her Perſon; and the Deponent anſwering, *You may be ſure he will not do it*, Captain *Lea* replied, *If half a dozen reſolute Men, ſuch as might have Acceſs to the Preſence, would ſtep unto the Queen, and kneel before her, and never riſe till ſhe had ſigned a Warrant, and until the Earls of* Eſſex *and* Southampton *were brought into the Queen's Preſence, they might do it; and named Sir* Henry Nevil, *Sir* Jervis Clifton, *Sir* George Gifford, *Sir* Richard Weſton, *and themſelves.* And the Deponent objecting, that ſome might come upon them, and remove them from her Majeſty, he anſwered, *We might keep them out, by ſhuting the Door, and telling them that offered to come in, that, if any harm came to the Queen, if ſhe ſhould do other-*

1600. 43 Eliz. *wiſe than well, be it at their Peril.* To which the Deponent anſwered, *he would ſleep upon it.*

Then the Depoſition of *William Poynes* was read, who depoſed, that he ſaw Captain *Lea*, the Priſoner, preſs towards the Privy-Chamber Door; and, miſtruſting the worſt, drew towards him, and obſerved he looked pale, his Countenance ſtern, and great Drops of Sweat ſtanding on his Face; and, leaning hard on the Deponent, the Captain ſaid, it was one of the Wonders of God, he was not in this Action with the Earl of *Eſſex*, he was ſo well acquainted with him; and aſked the Deponent, whether the Queen was at Supper. To which he anſwered, No: But ſaid, if the Captain was ſo well acquainted with the Earl, he might do good Service; for it was likely he knew ſomewhat of the Plot; and that Captain *Lea* anſwered, Not I; but you ſhall hear of more Villanies and Knaveries yet.

Then a Letter was read, from the Earl of *Eſſex*, to the Deputy of *Ireland*, recommending Captain *Lea* to the Deputy for Preferment.

Part of the Priſoner's Confeſſion alſo was read, wherein he ſaid, he loved and honoured the Earl of *Eſſex*, as much as any Man in *England*, ſave Sir *Henry Lea:* That Sir *Chriſtopher Blunt*, being Marſhal of the Army in *Ireland*, ſent him (the Priſoner) to *Tyr-Oen*, the General of the Rebels; and that he found him peremptory, uſing inſolent Speeches, and condemning the *Engliſh* Nation, as a baſe People; adding, the Earl of *Eſſex* was ſent to kill him, but he ſhould not compaſs it: That any of his Slaves might eaſily kill the Earl, but he would not take the Life of any: And further, that if the Earl would follow his *(Tyr-Oen)* Plot, he would make him the greateſt Man in *England*.

Then the Priſoner inſiſted, that his whole Examination might be read; but the Attorney-General would not admit of it, but ſtill recited theſe Words: *That they would go to her*, (the Queen) *and never leave her, till ſhe had done it:* So that they intended, he ſaid, to have put a Force upon the Queen, by his own Confeſſion: And this was High-Treaſon, in which the whole Court agreed. Mr. Attorney alſo urged, as an Aggravation of his Crime, that he had been once before pardoned by her Majeſty.

Lea's *Defence.* Captain *Lea*, the Priſoner, ſaid, in his Defence, that he never intended to be an Actor in the Enterprize himſelf; neither did he perſuade any Man to undertake it, but only ſpoke conditionally, *If ſuch a Thing could be done.* He acknowledged alſo, that he was at the Privy-Chamber Door, and ſpoke the Words ſpecified in *Poynes*'s Depoſition: But obſerved, that he had no Company with him, or ſo much as a Dagger, or any Thing about him, that could ſhew he meant to do the Queen any Harm; and ſaid, he had been there five hundred Times before, without any Notice being taken of it: That he had no Reaſon to venture any Thing in the Earl of *Eſſex*'s Service; but had ſpent his Blood in her Majeſty's, and was ready to do it again: And declared, he was not privy to the Earl of *Eſſex*'s Inſurrection.

The Jury, after a ſhort Receſs, bringing in the Priſoner GUILTY, Mr. Attorney ſaid, he would do well to confeſs the Matter now, and who ſet him on: But he anſwered, I am not a Fool, to be ſet on, like a Boy upon a Bear: No Body ſet me on; for I endeavoured nothing. 1600. 43 Eliz. *He is convicted.*

Judgment being pronounced on him as a Traitor, he deſired my Lord of *London*, that one might be ſent him, fit for a Man in his Condition. My Lord aſked, if he would have a Jeſuit, or a Prieſt; but the Captain anſwered, No, I am a Proteſtant: I never liked thoſe *Pater-Noſter* Fellows: I deſire a Miniſter, and to receive the Sacrament; and that my Son may have the little I have got together: He may do his Country good Service one Day. *And Condemned.*

He was executed the Day after his Trial, as a Traitor, at *Tyburn*, proteſting to the Miniſter, to whom he freely confeſſed the reſt of his Sins, that he never intended any ſuch Thing againſt the Queen, as was laid to his Charge. *He is executed.* *Profeſſes his Innocence.*

Mr. *Camden*, in his Hiſtory of Queen *Elizabeth*, *Anno* 1600. relates, that this *Thomas Lea* (a Kinſman of Sir *Henry Lea*'s) came to Sir *Robert Crofts*, Captain of a Man of War, and told him, it would be a glorious Enterprize, for ſix brave mettled Fellows, to go to the Queen, and compel her to diſcharge *Eſſex*, *Southampton*, and the reſt, that were in Priſon. (He was a Man himſelf, of great Aſſurance, and Reſolution; had commanded a Company in *Ireland*, was very intimate with *Tyr-Oen*, and an abſolute Creature of the Earl of *Eſſex*'s.) This did *Crofts* immediately diſcover to the Council; inſomuch, that *Lea* was ſought for, and found in the Duſk of the Evening, about the Door of the Queen's Privy-Chamber. He ſeemed very thoughtful, was extreme pale, and in a great Sweat; and frequently aſked, *Whether her Majeſty was ready to go to Supper?* and *Whether the Council would be there?* In this Poſture he was ſeized, and examined; the next Day had his Trial, and by *Croft*'s Evidence, and his own Confeſſion, convicted; and thereupon condemned, which Mr. *Camden* obſerves, appeared a very ſeaſonable Piece of Rigour, as the Times then were. *Mr.* Camden's *Account of* Lea.

The Courts of Law, it appears, ſtill acted very arbitrarily, at the Trials of State Priſoners: For here, we ſee the Judges denying the Priſoner the Benefit of his Challenges, which was his undoubted Right. We find alſo *Peynes*'s Depoſition read againſt him; whereas, by Act of Parliament, the Witneſſes ought to have been produced in Court, Face to Face; and, without two ſuch Witneſſes, a Man could not legally have been convicted of High Treaſon. As for his own Examination, out of Court, that could not have ſupplied the Place of another Witneſs; unleſs he had confirmed it, by a Confeſſion at his Trial. So that, though there was little Room to doubt his Guilt, yet we may ſay, he was not legally condemned. As to his profeſſing his Innocence to the laſt; all that he could mean by it was, that there was no *formed* Deſign: He only propoſed ſuch a Thing, as feaſible: But it has always been held, *That he, who propoſes the putting a Force upon his Sovereign, is guilty of High Treaſon, though he never attempt it.* And what he meant, by endeavouring to force his Way into the Privy-Chamber, *Remarks on* Lea's *Trial.*

1600. 43 Eliz. ber, without a Weapon, or any one to ſecond him, is not eaſy to be conceived. I am apt to think, the Man was a little diſordered in his Senſes. Certain it is, he was very little afraid of Death, by his Behaviour, both at his Trial, and Execution. 1600. 43 Eliz.

1600. 43 Eliz.

Trial of Blunt, &c.

The Trial of Sir CHRISTOPHER BLUNT, Sir CHARLES DAVERS, or DANVERS, Sir JOHN DAVIS, Sir GILLY MERRICK, and HENRY CUFFE, as Accomplices in the Earl of *Eſſex*'s Treaſon, before Commiſſioners of *Oyer* and *Terminer*, the 15th of *March*, 1600. 43 *Eliz.*

1600. 43 Eliz.

Very defective.

THIS alſo ſcarce deſerves the Name of a Trial, the Indictment, and moſt of the Evidence being wanting: But it is to be preſumed, the Indictment charged them, with compaſſing the Death of the Queen, levying War, *&c.* as the Indictments againſt the Earls of *Eſſex* and *Northampton*, had done.

The Charge.

Of which Charge, it ſeems, the Priſoners deſired they might confeſs Part, and plead guilty to the reſt: But, being informed, they muſt plead *Guilty*, or *Not Guilty*, to the whole, they all pleaded *Not Guilty:* After which, Sir *Chriſtopher Blunt*, Sir *Charles Davers*, and Sir *John Davis*, confeſſed their Deſign was, to come to the Queen, with ſuch a Force, as could not be reſiſted; and to require of her certain Conditions and Alterations of Government: But that they intended no perſonal Hurt to the Queen herſelf; and that was the Reaſon they could not confeſs the whole Indictment, which charged them with compaſſing the Death and Deſtruction of the Queen.

Some of the Priſoners confeſs the Charge.

The putting a Force upon the King, conſtrued a Deſign upon his Crown and Life.

The Court replied, that a Conſpiracy to put a Force upon the Queen, was Treaſon: That the Law conſtrued ſuch an Attempt to be a Deſign upon the Prince's Life and Crown: That, when a Subject took upon him to give Law to the King, he took the Sword out of his Hand, and the Crown off his Head; and this always ended in the Death and Deſtruction of the King, as was evident from Examples, both at Home and Abroad; and therefore it was highly reaſonable, that the Law ſhould conſtrue the putting a Force upon the King, to be an Attempt againſt his Life.

Whereupon Sir *Chriſtopher Blunt*, Sir *Charles Davers*, and Sir *John Davis*, ſaid, Since they had better conſidered the Matter, they were ſorry they had given the Court ſo much Trouble, and had not confeſſed the Indictment, at firſt.

The Evidence againſt Cuffe.

Then the Queen's Counſel produced their Evidence againſt *Henry Cuffe*; and particularly the Examination of the Earl of *Eſſex*, who had confeſſed, that *Cuffe* principally incited him to commit theſe Treaſons, with which he was charged. Depoſitions alſo were read, to prove *Cuffe* at the Conſultations with the Earl of *Eſſex*, at *Drury* Houſe, and his defending *Eſſex-Houſe* againſt the Queen's Forces. To which *Cuffe* anſwered, that he was ſhut up in *Eſſex-Houſe*, againſt his Will.

Againſt Merrick.

The Evidence againſt Sir *Gilly Merrick*, (though the Editor does not tell us, what that Evidence was) it is proved, that he commanded the Garriſon in *Eſſex-Houſe*, fortified it, and appeared the moſt active of any of the Earl of *Eſſex*'s Adherents, againſt the Queen's Forces; and that, the Day before that Rebellion, he cauſed the Play of the depoſing King *Richard* II. to be acted.

They are all convicted, and condemned. Two hanged, and two beheaded.

Then the Jury being withdrawn, in a little Time returned, and brought in all the five Priſoners GUILTY: And Sentence being pronounced on them as Traitors, *Cuffe* and *Merrick* were thereupon drawn to *Tyburn*, and executed there, the 13th of *March:* But Sir *Chriſtopher Blunt*, and Sir *Charles Davers*, had the Honour of being beheaded on *Tower-Hill*, the 18th of the ſame Month; and Sir *John Davis* was pardoned.

Davis *pardoned.*

Blunt's *Speech on the Scaffold.*

Sir *Chriſtopher Blunt*, in his Speech on the Scaffold, declared that, when the Earl of *Eſſex* was in *Ireland*, he told him, he reſolved to ſend over his beſt Troops from thence to *England*, and to land them at *Milford-Haven:* And after he had aſſembled the reſt of his Forces, he intended to have marched with them, directly to *London*; but that he *(Blunt)* diſſuaded *Eſſex* from it, as being a deſperate Attempt: He acknowledged, indeed, that he had adviſed the Earl, to get the Court into his Power, and to make Conditions for himſelf: But, in all their Debates, they fully reſolved not to touch her Majeſty's Perſon; *though, had they failed to attain their Ends, he would not ſay, but it might have coſt her Majeſty her Life:* He declared, he died a Catholick; and, when a Proteſtant Miniſter came to tender his Service to him, in his laſt Moments, he deſired he might not be diſturbed; and, contenting himſelf with ſome pious Ejaculations of his own, he died, ſays my Author, with great Reſolution.

Cuffe's *Declaration.*

Cuffe declared alſo, at his Execution, that they had an Intention to force their Way into the Queen's Preſence; but ſaid, he never perſuaded any Man to take up Arms againſt her Majeſty: And as to Sir *Charles Davers*, and Sir *Gilly Merrick*, I do not find they made any Speeches at their reſpective Executions.

Remarks on the Trial of Blunt, *&c.*

Theſe Trials, I have already obſerved, are very deficient, both as to the Charge, and the Evidence; and no leſs ſo, as to the Priſoners Defence. There is no doubt, indeed, to be made of the Priſoners Guilt, where ſo many thouſands were Witneſſes of the Facts they were charged with. However, the Teſtimony produced againſt them, was certainly not legal Evidence,

1600. 43 Eliz. Evidence, conſiſting of the Depoſitions of abſent Witneſſes, and ſome of it the Confeſſions of the Earl of *Eſſex*, and his Accomplices, who ſtood convicted and attainted of the ſame Treaſons. The Law, 'tis true, was much the ſame then, as it is now: But the Court then acted very arbitrarily, and frequently cauſed Men to be convicted on ſuch Evidence, as the Judges themſelves knew was not legal; and which, at this Day, would not be admitted to be given in Caſes of this Nature. 1600. 43 Eliz.

1603. 1 Jac. I. The Trial of Sir GRIFFIN MARKHAM Knight, Sir EDWARD PARHAM Knight, GEORGE BROOKE Eſq; BARTHOLOMEW BROOKESBY Eſq; ANTHONY COPLEY, WILLIAM WATSON, Prieſt, and WILLIAM CLARKE, Prieſt, for *High Treaſon*, at *Winchеſter*, the 15th of *Novemb.* 1 *Jac.* I. 1603. 1603. 1 Jac. I.

Markham's *Trial.*

The moſt defective of any of them.

THIS has the leaſt Appearance of a Trial, of any Thing we have ſeen yet, containing little more than an Abſtract of the Charge, without the Evidence, and very little of the Defence.

The Charge. The Indictment charged, that the Priſoners conſulted with the Lord *Gray*, and others, traiterouſly to ſurprize the King, and the young Prince, at *Greenwich*, and to carry them to the *Tower*; to ſeize the Treaſure and Jewels there, to effect their Purpoſes; and agreed, that the Lord Chancellor, Treaſurer *Cecil*, and the Chief Juſtice, ſhould be removed, and cut off: That, if their Project of carrying the King to the *Tower* failed, then they ſhould convey him to *Dover*; and either there, or in the *Tower*, the King was to have been kept three Months: That they would, in the mean Time, have required of his Majeſty, 1. A general Pardon; 2. A Toleration of Religion; and that the Papiſts ſhould be admitted to the Council-Board, and to Poſts in the Government, as well as Proteſtants; and, 3. That the King ſhould remove, and cut off, the aforeſaid Counſellors, and others, who ſhould be thought to hinder their Enterprize. *Watſon* particularly was charged with deviſing an Oath to be taken by the Conſpirators, for the Preſervation of the King's Perſon, the Advancement of the Catholick Religion, and for concealing their Secrets: And it was agreed, *That every Thing ſhould be tranſacted in the King's Name* (as it was afterwards in the Year 41.) and particularly, that the Lord-Mayor, and Aldermen, ſhould be ſent for, in his Majeſty's Name, and kept in ſafe Cuſtody till they gave Hoſtages, not to oppoſe their Deſigns, and promiſed, to furniſh them with ſuch Proviſions and Neceſſaries, as the Conſpirators ſhould require of them.

There is no Account of the Evidence that was given at theſe Trials, as hath been obſerved already: And, as to the Defence, the Editor of this Piece only tells us, that *Brooke* pretended, he had a Letter from his Majeſty, authorizing him to ſound the Deſigns of the Conſpirators: But he could produce no ſuch Letter; and the King declared, he never wrote any ſuch Letter.

What appears of their Defence.

Markham ſaid, he had been miſled by *Watſon*, the Prieſt, who aſſured him, *That the King, before his Coronation, was not an actual, but a political King; and therefore no Treaſon could be committed againſt him:* And *Brookeſby* declared, he was drawn into this Plot by *Watſon*, the Prieſt.

Sir *Edward Parham* acknowledged alſo, that he was dealt with by *Watſon*, to take the aboveſaid Oath, and to concur in the Enterprize, for the Advancement of the Catholick Religion.

They are convicted, and condemned. The Jury found all the Priſoners GUILTY, and Judgment of High Treaſon paſſed againſt them; but only *George Brooke*, Brother to the Lord *Cobham*, with the two Prieſts, *Watſon* and *Clark*, were executed. The Editor of theſe Trials concludes his Narrative, with his Majeſty's Warrant to the Sheriff of *Hampſhire*, to ſuſpend the Execution of the Lord *Cobham*, the Lord *Gray*, and Sir *Griffin Markham*; with which theſe Priſoners were not acquainted, till they had mounted the Scaffold, performed their Devotions, and prepared themſelves for the Block. The Lord *Gray* died in the *Tower*, not long after: The Lord *Cobham* obtained his Liberty; but, his Eſtate being confiſcated, lived a great while very miſerably. Sir *Griffin Markham* alſo was releaſed at length, and went beyond Sea; but, having loſt his Eſtate, was reduced to great Diſtreſs. *Parham*, *Brookeſby*, and *Copley*, alſo were reprieved; but it does not appear what become of them. *Brook, and the two Prieſts only executed.*

The Warrant for ſuperſeding the Execution of the two Lords, and *Markham*, being written in the King's own Hand, and eſteemed a Curioſity, I ſhall give it the Reader *Verbatim*.

King James's Warrant for ſuſpending the Execution of the two Lords, and Markham

" ALTHOUGH it be true, that all
" well-governed and flouriſhing King-
" doms, and Commonwealths, are eſtabliſhed
" by Juſtice; and that theſe two Noblemen
" by Birth, that are now upon the Point of
" Execution, are for their treaſonable Practices
" condemned by the Laws, and adjudged wor-
" thy of the Execution thereof, to the Ex-
" ample and Terror of others: *The one of them*
" *having practiſed the Overthrow of the whole*
" *Kingdom, and the other for the Surprize of*
" *our own Perſon:* Yet in regard that this is
" the firſt Year of our Reign, in this King-
" dom; and that never King was ſo far obliged
" to his People, as we have been to this, by

" our

1603. 1 Jac. I.

" our Entry here, with ſo hearty and general " an Applauſe of all Sorts; among whom all " the Kin, Friends, and Allies, of the ſaid " condemned Perſons, were as forward and " dutiful as any other our good Subjects: As " alſo that, at the very Time of their Arraign- " ment, none did more freely and readily give " their Aſſent to their Conviction, and to de- " liver them into the Hands of Juſtice, than ſo " many of their neareſt Kinſmen and Allies " (as being Peers) were upon their Jury: As " likewiſe, in regard that Juſtice hath, in ſome " ſort, had its Courſe already, by the Execu- " tion of the two Prieſts, and *George Brooke*, " that were the principal Plotters and Inticers " of all the reſt, to the embracing the ſaid " treaſonable Machinations: We, therefore, " being reſolved to mix Clemency with Ju- " ſtice, are contented, and by theſe Preſents " command our Sheriff of *Hampſhire*, to ſu- " perſede the Execution of the ſaid two No- " blemen, and to take them back to their " Priſon again, while our further Pleaſure be " known. And, ſince we will not have our " Laws to have Reſpect to Perſons, in ſparing " the Great and ſtriking the meaner Sort, it " is our Pleaſure, that the like Courſe be alſo " taken with *Markham*, being ſorry from our " Heart, that ſuch is not only the heinous Na- " ture of the ſaid condemned Perſons Crime, " but even the Corruption is ſo great of their " natural Diſpoſition, as the Care we have for " the Safety and Quiet of our State, and good " Subjects, will not permit us to uſe that Cle- " mency towards them, which, in our own na- " tural Inclination, we might very eaſily be per- " ſuaded unto."

Remarks on the Trial of Markham *&c.*

As to the Trial of the two Lords, *Cobham* and *Gray* (before their Peers) I meet with no manner of Account of it; and the Trials of the Commoners are very imperfect, as has been obſerved already: But, from what we have, there ſeems to have been two Plots: The one, to have ſeized the King's Perſon, and the Prince, and to have compelled his Majeſty, to have changed his Miniſtry, and granted a general Liberty of Conſcience, which was the Charge againſt the Priſoners mentioned in the preſent Trial: The other, a Plot to depoſe King *James*, and place the Lady *Arabella Stuart* upon the Throne; with which the Lord *Cobham* and Sir *Walter Ralegh* were charged. Poſſibly the Prieſts let ſome into one Deſign, and ſome into the other. So they could bring about a Change in Religion, they were not very ſolicitous by what means it was effected: But I am apt to think, neither of theſe Plots was brought to any Maturity.

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Treaſon may be committed againſt a King out of Poſſeſſion.

The moſt remarkable Thing in theſe Trials was, that the Priſoners were indicted for a Conſpiracy againſt the King, before he was crowned, and before he ſet his Foot upon *Engliſh* Ground. *Watſon* and *Clarke*, the two Prieſts, it ſeems, had taught their Accomplices, that no Treaſon could be committed againſt a King, out of Poſſeſſion of the Government: And we find the Regicides afterwards copying after them, and making that a Part of their Defence, that King *Charles* I. was depoſed, and out of the Exerciſe of the Government, and therefore their murdering him could not be Treaſon: And Sir *Harry Vane* alſo made the like Defence, when he was indicted for making War againſt King *Charles* II. and keeping him out of the Poſſeſſion of his Throne: But the Judges cited this Precedent of *Watſon* and *Clark*, to ſhew them, that Treaſon might be committed againſt a King, before he was crowned, or had entered on the Adminiſtration of the Government; for that the King is King, to all Intents and Purpoſes, immediately upon the Demiſe of his Predeceſſor: *This was the unanimous Opinion of the Judges at the Reſtoration.*

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The Trial of Sir Walter Ralegh, *for High Treaſon.*

The Trial of Sir WALTER RALEGH Knight, for *High Treaſon*, before *Henry Howard* Earl of *Suffolk*, the two Chief Juſtices *Popham* and *Anderſon*, and other Commiſſioners of *Oyer* and *Terminer*, at *Wincheſter*, the 17th of *Novemb.* 1603. 1 *Jac.* I.

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The Charge.

THE Indictment charges the Priſoner with High Treaſon, in compaſſing and imagining to depoſe and deſtroy the King; and particularly that he met and conſulted with the Lord *Cobham*, how to advance the Lady *Arabella Stuart* to the Throne; and that, in order to it, the Lord *Cobham* was to go over to the Archduke, the King of *Spain*, and the Duke of *Savoy*, to procure their Aſſiſtance, and carry Letters from the Lady *Arabella*, with him, promiſing ſhe would procure a Peace between *England* and *Spain*, tolerate Popery, and be directed by them in her Marriage; and that *Cobham*, at the Inſtance of Sir *Walter*, did write to *Aremberg*, the Archduke's Ambaſſador, to obtain 600,000 Crowns, for carrying on theſe Deſigns; which Sum the Ambaſſador promiſed to pay: That *Cobham* promiſed Sir *Walter* 8000 Crowns of the Money, which he agreed to accept; and that Sir *Walter* alſo had publiſhed a Book againſt the King's Title.

The Evidence. Depoſitions of Lord Cobham.

Sir *Edward Coke*, the Attorney-General, having opened the Indictment, and given Sir *Walter Ralegh* a great deal of ſcurrilous Language, proceeded to produce the Evidence: And firſt, the Examination of the Lord *Cobham* was read, wherein he confeſſes his going over to *Flanders*, to the Archduke, and getting a Paſs, to go to *Spain*, to ſolicit that King for 600,000 Crowns; and that he was to return home by *Jerſey*, and conſult Sir *Walter*

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Ralegh there, concerning the Diſtribution of the Money among the Diſaffected in *England*: And further depoſed, that he had not entered into theſe Courſes, but by the Inſtigation of Sir *Walter*, curſing him, and calling him Villain and Traitor for ſeducing him. A Letter alſo of the Lord *Cobham*'s was read, of the ſame Tenor.

Of Lawrency.

The Examination of one *Lawrency* alſo was read, who depoſed, that Sir *Walter* ſupped with *Cobham* that Evening *Cobham* went to *Aremberg*, the Archduke's Ambaſſador.

The Priſoner's Examination read.

Then Sir *Walter*'s own Examination was read, wherein he ſays, *Cobham* offered him 8000 Crowns, if he would promote a Peace between *England* and *Spain*: To which the Deponent replied, when I ſee the Money, I will tell you more: For he thought it one of Lord *Cobham*'s idle Conceits, and therefore made no Account of it.

Cobham's Depoſition alſo, concerning the Book, was read, wherein he depoſed, that he had a Book from *Ralegh*, written againſt the King's Title; and *Ralegh* ſaid, it was fooliſhly written.

Hearſay.

The only living Witneſs produced againſt the Priſoner, was one *Dyer*, who depoſed, that he heard a Gentleman ſay, at *Liſbon*, the King would never be crowned; for Don *Ralegh*, and Don *Cobham*, would cut his Throat, ere that Day came.

Letter of Cobham's.

Then a Letter of the Lord *Cobham*'s was produced, where he ſays, that *Ralegh* ſent to him in the *Tower*, to retract his Evidence; and that *Ralegh* was to have had 1500 *l. per annum* of the *Spaniard*, to give Intelligence when any Thing was deſigned againſt the *Spaniſh* Territories.

Sir Walter's *Defence.*

To this Sir *Walter Ralegh* anſwered, that he knew nothing of the Lord *Cobham*'s Practices with *Aremberg*, and proteſted, he had never heard of the Name of the Lady *Arabella Stuart*: That it was very unlikely he ſhould ſend Lord *Cobham* to *Spain*; and more unlikely, that *Spain* ſhould attempt another Enterprize againſt *England*, which had met with ſo many Repulſes, and their Royal Navy now deſtroyed, and ſunk to nothing; and that the Crown of *Spain* was too much impoveriſhed at this Day, to lend 600,000 Crowns on ſo precarious a Project: That it was very unlikely alſo, he ſhould promote a Peace with *Spain*, who had written a Book expreſly againſt a Peace, which he intended to preſent to his Majeſty: That it was not enough to accuſe a Man generally; but the Lord *Cobham* ought to give ſome Account of the Reaſon of the Undertaking: Some other Proof ought to be produced, beſides the Depoſition of one who acknowledged his Guilt: There ought to be two credible Witneſſes, brought Face to Face, in Caſes of Treaſon; and here had not one Witneſs appeared: And as to the Book he was charged with, he had it in the late Lord Treaſurer's Study, who had written in it, *This is the Book of* Robert Snaggs. That he never read it, commended it, or communicated it to any Man; and the Book had been burnt long ago.

Inſiſts on two Witneſſes.

Then he returned to ſpeak to the firſt Part of the Charge, and ſaid, it was not likely, that he, who had ſpent 40,000 Crowns againſt the *Spaniard*, ſhould now become ſo affected to him, as to accept a Penſion from that Crown: And in Anſwer to the Depoſition of the Lord *Cobham*, he produced a Letter from the ſame Lord, written after his Examination, when he was ſick, and like to die; wherein he ſays, *Seeing myſelf ſo near my End, for the Diſcharge of my Conſcience, and freeing myſelf from your Blood, which elſe will cry Vengeance againſt me, I proteſt, upon my Salvation, I never practiſed with* Spain *by your Procurement. God ſo comfort me in this my Affliction, as you are a true Subject, for any Thing I know. I will ſay as Pilate,* Purus ſum a ſanguine hujus: *So God have Mercy upon my Soul, as I know no Treaſon by you.*

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Lord Cobham *retracts his Evidence.*

Reply to the Defence.

To this Defence the Attorney-General replied, chiefly with Invectives and ill Language, telling Sir *Walter*, he was the moſt notorious Traitor that ever came to the Bar; and that when he had taken off the King, he would have altered Religion: That he was a Monſter, a Viper, had an *Engliſh* Face, but a *Spaniſh* Heart; and that the Witneſſes need not be brought Face to Face: And the Lord Chief Juſtice added, that the Statute, which required this, was repealed; in which the reſt of the Court concurred.

The Attorney-General alſo ſaid, that the Crown could never ſtand a Year upon the King's Head, if a Traitor might not be condemned by *Circumſtances*: That it did not conſiſt with the King's Safety, that the Priſoner ſhould be acquitted; proteſting before God, that he never knew a clearer Treaſon, and that Sir *Walter* was the moſt vile and execrable Traitor that ever lived; after which followed this inimitable Dialogue.

A Dialogue between Coke, *the Attorney-General, and Sir* Walter.

Ralegh. You ſpeak indiſcreetly, and barbarouſly.

Att. Gen. I want Words to expreſs thy viperous Treaſons.

Ralegh. I think you want Words, indeed; for you have ſpoken one Thing half a dozen Times.

Att. Gen. Thou art an odious Fellow; thy Name is hateful to all *England* for thy Pride.

Ralegh. It will go near to prove a meaſuring Caſt, between you and me, Mr. Attorney.

Other Evidence produced.

Then Mr. Attorney produced Lord *Cobham*'s Letter, wherein he ſays, *Ralegh* ſent to him in the *Tower*, to retract what he had ſaid. To which *Ralegh* anſwered, he confeſſed he did ſend a poor Fellow, to throw a Letter into his Window, with theſe Words, *viz. You know you have undone me: Now write three Lines to juſtify me.*

The Lord Chief Juſtice then demanded of the Priſoner, what he ſaid to his being promiſed a Penſion of 1500 *l. per Annum.*

To which he anſwered, Cobham *was a baſe, diſhonourable, poor Soul:* And the Chief Juſtice replied, I perceive you are not ſo clear a Man as you have proteſted all this while.

The Lady Arabella *profeſſes her Innocence.*

During the Trial, the Lord Admiral *Nottingham*, being in Court with the Lady *Arabella*, ſtood up, and declared, that the Lady proteſted, upon her Salvation, that ſhe never dealt in any of thoſe Things, and ſo deſired him to inform the Court: She acknowledged, indeed, ſhe received a Letter from the Lord *Cobham*, to prepare

1603. 1 Jac. 1. *Sir* Walter *convicted.*

pare her; but ſhe laught at it, and immediately ſent the Letter to the King.

The whole Evidence being given, and ſummed up, the Jury withdrew, and within a Quarter of an Hour, brought the Priſoner in GUILTY; and Judgment paſſed on him, as a Traitor.

Remarks on the Trial.

Never was Man convicted on ſo ſlender an Evidence. There was nothing, but the Depoſition of the Lord *Cobham*, that affected him; and that he had ſolemnly retracted: And, even this Witneſs was not produced in Court, the Judges declaring it was not neceſſary; and, that the Statute of the 5th and 6th *Edw.* VI. (which requires that two Witneſſes ſhould give their Evidence, *viva voce*, in Caſes of Treaſon) was repealed. But it is remarkable, that in this, and the former Trials, where the Court declared, that Statute was not in Force, they never ſpecified by what Act it was repealed. And, indeed, there is no ſuch Act in the Statute-Book: So that, whether Sir *Walter* was guilty or not, both he and many more were unjuſtly convicted, in that Age, for want of two Witneſſes produced perſonally againſt them, as the Law required. It is obſervable, that ſome Judges uſed only to affirm, that the Law was *inconvenient*, and the Crown could not have Juſtice done, if that Opinion prevailed. And Sir *Edward Coke*, the Attorney-General, at this Trial, ſays, *That the Crown cannot ſtand a Year upon the King his Maſter's Head, if a Traitor could not be condemned by Circumſtances*; and, therefore, ſeems to argue, there was a Neceſſity that Statute ſhould be *ſuſpended*, in Favour of the Crown: But this great Lawyer does not attempt to ſhew, by what Act the 5th and 6th of *Edw.* VI. cap. 11. was repealed. He appears alſo, in his *Crown-Law*, to have been of another Opinion. But the moſt trifling Evidence that ever was given, was the Teſtimony of *Dyer* at this Trial, who, in order to influence the Jury, declared, *he heard* a Gentleman ſay at *Liſbon*, *Don Raleigh*, and *Don Cobham*, would cut the King's Throat before he was crowned.

Remarks on Sir Edward Coke's *Conduct.*

Give me leave to obſerve further, that nothing could leſſen Sir *Edw. Coke*'s Character more, than his Conduct at this Trial. To ſee the Inſolence, the Violence, and ſcurrilous Language, he uſed, to run down a Man of Quality and Honour, who had been ſo eminent in the Service of his Country: To ſee him wreſting and perverting the Law, contrary to his own Opinion, and Conſcience, to come at the Blood of an innocent Man; and this, either to make his Court to the new King, or out of Malice to the Priſoner; muſt give every Man a very mean Opinion of this Lawyer. And whoever have attended the Trials of State Priſoners, may have obſerved much of the like Practice in this Age. We have ſeen Gentlemen of the Long Robe, Men of conſiderable Fortunes, whoſe Neceſſities could not prompt them to take away any Man's Life, one would think, for a little ſordid Pelf, labouring with all their Might, and uſing all their Skill and Oratory, to hunt down Men marked out for Deſtruction; and this, perhaps, with no Malice to the Parties, or, with any other View, than that of being advanced from the Bar to the Bench; obſerving, that the Cutting of Throats, or ruining a Man by Colour of Law, when ſome vile Miniſter required it, was the ready Road to Preferment. But, whatever Reward thoſe Time-ſervers may expect in this World, they, ſurely, never think of a Day of Retribution in the next.

1603. 1 Jac. 1.

Sir Walter's *Voyage to* Guiana.

Sir *Walter Ralegh*, having remained fourteen Years in the *Tower*, was ſet at Liberty; and, finding the Government in great Diſtreſs for Money at that Time, propoſed an Expedition to *Guiana*, on the Continent of *America*, in order to poſſeſs himſelf of a Gold Mine, he had formerly diſcovered: Which the Miniſtry liſtened to with a great deal of Pleaſure; and ſome Gentlemen of Quality and Fortune, with ſeveral conſiderable Merchants, contributed to the Expedition. But Sir *Walter* arriving with ten Ships at the Mouth of the River *Oronoque*, and detatching five Companies of Soldiers, under the Command of his Son Captain *Ralegh* and Captain *Kemiſh*, to ſail up and down the River, in Search of the Mine; they found the Avenues to it ſo well fortified by the *Spaniards*, that after a fruitleſs Attack, in which Captain *Raleigh* loſt his Life, *Kemiſh* returned with the Boats to the Fleet.

His Son killed.

His Friend Kemiſh, *kills himſelf.*

Sir *Walter*, deeply afflicted with his Son's Death, and the Miſcarriage of the Attempt, it is ſaid, reproached *Kemiſh*, telling him, he had ruined him, by putting him upon ſo impracticable an Enterprize: Which Captain *Kemiſh* laid ſo much to Heart, that he retired to his Cabbin, and ſhot himſelf; and, finding the Shot had not reached his Vitals, afterwards ſtabbed himſelf with a Knife in ſeveral Places, of which Wounds he died.

In Doubt, if he ſhould return home.

But I am apt to think, that Sir *Walter* rather reprimanded *Kemiſh*, for attacking the *Spaniards*, than for adviſing him to undertake this Expedition; for this it was, that rendered him obnoxious to the Government: We were, then, in full Peace with *Spain*; and, it was very natural to ſuppoſe, that the *Spaniards* would demand Satisfaction, for falling upon their Settlements; which Sir *Walter*'s Commiſſion never authorized him to do. It is highly probable, that the *Spaniards* were not poſſeſſed of thoſe Mines, when Sir *Walter* firſt diſcovered them; and, even when he undertook this Enterprize, neither the Miniſtry, or he, knew the *Spaniards* had fortified them; or we ſhould never have attempted to have ſettled there, and diſobliged an Ally the King was then ſo fond of, and actually engaged with in a Treaty of Marriage, between his Son, Prince *Charles*, and the *Infanta*: Therefore it appears, when Captain *Kemiſh* had committed Hoſtilities againſt the *Spaniards*, Sir *Walter* and all that were with him gave themſelves over for loſt, and propoſed ſailing for *France*, or *Italy*, as ſome of his Ships actually did: Only Sir *Walter* and four Ships, returned to *Ireland*; where he propoſed to remain till he had made his Peace. But, being encouraged, to venture home, by ſome falſe or indiſcreet Friends, he no ſooner landed but he was taken, and committed to the *Tower*, from whence he made his Eſcape; but, being re-taken, was ordered to be executed, by Vertue of a Sentence that had paſſed on him fifteen Years before, to give the *Spaniards* Satisfaction: Though the Treaſon, he had been con-

Taken, and eſcapes again.

Re-taken, and beheaded.

1603. 1 Jac. I.

condemned for, was, his being a Penſioner to *Spain*, and inviting the *Spaniard* to invade the Kingdom. An Offence, which, if he had been guilty of it, all the World looked upon as pardoned; Sir *Walter* being not only ſet at Liberty, but conſtituted General and Admiral, by a a Commiſſion that gave him Power of Life and Death, and even of pardoning capital Offences in others; which could not have been executed by a Perſon attainted of High-Treaſon, unleſs he had been, at leaſt (virtually) pardoned by the King: However, the Lawyers, it ſeems, gave it as their Opinion, that nothing but expreſs Words could amount to a Pardon of Treaſon; and he was thereupon beheaded, the 29th of *Octob.* 1618. in the 66th Year of his Age.

1603. 1 Jac. I.

1603-4. 1 Jac. I.

Goodwin's *Caſe.*

The Caſe of a Return of a Knight of the Shire, for the County of *Bucks*, between Sir FRANCIS GOODWIN, and JOHN FORTESCUE, 1603/4. 1 *Jac.* I.

1603-4. 1 Jac. I.

A Knight returned, and rejected, by the Clerk of the Crown, becauſe he was outlawed.

ON Thurſday, the 22d of *March*, Sir *William Fleetwood*, Knight of the Shire for the County of *Bucks*, moved the Houſe, on the Behalf of Sir *Francis Goodwin*, who had been returned one of the Knights of the Shire for the ſaid County, and refuſed by the Clerk of the Crown, becauſe he was outlawed, (and thereupon a ſecond Writ iſſued, and Sir *John Forteſcue* returned;) that this Return might be examined, and Sir *Francis Goodwin* received a Member of the Houſe.

Whereupon it was ordered, that Notice ſhould be given to the Clerk of the Crown, to appear at the Bar the next Morning, and bring with him all the Writs of Summons, Indentures, and Returns of Elections, for the County of *Bucks*, this laſt Parliament; and that Notice ſhould be given to Sir *Francis Goodwin*, to attend in Perſon, and repreſent the State of his Caſe, *Ore tenus*.

Received by the Houſe, notwithſtanding.

The Clerk of the Crown attended accordingly, the next Day, with the Writs, *&c.* and Sir *Francis Goodwin*, having made a Repreſentation of his Caſe, was ordered to withdraw; and, after a long Debate, the Queſtion being put, Whether Sir *Francis Goodwin* was lawfully elected, and returned, one of the Knights for *Bucks*, and ought to be admitted and received as a Member of that Houſe? It was reſolved in the Affirmative; and thereupon the Clerk of the Crown was commanded to file the firſt Indenture of Return: And it was Ordered, that Sir *Francis* ſhould immediately take the Oaths, and his Place in the Houſe; which he did accordingly. On Tueſday, the 27th of *March*, 1604. Sir *Francis Bacon*, reporting a Conference with the Lords, on another Subject, ſaid, the Lords touched on the Caſe of Sir *Francis Goodwin*, and deſired to be more particularly informed, concerning it, by that Houſe: But Anſwer was made (by the Committee of the Commons) that they had no Warrant from the Houſe to ſpeak to it.

The Lords enquire into the Reaſon of it.

The ſame Day a Meſſage came from the Lords, deſiring, that the Committee of the Commons might, at the next Conference, be authoriſed to treat, concerning the Caſe of Sir *Francis Goodwin*, Knight of the Shire for *Bucks*.

The Commons refuſe a Conference on that Subject.

Which Meſſage being debated, it was urged by ſome Members, that they ought not to give an Account to the Lords of their Proceedings in the Houſe: But that the Speaker ſhould repreſent to his Majeſty, that, as the Judgment of Sir *Francis Goodwin*'s Caſe had paſſed the Houſe, it ought not to be reverſed by them: And a Precedent of the 27th of *Eliz.* was cited; where a Bill, brought down from the Lords, being rejected, on the firſt Reading, and the Lords ſending to demand a Reaſon of their Judgment, it was denied to yield any Reaſon.

And the Queſtion being put, Whether they ſhould confer with the Lords, on the Caſe of Sir *Francis Goodwin?* It paſſed in the Negative: And the Commons ſent a Meſſage to the Lords, that they conceived, it did not ſtand with the Honour and Order of the Houſe, to give an Account of their Proceedings.

His Majeſty interpoſes.

This produced another Meſſage from the Lords, importing, that their Lordſhips taking notice of the Return of the Sheriff of *Bucks* to the King, his Majeſty conceived himſelf engaged, and touched in Honour, that there ſhould be a Conference between the Houſes on that Subject.

The Commons offer his Majeſty the Reaſons of their Judgment.

Whereupon the Commons moved, to have Acceſs to his Majeſty; and Eight the next Morning being appointed for their attending him, a Committee was appointed to attend his Majeſty, with the Speaker, and relate the Reaſons of their Proceedings, in the Caſe of Sir *Francis Goodwin*; which the Committee did accordingly.

On Thurſday, the 29th of *March*, 1604. Mr. Speaker related what he had delivered to the King, by Warrant from the Houſe the Day before, and his Majeſty's Anſwer.

He ſaid, he delivered, 1. The Manner and Matter. 2. Such Precedents as had been vouched and ſtood upon; and, 3. He opened the Law of Elections.

The Election duely made.

1. The Writ of Summons, dated the laſt of *January*, was duely iſſued. The Liberty was free, by that Writ, to chuſe *in pleno comitatu*. The Election was made, according to that Writ, and the Indenture duely returned; and therefore it was adjudged by the Houſe, that this firſt Election being good, the ſecond was conſequently void.

2. As to the Outlawry againſt Sir *Francis Goodwin*, there was one proſecuted againſt him,

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at the Suit of *Johnſon*, 31 *Eliz.* for 60 *l.* laid in the Huſtings, *London*. Another at the Suit of one *Hacker*, for 16 *l.* 39 *Eliz.* That Sir *Francis* had been ſince choſen, admitted, and ſerved as a Member of this Houſe, in ſeveral Parliaments holden, 39 & 43 *Eliz.*

That the Outlawry remained in the Huſtings, ſo as the Law could take no notice of it; neither was it pleadable.

Precedents of Outlaws ſerving in Parliament.

1 *Eliz.* One *Smith* was found outlawed, and privileged by the Houſe.

23 *Eliz.* One *Vaughan* outlawed, and, on a Diviſion, voted to be privileged: Carried by ſix Voices.

Mr. *John Killegrew*, having fifty two Outlawries returned againſt him, was admitted to ſerve in the Houſe.

Sir *William Harecourt*, eighteen Times outlawed, was admitted to ſerve.

The Outlawry irregular,

The ſuppoſed Outlawry againſt Sir *Francis*, 31 *Eliz.* was no Outlawry at all; no Proclamations being made in the County where he dwelt.

General Pardons ſince.

The general Pardons of the 39 & 43 *Eliz.* were good in Outlawries againſt all, but the Parties, at whoſe Suit they were proſecuted.

The Sheriff no Judge of the Outlawry.

That the Sheriff was no Judge of the Outlawry, nor could take notice it was the ſame Man, and therefore could not properly return him outlawed.

The King's Anſwer.

To which his Majeſty anſwered, He was indifferent which of the two was choſen: Nor had he any Deſign to impeach their Privilege; but, *ſince they derived all their Privileges from him, and by his Grant, he expected they ſhould not be turned againſt him:* That there was no Precedent ſuited this Caſe fully: Either they were in the Times of Minors, of Tyrants, of Women, or of ſimple Kings.

All their Privileges derived from the Crown.

That the Chancery *ought to judge of Returns.*

By Law, that Houſe ought not to meddle with Returns, being all made into *Chancery*; and ought to be corrected, or reformed, in that Court only, into which they were returned.

That Outlaws ought not to ſit in the Houſe.

And that it was the Opinion of all the Judges, that Matter of Outlawry was a ſufficient Cauſe of Diſmiſſion, of any Member out of the Houſe; and that Sir *Francis Goodwin* was outlawed, according to the Laws of the Land.

The King orders them to debate the Matter again, confer with the Judges, &c.

It was, therefore, his Majeſty's ſpecial Charge, 1. That the Courſe already taken, ſhould be truly reported. 2. That they ſhould debate the Matter, and reſolve among themſelves. 3. That they ſhould admit of a Conference with the Judges; and, 4. That they ſhould make a Report of all their Proceedings to the Council.

The Commons diſpute theſe Points among themſelves.

In the Debate upon this Report, it was ſaid, that now the Caſe of Sir *John Forteſcue*, and Sir *Francis Goodwin*, was become the Caſe of the whole Kingdom: That old Lawyers forget, and commonly interpret the Law, according to the Time.

Reſolve to maintain their Privileges.

That, by this Courſe, the free Election of the County was taken away; and none could be choſen, but ſuch as pleaſed the King and Council; and that they ought, therefore, with Fortitude, to maintain their Privilege; which could not be conſtrued a Contempt, but merely a Maintenance of their common Right, which their Anceſtors had left them: And it was juſt and fit they ſhould transfer them to Poſterity.

At length, it was reſolved, to preſent his Majeſty, in Writing, with the Reaſons of their Reſolutions, in Sir *Francis Goodwin*'s Caſe, which were of the following Tenor.

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But offer his Majeſty further Reaſons.

To the King's Moſt Excellent Majeſty, the humble Anſwer of the Commons Houſe of Parliament, to his Majeſty's Objections in Sir Francis Goodwin's *Caſe:*

1. AS to that Objection, that they aſſumed a Power of examining Elections and Returns, which belonged to the Court of *Chancery*,

They anſwer, That, until the 7th of *Hen.* IV. all Parliament Writs were returnable into the Parliament, and conſequently examinable there: But in that Year, a Statute was made, that thenceforth every Parliament Writ ſhould be returnable in *Chancery*, however the Power of the Parliament to examine and determine Elections remained; for ſo the Statute had been always expounded ſince: And for that Purpoſe, the Clerk of the Crown uſed to attend, all Parliament Time, upon the Commons Houſe, with the Writs and Returns: And the Parliament always appointed Committees, for examining Controverſies, concerning Elections and Returns. During which Time, the Writs and Indentures remain with the Clerk of the Crown; and after the Parliament ended, and not before, are delivered to the Clerk of the Petty Bag in *Chancery*, to be kept there.

They ſhew the Commons always determined Returns.

Precedents of it.

As to Precedents: In the 29th of *Eliz.* after one Writ awarded into *Norfolk*, for Choice of Knights, and Election, made and returned, a ſecond was, before the Parliament Day, awarded by the Lord Chancellor, and thereupon another Election and Return made: And the Commons being attended, with both Writs and Returns, by the Clerk of the Crown, allowed the firſt, and rejected the ſecond. So in the 23d of *Eliz.* a Burgeſs was returned dead, and a new one choſen, and returned by a new Writ. For the Party, that was returned dead, appearing, the Commons, notwithſtanding the Sheriff's Return, admitted the firſt choſen, and rejected the ſecond. The ſame 23d Year, a Burgeſs, choſen for *Hull*, was returned Lunatick, and a new one choſen, upon a ſecond Writ: And the Commons, finding the Return of Lunacy to be true, refuſed the firſt: But if it had been falſe, they would have received him. In the 43 *Eliz.* the Sheriff of *Rutlandſhire* returned himſelf elected: The Commons, finding he was not eligible by Law, ſent a Warrant to the *Chancery*, to chuſe a-new. The ſame 43d Year, a Burgeſs was choſen for two Boroughs. The Commons, after he had made his Election which he would ſerve for, ſent a Warrant to the *Chancery*, for a Writ, to chuſe a-new, for the other Borough: All which proves the *Chancery* to be a Place appointed to receive the Returns, and keep them for the Parliament; but not to judge of them. The Inconvenience would be great, if the *Chancery* might, upon Suggeſtions, or Sheriffs Returns, ſend Writs for new Elections, and theſe not ſubject to Examinations in Parliament; for ſo, when fit Men were choſen, the Lord Chancellor, or Sheriffs, might diſplace them, and ſend out

The Court would chuſe the Houſe of Commons, if the Chancery, *or Sheriffs, were Judges of Returns.*

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new Writs, till ſome were choſen to their Liking.

2. As to that Objection, that they had proceeded with too much Precipitation; and being but half a Body, and no Court of Record alone, they had refuſed a Conference with the Lords, the other half; they anſwered, that they debated this Caſe with as much Deliberation, as others, of the like Nature, uſed to be debated in Parliament, calling the Clerk of the Crown before them, and viewing both the Writs and Returns; and finding the latter Writ was awarded, and ſealed, before the *Chancery* was repoſſeſſed of the former, they held it clearly to be a Fault in Law, and proceeded to Sentence, with the leſs Regard to the latter Election: And as to their refuſing a Conference with the Lords, there was none deſired, till they had given their Judgment; and then it could not be revoked. However, they proceeded with all Diligence, to lay the Matter before his Majeſty: And though they were but Part of a Body, as to the making of new Laws; yet, for any Matter of Privilege of their own Houſe, they were, and ever had been, a Court of themſelves, of ſufficient Power to diſcern and determine, without their Lordſhips, as their Lordſhips have uſed always to do for theirs, without them.

The laſt Writ null, the firſt not being returned at the Time of awarding the ſecond.

The Lords deſired no Conference, till the Thing was determined.

And had nothing to do with their Privileges.

3. As to the third Objection, that they had, by their Sentence of receiving *Goodwin*, admitted, that Outlaws might be Law-Makers, which was contrary to all Laws,

They ſhew the Outlawry to be irregular.

They anſwered, that notwithſtanding the Precedents they had exhibited, of Outlaws in perſonal Actions being admitted into the Houſe, they were ready to paſs an Act, for the excluding all Outlaws for the future: But that, indeed, *Goodwin* was not legally outlawed, at the Time of his Election. For whereas the Party outlawed, ought to be five Times proclaimed, to appear in the Sheriff's County Court; and then, not appearing, ought to be adjudged outlawed by the Coroners of the County; there appeared no Record made in the Huſtings of *London*, that *Goodwin* was five Times proclaimed, or that the Coroners had given Judgment of Outlawry againſt him, at the Time of the Election: But a Clerk, lately come to that Office, had now, ſeveral Years after *Goodwin*'s Election, made Entries, interlined in a new Hand, that he was outlawed: To which new Entries they could give no Credit; becauſe the Parties, at whoſe Suit *Goodwin* was ſued, had teſtified, by their Releaſe in Writing, that they never proceeded further, than to take out the Writ of Exigent, for an Outlawry; and being then paid their Money, deſiſted in their Suit; ſo that *Goodwin* was not five Times proclaimed, or adjudged, outlawed: And it was uſual to ſpare that Proclamation, and Judgment, if the Party called not for it. 2. The Writ of Exigent, by which the Sheriff was commanded to proclaim him five Times, was not legally returned, or certified, by *Certiorari*; without which, *Goodwin* could not be diſabled, as an Outlaw: And beſides, the two Parliament Pardons had cleared the Outlawry, if there had been any: And they could not but obſerve, the extraordinary Steps that had been taken, to make *Goodwin* an Outlaw, ſince his Election, *viz.* by procuring the Outlawry to be returned, in the Name of the Sheriffs, that ſerved ſeven Years before, and had been long dead, and now a Return made of the old Exigent; which could be for no other End, than to diſable him to ſit in the Houſe, the Party being long ſince ſatisfied his Debt.

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Theſe Reaſons were delivered in Writing to a Committee of the Houſe of Lords, by Sir *Francis Bacon*, and ſeveral Members of the Commons, appointed for that Purpoſe: And the Committee of the Commons, at the ſame Time, by the Order of their Houſe, deſired their Lordſhips, that ſince they had nearer Acceſs to his Majeſty, they would co-operate with them, for the King's Satisfaction.

The King's Reply.

Theſe Reaſons being communicated to his Majeſty by the Lords, his Majeſty ſent for the Speaker of the Commons, and told him, he had received a Parchment from the Houſe: Whether it were an abſolute Reſolution, or Reaſons, to give him Satisfaction, he knew not; but proteſted, he had as great a Deſire to maintain their Privileges, as ever Prince had, or they themſelves. He had conſidered the Matter, and heard his Judges and Council, and was now diſtracted in Judgment. Therefore, for his further Satisfaction, he deſired, and commanded, as *an abſolute King*, that there might be a Conference between the Houſe and the Judges; and that his Council might be preſent; not as Umpires to determine, but to report, indifferently, on both Sides.

He inſiſts on a Conference with the Judges, before the Privy Council.

The Commons agree to it.

Whereupon, the Queſtion being put, Whether to confer with the Judges, in the Preſence of the King's Council? It was reſolved in the Affirmative, and a ſelect Committee appointed for the Conference: And it was further reſolved, upon the Motion of Mr. *Lawrence Hyde*, that the ſaid Committee ſhould inſiſt upon the Fortification and explaining of the Reaſons and Anſwers, delivered to his Majeſty; and not proceed to any other Argument, or Anſwer, what Occaſion ſoever moved in the Time of the Debate.

The Conference reported.

On Wedneſday, the 11th of *April*, Sir *Francis Bacon* was called upon by the Houſe, to make a Report of the late Conference with the Judges, in the Preſence of his Majeſty, and the Lords of the Council: But he excuſed himſelf, ſaying, he was not warranted to make any Report: However, upon the Queſtion being over-ruled, to make a Report, he ſaid, the King declared, he would be Preſident himſelf.

That this Attendance renewed the Remembrance of the laſt, when they departed with ſuch Admiration. It was the Voice of God in Man; the good Spirit of God in the Mouth of Man. *I do not* (ſays Sir *Francis*) *ſay, the Voice of God, and not of Man. I am not one of* Herod's *Flatterers. A Curſe fell upon him that ſaid it: A Curſe on him that ſuffered it. We might ſay, as was ſaid to* Solomon, *We are glad, O King, that we give Account to you, becauſe you diſcern what is ſpoken.* But he obſerved, THEY DID MORE NOW TO KING JAMES, THAN EVER WAS DONE, SINCE THE CONQUEST, IN GIVING ACCOUNT OF THEIR JUDGMENTS.

Sir Francis Bacon's Flights.

This

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This was ſpoken by Way of Preamble. How to report his Majeſty's Speeches: He knew the Eloquence of a King was inimitable.

His Majeſty ſaid, The Cauſe of this Meeting was, to draw to an End the Difference in Sir *Francis Goodwin's* Caſe: —— If they required his Abſence, he was ready; becauſe he feared he might be thought intereſted, and ſo breed an Inequality on their Part: —— He ſaid, he would not hold his Prerogative, or Honour, or receive any Thing of his Subjects: —That he would confirm and ratify all juſt Privileges: —— One Point was, whether they were a Court of Record, and had Power to judge of Returns. As their Court had Power, ſo had the Chancery: And the Court that firſt had paſſed their Judgment, ſhould not be controlled. The Chancery was a Confidentiary Court to the Uſe of the Parliament, during the Time: — Whatever the Sheriff inſerted beyond the Authority of his Mandate, was a Nugation. The Parliament of *England* were not bound by a Sheriff's Return: That their Privileges were not in Queſtion. It was private Jealouſies, without any Kernel or Subſtance. *He granted, It was a Court of Record, and a Judge of Returns:* And, in Concluſion, moved, that neither Sir *John Forteſcue*, or Sir *Francis Goodwin*, might have Place: With which the Committee agreed.

The King admits them a Court of Record, and Judges of Returns.

Moved for a new Election.

Upon this Report, it was ſaid, that the Committee had Authority, only to fortify what was agreed on by the Houſe; they had no Authority to conſent.

Which the Commons agree to.

But the general Voice of the Houſe being, They had done their Duty, it was reſolved, that Sir *John Forteſcue*, and Sir *Francis Goodwin*, ſhould both be ſecluded, and a Writ ſhould iſſue for a new Choice; and a Warrant, from the Speaker, was directed accordingly, for a new Writ.

But the Conſent of Sir *Francis Goodwin*, for a new Election, was firſt ſignified to the Speaker, in Writing, before they would come to this Reſolution.

And return his Majeſty Thanks.

A Committee was, afterwards, appointed, to return his Majeſty Thanks, for his gracious Preſence, and Direction, in Sir *Francis Goodwin's* Caſe. To whom, his Majeſty anſwered, That this Queſtion was unhappily caſt upon him: He carried as great a Reſpect to their Privileges as ever Prince did; their Privileges were his Strength: He thought the Ground of their Proceeding was, their not underſtanding, he had intermeddled before they decided: That, he thought alſo, they had no wilful Purpoſe to derogate any Thing from him; for their Anſwer was grave, dutiful, and obedient: But, as the Devil had unhappily caſt that Queſtion between them, ſo, he ſaw, God had turned it to two great Purpoſes; 1. that he knew, and had approved, their Loyalty; and 2. that he had ſo good an Occaſion, to give a Teſtimony o his Bounty and Grace; and, as they came to give him Thanks, ſo he redoubled his Thanks to them: That he had rather be a King of his Subjects, than a King of many Kingdoms.

The King gives them double Thanks.

The Warrant for a new Election.

The Warrant for the new Election, was of the following Tenor, (*viz.*) *Whereas the Right Honourable Sir* John Forteſcue *Knight, Chancellor of his Majeſty's Dutchy of* Lancaſter, *and Sir* Francis Goodwin *Knight, have been ſeverally elected, and returned, Knights of the Shire, for the County of* Bucks, *to ſerve in this preſent Parliament: Upon deliberate Conſultation, and for ſome ſpecial Cauſes moving the Commons Houſe of Parliament, It is this Day ordered, and required by the ſaid Houſe, That a Writ be forthwith awarded, for a new Election of another Knight of the ſaid Shire; and this ſhall be your Warrant.* 1604. 1 Jac. I.

Directed, To my very loving Friend, Sir *George Coppin* Knight, Clerk of the Crown, in his Majeſty's High Court of Chancery.

Remarks on Goodwin's Caſe.

King *James* appears to have been miſinformed, both as to the Circumſtances of the Caſe, and the Privilege of the Commons. He took it for granted, that Sir *Francis Goodwin* was legally outlawed; and, that the Chancery, in that Caſe, might iſſue a new Writ, for another Election: But, upon the Commons ſhewing him, that the Outlawry was irregular, and that the Houſe were Judges of the Returns of their own Members, he ſeems to have given up both thoſe Points: And, as the Commons would admit of no Conference with the Houſe of Peers, on this Head, after they had given their Judgment, we ſee them repreſenting to his Majeſty, that this was the firſt Time that they ever condeſcended to give a Reaſon of their Judgment to the Crown.

As to their Precedents of Outlaws actually ſitting in the Houſe; I believe, it will be admitted, that no Precedents, how numerous ſoever, could juſtify ſuch a Practice, either in Law or Reaſon: That a Man, who has loſt all the Benefits of the Law, and of an *Engliſh* Subject, ſhould commence a Lawgiver, and have the Diſpoſal of other Mens Lives, and Fortunes: This ſeems very abſurd; and the Commons were ſo ſenſible of it, that they offered to bring in a Bill, for excluding all Outlaws for the future: But I do not perceive, this would have mended the Matter much, if they would ſuffer No-body to judge who was an Outlaw, but themſelves. By the ſame Rule, that the Sheriff cannot avoid returning a Candidate regularly outlawed, one would think, he could not refuſe returning one, convicted of Treaſon, and Rebellion; or, if he pretended to apprehend ſuch a one, after his Election, he might be called to an Account, perhaps, for invading the Privileges of the Houſe; which, alone, can determine, according to this Opinion, the Qualifications of the Perſons elected.

But, in ſome Caſes, it is evident, that the Sheriff is made Judge of the Qualifications of the Electors, as well as the Elected, even by Act of Parliament; particularly, by the 7th and 8th of *Will.* III. c. 7. it is enacted, That if any Return-Officer, ſhall return a Member, to ſerve in Parliament, for any County or Place, contrary to the laſt Determination of the Houſe of Commons of the Right of Election in ſuch County or Place, ſuch Return, ſhall be adjudged a Falſe Return. Here the Sheriff is made Judge of what was the laſt Determination of the Commons, and, conſequently, of the Return; and, it would be very hard, if he

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he was not; becauſe he forfeits an hundred Pounds, for making a Falſe Return, by a preceding Act: Indeed, the Commons, by their unlimited Privileges, may exclude the Perſon the Sheriff has returned; but he ſhall ſit, and vote in the Houſe, till ſuch Excluſion.

By 6 *Annæ*, c. 7. alſo, the Candidate for a County, is obliged to make Oath, at the Election, that he is poſſeſſed of a clear Eſtate of 600 *l. per Annum*; which, if he refuſes to do, there is little doubt to be made, but the Sheriff may lawfully refuſe the returning of him; and, conſequently, he is, in this Caſe, Judge of his Qualifications (whatever the Houſe may determine afterwards;) and, poſſibly, would be liable to the Penalty of 100 *l.* for making a Falſe Return, if he ſhould return a Candidate that refuſed to take the ſaid Oath; and, if he may refuſe to return a Perſon, evidently diſqualified to ſit in the Houſe, in one Inſtance, why not in another? If he may judge, whether a Perſon is convicted of Treaſon, and Rebellion, why may he not take Cognizance that a Perſon is outlawed? they are both Matters of Record. Indeed, in this Caſe, the Outlawry was not recorded, and, therefore, could be no Bar to the Election; but where it is, and the Sheriff duly appriſed of it, ſurely, the Houſe could never cenſure him, for refuſing to return ſuch an Outlaw; or ſuffer ſuch a one, to ſit, and vote, in the Houſe. All the Queſtion is, If the Commons ſhould inſiſt on Outlaws being Members of their Houſe, whether the Crown, and the Houſe of Peers, may not juſtly refuſe the paſſing any Bills, till they ſhould be excluded? It ſeems to have been the Opinion, both of the King and Lords, at that Time, that they had a Right to demand a Reaſon, why the Commons admitted an Outlaw into their Body? And had the Party been regularly outlawed, poſſibly few People, at this Day, will think them much in the Wrong; for, by the ſame Rule one Outlaw is admitted into the Houſe, a Majority of Outlaws may be admitted; and it would be very hard upon the Kingdom in general, as well as upon the Crown, and the Houſe of Peers, if the Lives and Fortunes of the Subjects, ſhould lie at the Mercy of outlawed Men: To ſay, we may depend upon it, the Commons would never admit ſuch Members, is no Anſwer; for, do we not ſee this very Houſe of Commons, inſiſt upon their Right, of admitting Outlaws, and producing numerous Precedents, of Outlaws ſitting in their Houſe? and, particularly, of one *Killegrew*, who had two and fifty Outlawries returned againſt him, and yet was admitted to to ſerve in the Houſe; and, of Sir *Wm. Harecourt*, that was outlawed eighteen Terms, and yet admitted to ſerve.

We cannot wonder, after ſuch a Juſtification, that both the Crown, and the Houſe of Peers, were a little alarmed, and deſired a Conference on this Subject: Some, indeed, have charged the King, with exerting an arbitrary, and abſolute Power, on this Occaſion; becauſe he ſaid, *He deſired, and commanded, as an abſolute King, there might be a Conference, between the Houſe and the Judges, on this Subject, before the Privy-Council.* And, it muſt be acknowledged, that the Words, *An Abſolute King*, have a very ill Sound in *England*; but, if it be conſidered, that they were ſpoken *ex tempore*, and attended with ſuch qualifying Sentences, before and after, that the King could never mean, he thought himſelf veſted with a deſpotic and incontroulable Power, to which, all their Lives, and Privileges muſt ſubmit, as ſome People would interpret them, there will appear nothing very ſhocking in them: For, in the firſt Place, he proteſts, he had as great a Deſire to maintain their Privileges, as ever Prince had; and only required, there might be a Conference, for his Satisfaction; declaring, that his Council ſhould not be preſent, as Umpires, to determine, but to report the Matter, indifferently, on both Sides. This is not the Language of one, who looks upon himſelf to be poſſeſſed of abſolute Power; and, all that can in reality be made of it, is no more than if he had ſaid, *I am informed, that you have admitted an Outlaw into your Body; and, as I am your King, I require a Conference, between you and the Judges, that I may be informed, whether the Party be really outlawed, or not; and, if he be, whether, according to the Laws of* England, *ſuch a one can ſit in the Legiſlature.* This, ſurely, he might reaſonably require, *as King of* England: There was no Manner of Neceſſity of his uſing the Word *Abſolute*; nay, the Word was very improper, when he declared, he would be governed by the Laws, and the Privileges of the Houſe, in the Matter. The moſt that can be ſaid, is, that it was an improper, and unguarded, Expreſſion; it could never be meant in a bad Senſe, becauſe the whole Tenor of his Diſcourſe looked another Way: It could not be an unreaſonable Thing, in a King of *Englnnd*, eſpecially as he came from a foreign Kingdom, and could not be ſuppoſed perfectly acquainted with our Laws, to deſire to hear the Legality of the Matter debated between the Commons and the Judges: This, ſurely, he might have done, without reſorting to an *abſolute*, and unlimited Power.

1604. 1 Jac. 1.

And laſtly, It may be obſerved, that his Majeſty was ſo far from exerting an abſolute Power upon the Occaſion, that he compromiſed the Matter with the Commons, and both Sides agreed to a new Election: His Actions, therefore, were very far from being arbitrary, however his Words might be interpreted. And it is obſervable, how very cautious the Commons were, that they might not appear to be biaſſed, or influenced, by the King, or any other, in their Determination; for, in their Warrant for a new Election, they do not ſo much as mention, that his Majeſty, or the Houſe of Peers, had interpoſed: They only ſay, That *for ſome ſpecial Cauſes moving the Commons Houſe, they award a Writ for a new Election.* They make it entirely their own Act; and the King was ſo far from exerciſing an *abſolute* Power, to *compel* them to this, that he, nor any Body, but their own Houſe, appear in the Warrant to have any Hand in it.

The

1605. 3 Jac. 1.
The Trial of the Conſpirators in the Powder-Plot.

The Arraignment of ROBERT WINTER, JOHN GRANT, THOMAS BATES, THOMAS WINTER, AMBROSE ROOKWOOD, ROBERT KEYES, GUY FAWKES, and Sir EVERARD DIGBY, for *High Treaſon*, before the Earl of *Nottingham*, the Lord Chief Juſtice *Popham*, and other Commiſſioners of *Oyer* and *Terminer*, the 27th of *January*, 1605. 3 *Jac.* I.

1605. 3 Jac. 1.

The Charge.

THE Indictment charges the Priſoners, with compaſſing, and imagining, the Death of the King, Queen, *&c.* and the Subverſion of the eſtabliſhed Religion and Government; and, particularly, with conſulting and agreeing, to blow up, and tear in Pieces, the King and Queen, Prince *Henry*, the Lords Spiritual and Temporal, and the Judges, and Commons aſſembled in Parliament: And that, they did not only conſpire, and conclude, to deſtroy the King's Iſſue Male, but to ſurprize his Daughters, the two Princeſſes, *Elizabeth* and *Mary*, and to proclaim the ſaid *Elizabeth* Queen: And that they took their Oaths, and received the Sacrament, to conceal the ſaid Treaſons, and never deſiſt, till they had accompliſhed the ſame: That they, afterwards, dug a Mine in the Foundation of the Walls of the Parliament-Houſe, being three Yards thick; and, being diſcouraged by the Difficulty of that Work, they hired a Cellar, under the Parliament Houſe, in which they placed twenty Barrels of Gun-Powder; and, fearing the ſaid Powder was become damp, bought in ten Barrels and four Hogſheads, more, of Gun-Powder; covering the Whole with Iron Bars, Stones, Billets, and Faggots: And that, the ſaid *Guy Fawkes* had procured Touchwood and Match, and was prepared to ſet Fire to the ſame, at the Time prefixed: That the ſaid Traitors had alſo provided Horſes, Armour, Ammunition, and other Implements of War; and publiſhed divers falſe Reports, as if the Papiſts were to have been maſſacred; whereby divers Papiſts were incited to appear in Arms, and were in open and actual Rebellion, againſt the King, in ſeveral Parts of *England*.

Their Confeſſion.

To which Indictment, the Priſoners, ſeverally, pleaded, *Not guilty:* But their Examinations, wherein they had confeſſed theſe Treaſons, being ſhewn them, they acknowledged the ſame to be true in Court; and, thereupon, without any further Trial, their Confeſſions were recorded.

Sir Everard Digby pleads Guilty.

Sir *Everard Digby* alſo was arraigned for the ſame Treaſons, and pleaded GUILTY: Whereupon Judgment of High-Treaſon was pronounced on Sir *Everard Digby*, *Robert Winter*, *John Grant*, *Thomas Bates*, *Thomas Winter*, *Ambroſe Rookwood*, *Robert Keys*, and *Guy Fawkes*; and the four firſt were executed at the Weſt-End of St. *Paul*'s; and the reſt in the *Old Palace-Yard*, *Weſtminſter*.

Judgment pronounced. They are executed

The Trial of HENRY GARNET.

Garnet, *Superior of the Jeſuits tried. Evidence againſt him.*

HENRY GARNET, Superior of the Jeſuits, was arraigned, for the ſame Treaſons, the 28th of *March*, 1606. 3 *Jac.* 1.

The firſt Evidence, produced againſt him, was his own Confeſſion: Then two Witneſſes were examined againſt him, *Viva Voce*, (viz.) *Lockerſon*, and *Fauſet*; who depoſed, they heard *Garnet* ſay, *They will charge me with my Prayer, for the good Succeſs of the great Action in the Beginning of the Parliament; but I will tell them, that I meant it in Reſpect of ſome ſharper Laws, which, I feared, they would then make againſt Catholicks.*

Confeſſes the Treaſon.

Garnet ſaid, he was, indeed, acquainted with a Negotiation, in *Spain*, for Money to be beſtowed on poor Catholicks; but ever diſliked the Moving for an Army to be ſent hither: That he was alſo acquainted with the late Plot; but it was by Way of Confeſſion, which he was obliged not to diſcover: And, that he had actually written to *Rome*, to procure a Counter-mand of all Conſpiracies; and, he could never ſleep quietly, after he was acquainted with it.

To which, it was replied, That Meſſage to *Rome* was ſent ſo late, that the Blow muſt have been given, before the Meſſenger could have returned: And that, in his Confeſſion, he had ſaid, he the offered Sacrifice to God, for Stay of of that Plot, *Unleſs it were for the Good of the Catholick Cauſe*; and in no other Manner was the State obliged to him for his Maſſes and Oblations. And the Attorney-General obſerved, That the Priſoner did not come to the Knowledge of the Powder-Plot, by Confeſſion; but that he was conſulted upon it: And, though he had concealed the Perſons, he ought to have diſcovered the Miſchief intended, for the Preſervation of the State: That he was, indeed, the Author, and Procurer of theſe Treaſons, as appeared by his own Confeſſions, and by his reſolving *Cateſby*, concerning the Lawfulneſs and

1605. 3 Jac. I.

Merit, of them; as alſo, by his praying for their Succeſs.

He is convicted.

The Jury, being withdrawn a quarter of an Hour, returned with a Verdict that the Priſoner was GUILTY; and Sentence of Death paſſed on him as a Traitor.

And executed.

Garnet was executed, at the Weſt-End of St. *Paul*'s, the 3d of *May*: When he acknowleged his Offence; begged Pardon; and exhorted the Papiſts, never to make the like Attempt; for God, he ſaid, would never proſper ſuch Treaſons againſt the King and State.

Some killed.

There were no more put to Death, in a judicial Way, for this Plot: *Cateſby*, *Percy*, and ſome others, indeed, were killed, in defending themſelves againſt the Troops that were ſent to apprehend them in the Country, whither they had fled. And the Lords, *Mordaunt* and *Sturton*, being ſuſpected of their having ſome Knowledge of the Plot, by not appearing at this Parliament, were fined; *Mordaunt* ten thouſand Pounds, and the other ſix thouſand, by the Star-Chamber. And the Duke of *Northumberland*, Captain of the Band of Penſioners, was fined forty thouſand Pounds, and condemned to loſe all his Places, and to be impriſoned during the King's Pleaſure, for admitting his Couſin *Percy*, one of the Conſpirators, a Gentleman of that Band, without tendering him the Oath of Supremacy, though he knew him to be a Popiſh Recuſant: And an Act paſſed in this Parliament, for ſolemnizing the 5th of *November* (the Day appointed for the blowing up the Parliament) annually, as a Thankſgiving. 1603. 3 Jac. I.

Lords fined.

Remarks on the Powder-Plot.

There is very little Room for Remarks on theſe Proceedings; ſince all the Priſoners confeſſed themſelves guilty of High-Treaſon, and ſcarce made any Defence. All that ſeems ſtrange to me, is, that a great many People, at this Day pretend to doubt, whether there was any ſuch Plot, when the Conſpirators all died confeſſing it.

As to the fining the Lords in the Star-Chamber, on a bare Suſpicion of their Knowledge of the Plot, without any Manner of Evidence againſt them, This ſeems to be a Stretch of Power; and, it may be ſaid, of this Judgment, as in the late Biſhop of *Rocheſter*'s Caſe, it was either too mild, or too ſevere: If there was ſufficient Proof of High Treaſon againſt them, they ought to have ſuffered as Traitors; and, if there was no legal Proof, they ought to have been acquitted; for the Crime was Treaſon, or nothing.

1608. 6 Jac. I.

The Trial of GEORGE SPROT, Notary of *Aymouth* in *Scotland*, for *High Treaſon*, 12 *Aug.* 1608. 6 *Jac.* I.

1608. 6 Jac. I.

Sprot's Trial.

The Charge.

THE Indictment charged, That whereas *John*, late Earl of *Gowrie*, had in *July*, 1600. treaſonably conſpired to murder his Majeſty, and imparted his deviliſh Purpoſe to *Robart Logane*, of *Reſtalrig*, who undertook to be an Accomplice in the ſaid Treaſon; the ſame coming to the Knowledge of the Panel, (or Priſoner) he treaſonably concealed the ſame.

The Priſoner confeſſes it.

Why this is called a Trial, I cannot conceive; It had been more properly ſtiled an Arraignment, and Confeſſion: For the Priſoner confeſſing the Indictment, both at the Examination, and in open Court, was thereupon condemned to be hanged and executed; in Purſuance of his Sentence: Which may be looked upon, as a Confirmation of the Truth of *Gowrie*'s Conſpiracy; and might be the principal Inducement for binding it up with the ſecond Collection of Trials.

Is condemned, and executed.

1609. 7 Jac. I.

The Trial of ROBERT LOGAN.

1609. 7 Jac. I.

Logan's pretended Trial, after he was dead.

THE Trial of *Robert Logan* of *Reſtalrig*, for High Treaſon, in conſpiring with *John* Earl *Gowrie*, to murder King *James* I. *June*, 1609. 1 *Jac.* 1.

This, which is called the Trial of *Robert Logan*, is nothing more than a Summons, for him, or his Heirs, to appear in Parliament after he was dead; and, on their not appearing, Judgment given for the forfeiting their Eſtates and Honours, as in Caſes of High Treaſon.

The Evidence.

The Evidence againſt *Logan* conſiſted of five Letters, written by him to Earl *Gowrie*, containing ſome dark Expreſſions concerning a Plot; and his Hand was proved by the Depoſitions of ſeveral Witneſſes: But the principal Evidence of *Logan*'s being concerned in Earl *Gowrie*'s Conſpiracy, was the Confeſſion of the aforeſaid *George Sprot*, both at his Arraignment and Execution.

Remarks on theſe Pieces.

All the Remarks I ſhall make on theſe Proceedings, are, that they ſeem to be inſerted, to prove the Reality of the Conſpiracy of *Gowrie*'s, which was ſufficiently evident before: That there is nothing in them that can denominate them Trials; and that there has been a great Expence of Paper and Print, to very little Purpoſe.

The

1609. 7 Jac. I.

The Trial of JOHN Lord *Balmerino*, for *High-Treaſon*, in *Scotland*, the 10th of *March*, 1609. 7 *Jac.* I.

1609. 7 Jac. I.

Balmerino's *Trial. An Arraignment only.*

THIS alſo, which is denominated a Trial, by the Editor, is no more than an Arraignment and Confeſſion.

The Charge. The Indictment (of which there are but very ſhort Minutes) ſeems to have charged the Priſoner with High-Treaſon, in correſponding with the Pope, in the King's Name, and againſt his particular Directions; and charges him alſo, with Negotiations with foreign States, Enemies to the Goſpel, in order to ſubvert the eſtabliſhed Religion.

Confeſſed. The Lord *Balmerino*, being arraigned, confeſſed his Offence in writing a Letter clandeſtinely to the Pope, and acknowledged it would admit of no Excuſe; adding, that his Majeſty knew nothing of the Letter: That the King had declared againſt having any Correſpondence with the Pope; but that he, the Priſoner, thinking it might be for his Majeſty's Intereſt, to have a good Underſtanding with the Court of *Rome*, had ſurreptitiouſly procured his Majeſty's Hand, to a Letter to his Holineſs, among other Papers, he brought him to ſign: But ſaid, he (the Priſoner) had no View to the Alteration of Religion, or procuring a Toleration for Catholicks, or to his own private Advantage.

The King's Letter to the Lord Advocate. His Majeſty's Letter to the Lord Advocate alſo was read; wherein he declared, he refuſed to liſten to the Priſoner's Motion, of writing to the Pope.

The Priſoner convicted, but pardoned. Whereupon the Priſoner was convicted; but Execution ſuſpended, till his Majeſty's Pleaſure was known.

And his Eſtate reſtored. He was detained, for ſome Time, a cloſe Priſoner: Afterwards he was a Priſoner at large; and at length the King reſtored him, both to his Honour, and Eſtate.

Remarks on this Proceeding. Biſhop *Burnet*, who could never afford King *James* a good Word, tells us, That his Majeſty, obſerving the Popiſh Intereſt was conſiderable in *England*, and might poſſibly obſtruct his aſcending that Throne, endeavoured to gain the *Engliſh* Papiſts, by aſſuring them, he would connive at the Exerciſe of their Religion; and that he actually wrote that Letter to the Pope, with which the Lord *Balmerino*, his Secretary, was charged: But that, it being afterwards publiſhed by Cardinal *Bellarmine*, upon his Majeſty's putting the Laws in Execution againſt the *Engliſh* Papiſts, the King, to alloy the Jealouſies the Kirk of *Scotland* had entertained, of his favouting Popery, cauſed the Lord *Balmerino* to be tried and condemned for it. Thus the Biſhop inſinuates, that it was all a State Trick: That this Lord was aſſured of his Pardon, before he made his Confeſſion; and conſented to abuſe the World, by undergoing a mock Trial.

In anſwer to which, it may be obſerved, There is no other Proof, of this Contrivance between the King and the Lord *Balmerino*, than the Suggeſtions of Biſhop *Burnet*, and his Friends of the Kirk of *Scotland*, the King's moſt inveterate Enemies: To balance which, we have not only the Lord *Balmerino*'s Confeſſion, both before and after his Arraignment; wherein he declares, the King had no Knowledge of the Letter; and the King's own Letter, expreſly denying that he was acquainted with the Contents of it: But it appears, that the Lord *Balmerino* was ſo far from having any real Affection for King *James*, after his Arraignment, that, though his Majeſty granted him his Pardon, and reſtored him to his Honour and Eſtate, neither he, nor his Family, could ever forgive the Proſecution. His Son and Heir was remarkable for his Malice and Antipathy to his Succeſſor. We actually find him the Subject of another Trial, for High-Treaſon, in libelling his Adminiſtration.

1612. 10 Jac. I.

The Arraignment of ROBERT CREIGHTON Eſq; (Baron of *Sanquire*, in *Scotland*) for *Murder*, at the *King's-Bench* Bar, the 27th of *June*, 1612. 10 *Jac.* I.

1612. 10 Jac. I.

Lord Sanquire's *Arraignment.*

The Charge. THE Indictment charged him, as Acceſſary, before the Fact, to the Murder of *John Turner*, Fencing-Maſter.

The Caſe. The Caſe was this: *Robert Creighton*, Baron of *Sanquire*, or *Sanchar*, in *Scotland*, playing at Foils with *John Turner* (about five Years before the Murder) *Turner* thruſt out one of the Baron's Eyes, with his Foil: Whereupon the Baron, reſolving to be revenged, tampered with ſeveral Aſſaſſins, to murder *Turner*: But he had not an Opportunity of effecting it, till the preſent Year, 1612. when he prevailed on *Gilbert Gray*, one of his Servants, and *Robert Carliel*, a Dependant, both *Scotſmen*, to undertake it: But *Gray* afterwards declining the Attempt, *Robert Carliel* aſſociated himſelf with one *James Irweng*, another *Scotſman*; and theſe two, on the 11th of *May*, 1612. about ſeven in the Evening, went to a publick Houſe in the *Friars*, which *Turner* uſed to frequent, as he came from his School; and finding *Turner* there, they ſaluted him, and fell into Diſcourſe with him; when *Carliel*, on a ſudden, fired a Piſtol at *Turner*, and ſhot him in the Breaſt; and he immediately dropped down dead, ſaying only, *Lord have Mercy upon me, I am killed:* After which, *Carliel* fled to *Scotland*. The Lord *Sanquire* abſconded; *Irweng* and *Gray* were taken, endeavouring to make their Eſcapes; and *Gray* was afterwards made an Evidence againſt the reſt. At length, the Lord *Sanquire* ſurrendering himſelf, and *Carliel*, the principal Aſſaſſin,

1612. 10 Jac. I.

The Principals convicted and executed.

Lord Sanquire *convicted and executed as Acceſſary.*

Aſſaſſin, being brought back from *Scotland*, *Carliel* and *Irweng* were tried at the *Old-Bailey*, *London*; and being convicted of the Murder, were executed in *Fleet-ſtreet*, near the *Friars*; and the Lord *Sanquire* being afterwards arraigned at the *King's-Bench* Bar, as Acceſſary before the Fact, confeſſed the Indictment; and was thereupon condemned, and executed in *Palace-Yard*, when he profeſſed himſelf a *Roman* Catholick.

Some Points of Law reſolved, before his Arraignment.

Before the Arraignment of Lord *Sanquire*, ſeveral Points of Law were reſolved by the Judges, particularly, That the Acceſſary could not be tried till the Principals were attainted; That a Peer of *Scotland* could have no Advantage of his Peerage here, but muſt be tried as an *Engliſh* Commoner. That the Indictment of the Acceſſary ought to be in the County of *Middleſex*, where he incited the Murderers to commit the Fact; and that the Indictment ought to recite, That the Principals committed the Murder in *London*, as the Truth was. That the *King's-Bench* was the proper Court to try the Acceſſary in, as it ſat in the County of *Middleſex*, and was ſuperior to all other Courts of *Oyer* and *Terminer*; which could not ſit in Term-Time, while that Court ſat: And that there need not be fifteen Days for the Return of the *Venire facias*, becauſe the Offence was committed in *Middleſex*, where the Court ſat; but, if the Indictment had been found in another County, and removed thither, there ought to have been fifteen Days between the *Teſte* and Return. That if the Principal was erroneouſly attainted, either for Error in the Proceſs, or becauſe the Principal, being out of the Realm, was outlawed, *&c.* yet the Acceſſary might be attainted; but then, on the Reverſal of the Attainder of the Principal for Error, the Attainder of the Acceſſary was reverſed of Courſe.

1612. 10 Jac. I.

1613. 11 Jac. I.

The Divorce of the Earl of Eſſex *from his Counteſs.*

Proceedings in the *Divorce* between the Lady FRANCES HOWARD and ROBERT Earl of *Eſſex*, before *George* Lord Archbiſhop of *Canterbury*, *John* Lord Biſhop of *London*, and other Commiſſioners, 1613. 11 *Jac.* I.

1613. 11 Jac. I.

The Allegations of the Lady, to obtain a Divorce.

THE Lady *Frances*, Wife of *Robert* Earl of *Eſſex*, under Pretence of her Huſband's Impotency, exhibited Allegations againſt him, of the following Tenour, *viz.* That ſhe, being about thirteen Years of Age, was married to *Robert* Earl of *Eſſex*, in *January*, 1603. That the ſaid *Robert* was then about fourteen Years of Age, and now about twenty-three; and had, during all that Time, been in good Health; no way hindered, by Ague or Sickneſs but he might have performed the Duties of the Marriage-Bed.

That, ſince the ſaid pretended Marriage, at leaſt by the Space of three Years, ſince the ſaid *Robert* attained the Age of eighteen; as Time and Place ſerved, after the Faſhion of other married Folks, ſhe, the ſaid *Frances Howard*, in Hopes of lawful Iſſue, and deſirous to be made a Mother, lived with the ſaid *Robert* at Bed and Board, and they both lay naked in the ſame Bed, as married Folks uſe; and from Time to Time, again and again, ſhe yielded herſelf to his Power, and, as much as lay in her, offered herſelf and her Body to be known; and earneſtly deſired his Embraces: That the ſaid Earl very often, again and again, tried to lie with her, as his lawful Wife; which ſhe refuſed not, but uſed the beſt Means ſhe could: Notwithſtanding which, the ſaid Earl never could know her, or enjoy her, as the Marriage-Bed alloweth; though, both before and after the ſaid Time, he hath known other Women, and ſuggeſts that he was hindered by a perpetual and natural Impediment from knowing her, the Lady *Frances*, and could never enjoy her.

That the ſaid Lady *Frances* was, and ſtill is, fit for conjugal Embraces, and able to enjoy any Man; and is ſenſible of no Impediment in herſelf, and yet remains a Virgin; and was, at the Time of the pretended Marriage, unacquainted with the Earl's want of Ability, and Impediment, already mentioned.

That the ſaid Earl had very often declared, that, although he had done his beſt Endeavour, he never could once enjoy the ſaid Lady *Frances*. And, laſtly, That ſhe had never publiſhed his Infirmity, if ſhe had not been forced to it by falſe Rumours of her Diſobedience to the Earl: And deſires, that, ſince this pretended Marriage was but of Fact, and not of Right, it might be adjudged as none; and ſhe might be releaſed from all Knots and Bonds of the ſame, by the Sentence of the Court.

The Earl's Anſwer to the Allegations.

In anſwer to this, the Earl acknowledged, That he was about the Age in the Allegations mentioned, nor had he had above two or three Months Sickneſs ſince his Marriage. That one Year, ſince he was Eighteen, he attempted divers Times to enjoy her: That the two following Years, when he was willing, ſhe ſhewed herſelf at ſometimes willing, but at others refuſed: That he lay in Bed moſt commonly with her, and felt no Motions or Provocations; and that he could never penetrate, or enjoy her; though he found no Defect in himſelf, and both before and after the Marriage, was capable of enjoying any other Woman. As to perpetual and natural Impediments, he knew not what they meant; but he had lain, the two laſt Years, by the Lady *Frances*, and had no Motion to know her, and believed he never ſhould; for he thought the Lady *Frances* was not fit for conjugal Embraces; and admits it to be true, that he had ſaid, *He often endeavoured to enjoy her, but that he had not, nor could not.*

A Jury of Matrons, inſpect the Lady.

The Archbiſhop, and the reſt of the reverend Judges, obſerving from the Allegations, that both the Earl and the Counteſs were very deſirous to be divorced, ordered a Jury of Matrons to be impanelled, to inſpect the Counteſs, and

ſee

1613. 11 Jac. I. *Declares herſelf a Virgin, but fit for conjugal Embraces.*

ſee if ſhe was ſtill a Virgin, as was pretended on both Sides; and whether ſhe was capable of performing the Duties of the Marriage-Bed. Whereupon ſhe was ſearched, and the Jury found that the Lady was fit for matrimonial Embraces, and capable of bearing Children; but that ſhe was ſtill a Virgin. And three Ladies, that attended the Jury, alſo depoſed, that they were preſent when the Jury made the Inſpection; and, that they gave good Reaſons for the Judgment they made.

The Archbiſhop's Reaſon's againſt the Divorce.

The King argues for it.

However, the Archbiſhop was ſtill diſſatisfied; and obſerved, that there were no good Precedents for divorcing Man and Wife, for an Impotency, or Impediment, towards a particular Woman, when the Man was capable of enjoying others: But the King, who was zealous for the Divorce, urged, that there did not want Precedents of it: To which his Grace replied, that there was none, till the Pope aſſumed a Liberty of departing from the Primitive Rules; and inſiſted, that ſome Reaſon ought to be given, for this partial Impotency, or Impediment, that was pretended: With which, when the King was preſſed, and not able to aſſign any Cauſe for it, he ſuggeſted, that the Man might be bewitched: However, ſuch was the Royal Influence, that a Majority of the Commiſſioners were for a Divorce; and the Parties were accordingly ſeparated; the Bond of Matrimony diſſolved; and it was declared lawful for either of them to marry elſewhere.

Suggeſts, the Earl was bewitched.

Sentence of Divorce.

Commiſſioners for the Divorce.

The Biſhops, who were for the Divorce, were *Winchester*, *Ely*, *Rocheſter*, *Lichfield* and *Coventry*; and the Doctors, Sir *Julius Cæſar*, Sir *Thomas Parry*, and Sir *Daniel Donne*.

Commiſſioners againſt it.

The Commiſſioners, who diſſented, were the Archbiſhop of *Canterbury*, and the Biſhop of *London*; and the Doctors, Sir *John Bennet*, *Francis James*, and *Thomas Edwards*.

1613. 11 Jac. I. *Remarks on the Divorce of the Earl of Eſſex from his Counteſs.*

Both the King and the Delegates, it is ſaid, were egregiouſly impoſed upon in this Proceeding, by the Arts of the Lady *Frances* and her Gallant, the Lord *Rocheſter*: They had conſulted one *Foreman*, a pretended Phyſician, and a Dealer in the *Black-Art*, it is ſaid, who furniſhed them with Drugs, to render the Earl of *Eſſex* impotent, which was the Reaſon of his lying ſo quietly by the Counteſs the two laſt Years: They procured Sir *Thomas Overbury* to be murdered, becauſe he ſhould not defeat the Intrigue between them, or divulge their Secrets. And, when the Counteſs was to be inſpected, under Pretence of an extraordinary Modeſty, ſhe obtained Leave to be covered with a Veil, by which Means ſhe introduced a young Virgin in her Room, and deceived the Jury of Matrons, and the Court: But their Practices will be more amply diſcovered, in the ſucceeding Trials, for the Murder of Sir *Thomas Overbury*.

The King's being able to give no other Reaſon, for this partial Impotency towards a particular Woman, than the Earl's being bewitched, occaſioned ſome merry Reflections, when the Artifices, to prevent the Conſummation of the Lady *Eſſex*'s Marriage, were diſcovered: And ſuch pretended Impediments have been laughed at ever ſince: But, however foul theſe Practices might appear afterwards, Things had not, certainly, ſo ill an Aſpect at the Time of the Divorce; for we find, immediately after, *Rocheſter* and the Lady ſolemnized their Marriage; he was made Earl of *Somerſet*; and, not only the Court, but the City of *London*, congratulated them on the Occaſion; and they were ſplendidly entertained, by the Lord Mayor and Aldermen, in the City.

1615. 13 Jac. I. Weſton's *Trial, for* Overbury's *Murder.*

The Trial of RICHARD WESTON, for the *Murder* of Sir *Thomas Overbury*, before the Lord Mayor, the Lord Chief Juſtice, and other Commiſſioners of *Oyer* and *Terminer*, the 19th of *Octob.* 1615. 13 *Jac.* I.

1615. 13 Jac. I.

The Charge.

THE Indictment charges, That the ſaid *Richard Weſton*, contriving, not only to bring upon the Body of Sir *Thomas Overbury* great Sickneſs and Diſeaſes, but to deprive him of his Life, did, in the *Tower* of *London*, procure a certain Poiſon, mingle it in Broth, and give it the ſaid Sir *Thomas* to eat: That he mingled Poiſon alſo, in Tarts and Jellies, and gave him; and, that the Priſoner, with an Apothecary, his Confederate, then unknown, mixed Poiſon alſo in a Clyſter, and adminiſtered it to the ſaid Sir *Thomas*; whereupon he fell into Diſeaſes and Diſtempers; and upon the 15th Day of *September*, 1613. died, being ſo poiſoned and murdered by the ſaid *Richard Weſton*.

The Priſoner ſtands mute.

The Priſoner, being practiſed upon by a certain *Great Man*, ſtood mute, and refuſed to plead the firſt Day; but being threatened with the Puniſhment, called *Peine fort & dure*, that is, to be preſſed to Death, and brought to his Trial again, the 23d of *November*, he thought fit to plead *Not guilty*.

Pleads Not guilty.

Whereupon the Lord Chief Juſtice informed the Jury, that, though the Poiſons mentioned in the Indictment, were Roſalgar, White Arſenick, and Mercury Sublimate, yet, they were not to expect preciſe Proof of the ſeveral Kinds of Poiſon: So, where a Man was indicted for murdering another with a Dagger, it was not material what the Weapon was, ſo as the Jury found the Murder. Then the Proofs were produced: And firſt, the Examination of *Lawrence Davis*, Servant to Sir *Thomas Overbury*, was read, who depoſed, That his Maſter was a very healthful Man, and had no Sores, or Bliſters, on his Body, before his Impriſonment: That Sir *Thomas* would have undertaken his

Not neceſſary to find the Circumſtance laid in the Indictment.

The Evidence.

1615. 13 Jac. I.

Embaſſy, bnt the Earl of *Somerſet* diſſuaded him from it, and promiſed to bear him out; and, that Sir *Thomas* complained, he had not been a Priſoner, but for *Somerſet*; and, if he died, his Blood would be required at his Hands; and, that *Somerſet* told this Deponent at *New-Market*, *He would be even with Sir* Thomas. He further depoſed, That his Maſter wrote *Somerſet* a Letter, telling him, he would never conſent to his marrying the Lady *Eſſex:* That *Somerſet* ſent *Overbury* a Letter in the *Tower*, with a Powder in it, and perſuaded him to eat it; bidding him not fear, if it made him ſick; for that would be a Means of procuring his Enlargement.

Henry Payton, another Servant of *Overbury*'s, confirmed the Teſtimony of the former; and depoſed, that his Maſter and *Somerſet*, had a Quarrel in the Gallery at *White-Hall*, about that Lord's keeping Company with the Counteſs.

Sir *Dudley Diggs* depoſed, that Sir *Thomas* was perſuaded by *Somerſet*, to withdraw himſelf from Court, and depended on his Protection.

The Priſoner's Examination read.

Then the Priſoner's Examination was read, wherein he declared, That before *Somerſet*'s Marriage, or the Impriſonment of Sir *Thomas*, he carried ſeveral Letters between *Somerſet* and the Counteſs: That they met thereupon at a Farmer's Houſe in the Country; and, at Night in Town, at Mrs. *Turner*'s in *Pater-noſter-row*. He depoſed alſo, that he ſhewed the Phial, the Counteſs ſent him in the *Tower*, to the Lieutenant, who perſuaded him not to give it Sir *Thomas:* But that he did however give it him; as alſo ſeveral Tarts, and other Things, that were poiſoned, together with the poiſoned Clyſter, by the Direction of the Counteſs, and Mrs. *Turner*, who promiſed him a Reward; and that the Clyſter gave *Overbury* ſixty Stools and a Vomit: That the Counteſs ſent him, by Mrs. *Turner*, an hundred and eighty Pounds, at two Payments: And, that he was preferred to the Keeping Sir *Thomas Overbury*, in the *Tower*, by the Counteſs and Mrs. *Turner*'s Means, who prevailed on Sir *Thomas Monſon*, to uſe his Intereſt with the Lieutenant to give him that Place.

1615. 13 Jac. I.

Sir *Thomas Monſon* alſo depoſed, that he recommended the Priſoner to the Lieutenant of the *Tower*, to be Sir *Thomas Overbury*'s Keeper, at the Requeſt of the Counteſs.

The Examination of Sir *Jervis Elvis*, Governor of the *Tower*, alſo was read, who confeſſed the Priſoner was recommended to him by Sir *Thomas Monſon*; who gave him Direction alſo, that he ſhould not ſuffer any Letter, Tokens, or other Things, to be delivered to *Overbury*. He alſo confeſſed, he was Privy to the ſending the Poiſon to *Weſton*, for *Overbury* to take; but ſaid, he diſſuaded him from adminiſtring them.

Simon Marſon, a Muſician, depoſed, that he was Servant to Sir *Thomas Monſon*; and that he received Tarts and Jellies from the Counteſs of *Eſſex*, and carried them to Sir *Thomas Overbury*, in the *Tower*.

Paul de la Belle depoſed, That he ſaw *Overbury*'s Body, after he was dead; and that it was full of Bliſters, and ſo conſumed as he had never ſeen the like.

George Rawlins, a Kinſman of *Overbury*'s, depoſed, that he came often to the *Tower* to ſee him; but was not ſuffered to ſee him even at the Window; and *Weſton* ſaid, that was the Order of the Council, and of the Lieutenant.

Sir *David Wood* depoſed, that the Lady *Eſſex* offered him a thouſand Pounds, and her Protection, if he would murder Sir *Thomas Overbury*.

The Priſoner makes ſcarce any Defence.

The Priſoner denied the whole Charge upon his Trial, though he had confeſſed it before; but, being able to alledge very little to prove himſelf innocent, the Jury found him GUILTY of poiſoning and murdering Sir *Thomas Overbury*; and he was thereupon condemned, and executed.

He is convicted, and condemned.

1615. 13 Jac. I. The Trial of ANNE TURNER Widow, at the King's Bench, for the *Murder* of Sir *Thomas Overbury*, the 7th of *Nov.* 1615. 13 *Jac.* I. 1615. 13 Jac. I.

Anne Turner's Trial, for Overbury's Murder. The Charge.

THE Indictment charged her, as Acceſſary before the Fact, and with aiding and aſſiſting the aforeſaid *Richard Weſton*, to poiſon Sir *Thomas Overbury*.

The Evidence.

And a Letter from the Counteſs of *Eſſex*, to Mrs. *Turner*, was read in Evidence; wherein the Counteſs tells *Turner*, her Huſband complained he had not lain with her; and, that her Father, her Mother, and Brother, told her, ſhe muſt obey him, and were very angry with her; but ſhe had rather die a thouſand Times, for then ſhe ſhould loſe the other's (*Somerſet*'s) Love; deſires *Turner*, therefore, to do what ſhe could for her, and ſhe ſhould have as much Money as ſhe could deſire.

A Letter from the Counteſs, to *Foreman* the Quack and Conjurer, alſo was read, wherein ſhe bids him remember the Galls; for ſhe ſaid, ſhe was afraid, though all Things remained well as yet; deſired he would ſend her ſome good Fortune, and keep the Lord ſtill true to her; and wiſhed, if ſhe was ungrateful, all Miſchief might befall her: Told him, her Lord was luſty, and drank with his Men; and all the Content he gave her, was to abuſe her, and to uſe her doggedly, as formerly; and ſaid, ſhe ſhould never be happy in this World, becauſe he hindered her Good; and begged, for God's Sake, *Foreman* would get her from that vile Place: Subſcribing herſelf his affectionate Daughter, *Frances Eſſex*. Then

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Then ſeveral Pictures, and Paper Charms, were produced in Court, which were found in the Cuſtody of Mrs. *Turner*; at which Time, the Scaffolding in the Hall giving a Crack, the People were in a great Conſternation, believing the Devil was coming for them.

Mrs. *Foreman*, the Doctor's Widow, alſo brought into Court ſeveral Pictures and Charms, that were uſed to provoke the Lord *Somerſet* to love the Counteſs; and in ſome Scraps of Parchment, ſome Devils were invoked by Name, to torment the Lord *Somerſet* and Sir *Arthur Manwaring*, if they proved falſe to the Counteſs, and Mrs. *Turner*.

Turner, the Priſoner, alſo confeſſed, that they had applied to Dr. *Savory*, another Conjurer, after *Foreman*'s Death; and had practiſed ſeveral Sorceries againſt the Earl of *Eſſex*'s Perſon. 1615. 13 Jac. I.

Then the ſame Examinations were read, againſt the Priſoner, as were read in the former Trial of *Weſton*; whereby ſhe appeared to be the Counteſs of *Eſſex*'s Agent, in conveying the Poiſons to *Weſton* for Sir *Thomas Overbury*: And, ſaying very little in her Defence, the Jury found her GUILTY of the Murder; and, Sentence being pronounced upon her, ſhe was executed a few Days afterwards.

She making ſcarce any Defence, is convicted, and executed.

The Trial of Sir JERVIS ELVIS, for the *Murder* of Sir *Thomas Overbury*, the 16th of *Nov.* 1615. 13 *Jac.* I.

1615. 13 Jac. I.

1615. 13 Jac. I.

Elvis *tried for* Overbury's *Murder.*

The Charge.

THE Indictment charges him as Acceſſary, before the Fact, to the ſaid Murder; and with abetting, aiding, and aſſiſting, *Weſton* in it.

The Evidence.

The ſame Evidence was given, of his being Privy to the ſending the Poiſons to *Weſton*, as in *Weſton*'s Trial. Three Letters, from the Earl of *Northampton* to *Somerſet*, alſo were read; in the firſt of which, *Northampton* tells *Somerſet*, that he had ſpent two Hours, the Day before, in prompting the Lieutenant with Cautions, and Conſiderations, how to act his Part in the Adventure: In the ſecond, he tells him of the Care the Lieutenant took of his Charge; and, in the third, that *Overbury*'s Body being viewed, there were found twelve Tumours on his Belly, ready to break: That the Corpſe was a diſmal Spectacle, and ſtunk ſo intolerably, that they were forced to caſt it into a Coffin, with a looſe Sheet over it; and concluded, that God was gracious in cutting off all the Inſtruments of the factious Crew.

A Letter, from Sir *Jervis Elvis* to the Earl of *Northampton*, alſo was read, wherein he undertakes to keep Sir *Thomas Overbury* according to his Inſtructions; ſays, he adviſed Sir *Thomas* to give way to the Match between *Somerſet*, (then *Rocheſter*) and the Counteſs; and, that Sir *Thomas* grew warm againſt the Lord *Northampton* and the Counteſs of *Suffolk*, telling him, if he were the Counteſs of *Suffolk*'s Priſoner, as he thought he was, the Lieutenant might let her know, that he cared as little to die, as ſhe did to be cruel; adding, *Of* Rocheſter's *Part I ſhall greatly fear, until I ſee the Event.*

Franklin's *Examination read.*

Then the Examination of *James Franklin*, the Apothecary, was read, who depoſed, that Mrs. *Turner* came to him from the Counteſs of *Eſſex*, and deſired him to get the ſtrongeſt Poiſons he could for *Overbury*; and he, thereupon, bought ſeven Sorts, and ſent them to *Overbury* at ſeveral Times; and, that the Lieutenant knew of them, as appeared by ſeveral Letters he wrote to the Counteſs, which this Deponent had ſeen; in one of which was this Expreſſion; *Madam, The Scab is like the Fox; the more he is curſed, the better he fareth:* And further, that *Overbury* ſcarce ever eat any Thing, but there was Poiſon mixed with it; and for theſe Poiſons the Counteſs ſent him Rewards: That ſhe ſtill ſent for more Poiſons; and the Deponent beſought her, on his Knees, not to uſe him any more in this Matter; but ſhe would not deſiſt; and ſaid, ſhe would poiſon him, becauſe he would pry into her Suit: Concluding, that the Day the Counteſs was married, ſhe ſent the Deponent twenty Pounds, by Mrs. *Turner*; and he was to have had two hundred Pounds *per annum*, for Life.

The Priſoner's Defence.

To this Charge, and Evidence, Sir *Jervis* made a very poor Defence: He acknowledged indeed, he ſuſpected, there was a Deſign to poiſon his Priſoner, *Overbury*; but that he was no ways Acceſſary to it, or aiding and aſſiſting in it; and, thereupon, put the following Caſe to the Judges: *If one knows not of a Plot to poiſon another, but only ſuſpects it, and is no Actor, or Contriver, Whether ſuch a one be Acceſſary to the Murder?* If the Court thought ſuch a concealing, without Malice, was an Abetting, then he would acknowledge himſelf Guilty: But the Court thought his Guilt too manifeſt, to favour him with a Reſolution of this Caſe; and obſerved, that *Franklin*'s Confeſſion left him without Excuſe: The Jury being withdrawn, ſoon after returned with a Verdict, that the Priſoner was GUILTY; whereupon Sentence of Death paſſed upon him; and he was hanged at *Tower-Hill*, to deter future Governors of that Fortreſs from conſenting to ſuch Practices againſt the King's Priſoners.

He puts a Caſe of Law to the Judges.

He is convicted, and executed.

The

1615. 13 Jac. I.

The Trial of JAMES FRANKLIN, the Apothecary, for the *Murder* of Sir *Thomas Overbury*, the 27th of *Nov.* 1615. 13 *Jac.* I.

1615. 13 Jac. I.

Franklin's Trial, for the Murder of Overbury.

The Charge.

THE Indictment charges the Priſoner, as Acceſſary, before the Fact, to the Murder of Sir *Thomas Overbury*, by preparing ſeveral Sorts of Poiſon, for him to take.

The Evidence.

The Evidence againſt the Priſoner was, his own Examination and Confeſſion, which differs, in ſome Particulars, from his Examination that was read againſt Sir *Jervis Elvis*; and, probably, was taken at another Time.

His own Confeſſion.

In this Confeſſion the Priſoner ſays, That Mrs. *Turner* deſired him, to provide a Poiſon that would not kill a Man preſently, but lie in his Body a certain Time, wherewith he might languiſh, by little and little; and, that ſhe gave him four Angels, with which he bought *Aqua fortis*; and ſhe tried it upon a Cat, that languiſhed, and cried pitifully, two Days, and then died: Then Mrs. *Turner* brought him to the Counteſs, who told him, *Aqua fortis* was too ſtrong, and propoſed Arſenick, which the Priſoner ſaid was too violent: Then ſhe propoſed Powder of Diamonds, which, he ſaid, he did not know the Nature of: And ſhe anſwered, he was a Fool; and, giving him ſome Gold, bid him buy that Powder for her; and, enquiring, why ſhe would poiſon Sir *Thomas*, ſhe ſaid, he would pry ſo far into their Concerns, that he would undo them all: That, a little before *Overbury*'s Death, the Counteſs ſent for him, and ſhewed him a Letter from the Lord *Rocheſter* (*Somerſet*) wherein he read theſe Words, ***I marvel at theſe Delays, that the Buſineſs is not yet diſpatched:*** By which the Deponent believed, he meant the poiſoning of *Overbury*: And that the ſaid *Rocheſter* ſaid, in another Letter, Sir *Thomas* was to come out of the *Tower* within two Days, and they ſhould be all undone: And, thereupon, the Counteſs ſent for *Weſton*, and was very angry with him, that he had not diſpatched Sir *Thomas*: And *Weſton* anſwered, he had given him a Thing, that would have killed twenty Men.

That, about a Fortnight after *Weſton* was taken up, the Counteſs ſent for the Deponent, and told him, *Weſton* had confeſſed, and they ſhould all be hanged; adding, ***On your Life, do not confeſs, you brought me, or Mrs.*** Turner, ***any Poiſon; for, if you do, you ſhall be hanged; I will not hang for you.***

That *Weſton* came to his (the Deponent *Franklin*'s) Houſe, and told him, Now the Counteſs's Turn was ſerved, ſhe uſed him unkindly; and that two Perſons were employed to poiſon them both.

The Priſoner acknowledged in Court, that he did buy the Poiſons mentioned in his Confeſſion; but proteſted, at his Trial, that he was ignorant what they intended to do with them: Which the Jury not regarding, found him GUILTY; and he was condemned, and executed.

Franklin convicted, and executed.

1616. 14 Jac. I.

The Arraignment of FRANCES Counteſs of *Somerſet*, for the *Murder* of Sir *Thomas Overbury*, before her Peers, the 24th of *May*, 1616. 14 *Jac.* I.

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The Counteſs of Somerſet's Arraignment, for Overbury's Murder.

The Charge.

THE Indictment being read, in which ſhe was charged, as Acceſſary, before the Fact, to the poiſoning and murdering Sir *Thomas Overbury*, a Certificate was produced, ſigned by the Judges of the King's Bench, to prove that *Weſton* had been convicted, as Principal, for the ſaid Murder.

Proof that the Principal was convicted. She pleads guilty.

To which Indictment the Priſoner pleaded GUILTY. However, Sir *Francis Bacon*, the Attorney-General, thought fit to give an Account how the Murder was diſcovered, and what had been done upon it. He ſaid, *Overbury* died by Poiſon, in the *Tower* of *London*, the 15th of *September*, 1613. and immediately, upon his Death, there was a Rumour, that he came ſtrangely by his End. On the contrary, there was another Report, that he died of a very foul Diſeaſe: And although it was above two Years ſince he was murdered, God had ſo infatuated the two great Procurers, and their Inſtruments, that the former took no Care about it, and the others fled not: That the Diſcovery of the Murder was in a Manner miraculous, and came out in a Compliment: The Lord *Shrewſbury* recommending Sir *Jervis Elvis* to a Miniſter of State, whom Sir *Jervis* deſired to be made known to, that Miniſter anſwered, he took it as a Favour from his Lordſhip; but added, there lay an heavy Imputation on Sir *Jervis*, about *Overbury*'s Death, and wiſhed he would clear himſelf in that Point; which the Lord *Shrewſbury* reporting to Sir *Jervis*, he appeared in ſome Conſternation, and ſaid, ſome Attempts, indeed, had been made againſt Sir *Thomas Overbury*, but they came to nothing, having been checked by him.

How the Diſcovery was made.

The King being acquainted with what *Elvis* ſaid, ordered him to write down what he knew of it, which he did; but took care to be very favourable in what related to himſelf: And the Matter being referred to a Committee of Council, *Weſton* was ſent for, who made a further Diſ-

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Diſcovery; and the Offenders were ordered to be proſecuted: Whereupon, no Practices were left untried, to ſtifle the Truth. *Weſton* was prevailed on to ſtand mute, for ſome Time; but at length, a full Diſcovery was made, and the under Actors in this Tragedy having been convicted and executed, this Lady, one of the Authors and Contrivers of it, was brought to Trial, and convicted alſo, by her own Confeſſion: He deſired therefore, her Confeſſion might be recorded, and Judgment given againſt her.

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She deſires the Interceſſion of the Lords.

And it being thereupon demanded of the Counteſs, what ſhe had to ſay, why Judgment of Death ſhould not be pronounced, ſhe anſwered, *She could ſay much to aggravate, but nothing to extenuate, her Fault*; only deſired the Lords would intercede for her to the King, for Mercy: Whereupon the Lord High Steward paſſed Sentence on the Priſoner, but ſaid, ſince the Lords had obſerved, with what Humility and Grief ſhe had confeſſed the Fact, he did not doubt but they would become Mediators for her to the King.

Sentence pronounced.

1616. 14 Jac. I.

The Earl of Somerſet's *Trial for* Overbury's *Murder.*

The Trial of ROBERT CARR, Earl of *Somerſet*, for the *Murder* of Sir *Thomas Overbury*, before the Peers appointed to try him, the 25th of *May*, 1616. 14 *Jac.* I.

1616. 14 Jac. I.

The Charge.

THE Indictment charges him as Acceſſary, before the Fact, to the poiſoning and murdering Sir *Thomas Overbury*; to which he pleaded NOT GUILTY.

Sufficient, to prove the Subſtance of the Indictment.

Mr. Serjeant *Montague* opened the Indictment, and obſerved, that the only Thing to be enquired of was, whether the Lord *Somerſet* had procured, or cauſed, the poiſoning Sir *Thomas Overbury*; the Form and Circumſtances mentioned in the Indictment were not to be regarded; to which the Lord High Steward, Sir *Edward Coke*, and the reſt of the Judges, aſſented.

Sir Francis Bacon *opens the Evidence.*

Then the Attorney-General, Sir *Francis Bacon*, ſaid, That the King had given them in command, not to expatiate or make Invectives, but materially to purſue the Evidence, as it conduced to the determining the Point in queſtion; and this they ſhould have done of themſelves, if they had not had ſo good a Warrant; for far be it from us (ſays he) by any Strains of Wit, or Art, to ſeek to play Prizes, or blazon our Names in Blood; but obſerved, however, that next to High-Treaſon, the Offence the Priſoner ſtood charged with, was the greateſt and fouleſt Felony; it was Murder by Poiſon; Murder committed on the King's Priſoner; and Murder under a Colour of Friendſhip: That what rendered the Crime of poiſoning ſo deteſtable was, that a Man was taken off in full Peace, thinking no Harm, and while he was comforting and refreſhing Nature with his Food; and was the more to be dreaded, becauſe it was ſo eaſily committed, and ſo hard to be prevented or diſcovered; other Murders were committed *cum ſonitu*. There were ſome Acts that might diſcover or trace the Offenders; but this came upon a Man, when he thought himſelf in perfect Security, and every Day he was within the Gates of Death: Nor did it concern only the Man againſt whom the Malice was intended, but it was often prepared for one, and taken by another; as in the Reign of *Hen.* VIII. where the Intent was to poiſon one; and the Poiſon being put into the Broth, ſixteen of the Biſhop of *Rocheſter*'s Servants were poiſoned; and it went even to the Alms-Baſket, and the Poor at the Gate were poiſoned with it; which occaſioned a Statute, that made poiſoning High-Treaſon; for it tended to diſſolve human Society; and whatever Offence did ſo, was of the Nature of High-Treaſon; and obſerved, that Sir *Thomas* was the firſt Man that had been murdered in the *Tower*, except the two young Princes, who were deſtroyed by *Richard* III.

Shews the Heinouſneſs of the Crime.

Unlawful Love the Source of this Miſchief.

He ſhews, that the Source of all this Miſchief was, unlawful Love, between the Earl of *Somerſet* and the Counteſs of *Eſſex*, which *Overbury* oppoſing, they both determined to deſtroy him: Not that *Overbury* oppoſed it out of any Scruple of Conſcience (for there was a Time, when he boaſted he had won him the Love of this very Lady, by his Letters and Induſtry) but out of Hatred to the Family of the *Howards:* And this had drawn the Earl of *Northampton* into the Plot againſt him, who knowing *Overbury*'s Malice to himſelf, and his Houſe, thought it neceſſary he ſhould be removed, and cut off; and thus it was certainly reſolved and decreed amongſt them, that *Overbury* muſt die.

The Evidence.

Then the Witneſſes were produced, and firſt *Henry Payton*, a Servant of Sir *Thomas Overbury*'s, who depoſed, that he heard high Words between the Earl of *Somerſet* and his Maſter, concerning the Earl's viſiting the Counteſs in the Gallery of *Whitehall*, as he had depoſed in the Trial of *Weſton*. He depoſed further, that he ſaw a Letter from his Maſter to the Priſoner, the Lord *Somerſet*, wherein were theſe Words: *If I die, my Blood be upon you*; and in that, or another, *My Lord, you are now as good as your Word, you have kept your Vow to me:* That when his Maſter was in the *Tower*, *Weſton* ordered the Deponent, to tell the Lord *Somerſet*, that the Powder, his Lordſhip had ſent Sir *Thomas*, had given him ſixty Stools, beſides Vomits; and that when he delivered the Meſſage to Lord *Somerſet*, he cried, Piſh, and turned away.

Two Letters from Overbury *to* Somerſet.

Two Letters from Sir *Thomas Overbury*, to the Earl of *Somerſet*, alſo were read in Evidence, in one of which he ſays, "Is this the "Fruit of my Care and Love to you? Are "theſe the Fruits of common Secrets, common "Dangers?

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" Dangers? You cannot ſuffer me to lie in this " Miſery. All I entreat of you is, to free " me from this Place, and that we may part " Friends. Drive me not to Extremities, leſt " I ſhould ſay ſomething that you and I both " repent."

In the other Letter he ſays, " You told my " Brother *Lidcote*, that my irreverent Stile " made you neglect me. With what Face " could you do this, when you know you owe " me all the Fortune, Wit, and Underſtand- " ing, that you have? You ſacrifice me to " your Woman, ſtill holding Friendſhip with " them that brought me hither. You bad my " Brother *Lidcote* keep my Deſire of Liberty " ſecret: But this ſhall not ſerve your Turn; " you and I, ere long, will come to a Trial " of another Nature. I am upon the Rack, " and you are at Eaſe, and yet I muſt ſay no- " thing! When I heard, notwithſtanding my " Miſery, you went to your Woman, curled " your Hair, preferred *Gibbe* to the Bed Cham- " ber; and, in the mean time, ſend me nine- " teen Projects, how I ſhould caſt about for " my Liberty; give me a long Account of " the Pains you have taken, and then go out " of Town, while I have neither Friend, or " Servant, ſuffered to come at me. Well, I " have written the Story betwixt you and me, " how I have loſt my Friends, for your Sake; " what Hazards I have run; what Secrets have " paſſed between us; how, when you had won " that Woman by my Letters, you concealed " all After-Proceedings from me, which occa- " ſioned thoſe Breaches between us; of the " Vow you made to be even with me, and " ſending for me twice that Day I was caught " in the Trap; perſuaded me it was a Plot of " my Enemies, to ſend me beyond Sea; and " urged me not to accept it (the Embaſſy) aſ- " ſuring me you would free me from any long " Trouble. On Friday I ſent this Narrative " to a Friend, under eight Seals; and, if you " perſiſt to uſe me thus, aſſure yourſelf, it ſhall " be publiſhed. Whether I live or die, your " Shame ſhall never die, but remain to the " World's End, to make you the moſt odious " Man living."

Then *Simcock*'s Examination was read, who depoſed, that when Sir *Thomas* was in the *Tower*, *Weſton* often told him, the Lord *Somerſet* ordered him to look well to *Overbury*; for, if he came out, one of them muſt die.

Another Examination of *L. Davis* alſo was read, who depoſed, that ſeveral ſealed Packets, directed to the King, were given to Sir *Thomas* by the Lord *Somerſet*; and that Sir *Thomas* opened them, took ſhort Notes out of them, and then ſealed them up, and returned them to the Lord *Somerſet* again.

Overbury's Father's Evidence.

The Depoſitions of *Franklin*, and the reſt of the Witneſſes, alſo were read, which were given in Evidence at the former Trials; and Mr. *Overbury*, Father of Sir *Thomas*, depoſed, that, hearing his Son was very ſick in the *Tower*, he petitioned the King, that ſome Phyſicians might have Acceſs to him; and the King ſaid, his own Phyſician ſhould go to him: Whereupon he addreſſed himſelf to the Lord *Somerſet*, who ſaid, his Son ſhould be ſpeedily delivered; but bad him prefer no more Petitions. However, not finding any Steps taken towards releaſing him, he preferred another Petition, and the King ſaid, he ſhould have an immediate Anſwer; and the Lord *Somerſet* told him, he ſhould ſuddenly be relieved: but adviſed, that neither the Petitioner, or his Wife, ſhould preſs to ſee him, becauſe it might protract his Delivery; nor deliver any more Petitions to the King, for that might ſtir up his Enemies againſt him.

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Somerſet's Letter to Mrs. Overbury.

The following Letter from the Lord *Somerſet*, to Mrs. *Overbury*, alſo was read, *viz.* " Your Stay in Town can avail nothing to- " wards your Son's Delivery. I would ad- " viſe you to retire into the Country; and " doubt not, before your coming home, you " will hear he is a free Man."

Another to Mr. Overbury.

Then a Letter that the Lord *Somerſet* wrote to Mr. *Overbury*, after his Son's Death, was read, wherein he ſays,

" Your Son's Love to me got him the Ma- " lice of many; and they caſt thoſe Knots on " his Fortune, that coſt him his Life; ſo, in " a kind, there is none guilty of his Death " but I; and you cannot have more Cauſe to " commiſerate the Death of a Son, than I of " a Friend: But, though he be dead, you ſhall " find me as ready as ever I was, to do all the " Courteſies that poſſibly I can, to you and " your Wife, or your Children. In the mean " Time, I deſire Pardon from you, and your " Wife, for your loſt Son, though I eſteem " my Loſs the greater: And for his Brother, " that is in *France*, I deſire his Return, that " he may ſucceed his Brother in my Love."

Depoſition, not upon Oath.

Several Examinations were read, ſhewing, that *Overbury* was detained, and kept cloſe Priſoner, by *Somerſet*'s Order, though he was committed only for Contempt, and the great Apprehenſions he and his Lady were under, leſt *Overbury* ſhould get out: But ſome of theſe Examinations were not upon Oath.

The Letters concerning the Lord *Northampton*'s Practices with Sir *Jervis Elvis* alſo were read, in one of which he tells *Somerſet*, the Lieutenant had undertaken, that either *Overbury* ſhould do him good Offices with the Lord *Suffolk*, or elſe he ſhould never recover, which he thought the moſt ſure and happy Change: Which Letters the Priſoner acknowledged he had received.

Then Proof was made of *Somerſet*'s ſending *Overbury* Arſenick in a Letter; and the ſending the poiſoned Tarts and Jellies, as in the other Trials; and *Franklin*'s Depoſition was read, wherein he ſays, he was ſent for by the Lady *Somerſet*, and made to take an Oath of Secrecy, in order to ſuppreſs the Diſcovery.

And Sir *Robert Cotton* depoſed, that a little before the laſt *Michaelmas*, *Somerſet* gave him a Draught of the largeſt Pardon that had been granted, wherein, among other Offences, both Murder and Treaſon were pardoned; by which he was ordered to draw one for the Priſoner.

The Earl of Somerſet's Defence.

The Earl of *Somerſet*, in his Defence, ſaid, that the Powder he ſent *Overbury*, was to make him ſick, that he might have the better Handle to ſpeak to the King for him; and that it was at *Overbury*'s Deſire he ſent it: That though he had conſented to his Impriſonment, that was only to prevent his being an Impediment to his

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his Marriage; and he had, however, given Orders he ſhould have the moſt airy Lodgings, and might ſpeak with whom he would. That, though Breach of Friendſhip had been urged as an Aggravation againſt him, it was no wonder for Friends to fall out; and he thought *Overbury* never had a Friend to whom he had not given Offence.

He confeſſed there had been a Communication of Secrets between them; and, knowing *Overbury*'s Abilities, he had employed him to take Abſtracts out of Ambaſſador's Letters, and that by the King's Order. That he was ſo far from diſſuading *Overbury* not to undertake the Embaſſy, that he would gladly have had him gone, that he might have been out of the way at that Time, as well on Account of his Marriage, as *Overbury*'s Inſolence, and therefore could not be ſuppoſed to have prevented his going. That as to the poiſoned Tarts, his Wife had confeſſed the ſending them; but thoſe the Priſoner ſent ought to be preſumed wholſome, till it was proved otherwiſe.

That the Lord *Northampton*'s Letters proved no more, than that the Lieutenant would endeavour to make *Overbury* a good Inſtrument between him and *Suffolk*; and though *Elvis*, in his Letter, ſays, *Death is the beſt way*, the Anſwer to thoſe Letters, would juſtify him, if he had them to produce. He had endeavoured, indeed, to get a Pardon, as he might have been guilty of ſome Overſights, in the Beginning of his Adminiſtration, when he was unacquainted with Affairs of State: but the general Words in it were put in, by the Lawyers, without his Privity: And then, having recommended his Caſe to the Conſideration of his Peers, he withdrew; but, it ſeems, they were unanimous in their Opinion, that the Priſoner was GUILTY; and he was adjudged to be hanged. Whereupon, he deſired the Interceſſion of the Lord High Steward, and the reſt of the Peers, to his Majeſty, for Mercy; and they interceded ſo effectually, both in Behalf of the Earl, and the Counteſs, that they obtained their Pardon, with this Limitation, that they ſhould remain impriſoned, during his Majeſty's Pleaſure.

He is convicted.

The Earl and Counteſs pardoned as to their Lives. Remain Priſoners in the Tower *till the Year* 1622.

Both of them having continued Priſoners in the Tower (the Scene of their Villany) till the 18th of *January*, 1622. they obtained an Order of Council, for their Releaſe from thence: But the Earl and the Counteſs, were required, to repair, either to *Grays*, or *Cowſham*, the Lord *Wallingford*'s Houſes, in the County of *Oxon*, and remain confined in one of the ſaid Houſes, and within three Miles Compaſs of either of them, until further Orders from his Majeſty; and, it appears, that the King permitted the Earl to enjoy the greateſt Part of his Eſtate, notwithſtanding his Attainder.

Afterwards confined in Oxfordſhire.

Remarks on the Trials of Overbury's *Murderers.*

It is obſervable, in theſe Trials, that the Court reſolved, it was not neceſſary to find the Circumſtances laid in the Indictment, ſo as the Subſtance, namely, the poiſoning, was found.

We find Examinations ſtill read againſt the Priſoners here, as in former Trials: It was not, yet, cuſtomary, to produce the Witneſſes, to give their Evidence, *viva voce*; though this was ſometimes done: But, it was ſtill more irregular, and, indeed, illegal, to read the Examinations of Perſons convicted, and even executed, for the ſame Crime; and ſeveral of them not upon Oath. It is true, there was abundant Evidence, beſides, of the Priſoners Guilt; but this would not juſtify the bringing Evidence againſt them that was not legal: But Courts of Juſtice did what they pleaſed with Priſoners, in thoſe Days, as is manifeſt by theſe and the former Trials.

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Sir *Francis Bacon* very rightly obſerved, in theſe Trials, That all this Miſchief proceeded from an unlawful Amour, in which, perhaps, the Parties, at firſt, thought there was very little hurt. Had they foreſeen that Train of Evils that ſucceeded; that Injuſtice, Treachery, and Ingratitude; the barbarous Murder they muſt commit, to conceal the firſt Crime; the many Perſons there would be a Neceſſity of drawing into the ſame Guilt; the Lives that muſt be loſt, and the eternal Infamy that muſt ſucceed; they would, ſurely, never have engaged in ſuch an Attempt: Which ought for ever to caution others, how they deviate from the Paths of Virtue: We are, inſenſibly, led from one Step to another, till we find ourſelves involved in Crimes, which we could not at firſt have reflected on without Horror.

And thus we ſee, how Changes are frequently brought about, unexpectedly, in Courts and Kingdoms: One is diſgraced, another preferred, and the whole World, ſometimes, put in Confuſion, by a little Piece of Gallantry, as ſome term it: And a Miſtreſs ſhall put a Prime Miniſter upon perpetrating the vileſt Actions, to gratify her Revenge, or Luſt. I queſtion, whether there is to be met with in Hiſtory, a Man more univerſally deteſted, than *Somerſet*, who, to enjoy a faithleſs, laſcivious Woman, ſacrificed his Friend, and made him undergo the moſt cruel Tortures; and, after he had killed him, endeavoured to murder his Memory, by giving out, he died of an infamous Diſtemper. This may ſerve alſo, as a Specimen of the Friendſhips among the Great; and ſhews us, at the ſame Time, how dreadful a Thing it is, to fall into the Hands of a Prime Miniſter. Here we ſee one inciting his Friend to offend his Prince, and then, putting his Prince upon puniſhing him a thouſand Times more than the Offence could ever deſerve; or, rather, he makes uſe of his Sovereign's Name, to rack and torture his Friend to Death: And, how eaſy is it for a Miniſter, at this Day, thus to exerciſe his Malice againſt any Man he does not like? Let him charge the Party, firſt, with ſome notorious Crime; and this gives him a Colour to impriſon him in a Dungeon, to load him with Irons, exclude all his Friends from him, and murder him, almoſt, with repeated Hardſhips, and the Noiſomneſs of the Place; and this, before a Man appears guilty of any Crime whatever: Which ſeems a very great Defect in the Laws of a Country, which are ſaid to be ſo well adapted to the Preſervation of Liberty and Property.

Every Man is ſuppoſed to be innocent, and ought to be dealt with as ſuch, till he is convicted. But here a Man often ſuffers more before he is brought to his Trial, than he can do for the Offence afterwards, if he appears guilty of it: And this, perhaps, to make him an Evidence againſt a Perſon, ſome Great Man

1616. 14 Jac. I. Man has a Mind to deſtroy: Priſons may be made as ſtrong, and ſecure, as can be deſired; but, why People ſhould be tortured, and their Friends debarred from ſeeing, and relieving them, till it appears they are guilty, is not eaſy to conceive. This, ſurely, can be with no other View, than to gratify the Malice of his Enemies; or, to make ſuch unfortunate People Tools, to ſerve the Turn of an abandoned Miniſtry.

How King *James* came to ſpare the Principal Actors in this Tragedy, and execute only their under Agents, is very unaccountable, and muſt be allowed to reflect no ſmall Diſhonour on his Memory: It would not only have been the moſt juſt, but the moſt popular Thing he could have done, to have left theſe great, but infamous Offenders, to the Puniſhment their Crimes deſerved. 1616. 14 Jac. I.

1615. 13 Jac. I. Ogilvie's *Trial.*

The Trial of JOHN OGILVIE Jeſuit, for *High-Treaſon*, at *Glaſcow* in *Scotland*, the 28th of *February*, 1615. 13 *Jac.* I.

1615. 13 Jac. I.

The Charge. THE Indictment recites, That whereas God, the Author of all righteous Government, had eſtabliſhed Kings and Magiſtrates, his Lieutenants upon Earth; and had particularly bleſſed that Country with a more ancient, juſt, and permanent Deſcent of lawful Kings, than any other Nation in the World, and extended their Felicity beyond the Happineſs of their Anceſtors, by the Juſtice, Wiſdom, and Clemency, of his Majeſty's proſperous Reign, honouring, and ſtrengthening him, with the Acceſſion of the moſt mighty and flouriſhing Kingdoms of *England*, *France*, and *Ireland*: Which viſible Favours, proceeding directly from God's bountiful Hand, moved the whole Eſtates of that Kingdom, in the Parliament aſſembled at *Perth*, the 9th of *July*, 1606. to acknowledge his Majeſty's Sovereign Authority, Royal Prerogative, Power, and Privilege, of his Crown, over all Eſtates, Perſons, and Cauſes, whatſoever, within that Kingdom; and promiſe to maintain, defend, and advance, the Honour, Dignity, Sovereign Authority, and Prerogatives of his ſacred Majeſty, againſt all Perſons, Powers, and Eſtates, who ſhould impugn or impair the ſame. And whereas, by an Act made in the Parliament holden at *Edinburgh*, the 22d of *May*, 1584. his Majeſty's Royal Power and Authority, over all Eſtates Spiritual and Temporal, was ratified and confirmed: And it was enacted, that none ſhould preſume to decline the Judgment of his Highneſs, his Heirs, or Succeſſors, on Pain of High Treaſon. And by divers other Parliaments, it was enacted, That all the King's Leiges ſhould be governed by his Majeſty's Laws, and by no Laws of other Countries, or Realms, on Pain of Treaſon: Notwithſtanding all which, the Priſoner had renounced his natural Allegiance and Duty to his native King; caſt of all Reverence for his Sovereign Authority, and Laws, and dedicated his Mind and Actions to the unlawful Obedience of Foreign Powers, Adverſaries to his Majeſty, and, reſolving to ſeduce his Subjects from their Faith and Allegiance, repaired to *Scotland*, in the Month of *June* then laſt paſſed, and by Conferences, Inticements, Maſs-ſaying, and other ſubtil and crafty Means, endeavoured to corrupt many of his Majeſty's Lieges in Religion, and pervert them from their dutiful Obedience to his Majeſty, until he was detected and apprehended by the Archbiſhop of *Glaſcow*, who, with others of his Majeſty's Council, uſed all charitable Means, to bring him to a Senſe of his heinous Offences, by his Majeſty's Directions: That the Priſoner proved hardned and deaf, to all their Advice; and, at his Examination, had aſſerted and defended, ſeveral treaſonable Poſitions (mentioned in the Indictment, and recited in the Courſe of the Trial) plainly diſcovering, that he approved the Means, and wiſhed the Overthrow of his Majeſty's Eſtate; the Deſtruction of his Perſon; the Seduction of his Subjects from their Allegiance; and thereby, and by every one of his ſaid Anſwers, had committed moſt heinous, deteſtable, and unpardonable Treaſon.

Acts in Scotland *acknowledging the King's Supremacy.*

The King's Counſel open the Charge.

The King's Counſel, in opening the Indictment, obſerved, That the Priſoner was not indicted purely for ſaying Maſs, and propagating Popery; but for declining his Majeſty's Authority, and maintaining treaſonable Opinions: That the Statutes mentioned in the Indictment, made it Treaſon, not to anſwer the King, or his Council, when a Priſoner was under Examination for High Treaſon: But, that he being examined by the Lord Archbiſhop of *Glaſcow*, and other honourable Perſons, of his Majeſty's Special Commiſſion, refuſed to anſwer divers Interrogatories, and profeſſedly avowed the Pope of *Rome*'s Juriſdiction. ——That it being demanded of him, 1. *Whether the Pope had Power to depoſe the King?* 2. *Whether it was lawful to ſlay his Majeſty, being depoſed by the Pope?* 3. *Whether the Pope had Power to abſolve his Majeſty's Subjects from their Allegiance?* he refuſed to anſwer theſe Points, unleſs he was required ſo to do by the Pope, or others authoriſed by him; not acknowledging, that his Majeſty's Crown and Authority, was held immediately of God, the Author of all Government; and had voluntarily declared, that the Oaths of Allegiance and Supremacy were unlawful.

Then was read the Acts of Parliament, on which the Indictment was founded, and the Priſoner's Examination before the Council, ſubſcribed by himſelf, which was the principal Evidence produced againſt him.

The Priſoner juſtifies his Treaſons.

The Priſoner, inſtead of making a regular Defence, or excuſing his Crimes, proteſted againſt

1615. 13 Jac. I.

gainſt the Juriſdiction of the Court; denied the Facts laid in the Indictment were Treaſon; and even diſputed the Authority of thoſe Parliaments that declared thoſe Facts to be Treaſon: He ſaid, thoſe Parliaments were compoſed of a Number of partial Men, and thoſe Acts made, without the Conſent of the chief Men of the Kingdom: That they medled with Matters not ſubject to their Cognizance; and, in ſhort, that he did not care a Fig for them.

He added, That he knew no other Authority the King had, than what he received from his Predeceſſors, who acknowledged the Pope of *Rome*'s Juriſdiction: If the King would be to him, as his Predeceſſors were to his, he would obey and acknowledge him for King; but, if he did otherwiſe, and played the Runnagate from God, as he and all of them did, he would not acknowledge him more than his old Hat. The Jury being called, he made one general Exception to them all: He ſaid, they were either Enemies to his Cauſe, or Friends; If they were Enemies, they ought not to be admitted to try him; and, if they were his Friends, they muſt ſtand Priſoners at the Bar, as he did.

After the Jurors were ſworn, he ſaid, he wiſhed they would conſider what they did; for he could not be tried, or judged, by them: Whatever he ſuffered, it muſt be by way of Injury, and not of Judgment: He was accuſed of Treaſon; but he had committed no Offence, nor would he beg Mercy.

To which the Archbiſhop anſwered, It was ſtrange he had not offended, when he came into the Kingdom, to pervert his Majeſty's Subjects, contrary to the Laws.

Ogilvie replied, I came by Commandment; and, if I was now out of the Kingdom, I would return: I repent of nothing, but that I have not been ſo buſy as I ſhould, in that which you call *perverting*: I hope to come to *Glaſcow* again, and do more good: If all the Hairs of my Head were Prieſts, they ſhould all come into the Kingdom: And, *it being anſwered, The King might, ſurely, diſcharge the Country of thoſe that had offended the Laws*, he ſaid, I am as free as the King; he cannot diſcharge me, if I be not an Offender, which I am not. But he ſeemed to allow, that for Theft, or Murder, the King's Courts might baniſh a Prieſt.

He objects, the Kirk denied the King's Authority in Spirituals, as well as he.

He declared, that he declined the King's Authority, and ſhould do it ſtill, in Matters of Religion; for, in ſuch Matters, he ſaid, the King had nothing to do: Obſerving, that the *Kirk*, in like Manner, rejected the King's Authority, in Spiritual Matters, as well as he: The Archbiſhop anſwered, that he was miſtaken in the Fact; there was no more in it than this: Eight Miniſters, in the General Aſſembly at *Aberdeeen*, did, indeed, contend, that the Aſſembly could not be diſcharged by his Majeſty's Commiſſioner; but the whole Clergy ought not to be ſlandered for the Offence of a few: Beſides, ſome of them were puniſhed for it, and others confeſſed their Error, and were pardoned: That their Religion taught them, to acknowledge his Majeſty their ſupreme Judge in all Cauſes: That his Lord, the Pope, indeed, did not only deny the Authority that God had given to Kings, but uſurped it himſelf; aſſuming a Power of depoſing and killing them, when he was diſpleaſed

The Archbiſhop's Reply to the Priſoner.

with them: Nor did this reſt in Opinion only; they had actually put their Principles in Practice, and cut the Throats of the two laſt *Henry's*, Kings of *France*; but they could not lay ſuch Imputations on the Church of *Scotland*: And then the Archbiſhop demanded of the Priſoner again, *Whether he thought the Pope had Power to depoſe the King? or if it was not Murder to kill the King being depoſed by the Pope?*

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Ogilvie thereupon ſaid, he refuſed to anſwer ſuch Queſtions, becauſe he ſhould thereby acknowlege them Judges in Controverſies of Religion, which he did not. *He would not caſt holy Things to Dogs*: Adding, That if the King offended againſt the Catholick Church, the Pope might puniſh him, as well as a Shepherd, or the pooreſt Man in the Country. That in abrogating the Pope's Authority, the Eſtates of Parliament had gone beyond their Limits; and the King, in uſurping the Pope's Right, had loſt his own. That the Oath of Allegiance was a damnable Oath, againſt God and his Truth, and it was Treaſon to ſwear it; for ſince that Kingdom was Chriſtian, the Pope's ſupreme Power was always acknowledged; that this being caſt off by Act of Parliament, againſt all Reaſon and Conſcience, and the Subject forced to ſwear to a Matter ſo unlawful, it was no wonder that ſuch Attempts and dangerous Courſes were taken againſt his Majeſty. Would the King ceaſe to uſurp on the Pope, he might live without Fear, as well as the King of *Spain*, or any other Chriſtian Prince.

The Priſoner again denies the Juriſdiction of the Court.

Maintains the King was ſubject to the Pope.

The King's denying the Pope's Supremacy the Occaſion of the Plots againſt him.

Thus the Priſoner avowing and maintaining the Treaſons for which he was indicted in Court, the Jury unanimouſly found him GUILTY, and he was condemned to die the Death of a Traitor. Whereupon he cried out, God have Mercy upon me; if there be any hidden Catholicks let them pray for me, but the Prayers of Hereticks I will not have.

The Priſoner convicted and condemned.

He was executed, according to the Cuſtom of *Scotland*, the ſame Day Sentence paſſed on him: But it was obſerved he did not behave himſelf with the ſame Aſſurance and Reſolution at his Execution, as he had done at his Trial; on the contrary, 'tis ſaid, he trembled and ſhook when he came to the Foot of the Ladder, and ſaid he ſhould fall; and it was with ſome Difficulty the Hangman got him up: His laſt Words were, *O* Maria, *mater gratiæ, ora pro me! omnes Angeli, orate pro me! omnes Sancti, Sanctæque, orate pro me!* but theſe were ſpoken in ſo low a Voice, that few of the Audience could hear them.

His Execution.

This Jeſuit *Ogilvie*, ſeems to have been fond of dying a Martyr to the Pope's Supremacy: He evidently looked upon all the Princes in the World as Vaſſals to his Holineſs, and that they might be depoſed and aſſaſſinated whenever they oppoſed him. As to the Diſtinction of Spirituals and Temporals, there ſeems to be very little in it. For if the Pope declared that any temporal or ſecular Action was oppoſite to the ſpiritual Intereſt of the Church, (in his Opinion) any Sovereign Prince might be excommunicated for it, and even depoſed and murdered by his Subjects, and his Dominions transferred by his Holineſs to another Family. A Doctrine (however ſhocking it may appear to Proteſtants in general) that has been exactly copied and practiſed by the *Scots* Preſbyterians; with this Difference

Remarks on Ogilvie's Trial.

1615. 13 Jac. I. only, that inſtead of Kings being ſubject to the Pope, they make them ſubject to their Preſbyteries, Synods, or general Aſſemblies: And though at that Time, when the Church of *Scotland* was Epiſcopal, as the Archbiſhop obſerved, there were but eight of her Clergy that diſputed the King's Supremacy; and ſome of theſe renounced the deteſted Error: Yet, when that Church was deſtroyed, and Preſbytery rode triumphant, no Jeſuits ever carried the Pope's Supremacy higher, than thoſe Saints did the Authority of their general Aſſemblies: And, even at this Day, they will ſcarce ſuffer their Prince to moderate in their Aſſemblies, or to appoint a Faſt, or a Thankſgiving; and abſolutely refuſe to take the Oath of Supremacy, enjoined to be taken by the Members of the Church of *England*.

To return to the Trial: King *James* ſcarce ever put any Jeſuit, or Prieſt, to Death, purely for exerciſing his Function, if he ſubmitted himſelf, and promiſed to deſiſt; though it was Treaſon in them to come into, or remain in *Scotland*. He contented himſelf, either with their Impriſonment, or Baniſhment: But this Jeſuit ſo daringly challenged, and defied the civil Powers, that there appeared a Neceſſity of taking him off. He might probably be employed by his Superiors, to let King *James* know, in this publick Manner, that his Majeſty would never be out of Danger of Plots and Aſſaſſinations, if he did not ceaſe to proſecute them. This unhappy Criminal might be perſuaded by them, he ſhould purchaſe a Seat in Paradiſe, by thus braving a Proteſtant Prince in his own Dominions: But, if we may credit thoſe who give an Account of his Execution, his Heart failed him at laſt. He does not appear to have met Death with that Joy that Saints and Martyrs uſually do. 1615. 13 Jac. I.

There is another Obſervation I cannot avoid making on the Laws of *Scotland*; and that is, that a Man's Silence was, by ſeveral Acts, made treaſonable there. If a Perſon was examined before the Council, concerning a treaſonable Conſpiracy, and refuſed to anſwer; this Refuſal was looked upon as a renouncing the King's Authority, and interpreted High-Treaſon: Whereas no Man is bound to anſwer in a criminal Caſe, by the Laws of *England*, eſpecially where the Anſwer tends to accuſe himſelf.

1618. 16 Jac. I. Wraynham's *Trial.*

The Trial of -------- WRAYNHAM, or WRENHAM, for *Slandering* the Lord Chancellor *Bacon*, before the Court of *Star-Chamber*, *Paſch.* 1618. 16 *Jac.* I.

1618. 16 Jac. I.

The Caſe. THE Caſe, in ſhort, was this: The Lord Chancellor *Bacon*, at his coming to the Great Seal, found a Cauſe in that Court, between *Wraynham* and *Fiſher*, concerning the Value of a Leaſe, in which the former Lord Chancellor had made ſeveral Orders and Decrees: Theſe the Lord *Bacon* thought fit to reverſe, or alter, to the Advantage of *Fiſher*: Whereupon *Wraynham* complained of his Lordſhip to his Majeſty, and at length wrote a *Quarto* Book, and dedicated it to the King, wherein he ſet forth his Caſe at large, charging the Lord Chancellor *Bacon*, with *Injuſtice and Oppreſſion*.

The moſt obnoxious Paſſages in this Book, or Libel, as it was ſtiled, were thoſe that follow, *viz.*

That he (Wraynham) *had two Decrees in the firſt Lord Chancellor's Time, both under the Great Seal; and yet both altered, ſince his Death, and cancelled by this Lord Chancellor, in a prepoſterous Manner, without Cauſe, without new Matter, without any legal Proceedings, without Precedent, upon the Party's bare Suggeſtion, and without calling him* (Wraynham) *to anſwer: And this he had done, to reward* Fiſher's *Fraud and Perjuries, to palliate his unjuſt Proceedings, to rack Things out of Joint, and to confound his* (Wraynham's) *Eſtate; adding, that Injuſtice was worſe than Murder; and that his Lordſhip had devoured him and his Family*; and having heard that his Lordſhip had ſatisfied his Majeſty in the Matter, the Book ſays, *He that had done it unjuſtly, muſt, to maintain it, ſpeak untruly, adding Falſhood to Injuſtice*; and, in another Place, the Book ſays, *It is given out, my Lord hath begged* Wraynham's *Pardon* (begged his Majeſty to forgive *Wraynham*) *which, though it be the Shew of a gentle Heart, argues a guilty Conſcience, and is but my Lord's Cunning, to avoid the Hearing of the Cauſe*; telling his Lordſhip, *he had palliated Oppreſſion with Greatneſs, Wit with Eloquence; and that the Height of Authority made Men preſume:* That *his Lordſhip uſed ſecret Means, that the Unſoundneſs of his Actions might not be ſeen:* That, *He had raiſed a Report from Hell, of the late Maſter of the Rolls, which was confuted before his Face, and damned before his Death:* That, *the late Maſter of the Rolls grounded that Report, upon Witneſſes that ſwore Impoſſibilities, groſs Abſurdities, and apparent Untruths.*

The Evidence. The Evidence againſt *Wraynham* was the Book, or Libel, itſelf, out of which theſe Paſſages were extracted.

Wraynham's *Defence.* *Wraynham*, in his Defence, ſaid, that his Book conſiſted of three Parts: 1. An Epiſtle to his Majeſty. 2. The Body of the Book, which related the Truth of all the Proceedings; and, 3. a concluſive Speech, in the Nature of an Epilogue.

As to his Complaint againſt the Lord Chancellor, he ſaid, he muſt fly for Succour and Protection to the King, who had been pleaſed to declare, that, if any were wronged in Point of Juſtice, they might come to him for Redreſs: That, if they diſcovered *Bribery or Corruption*, they ſhould come boldly; but, beware of the Juſtneſs of their Cauſe.

From

1618. 16 Jac. 1. From whence he inferred, 1. That, in his Majeſty's Opinion, a Man might be wronged in a Court of Juſtice; and 2. That he was willing to receive the Complaint, and reform what was amiſs: He hoped, therefore, their Lordſhips would not conceive, that barely to complain was a Fault; eſpecially when his Majeſty had ſaid, *Why do you ſpare to complain?*

Then he obſerved, that the Attorney-General had taken the general Expreſſions in his Book, and applied them to my Lord Chancellor, which, he ſuggeſted, he never intended as Reflections on that Lord; declaring, he had no ſuch Meaning, as the King's Council would fix upon them. He obſerved, that the Word *Injuſtice* was what he was principally charged with, that all the other obnoxious Expreſſions he had uſed might be comprehended in this; and ſaid, *If a Man proved the Juſtice of his Cauſe, he proved the Judgment given againſt him to be Injuſtice:* That he was neceſſitated to uſe this Word: 1. Becauſe, unleſs he had particularly accuſed his Lordſhip of Injuſtice, he had no Hopes of obtaining a Hearing of his Majeſty; and 2. His Miſeries forced him to it.

That, underſtanding the Lord Chancellor had endeavoured to ſatisfy his Majeſty of the Juſtice of his Decrees, by producing the Report of *Philips*, late Maſter of the Rolls (to whom the Matter had been referred by the late Lord Chancellor) which Report, he confeſſed, might not only ſatisfy the Lord Chancellor, but the King himſelf; he ſaw there was no other Courſe, but to anſwer the Report by writing the Book, with which he was charged; in the making whereof, he had muſtered together his Miſeries. He ſaw his Lands taken away, which had been before eſtabliſhed to him; and after ſix and forty Orders, and twelve Reports, made in this Cauſe; nay, after Motions, Hearings, and Rehearings, fourſcore in Number, he beheld all overthrown in a Moment; and that without a new Bill preferred. He ſaw a Priſon gaping for him, in which he muſt from thenceforth ſpend all the Days of his Life; for, in this Suit, he had ſpent almoſt three thouſand Pounds. Many of his Friends were engaged for him; ſome damnified, others undone; and this accompanied with many terrible Miſeries, like to befal his Wife, and four Children, the eldeſt of which was but five Years old; ſo that they, who formerly gave Bread to others, muſt now beg Bread of others, or elſe ſtarve; and there being no means to move his Majeſty to hear the Cauſe, but to accuſe his Lordſhip of Injuſtice, (his Majeſty declaring he would not be troubled with hearing ſuch Cauſes, unleſs he could charge the Judge with Injuſtice, or Bribery): This, and all theſe, moved him to be ſharp and bitter; and to uſe Words, though dangerous in themſelves, yet he hoped pardonable in ſuch Extremities; and, if this would not acquit him, deſired their Honours would move the King to pardon him.

The Court will not let him enter into the Merits of the Cauſe.

Then Mr. *Wraynham* was proceeding to open the Merits of the Cauſe in *Chancery*; but the Lord Treaſurer ſaid, that was contrary to all Rules: They could not enter into the Merits: And the Attorney-General, *Yelverton*, put him upon inſtancing in one ſingle Point, wherein the Lord Chancellor had done him Injuſtice. Inſtead of which, *Wraynham* ſaid, had he thought his Majeſty would not have heard his Cauſe, he would have ſat down in Silence, and devoured his Sorrow. He ſubmitted himſelf in all Things to their honourable and clement Cenſure, beſeeching their Pardon, and craving their Compaſſion. 1618. 16 Jac. 1.

The Reply. Mr. Serjeant *Crew*, in his Reply to *Wraynham*, ſaid, he obſerved the Priſoner at the Bar had made that Submiſſion at laſt, which he ought to have begun with: That the Flux of foul Mouths muſt be ſtopped, otherwiſe the greateſt Magiſtrates, and even Majeſty itſelf, would be ſlandered, and traduced: That the Lord Chancellor, that was dead, had given Judgment according to his Conſcience; and the preſent Lord had judged according to his Conſcience, and the Integrity of his Heart. The Cauſe might appear to them in different Lights; and each of them had delivered his own Senſe, without any *binding* Decree.

That the Lord which was dead, when he was alive, was one of the Oracles of Wiſdom of his Time; and the preſent Lord was enriched with great Ornaments of Nature. No Man, no Magiſtrate, heard with more Attention, Juſtice, Underſtanding, and Patience; and *Wraynham* thus to traduce him, was a foul Offence. *He could not charge him with Corruption; for he always deſpiſed Riches, and ſet Honour and Juſtice before his Eyes*, and therefore demanded their Lordſhips Cenſure of *Wraynham*.

Wraynham cenſured. The celebrated Sir *Edward Coke* was the firſt of the Court of *Star-Chamber* that delivered his Opinion in this Cauſe. He ſaid, a Complaint to his Majeſty, or a Petition, by any Man that thought himſelf wronged, he held to be no Offence; yet upon the Statute of *Weſtminſter*, and at Common Law, he could ſhew, that where Petitions were made to the King, in an unfit Manner, they had been ſeverely puniſhed. He was ſorry, he ſaid, that Mr. *Wraynham*, a Man of excellent Parts, ſhould write ſuch a ſcandalous Book, which in reality was no Petition: He himſelf had entitled it, *A Review, or Revivor, of the Report of the Maſter of the Rolls* Philips, *and the Decree of the Lord Chancellor:* In which he dealt not like a Petitioner, but a Cenſurer, cenſuring every Man that had been concerned in the Cauſe. He charged the Lord Chancellor with Injuſtice; not complaining of any Particular to be referred to Examination, but ſaid in general, *He had done unjuſtly, was worſe than a Murderer; and that he had informed the King falſly: That the Height of Authority made Men preſume*; citing that Paſſage in Scripture, *Woe be to them that write wicked Decrees:* And in another Place ſays, *That Oppreſſion is palliated with Wit and Eloquence.*

That he had not ſpared the Dead. The Maſter of the Rolls, an excellent Chancery-Man, of great Dexterity and Diligence, and never charged with Corruption, he had accuſed of ſo high a Degree of Injuſtice, as *to omit ſome of the material Proofs; to ſhift off others; to wreſt the Equity of the Cauſe, with making an unjuſt and corrupt Gloſs upon a falſe Text*; declaring, *that his Report came from Hell.* Their Lordſhips remembered, that ſlandering the Dead was puniſhable in that Court: *Lewis Pickering* particularly, in his Time, was cenſured

One puniſhed for ſlandering a dead Archbiſhop.

1618. 16 Jac. I.

ſured, for ſlandering an Archbiſhop that was dead; for ſuch Slanders might wrong thoſe that were related to the Deceaſed.

Then Sir *Edward* cited ſome Precedents of Perſons, that had been puniſhed for reflecting on the Judges; particularly *Thomas Wilbraham*, *Mich.* 18 *Edw.* III, who petitioned the King againſt the Juſtices of the *King's-Bench*, for *that they had not done according to Law and Reaſon*: For which *Wilbraham* was indicted, convicted, and fined, by the *King's-Bench:* And *Humphrey Hunney*, who complained to King *Edw.* III. that Sir *William Scot*, Chief Juſtice, had awarded an Aſſize contrary to Law, was fined and impriſoned by the Judges to whom the King referred it.

That one Judge might differ from another in his Opinion, and yet both be ſincere upright Judges. The famous *Dyer* gave Judgment in the *Common-Pleas*, which was reverſed in the *King's-Bench*; and yet *Dyer* diſcharged his Conſcience: Though the Judgment was afterwards reverſed, he was not thought guilty of Injuſtice. If the Lord Chancellor, that was living, differed from the Lord Chancellor that was dead; this was not ſtrange: It had ever been, and would be; *but if a Judge's Conſcience was oiled and moiſtened with Corruption, all was naught:* And concluded, that he agreed in all Things with the Sentence given in *Foorth*'s Caſe, 2 *Jac.* And in this Judgment all the Lords of the Court of *Star-Chamber* agreed.

Remarks on the Trial of Wraynham.

From the Speeches made by Sir *Edward Coke*, and the reſt of the Lords of the *Star-Chamber*, at the Cenſure of *Wraynham*, it appears, that he was not only a Man of Quality and Figure in the World, but a Gentleman of excellent Parts: However, he was ruined, it ſeems, by a tedious and expenſive Suit in *Chancery*, and the Injuſtice and Oppreſſion of his Judges: And with his Fortune, this unhappy Gentleman appears to have loſt his Friends. The whole Court ſeem to have been in a Confederacy to complete his Deſtruction: Such was the Character of the celebrated Lord *Bacon*, that no Suggeſtions could be heard againſt him, how reaſonable ſoever. It could not enter into the Heart of Man, that a Nobleman, of his fine Senſe, and philoſophical Turn of Mind, who perfectly underſtood the Rules of Morality, and appeared generous and benevolent, even to Profuſion, could be touched with the ſordid Vices of Avarice, Extortion, and Oppreſſion: And though Bribery and Corruption appear to have been at the greateſt Height in the Court of *Chancery*, at this Time, and practiſed ſo openly, that when a Suitor came to ſee his Counſel, the firſt Queſtion aſked him was, *What Friends he had at York-Houſe*, (the Lord Chancellor's)? And his Servants were known to take one Side, or other, in almoſt every Cauſe: Yet did the mighty Lord *Bacon*'s Reputation blind the Eyes of all Mankind, and render the moſt palpable Corruptions doubtful.

The unfortunate *Wraynham* knew he had great Injuſtice done him, and violently ſuſpected Bribery in the Caſe; but durſt not charge the Chancellor with it, for Fear of an Action of *Scandalum Magnatum*. On the other Hand, he found his Eſtate was gone, his Family undone, and he had nothing to expect, but a Goal, as he informs us in his Caſe, unleſs he could find ſome Redreſs. In this Diſtreſs he applied himſelf to his Majeſty, petitioning to be heard before the King and Council: But was told, the Council could not trouble themſelves with every Cauſe, where the Parties were diſſatisfied with the Chancellor's Decrees; they muſt attend no other Buſineſs, if they did: But, if the Petitioner could charge the Lord Chancellor with *Injuſtice*, or with *Bribery*, or *Corruption*, the King would hear him: Whereupon *Wraynham* wrote the Book abovementioned, and dedicated it to his Majeſty; wherein he charged the Chancellor with *Injuſtice* and *Oppreſſion*, believing, if his Majeſty would hear his Cauſe, he ſhould be able to demonſtrate, there had been foul Play. For, ſays he, in his Defence, if I can ſhew my Cauſe was juſt, and the Lord Chancellor has decreed it againſt me, by conſequence I ſhall prove his Injuſtice: But neither the King, nor the Court of *Star-Chamber*, would enter into the Merits of the Cauſe; declaring, his Book was a Libel, becauſe he had charged the Chancellor with Injuſtice and Oppreſſion, which he could not prove: Whereupon *Wraynham* deſpaired of Succeſs, and ſubmitted himſelf to the Mercy of his Judges; who, not conſidering he had already loſt all he had, in purſuing this unlucky Cauſe, thought fit to finiſh his Ruin, by fining and impriſoning him; though it appeared, within the Space of two Years, that his Adverſary, Sir *Edward Fiſher*, carried his Cauſe, by Dint of Bribery, having given the Lord Chancellor an hundred Pounds, and upwards, at one Time; beſides what he might have preſented him with at other Times, and diſtributed among that Lord's Servants, who were known to take a Part in every Cauſe that came before his Lordſhip, as has been related already.

But, ſuppoſing there had been no Bribery in the Caſe, what a monſtrous Thing is it, in a Country that boaſts of the Equity of her Laws, that a Suitor ſhould be kept ſeven, perhaps two ſeven, Years in Suſpence, and the Charges of the Suit frequently exceed the Matter in Diſpute; and this in an ordinary Caſe, like that before us, where only the Value of a Leaſe was to be determined?

Wraynham, in his Defence, ſays, that in this trifling Cauſe, there had been ſix and forty Orders, and twelve Reports, made; and no leſs than fourſcore Hearings, Rehearings, and Motions; and, after all theſe, he ſaw his Lands taken away, which had been decreed him by the former Lord Chancellor; and he muſt expect to end his Days in a Goal, having ſpent three thouſand Pounds in the Cauſe, and ruined ſeveral of his Friends, who ſtood engaged for him. Were it not better to live in a Country where there are no Laws, than where Laws are thus adminiſtred? Where it is manifeſt, in a thouſand other Caſes as well as this, that the longeſt Purſe ſeldom fails of Succeſs, let the Cauſe be never ſo unjuſt. If there be no Bribery in the Caſe, the very Expence and Delays of a *Chancery* Suit undo the Suitor; and he is obliged to give up his Right, for Want of Money to defend it: And what renders theſe

Pro-

1618. 16 Jac. I. ceedings ſtill more inſupportable now, than they were in the Lord *Bacon*'s Days, is, the extravagant Riſe of Counſel's Fees, and the Stamps, with which all the Proceſs in *Chancery*, and other Courts, are loaded at this Day. We ſeem to block up the Way to Juſtice, as though it were a Crime, for a Man to attempt the Recovery of his Right. 1618. 16 Jac. I.

1620. 19 Jac. I. *Lord* Bacon's *Trial.*

Proceedings in Parliament, againſt the Right Honourable FRANCIS Lord *Verulam*, Viſcount *St. Albans*, and Lord Chancellor of *England*, for *Bribery* and *Corruption*, the 19th, *&c.* of *March*, 1620. 18 and 19 *Jac.* I.

1620. 19 Jac. I.

A Motion in the Houſe of Commons, charging him with Bribery.

ON Thurſday, the 15th of *March*, 1620. Sir *Robert Phillips*, from the Committee of the Commons, appointed to enquire into Abuſes in the Courts of Juſtice, reported to the Houſe, that they had received two Petitions, charging the Lord Chancellor with Corruption, in his Office.

In Awbrey's *Caſe.*

That the firſt Petition was from *Awbrey*, which ſhewed, that he, having a Cauſe depending before the Lord Chancellor, and being tired with Delays, was adviſed, by ſome near my Lord, to quicken him, by making his Lordſhip a Preſent of 100 *l.* That he, thereupon, with ſome Difficulty, procured the ſaid Sum of an Uſurer, and went with Sir *George Haſtings*, and Mr. *Jenkins*, to the Lord Chancellor's Houſe, in *Gray's-Inn*; and thoſe two Gentlemen carried in the Money to his Lordſhip; and, when they came out, ſaid, my Lord was thankful, and aſſured him of Succeſs in his Buſineſs.

That, Sir *George Haſtings*, a Member of the Houſe, had acknowledged the giving *Awbrey* that Advice, and carrying in the Money to my Lord; but ſaid, he preſented it as from himſelf, and not from *Awbrey:* Nor had it the Effect that the Petitioner expected. This Charge was confirmed by ſeveral Letters.

In Egerton's *Caſe.*

The ſecond Petition was from *Edward Egerton*, who ſhewed, that he was perſuaded by Sir *George Haſtings*, and Sir *Richard Young*, to preſent his Lordſhip with a Sum of Money; but that he had before given my Lord a Piece of Plate, of the Value of 52 *l.* as a Teſtimony of his Love; and now he procured 400 *l.* and ſent it to his Lordſhip by Sir *George Haſtings* and Sir *Richard Young*, as a Gratuity, for what my Lord had done for him, when he was Attorney-General: That theſe Gentlemen told the Petitioner, my Lord ſcrupled the taking it at firſt, and ſaid, it was too much; but was at length perſuaded to take it, as for Favours paſſed, and returned him Thanks, ſaying, he did not only enrich him, but laid a Tie on him, to aſſiſt him in his lawful Buſineſs: That Sir *George Haſtings* and Sir *Richard Young*, Members of the Houſe, acknowledged the Delivery of the Purſe; but ſaid, they knew not what was in it.

The Report alſo took notice, that Doctor *Field*, now Biſhop of *Landaff*, had undertaken to procure Mr. *Egerton* Succeſs in his Cauſe, on condition of his entring into a Recognizance of 10000 Marks; with Condition, that if my Lord Chancellor decreed it for him, 6000 Marks ſhould be diſtributed among thoſe honourable Perſons that ſolicited his Cauſe for him.

This Matter being ordered to be further conſidered by the Committee, Sir *Robert Phillips* reported on the 17th of *March*, that it appeared plainly in *Awbrey*'s Caſe, there was a Suit depending at the Time the Money was preſented: And that Sir *George Haſtings* had at length acknowledged, when he gave the Lord Chancellor the 100 *l.* he ſaid, that it was to help *Awbrey* in his Cauſe. However, not long after, a very prejudicial and murdering Order was made againſt *Awbrey:* Whereupon, Sir *George* moved, it might be rectified; and my Lord promiſed to do it; but did not: And that there were Letters produced, from *Awbrey* to the Lord Chancellor, about this Buſineſs.

And, in *Egerton*'s Caſe, when the 400 *l.* was preſented to the Lord Chancellor, there was a Suit depending in the *Star-Chamber*; and Sir *Rowland Egerton*, about the ſame Time, preferred a Petition to the King, for a Reference of the Matter to the Lord Chancellor: Whereupon, his Lordſhip cauſed Mr. *Edward Egerton* to enter into a Bond of 6000 Marks, to ſtand to his Award: And an Award being afterwards made, and refuſed by *Edward*, a Suit was, by the Lord Chancellor's Direction, commenced againſt him, and the Bond of 6000 Marks aſſigned over to Sir *Rowland Egerton:* And then it was, that Doctor *Field* adviſed Mr. *Edward Egerton* to apply himſelf to Mr. *Damport*, and Sir *John Butler*, to ſolicit his Cauſe for him, and drew Mr. *Edward* into a Bond of 10000 Marks, for the Payment of 6000, as related already: And it being demanded of *Damport*, how much he and Doctor *Field* were to have of the Money, he anſwered, he did not remember the certain Sum; but it was more than any Cauſe could deſerve, in any Court of Juſtice.

That, in *Awbrey*'s Caſe, it appeared, that Sir *George Haſtings*, being at *Hackney*, where he dwelt, was ſent for by the Lord Chancellor: And when Sir *George* came, the Lord Chancellor ordered every Body elſe out of the Room; and ſaid, *Sir* George, *I am ſure you love me; and, I know, that you are not willing, that any Thing, done by you, ſhould reflect Diſhonour upon me. I hear, that one* Awbrey *intends to petition againſt me: He is a Man, that you have ſome Intereſt in; you may take him off, if you pleaſe:* And that Sir *George* afterwards deſired *Awbrey*, to let him ſee his Petition; and he ſhewed it to my Lord; and his Lordſhip promiſed, to do him Juſtice: But he could have no Remedy, and ſo the Petition went on.

1620. 19 Jac. I. That, ſome Time after, Sir *George*, diſcourſing with the Lord Chancellor, told him, *He muſt lay it* (the Buſineſs of *Awbrey*) *upon his Lordſhip*; to which my Lord replied, *If you do*, George, *I muſt deny it, upon my Honour.*

Upon this Report, it was moved, that Sir *George Haſtings*, and Sir *Richard Young*, might be ſequeſtred from Parliament: But they were permitted to keep their Seats; and it was ordered, that the Complaint of *Awbrey* and *Egerton*, againſt the Lord Chancellor, and the Biſhop for Corruption, ſhould be drawn up by Sir *Robert Phillips*, Sir *Edward Coke*, Mr. *Noy*, and Sir *Dudley Diggs*; and that the ſame ſhould be related to the Lords, without Prejudice or Opinion, at a Conference.

A Committee of both Houſes examine the Matter.

The ſame Day, the Commons received a Meſſage from his Majeſty, in which he ſaid, he was ſorry to hear of the Complaints againſt the Lord Chancellor: It had always been his Care, to advance the beſt Men to Places; though no Man could prevent ſuch Accidents: But his Comfort was, the Houſe was careful to preſerve his Honour; and propoſed a Committee, of ſix of the Upper Houſe, and twelve of the Lower Houſe, to examine the Matter.

In anſwer to which, the Commons deſired, the like Meſſage might be ſent to the Lords, that they might have a Conference with them about it.

The Commons prefer only a verbal Charge againſt the Lord Chancellor.

On the 20th of *March*, Sir *Robert Phillips* reported from the Conference, that the Lords demanded, if they would not reduce their Complaint into Writing: And it was reſolved, that they would not; it only conſiſting of two or three Points, clear and plain.

Two Members allowed to give Evidence before the Lords.

A Meſſage came from the Lords, the ſame Day, ſignifying, that they had taken into Conſideration, the laſt Conference, and ſhould need the Teſtimony of two Members of that Houſe; deſiring, they might attend voluntarily, without Order, as private Perſons, and give their Teſtimony upon Oath: And it was anſwered, that they would attend as private Gentlemen, and be examined.

Bribery, in Lady Wharton's Caſe.

Sir *Robert Phillips* reported further, that the Committee of the Commons had examined *Churchill*, one of the Regiſters in *Chancery*; and it appeared that, the Lady *Wharton* having a Cauſe depending there, an Order was made, for the Diſmiſſion of her Bill, by Conſent of the Counſel on both Sides; which the Lady diſliking, took *Churchill* into her Coach, and carried him to the Lord Chancellor's; and ſo managed the Matter, that the Regiſter was commanded, not to enter the laſt Order; and my Lady being left at Liberty, thereby, to proſecute her Suit, brought it to a Hearing, and obtained a Decree.

That —— *Keeling* being examined, declared, that about the Time of paſſing the ſaid Decree, my Lady took an hundred Pounds, and carried it to *York-Houſe*, to the Lord Chancellor, in a Purſe; and, my Lord aſking her, *What ſhe had in her Hand?* ſhe anſwered, *a Purſe of her own making*, and preſented it to him; who took it, and ſaid, *What Lord could refuſe a Purſe of ſo fair a Lady's Working?* That, afterwards, my Lord decreed for her; but the Decree was not perfected, till 200 *l.* more was given, in the Preſence of one *Gardiner*.

1620. 19 Jac. I. *Gardiner*, *Keeling*'s Man, confirmed the Payment of the 300 *l.* for the Decree, *viz.* 100 *l.* firſt, and 200 *l.* afterwards: And this purchaſed Decree, being lately damned by the Lord Chancellor, occaſioned the Lady's Complaint.

Keeling added, that Sir *John Trevor* preſented the Lord Chancellor with 100 *l.* by the Hands of Sir *Richard Young*, for a final End of this Cauſe: And Sir *Richard Young* declared, that, when he attended the Lord Chancellor, Sir *John Trevor*'s Man brought a Cabinet, and a Letter, to my Lord, and entreated him to deliver it, which he did, openly.

Other Complaints of Bribery made to the Commons.

On the 21ſt of *March*, 1620. Sir *Robert Phillips* reported, that they were informed of ſeveral other Corruptions, by *Keeling* and *Churchill*; particularly, that his Lordſhip had taken great Sums in the Cauſes of *Hull* and *Holman*, *Wroth* and *Manwaring*, *Peacock* and *Reynell*, *Barker* and *Bill*, *Smithwick* and *Welch*: That, in this, and other Cauſes, my Lord would decree Part; and, when he wanted more Money, he would ſend for more, and then decree, another Part: And in moſt Caſes my Lord's Servants had undertaken one Side or another; inſomuch that it was uſual for Counſel, when their Clients came to them, to aſk, what Friend they had at *York-Houſe?*

Decrees made by Parcels, to extort Money.

My Lord's Servants bribed in every Cauſe.

It being ordered that a Meſſage be ſent to the Lords, by Sir *Robert Phillips*, to relate the Caſe of the Lady *Wharton*, and the Informations of *Churchill*; Sir *Robert* reported from the Lords, That they acknowledged the great Care of the Commons, returned them Thanks for their Correſpondence, and aſſured the like on their Part for ever.

The Commons communicate theſe Complaints to the Lords.

The Lords examine the Matter.

The Caſe of the Lord Chancellor coming under Debate in the Houſe of Peers, the 19th of *March*, the Lord Admiral * preſented a Letter to that Houſe, the ſame Day, from his Lordſhip, deſiring them to excuſe his Abſence, becauſe he was ſo very ill, that he thought he had but a little Time to live; however, underſtanding there were ſome Complaints of baſe Bribery coming before their Lordſhips againſt him, he would be glad to preſerve his Honour and Fame, and therefore requeſted, 1. That they would preſerve a good Opinion of him, till his Cauſe was heard; 2. That they would give him Time to adviſe with Counſel, and put in his Anſwer: 3. That he might be allowed to except againſt the Witneſſes, to croſs examine them, and produce his own Witneſſes; and, Laſtly, That their Lordſhips would not be prejudiced againſt him from the Number of Complaints that ſhould be exhibited, conſidering he did not make leſs than two thouſand Orders and Decrees within the Space of a Year, and the Courſes that were taken to hunt out Complaints againſt him; but that he might anſwer them ſeparately, according to the Rules of Juſtice.

* *Duke of* Buckingham.

Lord Chancellor excuſes his Abſence.

He is ordered to prepare his Defence.

To this Letter their Lordſhips anſwered, That they intended to proceed in his Cauſe according to the right Rules of Juſtice; and ſhould be glad if his Lordſhip ſhould clear his Honour therein: To which End they deſired his Lordſhip to prepare for his juſt Defence.

Then the Lords proceeded to examine the ſeveral Complaints of the Suitors, and reduced them to the following Particulars, *viz.*

That

1620 19 Jac. I. *The ſeveral Complaints of the Suitors, before the Lords.*

	l.	*s.*	*d.*
That in the Cauſe between Sir *Rowland Egerton*, and *Edward Egerton*, his Lordſhip received on the Part of Sir *Rowland*, before he decreed for him,	300	0	0
Of *Edward Egerton*, in the ſame Cauſe, — — —	400	0	0
In the Cauſe between *Hody* and *Hody*, a Dozen of Buttons (after the Cauſe ended) of the Value of — — —	50	0	0
Of the Lady *Wharton*, — —	310	0	0
Of Sir *Thomas Monk*, — —	100	0	0
Of Sir *John Trevor*, — —	100	0	0
Of one *Young*, — — —	100	0	0
In *Fiſher* and *Wraynham*. Of *Fiſher*,	106	0	0
In the Cauſe of *Kennedy* and *Valore*. Of *Kennedy*, a Cabinet worth —	800	0	0
Of *Valore*, borrowed at twice, —	2000	0	0
In the Cauſe between *Scot* and *Lenthall*. Of *Scot*, — — —	200	0	0
Of *Lenthall*, — — —	100	0	0
In *Wroth* and *Manwaring*. Of *Wroth*,	100	0	0
Of Sir *Ralph Hanſby*, — —	500	0	0
Of the Lord *Mountague*, and more promiſed at the End of the Cauſe,	600, or 700		
Of one *Dunch*, — — — —	200	0	0
In *Reynell* and *Peacock*. Of *Reynell*, 200 *l.* in Money, and a Diamond, worth 5 or 600 *l.* — — — —	700 or 800	0	0
Of *Peacock*, — — —	100	0	0
Of *Barker*, — — —	700	0	0
There being a Reference from his Majeſty to his Lordſhip of a Buſineſs between the *Grocers* and *Apothecaries*. Of the *Grocers*, —	200	0	0
Of the *Apothecaries* (beſides a rich Preſent of Ambergreaſe) — —	150	0	0
Of the *French* Merchants, to oblige the *London* Vintners to take 1500 Tuns of Wine, — —	1000	0	0

And laſtly, that he had given way to great Exactions by his Servants, in reſpect of private Seals, and ſealing Injunctions.

The Lord Chancellor makes a general Submiſſion and Confeſſion.

On the Twenty-fourth of *April*, the Prince ſignified to their Lordſhips, that the Lord Chancellor had ſent a Submiſſion, which was read in the Houſe; wherein he tells their Lordſhips, That having underſtood the Particulars of the Charge, not formally from the Houſe, but enough to inform his Conſcience and Memory, he found Matter ſufficient and full, both to move him to deſert his Defence, and to move their Lordſhips to condemn and cenſure him.

Neither would he trouble their Lordſhips with ſingling out thoſe Particulars which might be moſt eaſily anſwered, or prompt their Lordſhips to obſerve upon the Proofs, where they came not home; or with Scruples touching the Credit of the Witneſſes; nor would he obſerve how far a Defence, in divers Things, might extenuate the Offence, in reſpect of the Time or Manner of the Gift, but leave thoſe Things to their own Obſervations on the Evidence; and ſubmitted himſelf wholly to their Pity and Grace.

He made it his humble Suit to their Lordſhips, that his penitent Submiſſion might be his Sentence, and the Loſs of the Seal his Puniſhment: That their Lotdſhips would ſpare any farther Sentence, and recommend him to his Majeſty's Grace and Pardon for all that was paſt. 1620. 19 Jac. I

The Lords having conſidered this Submiſſion, and heard the Particulars of the Corruptions charged on the Lord Chancellor, with the Proofs; they ſent a Copy of them, without the Proofs, to the Lord Chancellor, and the following Meſſage, *viz.*

That his Lordſhip's Confeſſion, in the ſaid Submiſſion, was not full, for three Cauſes. *A Particular of his Charge ſent him.*

1. His Lordſhip confeſſed not any particular Bribe, or Corruption.

2. Nor ſhewed how he heard the Charge thereof.

3. The Confeſſion was afterwards extenuated, and therefore the Lords had ſent him a Particular of the Charge, and expected his Anſwer to the ſame with all convenient Expedition. *To which the Lords require his Anſwer.*

To this Meſſage, the Lord Chancellor anſwered, he would return the Lords an Anſwer with ſpeed.

On the Twenty-fifth of *April*, the Lords ſent the Lord Chancellor another Meſſage, by Mr. Baron *Denham* and Mr. Attorney General, (*viz.*) That they had received a doubtful Anſwer to their Meſſage, ſent him the Day before; and therefore deſired to know, directly and preſently, whether he would make his Confeſſion, or ſtand upon his Defence.

To which the Lord Chancellor anſwered, by the ſame Meſſengers, That he would make no manner of Defence, but acknowledge Corruption, and make a particular Confeſſion to every Point, and after that an humble Submiſſion; but begged Leave, where the Charge was more full than the Truth of the Fact was, he might declare the Truth in ſuch Particulars. And the Lords allowing him Time, till *Monday* the Thirtieth of *April*, to ſend his Confeſſion and Submiſſion, the Lord Chancellor then ſent it accordingly. *He abandons his Defence,*

It was directed, *To the Right Honourable the Lords Spiritual and Temporal, in the High Court of Parliament aſſembled*; and ſtiled, *The humble Confeſſion and Submiſſion of me, the Lord Chancellor.* *And makes a particular Confeſſion, and Submiſſion.*

1. To the firſt Article he confeſſed, that upon a Reference from his Majeſty, of all Suits between Sir *Rowland Egerton* and *Edward Egerton*, both Parties ſubmitted to his Award, by reciprocal Recognizances in ten thouſand Marks a-piece: That, after divers Hearings, he made his Award, with the Advice of Lord *Hobart*; and ſome Days after, the 300 *l.* mentioned in the Charge, were delivered to him from Sir *Rowland*. That Mr. *Edward Egerton* flying off from the Award, a Suit was begun in *Chancery* by Sir *Rowland Egerton*, to have the Award confirmed; and a Decree was made thereupon.

2. To the ſecond Article, he confeſſed, that ſoon after his coming to the Seal, when many preſented him, he received the 400 *l.* mentioned in this Article, of Mr. *Edward Egerton*; but, as he remembered, it was for Favours paſt.

3. That in the Cauſe between *Hody* and *Hody*, about a Fortnight after the Cauſe was ended,

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ed, there were Gold Buttons, about the Value of 50*l.* preſented him.

4. That in the Cauſe between the Lady *Wharton*, and the Coheirs of Sir *Francis Willoughby*, he received of the Lady *Wharton* 200*l.* in Gold, and at another Time an hundred Pieces, while the Cauſe was depending.

5. That he received of Sir *Thomas Monk* one hundred Pieces, but it was long after his Suit was ended.

6. That he received of Sir *John Trevor*, as a New-Year's-Gift, 100*l.* but he confeſſed it was while his Cauſe was depending.

7. In the Cauſe between *Holman* and *Young*, he received of *Young* an 100*l.* but it was long after the Cauſe was ended.

Bribery proved in Wraynham's *Caſe.*

8. That while the Cauſe was depending between *Fiſher* and *Wrenham*, (or *Wraynham*) he did receive of Sir *Edward Fiſher* a Suit of Hangings, of the Value of about an 160*l.* towards furniſhing his Houſe; and was at the ſame Time preſented by others, who were no Suitors, with Furniture for his Houſe.

9. As to the Charge of his receiving a Cabinet, of the Value of 800*l.* of Sir *John Kennedy*; a Cabinet was indeed ſent to his Houſe by Sir *John*, but not of half that Value; but he refuſed to accept it, and was determined to ſend it back again: That one *Pinkney*, who ſtood engaged for the Money to pay for the Cabinet, deſired he might have it; and thereupon Sir *John* entreated his Lordſhip, that he would not diſgrace him by returning the Gift, much leſs put it into a wrong Hand; and that he was ready to return it to whom their Lordſhips ſhould appoint.

10. He confeſſed he had borrowed 2000*l.* of *Vanlore*; but looked upon it as a Debt, and was obliged to repay it.

11. He acknowledged his receiving 200*l.* of Mr. *Scott*, about a Fortnight after the Decree paſſed for him.

12. That he received 100*l.* of Sir *John Lenthall*, about a Month after the Decree paſſed.

13. That the Cauſe between *Wroth* and *Manwaring* was ended by his Arbitrement, by Conſent of Parties, and he received of Mr. *Wroth* 100*l.* about a Month after the Cauſe was ended.

14. That he received of Sir *Ralph Hanſbye*, while his Cauſe was depending, 500*l.*

15. That he did borrow the 500*l.* mentioned in this Article, of *Compton*; but looked upon it as a Debt which he was obliged to repay.

16. In the Cauſe between Sir *William Brounker* and *Axebrey*, he did acknowledge his receiving 100*l.* of *Axebrey*.

17. He confeſſed, he received Money of the Lord *Montague*, while his Suit was depending, to the Amount of 6 or 700*l.*

18. He confeſſed his receiving 200*l.* of Mr. *Dunch*; but thought it was ſome Time after the Decree.

19. He confeſſed his receiving 200*l.* of Sir *George Reynell*, his near Relation, at his firſt coming to the Seal, to be beſtowed in Furniture; but thinks this was before any Suit began: And as to the Diamond Ring, he received of him, while his Cauſe was depending, charged to be worth 5 or 600*l.* it was not of near that Value; though he confeſſed, it was too much for a New-Year's-Gift.

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20. He confeſſed his receiving of 100*l.* of Mr. *Peacock*, at his coming to the Seal, as a Preſent; and that he afterwards borrowed 1000*l.* of him, at twice; for which, he ſaid, he would take no Security or Intereſt, and gave him his own Time for repaying it.

21. He confeſſed his Servant *Hunt* did receive 200*l.* of *Smithwick*; but that he ordered it to be repaid.

22. That he did receive of Sir *Henry Ruſwell* 3 or 400*l.* about a Month after the Cauſe was decreed; in which Decree he was aſſiſted by two of the Judges.

23. He confeſſed he received of Mr. *Barker* the 700*l.* mentioned in this Article, ſome Time after the Decree paſſed.

As to the 24th, 25th, and 26th Articles, he confeſſed he received the ſeveral Sums therein mentioned, (viz.) Of the *Grocers* 200*l.* of the *Apothecaries*, that ſtood with the *Grocers*, a Taſter of Gold, worth 4 or 500*l.* and a Preſent of Ambergreaſe, and of a new Company of *Apothecaries* that ſtood againſt the *Grocers*, 100*l.* But this was no judicial Buſineſs, he obſerved, only a Compoſition between the Parties; and he thought, as they all received Benefit by it, and were all three Common Purſes, there was no great Matter in receiving what they voluntarily preſented.

As to the 27th Article, in which he is charged with taking of the *French* Merchants 1000*l.* to conſtrain the Company of Vintners to take 1500 Tuns of their Wine, with threatning and impriſoning the Vintners becauſe they would not take their Wines at higher Prices than they were vendible; he confeſſed, Sir *Thomas Smith* did deal with him in Behalf of the *French* Company; informing him, that the Vintners, by Combination, refuſed to take their Wines at any reaſonable Prices; and that this would deſtroy their Trade, which the State was concerned in; and that the Company would gratify him with 1000*l.* for the Trouble he ſhould take in it. He did, he confeſſed, thereupon endeavour to compromiſe Matters between them, and prevent a Suit, propounding ſuch a Price as the Vintners might gain 6*l.* a Tun: And the King afterwards recommending the Buſineſs to him, as a Matter that concerned his Cuſtoms, he dealt the more peremptorily in it, and did, for a Day or two, reſtrain ſome of thoſe that were the moſt ſtiff in a Meſſenger's Hands; and afterwards the Merchants preſented him with 1000*l.*

To the 28th Article, That he had given way to the Exactions of his Servants, in reſpect of private Seals and Injunctions, he confeſſed it to be a great Fault, that he had looked no better to his Servants.

He confeſſes a great deal of Corruption.

And now he again confeſſed, That in the Points charged upon him, though they ſhould be taken as he had repreſented them, there was a great deal of Corruption and Neglect, for which he was heartily ſorry, and ſubmitted himſelf to the Mercy of the Court.

He deſired that their Lordſhips would look with Compaſſion on his Perſon and Eſtate, and conſider he was never eſteemed an avaricious Man: That there were few or none of theſe Particulars that were of leſs than two Years ſtanding;

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ſtanding; from whence he inſinuated, that he had reformed theſe Practices, inſtead of increaſing his Corruptions; and his Eſtate was ſo inconſiderable, that his chief Care was, how he ſhould be able to pay his Debts.

Concluding with his humble Suit, that their Sentence might be mixed with Mercy; and that they would be Interceſſors for him to his Majeſty for his Grace and Favour.

Signs his Confeſſion. Signed, *Your Lordſhips*
Humble Servant and Supplicant,
Franc. St. Albans, *Canc.*

A Committee of Lords was hereupon ſent to the Lord Chancellor, to acquaint him that they conceived this to be an ingenuous and full Confeſſion, and to demand, Whether that was his Hand to it, and if he would abide by it. To whom the Lord Chancellor anſwered, *My Lords, It is my Act, my Hand, my Heart: I beſeech your Lordſhips to be merciful to a broken Reed.*

The Seal taken from him. Which Anſwer being reported to the Houſe, they moved his Majeſty to ſequeſter the Seal; and the King thereupon gave it to the Lord Chief Juſtice Sir *Robert Hutton*, on the firſt of *May*.

He is ſummon'd to appear. The next Day the Lords commanded the Gentleman-Uſher, and Serjeant at Arms, of that Houſe, to ſummon the late Lord Chancellor to appear in Perſon before their Lordſhips by Nine the next Morning; and that the Serjeant ſhould ſhew his Mace to his Lordſhip at the Time of the Summons; which was done accordingly: But they found him ſick in Bed; *Pleads Sickneſs.* and he proteſted his Illneſs was not feigned, and that if he had been well, he would willingly have come.

On *Thurſday*, the third of *May*, the Lords ſent a Meſſage to the Commons, importing, that they were ready to give Judgment againſt the Lord Viſcount *St. Albans:* Whereupon the Commons came up, and their Speaker ſaid, *The Commons demand Judgment againſt him.* "The Knights, Citizens, and Burgeſſes of "the Commons Houſe having made Com- "plaint to your Lordſhips of many exorbitant "Offences of Bribery and Corruption commit- "ted by the late Lord Chancellor, in their "Name I do humbly pray and demand Judg- "ment againſt him, as the Nature of his Of- "fence and Demerits do require."

The Lord Chief Juſtice (to whom the Cuſtody of the Seal was now committed) anſwered, That that High Court had found the Lord Viſcount *St. Albans* guilty of the Crimes and Corruptions complained of by the Commons, and of ſundry other Crimes and Corruptions of the like Nature; and that, he having excuſed his Attendance on account of Sickneſs, they did nevertheleſs proceed to Judgment; and that *His Sentence.* High Court did adjudge, *That the Lord Viſcount* St. Albans, *late Lord Chancellor of* England, *ſhould pay a Fine of forty thouſand Pounds; be impriſoned in the* Tower *during the King's Pleaſure, and be for ever incapable of any Office, Place, or Employment, in the Eſtate or Commonwealth; and that he ſhould never ſit in Parliament, or come within the Verge of the Court.*

He is ſet at Liberty, and allow'd a Penſion. The King ſome Time after releaſed his Lordſhip out of the *Tower*, and ſettled a ſmall Penſion on him; and he reſided, for the moſt part, at his Chambers in *Gray's-Inn*. *His Death.* He died the ſixth of *April*, 1626, in the ſixty-ſixth Year of his Age, at the Lord *Arundel*'s Houſe at *Highgate*, near *London*; where he had been about a Week upon a Viſit. His Diſtemper was a ſlow Fever, attended by a violent Cold, and a Defluxion of Rheum upon his Breaſt, which was ſo great that it ſuffocated him.

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Buried at St. Albans. He was buried at St. *Michael*'s Church in *St. Albans*, in purſuance of his Will, and had a Monument of white Marble erected there, by Sir *Thomas Meautys*, once his Lordſhip's Secretary; the Inſcription being compoſed by the celebrated Sir *Henry Wotton*. He left neither Wife or Child, and conſequently his Titles, of Lord *Verulam*, and Viſcount of *St. Albans*, expired with him.

Remarks on Lord Bacon's Trial. Theſe Proceedings againſt the Lord Chancellor *Bacon* may not be thought perfectly regular at this Day perhaps; for here the Commons exhibit only a verbal general Charge againſt him, for Bribery and Corruption; giving two or three Inſtances of it, and leaving the Lords to ſpecify the reſt. No particular Articles were exhibited in Writing, or indeed any thing in Writing, by the Commons; and for ought appears, that Charge (ſuch as it was) was delivered at a Conference between the two Houſes, and not at the Bar of the Houſe of Lords: Nor was it ſo much as ſtiled *An Impeachment*, though the Editor of this ſecond Collection of Trials calls it ſo.

The Lords, we find, drew up the Charge *in Writing* themſelves, and added abundance of Inſtances of Bribery that the Commons never mentioned; and gave Judgment on the Whole, though regularly, Judges can take Notice of no more than what the Criminal is charged with by the Proſecutor. Where a Perſon is impeached, or indicted, for two or three Miſdemeanors, and his Judges know of twenty more, they are not to try and ſentence him for more than the Proſecutors charged him with. But here the Lords ſeem to have taken upon them to be both Proſecutors, and Judges in a great meaſure, which is not exactly agreeable to the Rules of Juſtice. However, as the Commons acquieſced, or rather concurred in this Method of Proceeding, it was in vain to complain, for they could ſoon have converted their Charge into a formal Impeachment, where there appeared ſuch abundant Evidence againſt his Lordſhip. Whether it be conformable to the Rules of Juſtice alſo, to condemn a Perſon in his Abſence, if that Abſence be really occaſioned by Sickneſs, is another Point that deſerves Conſideration: But perhaps the two Houſes might not imagine, they were tied up by ſuch Rules as other Courts are indiſpenſibly obliged to obſerve: And it muſt be admitted, when they act in their Legiſlative Capacity, they are not. But whether, in other Caſes, the Laws of the Kingdom ought not to be obſerved by the Houſe of Peers, as well as by inferior Courts, I perceive ſome are apt to queſtion.

But, notwithſtanding theſe numerous Inſtances of Bribery and Extortion, I find there are ſome Gentlemen, at this Day, that cannot bring themſelves to believe, that a Perſon of my Lord *Bacon*'s fine Sentiments could be guilty of theſe ſordid Crimes. They aſcribe all to his Servants, and to the Malice of his Enemies, who fixed the Faults of his Dependants upon him. But, when

1620. 19 Jac I. we ſee his Lordſhip firſt making a general Confeſſion of the Charge, and then acknowledging his Guilt in many particular Inſtances, what Room is there to ſuppoſe him innocent?

My Lord endeavours to extenuate his Guilt, by obſerving, that he was never eſteemed a covetous Man, nor had acquired a great Eſtate: And perhaps his principal Errors were a bad Œconomy, and a Generoſity that bordered on Profuſeneſs, which brought him under Difficulties; and then poſſibly he liſtened to his Servants and Dependants, who were already retained in almoſt every Cauſe, and repreſented to their Maſter, no doubt, how eaſily he might extricate himſelf, by accepting Preſents from the Suitors; and when they had once prevailed on their Lord to pay his Debts, *and trafick with Orders and Decrees*, they continued their own Extortions without Reſtraint. They had him now in their Power, and he was under a Neceſſity of conniving at whatever they did; and perhaps he frequently perverted Juſtice for fear of provoking theſe inſatiable Wretches to make a Diſcovery. What he gained himſelf might be a Trifle to what they pillaged the unhappy Suitors of.

It has been frequently obſerved of great Wits, that, though they give excellent Rules to others, their own Œconomy is the worſt in the World. They ſeem to think it beneath them to attend to the Parts of low Life; to deſpiſe the keeping Accounts, and calculating whether their Revenues will ſupport their Expences. They cannot ſee an Object of Compaſſion perhaps without relieving him, or deny a Share in their Purſe to a Perſon that pretends to be in Diſtreſs; not conſidering, that the beſt Fortune muſt ſoon be exhauſted, where they have not Reſolution enough to reſiſt the Importunities of every idle neceſſitous Supplicant.

They do not reflect, that when they have brought Difficulties upon themſelves, by ſquandring away their Fortunes, with a laviſh undiſtinguiſhing Hand, what a Teſt their Virtue may be put to, to ſupply their Neceſſities: That, when hungry Creditors ſtand ready to expoſe and devour them, it will be difficult to reſiſt any Opportunities of furniſhing themſelves with Money, how infamous ſoever.

That Species of Covetouſneſs which induces a Man to wrong others, in order to hoard up Treaſure, with which he might do a great deal of Good in the World, ought certainly to be deteſted; but I queſtion if, he who is guilty of Extortion and Oppreſſion, to ſupply his own Extravagancies, or the Defects of his Œconomy, be not the more to be dreaded of the Two. For the Miſer, as we ſtile him, is generally timerous and cautious how he expoſes himſelf to be called to an Account; while the vain, luxurious Prodigal is frequently obliged to venture upon any Meaſures, how criminal or deſperate ſoever, to preſerve him from preſent Deſtruction. Nothing, therefore, is more to be dreaded, than the filling our Courts of Juſtice with indigent and extravagant Men, who are under a kind Neceſſity of ſelling and making Merchandize of the Suitors, in order to ſupport their own profuſe Way of Living.

It was an excellent Obſervation, *That a Man ought to be juſt, before he is generous.* He ought not to beſtow that Part of his Fortune upon others, that ſhould be applied to the Payment of his Debts; much leſs ſhould he accept Bribes to pervert Juſtice, and ruin Families, to enable him to be generous to others. Such Sort of Generoſity is worſe than Robbery; for it does not only bring Deſtruction on innocent Men, under a Colour of doing them Juſtice, but, for a trifling Sum the Judge takes, probably the Suitor loſes ten times as much; whereas a Highwayman only takes what a Man has about him; we expect no Juſtice or Compaſſion from him, and he deprives us of no more than what he himſelf makes uſe of. 1620. 19 Jac. I.

But what makes an unjuſt Judge ſtill to be more dreaded than a Robber, is, that after he has ruined a Family, he ſometimes finds himſelf under a Neceſſity of perſecuting and torturing the injured Suitor, in order to conceal his own Wickedneſs, as in the preceding Caſe of *Wraynham*; where this very Lord Chancellor took a Bribe of 100*l.* of his Adverſary *Fiſher*, to give the Cauſe againſt him; whereby *Wraynham* and his Family were not only ruined, but when he complained of the Injuſtice, the Injury was doubled by a Proſecution in the *Star-Chamber*, where his Lordſhip was Preſident, and procured him to be fined and impriſoned, inſtead of relieving him; and we ſee the unfortunate *Wraynham* crying out, in the Anguiſh of his Soul, when he found he was like to be cenſured by that Court, *My Lands are taken away, which were decreed me by a former Lord Chancellor; I ſee a Priſon gaping for me, in which I muſt from henceforth ſpend all the Days of my Life; for I have laid out three thouſand Pounds in this Suit: My Wife and Children muſt ſtarve, and my Friends, that ſtand engaged for me, are undone.* And all theſe Misfortunes brought upon him by a Bribe of 100*l.* or a very little more, for ought appeared; and now he was to be puniſhed, by the Influence of his Oppreſſor, for complaining of the Injuſtice that had been done him. In his own Words, *Oppreſſion was palliated and defended by Greatneſs, Wit, and Eloquence: He that had done him this Injury, was forced to add Falſhood and Cruelty to it, to prevent the Diſcovery, which was worſe than Murder, for his Lordſhip had devoured him and his Family.* Such was the curſed Effects of his Lordſhip's taking one ſingle Bribe in this Cauſe, and very probably the Conſequences were as deſtructive in many more; and yet with what extreme Tenderneſs did the Parliament proceed againſt this illuſtrious Oppreſſor; it was long, very long, before they would give any Attention to the unfortunate injured Suitors; and, as has been already obſerved, ſome were puniſhed but for complaining of him, when his Corruption was ſo manifeſt, that his Servants were known to eſpouſe one Side or other, in almoſt every Cauſe.

Such were the fine Talents, the inimitable Accompliſhments of the Lord *Bacon*, that all the World ſeem to have been prejudiced in his Favour; and it has been looked upon as a memorable Inſtance of the Humanity of the *Engliſh*, that they expreſſed ſo much Compaſſion towards him in his Fall: The Commons, though his Oppreſſions cried ſo loud that they could not avoid proſecuting him, would not impeach

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impeach him formally, or draw up any Articles againſt him; but left the ungrateful Taſk entirely to the Lords.

His Peers, to deliver him from that Confuſion that muſt naturally have attended his Appearance before them, were pleaſed to diſpenſe with it, and gently cenſured him, in his Abſence. His Sentence muſt be acknowledged exceeding mild, if we reflect on his complicated Crimes. The Brightneſs of his Parts, and his exalted Station, were certainly ſo far from extenuating his Guilt, that they were in reality a very great Aggravation of it: This Backwardneſs, therefore, of the Commons, in proſecuting, and the Lords in puniſhing, this unrighteous Judge, muſt ſurely be looked upon, rather as the Effect of Weakneſs, than an Inſtance of the Virtue, of the *Engliſh* Nation.

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Sir Thomas Darnel's *Caſe.*

Proceedings on the Writs of *Habeas Corpus*, brought by Sir THOMAS DARNEL, Sir JOHN CORBET, Sir WALTER EARL, Sir JOHN HEVENINGHAM, and Sir EDMUND HAMPDEN, *Nov.* 1627. 3 *Car.* I.

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HIS Majeſty being engaged in War, both with *France* and *Spain*, and having been refuſed Supplies, by his two firſt Parliaments, aſſembled in the Years 1625, and 1626. had Recourſe to that extraordinary Way, of raiſing Money by way of Loan: And Letters were ſent to the Lords Lieutenants of the reſpective Counties, to return the Names of ſuch Perſons as were of Ability, and what Sums they might be ſuppoſed to ſpare: After which, Letters were iſſued, under the Privy Seal, requiring the Loan of ſuch Sums, as had been ſpecified in the Return of the Lords Lieutenants. Of ſome were demanded ten, of others fifteen Pounds; and ſcarce more than twenty Pounds, of any one Perſon. Collectors were employed to receive the reſpective Sums, or procure Subſcriptions for them; and thoſe who refuſed, either to pay, or ſubſcribe, what they were aſſeſſed at, were bound by Recognizance to appear at the Council Board. If they were Gentlemen of Fortune, and in caſe of their perſiſting to refuſe the Loan before the Council, they were committed to Priſon: Among theſe were Sir *Thomas Darnel*, and the other four Gentlemen above named; who ſeverally ſued out Writs of *Habeas Corpus*, to be admitted to Bail; and, firſt, Sir *Thomas Darnel*, who was impriſoned in the *Fleet*, brought his Writ of *Habeas Corpus*, returnable the 8th of *November*, and afterwards an *Alias Habeas Corpus*, returnable the 15th of *November*: By virtue whereof, the Warden of the *Fleet* brought Sir *Thomas Darnel* into the Court of *King's-Bench*, and made the following Return:

A Loan required of the Subject.

Sir Thomas *committed by the Council, for refuſing to lend.*

Brings his Writ of Habeas Corpus.

Return of the Habeas Corpus.

Executio iſtius brevis patet in quadam ſchedula annexat' huic brevi:

Ego, Henricus Liloe, Miles, Gardianus Priſone Domini Regis de le Fleet, *ſereniſſimo Domino Regi certifico, quod dict'* Thomas Darnel *Baronet' detentus eſt in priſona predict' ſub cuſtodia mea virtute cujuſdam Warranti duorum de privato Conſilio mihi directi cujus tenor ſequitur in hiis verbis,* viz.

Whereas heretofore the Body of Sir *Thomas Darnel* hath been committed to your Cuſtody, theſe are to require you, ſtill to continue him; and to let you know, that he was, and is, committed by the ſpecial Command of his Majeſty. *Et hæc eſt cauſa detentionis predict'* Thomæ Darnel.

The Caſe of Sir *John Corbet* Baronet, Sir *Walter Earl*, Sir *John Heveningham*, and Sir *Edmund Hampden* Knights, was exactly the ſame with that of Sir *Thomas Darnel*: And they alſo were brought into Court, on their ſeveral Writs of *Habeas Corpus*, on Thurſday, the 22d of *November*.

The Caſe of the other four Priſoners, the ſame.

Serjeant *Bramſton*, on the Behalf of Sir *John Heveningham*, moved, that he might be bailed, taking Exceptions, as well to the Matter and Subſtance of the Return, as to the Manner and legal Form thereof.

Bramſton's *Argument for Sir* John Heveningham.

The Exceptions he took to the Matter, were, That, the Return was too general, there being no ſufficient Cauſe ſhewn, of the Commitment of the Priſoner: And, as it was inſufficient for the Cauſe, ſo alſo in the Time of the firſt Impriſonment; for though there appeared a Time, upon the ſecond Warrant from the Lords of the Council, to detain him ſtill in Priſon; yet, by the Return, no Time appeared when he was firſt impriſoned, which was neceſſary to be ſhewn; and if that Time appeared not, there was no Cauſe to remand him, and conſequently he was to be delivered.

Exceptions to the Return.

And as to the Cauſe of his Impriſonment, which was ſaid to be *per ſpeciale mandatum Domini Regis*, this was too general, and uncertain; for that it was not manifeſt, what kind of Command that was.

Nor was the Form of the Return, as it ought to be, fully and poſitively the Return of the Keeper himſelf only, but came in with a *ſignificavit*, or *prout*, that, he was committed *per ſpeciale mandatum Domini Regis.*

That it was not good in Subſtance; becauſe there was no Cauſe of the Impriſonment ſhewn. The Writ of *Habeas Corpus* was the only Means the Subject had to obtain his Liberty; and the End of the Writ was, to return the Cauſe of the Impriſonment, that it might be examined in that Court, whether the Parties ought to be diſcharged, or not. In this Return there was no Cauſe at all appeared of the firſt Commitment, and therefore there could be no Cauſe for the Court to remand him: But there was Cauſe to deliver him, ſince the Writ required the Keeper to bring the Body, *and the Cauſe* of his Impriſonment, before the Court.

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This was the End of the Writ: And this could not appear to the Court, unleſs the Time of the firſt Impriſonment was expreſſed in the Return. By a latter Warrant from the Lords of the Council indeed, for continuing him in Priſon, there is a Time expreſſed: But if this was a good Cauſe, to remand theſe Gentlemen to Priſon, they might be perpetually impriſoned; for if they ſued out Writs of *Habeas Corpus*, it was but making a new Warrant, and they ſhould be remanded, and never have the Advantage of the Laws, which were the beſt Inheritance of the Subject.

Here the Serjeant cited ſeveral Precedents, where Priſoners had been bailed, that were committed *per mandatum Domini Regis*, without Cauſe of their Impriſonment ſhewn.

After citing theſe Precedents, the Serjeant concluded, that, ſince there was no ſufficient Cauſe of the Impriſonment expreſſed in the Return, his humble Suit was, that his Client, Sir *John Heveningham*, who had petitioned his Majeſty, that he might have the Benefit of the Law, (and his Majeſty had ſignified it to be his Pleaſure, that Juſtice, according to Law, ſhould be adminiſtred to all, and eſpecially to theſe Gentlemen) might be delivered from his Impriſonment.

Mr Noy's *Argument for bailing Sir* Walter Earl.

Mr. *Noy* being aſſigned Counſel for Sir *Walter Earl*, before he entered upon his Argument, for a Foundation of his Diſcourſe, read the *Writ* of *Habeas Corpus*, which runs thus:

Carolus, *Dei Gratia*, &c. Johanni Liloe *Milit' Gardian' Priſon' noſtræ de le* Fleet *ſalut' Præcipimus tibi quod corpus* Walteri Earl *Milit' in priſona noſtra ſub cuſtodia tua detent' ut dicit' una cum cauſa detentionis ſuæ quocumque nomine predict'* Walter' *cenſeat in eadem Habeas Corpus ad ſubjiciendum & recipiendum ea quæ Curia noſtra de eo ad tunc & ibidem ordin' conting' in hac parte.*

Et hæc nullatenus omit' periculo incumbend' & habeas ibi hoc breve. Teſte Hyde, *apud* Weſtm. *quarto die* Novembris, *Anno*, &c.

He alſo read the Return; but this being of the ſame Tenor as the former Return, there is no Neceſſity of repeating it.

Then Mr. *Noye* obſerved, that the Writ of *Habeas Corpus* contained a Command to the Warden of the *Fleet*, *quod Habeas Corpus* Walteri Earl *coram nobis ad Subjiciend' & recipiend' ea quæ Curia noſtra de eo*, &c. *Ordin' & Conting'* And the Warden having made the like Return as was made on the Return of Sir *Thomas Darnel's Habeas Corpus*, he deſired he might be bailed, if there was no other Cauſe of his Impriſonment; for if there had been a Cauſe certified, and that Cauſe had not been ſufficient to detain him ſtill in Priſon, the Court would have bailed him; and if a Man ſhould be in a worſe Caſe, when there was no Cauſe certified, it would be very hard.

He conceived, that though there was a Signification of the King's Pleaſure to have this Gentleman impriſoned, yet when the King afterwards granted this Writ of *Habeas Corpus*, to bring the Priſoner hither, *ad ſubjiciendum*, to ſubmit himſelf to Puniſhment if he had deſerved it, or, *ad recipiendum*, to receive his Enlargement and be delivered, if there was no Cauſe of his Impriſonment; ſince there appeared no Cauſe of his Impriſonment upon the Return, he ought to be diſcharged.

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He made the ſame Objection to the Return alſo that the Serjeant had made, (*viz.*) That the Warden could not certify what was done by another: He muſt inform the Court of the immediate Act done, and not that ſuch Things were told him, or were ſignified to him, as he had done in this Caſe, which rendered the Return inſufficient in the Form.

That, whereas the Statute of *Magna Charta* 29. ſays, *Nullus liber homo capietur vel impriſonetur, &c. nec ſuper eum mittimus, niſi per legale judicium parium ſuorum vel per legem terræ*, the Words *in carcerem* are omitted out of the printed Books, it ſhould have been *nec eum in carcerem mittimus*; that the Words *legem terræ* are underſtood in ſeveral ſubſequent Acts of Parliament, to ſignify the Proceſs of Law, ſometimes by Writ, ſometimes by Attachment of the Perſon, and not *ſpeciale mandatum Domini Regis*, as appeared by two Petitions of the Commons, and the King's Anſwer, in 36 *Edw.* III. N°. 9. and N°. 20.

In the firſt of them the Commons complained, That the Great Charter, the Charter of the Foreſt, and other Statutes, were broken, and deſire his Highneſs, for the Good of himſelf and his People, they might be kept, and put in execution, and that they might not be infringed, by making an Arreſt by ſpecial Command, or otherwiſe: And the Anſwer was, That the ſaid Charter and other Statutes ſhould be put in execution according to the Petition; that is, without any Diſturbance by Arreſt by ſpecial Command, or otherwiſe. In the ſame Year they complained again, that Men were impriſoned by ſpecial Command, and without Indictment, or other legal Courſe; and deſired that Men might not be arreſted by ſpecial Command, againſt the Great Charter. To which the King anſwered, that he was well pleaſed therewith; and afterwards, that if any Man was grieved, he ſhould complain, and Right ſhould be done to him. And by the 37th of *Edw.* III. cap. 18. which was a Commentary upon *Magna Charta*, it was enacted, that Men ſhould not be committed upon Suggeſtion made to the King, without due Proceſs of Law; and ſo it was enacted twice in one Year.

Huſſey, Chief Juſtice, ſaith, that Sir *John Markham* told King *Edward* IV. that he could not arreſt a Man upon Suſpicion of Felony or Treaſon, as any of his Subjects might; becauſe if he ſhould wrong a Man by ſuch Arreſt, the Parties could have no Remedy againſt him.

The Statute of *Weſtm.* 1. indeed, ſays, That Men ſhould not be repleviſable in theſe four Caſes, *viz.* where they are committed for the Death of a Man; or by the Commandment of the King, or of his Juſtices, or of the Foreſt. This Statute, he held, regarded only the Writ *de homine replegiando*, and the Sheriffs, and inferior Officers, and not the ſuperior Courts; for it appeared by the Books, that where a Man was brought into the Court of *King's-Bench*, by *Habeas Corpus*, as in the 21 *Edw.* 4. 7. *Winckfield* was bailed here: And if the Statute was expounded otherwiſe, there could

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could be no bailing of Men outlawed, or Breakers of Priſons; for they were not within this Statute; and yet this Court bailed them at Pleaſure. It was evident, from the Preamble and whole Tenor of that Act, That it extended only to Sheriffs, Goalers, and other Keepers of Priſons, to direct them in what Caſes they ſhould let Men to Bail, and in what Caſes not; but did not extend to the Judges of the ſuperior Courts. He concluded, that theſe Gentlemen were brought into Court by Writ *ad ſubjiciendum*, if they were charged; and *ad recipiendum* if they were not charged: Therefore, in regard there was no Charge againſt them, whereupon they could be detained in Priſon any longer, he deſired his Client might be bailed, or diſcharged with the reſt.

Mr. Selden's *Argument for Sir* Edmund Hampden.

Mr. *Selden*, being aſſigned Counſel for Sir *Edmund Hampden*, moved alſo, that his Client might be bailed, there appearing no Cauſe, in the Return of the *Habeas Corpus*, why he ſhould be reſtrained of his Liberty: And, beſides the Arguments uſed by the former Counſel, he urged, That the Return was contradictory; for one Part of it ſaid, that his Client was detained by the ſpecial Command of the King, and the other, that the Lords of the Council willed and required the Warden ſtill to detain this Gentleman, and that this Contradiction made the Return void.

And as to the Matter, he conceived no Man could be impriſoned, either by the King or the Privy-Council, without Cauſe expreſſed: That by the Words, *per legem terræ*, in *Magna Charta*, muſt be intended a due Courſe of Law, either by Preſentment or Indictment; for if the Words *per ſpeciale Mandatum*, *&c.* were within the Meaning of thoſe Words *per legem terræ*, (or according to Law) then the Statute had done nothing: That the Words, *per legem terræ*, muſt be interpreted here, as in 42 *Eliz.* where a Bill was brought in, reciting, that divers Perſons, without any Writ or Preſentment, were caſt into Priſon; and deſiring it might be enacted, That it ſhould not be ſo done hereafter. The Anſwer was, that this was an Article of the Great Charter, and ſhould be granted: So that it appeared, that Statute was not taken to be an Explanation of *Magna Charta*, but the very Words of the Statute of *Magna Charta*. He concluded, that ſince there were ſo many Reaſons, ſo many Precedents, and ſo many Statutes, which declare, that no Freeman ought to be impriſoned, but according to the Laws of the Land, and that the Liberty of the Subject was the higheſt Inheritance he had, his Client might be bailed.

Mr. Calthrop's *Argument for Sir* John Corbet.

Mr. *Calthrop*, who was aſſigned Counſel for Sir *John Corbet*, moved alſo that his Client might be bailed, becauſe the Return of the *Habeas Corpus* was inſufficient, both in the Matter and the Manner of the Return. As to the Manner, he obſerved, as the reſt of the Counſel had done, That it was ſaid in the Return, that Sir *John Corbet* was detained in Priſon by the ſpecial Command of the King, ſignified by the Warrant of the Lords of the Council; which was not a direct Affirmation that he was detained by the ſpecial Command of the King; but that the Lords of the Council had *ſignified* by their Warrant, that he was committed, and ſtill detained, by the ſpecial Command of the King: Therefore, as a Return ought to be certain, punctual, and affirmative, and not by way of Information out of another Man's Mouth, this Return could not be good.

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As to the Matter of the Return, he obſerved, it reſted on theſe three Points: 1. Whether the Return, that he was detained in Priſon by the ſpecial Command of the King, was good, or not, without ſhewing the Nature of the Command, or the Cauſe whereupon the Commitment was grounded? 2. Whether the Time of the firſt Commitment by the Command of the King, not appearing to the Court, was ſufficient to detain him? 3. Whether the Impriſonment of the Subject, without Cauſe ſhew'd, but only *by the Command of the King*, was warrantable?

That the Commands of the King were of ſeveral Natures: As to the verbal Command of the King, he held it was not ſufficient, either to impriſon a Man, or to continue him in Priſon: That it had been reſolved by the whole Court, that if the King commanded one Man to arreſt another, and the Party commanded did arreſt the other, an Action of Treſpaſs or falſe Impriſonment was maintainable againſt the Party that arreſted him, although it were done in the King's Preſence, 16 *Hen.* VI. *Monſtrans de droit*.

37 *Hen.* VI. 10. If the King give me a Thing, and I take it, by his Command by Word of Mouth, it is not juſtified by Law. Nothing paſſes from the Crown without Matter of Record, 10 *Hen.* VII. 7, & 17, 18. Juſtices may command one to arreſt another intheir View or Preſence, but not one out of their View.

2. There is a Command of the King, by his Commiſſion; but it was reſolved in 42 *Aſſ. pl.* 5. that a Commiſſion to take a Man's Goods, or impriſon his Body, without Indictment or Suit of the Party, or other due Proceſs, was againſt Law.

3. There is a Command of the King, grounded on a Suggeſtion made to the King or his Council; but if a Man is committed to Priſon on ſuch Suggeſtion, by Command of the King, it is unlawful. 25 *Edw.* III. *cap.* 4. it is eſtabliſhed, that from thenceforth none ſhall be taken by Petition, or Suggeſtion, made to the King, or his Council; or otherwiſe, than by Preſentment or Indictment, or by Proceſs made by Writ original at the Common Law: And to the ſame Effect is the 37 *Edw.* III. *cap.* 10.

4. There is a Command of the King, under his Hand by his Signet; and it appears that this is not ſufficient to ſet a Man at Liberty; and much leſs to impriſon him.

5. There is a Command of the King, by Writ under the Great Seal, or the Seal of the Court out of which it iſſueth, which is legal and warrantable; and yet even here the Party is bailable. And in the Regiſter he obſerved, this Writ was expounded to be *ſpeciale mandatum domini Regis*: Therefore when the Return is made, that he is impriſoned, and detained in Priſon by the ſpecial Command of the King, how could the Court adjudge, upon this Return, whether he ought to be kept in Priſon, and not be bailed; when the Nature of the

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ſpecial Command is not ſet forth in the Return, whereby it might appear to the Court, whether he was bailable?

As to the general Return of *ſpeciale mandatum domini Regis*, without ſhewing Cauſe; the Command of the *Habeas Corpus* being to ſhew the Cauſe of his detaining in Priſon, as well as to bring his Body into Court, the Keeper did not give a full Anſwer to the Writ, unleſs the Cauſe of the Detainment in Priſon was returned. The Court could not know how to give their Judgment upon him, either for his Impriſonment, or for his Diſcharge, according to the Purport of the Writ, when there was not any Cauſe returned.

As the Court of *King's-Bench*, and Judges, ought not to deny an *Habeas Corpus*, to any Priſoner that demands it, by whomſoever committed; ſo ought the Cauſe of his Impriſonment to be ſhewn on the Return, that the Court may adjudge of the Cauſe, whether it be lawful or not.

Then he proceeded to cite Precedents, where the Parties were committed by the Command of the King, or the Privy-Council; admitting that ſuch Acts as were done by the Privy-Council might properly be ſaid to be done by the King himſelf; and in all theſe Caſes he ſaid it would appear, there was a Cauſe returned, as well as a *ſpeciale mandatum domini Regis*, &c. or *mandatum Privati Concilii domini Regis*. And after the reciting of the ſaid Precedents, he concluded, That the Return, that Sir *John Corbet* was committed and detained in Priſon, *per ſpeciale mandatum domini Regis*, without ſhewing the Nature of the Command, and the Cauſe upon which the Command of the King was grounded, was not good; and therefore deſired his Client Sir *John Corbet* might be diſcharged.

Whereupon the Chief Juſtice demanded, if Mr. Attorney would take another Day to anſwer their Arguments; and the Attorney deſiring that *Monday*, the 26th of *November*, might be appointed for hearing him, the Council for the Priſoners were ordered to attend the Judges and Mr. Attorney, with the Precedents and unprinted Statutes they had mentioned, in the mean time.

Mr. Attorney's Anſwer to the preceding Arguments.

On *Monday* the 26th of *November*, 1627, Sir *John Corbet*, and the reſt of the Priſoners, being brought into Court again, Mr. Attorney obſerved, that their Council had divided their Objections into two main Points; the one *the Form*, the other *the Matter*; and to the Form, had objected four ſeveral Things.

1. That the Return was not poſitive, but referred to the Signification made by another, as the Lords of the Council. 2. That the Keepers of the Priſons had not returned the Cauſe of the Commitment, but the Cauſe of the Cauſe, which was not good. 3. That the Return was imperfect; for that it ſhew'd only the Cauſe of the detaining in Priſon, and not the Cauſe of the firſt Commitment. 4. And laſtly, That the Return was contradictory; for that in the firſt Part there was a Certification that the detaining theſe Gentlemen in Priſon was *per ſpeciale mandatum domini Regis*; and when the Warrant of the Lords of the Council was ſhewed, it appeared that the Commitment was by the Lords of the Council.

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As to the firſt Objection, Mr. Attorney ſaid, he did agree, that if the Return was not poſitive, it was not good. But it appeared that the firſt Words of the Return were poſitive and affirmative: The Words were, *Quod detentus eſt ſub cuſtodia mea per ſpeciale mandatum domini Regis*. The Words *mihi ſignificavit* followed, and were not Part of the Affirmation made before it. There was a poſitive Return, that the Detaining was by the Command of the King; and the reſt of the Return was only for the Satisfaction of the Court.

To the ſecond Objection, that the Warden had returned the Cauſe of the Cauſe, and not the Cauſe itſelf, in which alſo they were miſtaken; for the Return was affirmative, *Ego Johannes Liloe certifico*, &c. the other was but the Council's Warrant for him that made the Return.

3. To the third Objection, that the Return ſhewed only the Cauſe of *detaining* in Priſon, and not the Cauſe of the *firſt* Commitment, he anſwered, that it was ſufficient for the Officer to anſwer the Point commanded, and the Writ mentioned only the Cauſe of the Detaining.

4. As to the fourth Objection, that the Return was contradictory, for that in the firſt Part it is ſaid they were detained *per ſpeciale mandatum domini Regis*, and afterwards that they were detained by the Lords of the Council; To this he anſwered, that it appeared that the Lords of the Council ſpake not their own Words or Command in that Warrant, but ſay, you are to take notice of it as the Words and Command of the King. They ſay it was his Majeſty's Pleaſure he ſhould know, that the firſt Commitment, and the preſent detaining him in Priſon, was by his Majeſty's ſpecial Command; from whence he concluded, that the Form of the Return was ſufficient.

As to the Matter of the Return: The great and mighty Reaſon the Council for the Priſoners inſiſted upon was, the Inconveniences that might come to the Subjects in their Liberties, if this Return ſhould be good: And he did acknowledge, that the Liberty of the Subject was juſt, and that it was the Inheritance of the Subject; but yet it was their Inheritance *ſecundum legem terræ*.

He obſerved, the Council had cited many Caſes to enforce what they advanced; as 1 & 2 *Eliz. Dyer*, *fo.* 175. That the Continuance of a *Capias* ſhall be from Term to Term, without a Term betwixt; becauſe otherwiſe the Defendant may be kept too long in Priſon; and 38 *Aſſ. pl. f.* 22. *Broke*, *tit. Impriſonment*, 100. that Impriſonment is but to detain the Party till he have made Fine to the King; and therefore the King cannot juſtly detain him in Priſon after the Fine tendered: And 16 *Hen.* VI. *Monſtrans de droit*, If the King command me to arreſt a Man, and thereupon I do arreſt him, he may have an Action of falſe Impriſonment, or of Treſpaſs, againſt me, though it be done in the King's Preſence: And 1 *Hen.* VII. 4. where *Huſſey* is made to ſay, that Sir *John Markham* declared to King *Edward* IV. that he might not arreſt any of his Subjects for Treaſon or Felony; becauſe he might wrong his Subjects by ſuch Arreſts, and they could not have a Remedy againſt him.

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To the two firſt Caſes, he anſwered, that the Reſtraint in theſe, and moſt of the other Caſes cited, appeared to be in the ordinary Courſe of Judicature, fit for *Weſtminſter-Hall*, and not for the Council-Table, and therefore not applicable to this Caſe: And for the other two Caſes, the Law preſumed the active Part of them not proper for the Majeſty of a King, who ever did thoſe Things by his ſubordinate Officers. The King might commit any Man at his Pleaſure: But the Queſtion here was, Whether, when the King had committed any one, he muſt render a Cauſe of that Commitment?

That the King could not command his Lordſhip, or any other Court of Juſtice, to proceed otherwiſe than according to the Laws of the Kingdom: But there was a great deal of Difference between thoſe legal Commands, and that abſolute *poteſtas*, that a Sovereign has, by which a King commands. He did not mean, he ſaid, by *abſoluta poteſtas*, that it was ſuch a Power, that the King might do what he pleaſed; for he had Rules to govern himſelf by, as well as his Lordſhip, who was a ſubordinate Judge, under him: The Difference was, the King was the Head of the ſame Fountain of Juſtice, which his Lordſhip adminiſtred to all his Subjects. All Juſtice was derived from him; and what he did, he did not as a private Perſon, but as Head of the Commonwealth, as *Juſticiarius Regni*. The very Eſſence of Juſtice, under God, upon Earth, was in him: And ſhould they not ſubmit to his Commands, but make Enquiries, whether they were lawful, and ſay, that the King could not do this or that, in the Courſe of Juſtice? Who ſhould call in queſtion, the Actions, or the Juſtice, of the King, who was not to give any Account for them? as in this Caſe, where he had committed a Subject, and ſhewed no Cauſe for it.

The King often commits, and ſhews no Cauſe: If he does expreſs the Cauſe, indeed, to be either for Suſpicion of Felony, Coining, or the like, the Court might deliver the Priſoner, though it was *per ſpeciale mandatum domini Regis*, becauſe there is no Secret in theſe Caſes; for with the Warrant, he ſends the Cauſe of the Commitment: But if there was no Cauſe expreſſed, that Court always remanded them. It was to be intended, there was Matter of State, and that it was not ripe, or Time for it to appear.

By *Magna Charta* indeed (the Foundation of our Liberties) *None ſhall be impriſoned, but by lawful Judgment of his Peers, or by the Law of the Land.* But did it follow from thence, that no Man could be committed, but he muſt be firſt indicted, or preſented? Every Juſtice of Peace, or Conſtable, might commit before Indictment, or Preſentment; therefore a Commitment could not be meant by the Words, *per legem terræ*, much leſs a Commitment by the King, who was not anſwerable to the Party, or to any Court of Juſtice, for his Commitments, but to the high Court of Heaven.

Then Mr. Attorney cauſed the Statutes to be read, on which the Counſel on the other Side inſiſted, affirming, that they were not to be underſtood of the firſt Arreſt; but that no Man ſhould be tried, or condemned, but by the Law of the Land: And that, if they were to be underſtood otherwiſe, it was contrary to all Practice, both then, and now in Uſe: That their Buſineſs was to find out the true Meaning of *Magna Charta*, that being the Foundation of their Caſe: All that had been ſaid beſides, was not to the Purpoſe; there was not a Word, either of the Commitment of the King, or Council, in all the Statutes and Records they had cited.

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The Queſtion was not, Whether the King, or Council, could commit a Man, and ſhew no Cauſe of his Commitment; but, *Whether the ordinary Courts of Juſtice had Power to bail him, or not?* And he inſiſted, that the Statute of *Weſtm.* 1. was a Direction, in what Caſes Men impriſoned ſhould be bailed. This Statute declared, that in four Caſes Men were not repleviſable, *viz.* thoſe that were impriſoned for the Death of a Man, by the Command of the King, or of his Juſtices, or of the Foreſt. This Statute was made ſoon after that of *Magna Charta*, and was an Expoſition of it; and the Council, on the other Side, had not ſhewn one Law, printed or unprinted, that repealed or altered this; or ſhewed that ſuch Men were repleviſable: And as the Law, ſo the conſtant Courſe of Precedents, which were the beſt Expoſitions of the Law, were againſt them. They, on the other Side, could not cite one Book, Statute, or other Thing, to prove, that they that have been committed *per ſpeciale mandatum domini Regis*, were bailable.

Then Mr. Attorney cited ſeveral Precedents, to ſhew, that Perſons committed by the ſpecial Command of the King, or the Council, were not bailable; and, among the reſt, a Reſolution of the Judges, in Queen *Elizabeth*'s Reign, that a Man committed by the Queen, or the Privy Council, without Cauſe expreſſed, could not be bailed.

He ſaid, there were *Arcana Imperii*, which Subjects were not to pry into. If the King committed a Subject, and expreſſed no Cauſe, it was not to be inferred from thence, there was no Cauſe for his Commitment: The Courſe had always been, to ſay there was no Cauſe expreſſed, and therefore the Matter was not ripe; and thereupon the Courts of Juſtice have always reſted ſatisfied, and would not ſearch into it.

In this Caſe, the King was to be truſted: It was not to be preſumed, he would do any thing, that was not for the Good of the Kingdom. In coining Money, his Power was abſolute: If he would coin Braſs, or Leather, inſtead of Silver, there was no Remedy: The Cinque Ports were free to carry on their Trade; but the King, foreſeeing Danger, might ſhut up the Ports: The King might pardon all Traitors and Felons, and exempt ſo many from Offices and Juries, that there might not be Men enough left to ſerve: But it was not to be ſuppoſed, he would do theſe Things: However, he was intruſted with the Power of doing them; and the Inconvenience would be as great to the Subject, if he did any of them, as his committing Men, without ſhewing Cauſe, might

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might be; and therefore the Arguments drawn from the Inconvenience that might attend ſuch Commitments, were of no Weight.

Then he proceeded to anſwer their Precedents, and inſiſted, that thoſe they had produced, made more againſt the Priſoners, than for them; but complained, that though they mentioned but eight Precedents in Court, they had ſince brought him ſixteen.

He ſhewed that, in moſt of the Precedents cited by the Council, the Cauſe of the Commitment was expreſſed; or the Parties were committed by the ordinary Courts; or the King ſignified his Pleaſure to the Court, that the Priſoners ſhould be diſcharged, or bailed, before the Court did either. He cited alſo many other Precedents, to ſhew, that this was the general Practice; and prayed, that theſe Gentlemen might be remanded, and left to go the right Way for their Delivery, namely, by Petition to the King. Whether it was a Petition of Right, or of Grace, he knew not; but he was ſure it muſt be to the King, from whom he perſonally underſtood, that theſe Gentlemen had never yet preſented any Petition to him.

The Judges having appointed the 28th of *November*, to deliver their Opinions in this Matter, the Lord Chief Juſtice *Hyde* ſaid, they had ſeriouſly conſidered what had been offered on either Side; and being come to a Reſolution, the reſt of the Judges had deſired him to deliver the Opinion of the whole Court.

The Judges deliver their Opinion.

He ſaid, the Statutes of *Magna Charta*, the 25 *Edw.* III. the 36 *Edw.* III. the Statute of *Weſtm.* 1. and the reſt of the Statutes mentioned, were very good Laws, and ſtill in Force; but it was not their Buſineſs, to interpret them now: What was now to be adjudged of by them, was, *Whether one that was committed by the King's Authority, and no Cauſe declared of his Commitment, ought to be delivered by Bail, or remanded back?*

The Exceptions which had been taken, he ſaid, were either to the Form, or to the Subſtance. As to the Form, it was pretended, the Return was not poſitive; but they conceived, it was a poſitive and abſolute Return. The Warden of the *Fleet* had firſt returned poſitively, *that it was done by the King's Direction*; and the Words that followed, were ſurpluſage, as to that Objection, that the Return did not take Notice, why they were taken: It was ſufficient for the Officer to anſwer the Point in Queſtion; and the Writ did not demand the Reaſon why they were taken, but the Cauſe of the Detention, which was ſufficiently anſwered; and therefore they reſolved, that the Form of the Return was good.

As to the Subſtance, or Matter of the Return, the Warden certified, that they were detained in Priſon by *the ſpecial Command of the King*; and the Queſtion was, Whether this Return was good in Law?

They had produced Precedents indeed, to prove that where Men were committed by the King, or the Lords of the Council, and no Cauſe expreſſed, they were delivered; but theſe Precedents proved the direct contrary: Where the Cauſe of the Commitment hath been expreſſed; there the Party hath been delivered by the Court, if the Caſe ſo required: But where there hath been no Cauſe expreſſed, they have ever been remanded; or, if they have been delivered, it was by the Direction of the King, or of the Lords of the Council. After which the Chief Juſtice went through all the Caſes that had been cited, and declared that the whole Court were of Opinion, the Precedents made againſt the Priſoners; but ſeemed to rely on none more than the Reſolution of all the Judges of *England* in 34 *Eliz. That if a Man was committed by the Commandment of the King, he was not to be delivered by a* Habeas Corpus *in that Court, for they knew not the Cauſe of his Impriſonment.*

This had been the Practice in the Times of all preceding Kings, as appeared from the Records they had cited; and they muſt walk in the Steps of their Forefathers: The King was truſted in great Matters, though he was bound to act by Law, and he commanded them to proceed by Law; and they made no doubt but if the Priſoners would apply to the King, who knew the Cauſe of their Impriſonment, he would relieve them; but they muſt leave Mercy to him. If in Juſtice they ought to have delivered the Priſoners, they would have done it; but upon thoſe Grounds and Records, on thoſe Precedents and Reſolutions, they could not deliver them, but they muſt be remanded. However, his Majeſty having releaſed all thoſe Gentlemen who were impriſoned for refuſing the Loan, in *January* following, the Nation ſeemed to look upon them as injured Patriots, who had ſuffered in the Cauſe of Liberty; and a Parliament being ſummoned to meet ſoon after, moſt of them were elected, and returned to ſerve as Members in it.

The Gentlemen who refuſed the Loan elected Members of Parliament.

The Parliament meeting on the 17th of *March* 1627, among other Grievances, this of impriſoning Gentlemen for refuſing the Loan, and not admitting them to Bail, was moved: And it ſeemed determined in the Houſe of Commons, not to grant his Majeſty any Supplies, till this, and the reſt of their Grievances, were redreſſed.

The Parliament meets.

The Commons reſent the Impriſonment of Gentlemen for refuſing the Loan, &c.

Sir *Francis Seymour* opened the Debate on this Subject, and, after ſome Preamble to his Diſcourſe, ſaid, *How can we think of giving Subſidies, till we know whether we have any Thing to give?* If his Majeſty is perſuaded by any, he may take from his Subjects what he will, I would gladly know what we have to give? It was ill for Subjects to give Laws to their Princes, and as ill that Princes ſhould uſe Force with their Laws; that this had been done, appeared by billeting of Soldiers, levying Money againſt Act of Parliament, and by impriſoning divers Gentlemen for the Loan, who, if they had ſubmitted, had been as much in Fault as thoſe that were the Projectors of it; though, to countenance theſe Proceedings, it had been preached (or rather prated) from the Pulpit, that all we have is the King's, *Jure Divino:* They forſook their own Function, and turned ignorant Stateſmen: They were willing to change their Conſcience for a good Biſhoprick: They ſaw how eaſy it was for a Prince, how juſt and good ſoever, to be abuſed, in regard he muſt ſee with other Men's Eyes, and hear with other Men's Ears. He obſerved, that thoſe Princes had been in the greateſt Want and Extremity, that had

Sir Francis Seymour's Speech.

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had exacted moſt of their Subjects; moſt unfortunate in the Choice of their Miniſters, and failed moſt in their Undertakings. It was clear that the Reaſon his Majeſty did not ſucceed in his Wars with *France* and *Spain*, was for want of faithful Council: He wiſhed he could ſay ſuch a one had been employed abroad. He confeſſed, he was no good Subject, nor well affected to his Majeſty, that would not freely lay down his Life, for the Service of his Majeſty and the Commonwealth: But, on the contrary, when againſt a Parliament-Law, the Subject ſhall have his Goods taken away, and be deprived of his Liberty, ſhould it be accounted want of Duty to ſtand upon their hereditary Privileges, confirmed by many Acts of Parliament?

They ſtrike at the Duke of Bucks.

In doing this they ſhould tread in the Steps of their Forefathers, who ever preferred the publick Intereſt before their own private Right, nay, before their Lives; nor could it be any wrong to his Majeſty to ſtand upon them, ſince they ſhould thereby be the better enabled to ſerve his Majeſty; but they muſt wrong their Poſterity and their Conſciences, if they ſhould willingly forego what belonged to them, by the Laws of God and of the Land; and this they ſhould do well to preſent to his Majeſty; they had no Cauſe to doubt of his gracious Acceptance of ſuch an Addreſs.

Sir Thomas Wentworth's *Speech.*

Surely, ſaid Sir *Thomas Wentworth*, in the greateſt Humility I ſpeak it, theſe illegal Ways are Puniſhments, and Marks of Indignation: The raiſing Loans, ſtrengthned by Commiſſions, with unheard of Inſtructions and Oaths; the billeting of Soldiers by Lieutenants, and Deputy-Lieutenants, have been as if they could have perſuaded Chriſtian Princes, yea Worlds, that the Right of Empire was to take away by a ſtrong Hand; and they had endeavoured, as far as poſſible, to do it. This had not been done by the King, (under the pleaſing Shade of whoſe Crown, he hoped they ſhould ever gather the Fruits of Juſtice,) but by Projectors, who had extended the Prerogative of the King beyond the juſt Symmetry, which made a ſweet Harmony of the whole: They had brought the Crown into greater Want than ever, by anticipating the Revenues: They had introduced a Privy-Council, raviſhing at once the Spheres of all antient Government; impriſoning the Subject, without either Bail or Bond. He added, they have taken from us, what? What ſhall I ſay? Indeed, what have they left us? All Means of ſupplying the King, and ingratiating ourſelves with him, taking up the Root of all Property; and concluded with a Motion to addreſs his Majeſty for four Things: 1. The Freedom of their Perſons from Impriſonment; 2. Not to employ them abroad, contrary to antient Cuſtom; 3. That no Levies be made on their Goods, but by Parliament; and 4. That there might be no billetting of Soldiers.

Sir Benjamin Rudyard's *Speech.*

Sir *Benjamin Rudyard* obſerved, That they had provoked two mighty Kings, (*France* and *Spain*) that they had united them, and betrayed themſelves more than the Enemy could; that if the King drew one way, and the Parliament another, they muſt all ſink: He deſired the Houſe therefore, to avoid all Conteſts with the King, and give him Leave to come off; he believed his Majeſty expected but the Occaſion: By truſting the King, and giving him a large Supply, according to his Wants, they would breed a Truſt in him; and by proſtrating their Grievances humbly at his Feet, they would find the beſt Way to his Heart: Concluding, let us all labour to get the King on our Side, which may be no hard Matter, conſidering the near Subſiſtence between the King and People.

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Then Sir *Edward Coke* ſtood up, to ſhew that Loans were againſt the Laws of the Land, reciting thoſe Words in the 25th of *Edw.* III. *Loans againſt the Will of the Subject, are againſt Reaſon, and the Franchiſes of the Land.*

Sir Edward Coke.

Mr. Secretary *Cook* ſpoke in Behalf of the Court, propoſing both a Supply and Redreſs of Grievances: He acknowledged, illegal Courſes had been taken, which muſt be redreſſed by Laws and Puniſhments; but urged, that the Court had been neceſſitated to take theſe Courſes, and Neceſſity had no Law; they muſt enable the State to do what they required by their Petition: He would have them prepare a Repreſentation of their Grievances, but begin with the Supply, which would confound their Enemies more than ten Subſidies; and that they would not ſeem to put Conditions upon his Majeſty, who was a Prince jealous of his Honour.

Secretary Cook's *Speech.*

Sir Robert Phillip's *Speech.*

Sir *Robert Phillips*, on the other Side, ſaid, he acknowledged their Dangers from abroad were not chimerical, but real: They had provoked two potent Kings, who were ſtrongly united; but they muſt conſider their Dangers at home. He was more afraid of the Violation of their publick Rights at home than of a foreign Enemy. The late unaccuſtomed Violences affected all they had, though the People of this State were under no Subjection, but what they conſented to by the *Original Contract* between King and People: As there were Prerogatives and Privileges conferred on the King, ſo there were left to the Subject many, very many, neceſſary Liberties and Privileges, notwithſtanding what thoſe two Sycophants, *Sibthorpe* and *Manwaring*, had prated in the Pulpit to the contrary: Never any King violated the Subjects Liberty and Property, but it was immediately complained of, and redreſſed; and he was confident his Majeſty would do the ſame, if he was applied to. And having taken notice of the reſt of the Grievances the former Gentleman had mentioned, he fell upon the Impriſonment of Sir *John Darnel*, Sir *John Heveningham*, &c. for not paying the Loan: He ſaid, *I can live, although I pay Exciſes and Impoſitions for more than I do; but to have my Liberty, which is the Soul of my Life, taken from me by Power, and to be pent up in a Jayl, without Remedy by Law, and to be adjudged to periſh in a Jayl; Oh improvident Anceſtors! Oh unwiſe Foreſathers! to be curious in providing for the quiet Poſſeſſion of our Lands and Privileges of Parliament, and to neglect our Perſons and Bodies, and to let them die in Priſon, or remain there remedileſs,* durante beneplacito. *If this be Law, what do we talk of our Liberties? Why do we trouble ourſelves with Diſputes of Law, Franchiſes, and Property of Goods? This is the Sum of all Miſeries, and I hope we ſhall ſpeak our Minds when this Judgment comes to be debated.*

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All Things a State can be capable of, whether Bleſſings or Puniſhments, depend on this Meeting: If any think the King can be ſupplied, and the Commonwealth preſerved, without Redreſs of Grievances, he is deceived. The Kings of England *were never more glorious than when they truſted their Subjects. Let the Houſe therefore, prepare their Grievances, fit for his Majeſty's View; not make a Law to give us new Liberties, but declaratory, with Penalties; ſo that thoſe that violate them, if they will be vile, may fear Infamy with Men; and then we ſhall think of ſuch a Supply as never Prince received; with our Money we ſhall give him our Hearts, and give him a new People raiſed from the Dead: We ſhall go home to our Countries, and leave our Poſterities as free as our Anceſtors left us.*

Sir Edward Coke *againſt himſelf.*

The Caſe of the Impriſonment of the Gentlemen, for not paying the Loan, being again debated in the Houſe of Commons, the 29th of *March*, 1628, Sir *Edward Coke* averred, That Perſons committed by the King or Council, without Cauſe ſhewn, might be bailed.

Solicitor General.

To which Mr. Solicitor replied, That by the ſame Sir *Edward Coke*, *Crook*, *Dodderidge*, and *Houghton*, the whole Court of *King's-Bench*, it had been reſolved, that the Cauſe need not be diſcloſed, being *per mandatum Concilii* as *Arcana Regni*; and by *Coke* it was then ſaid, *If the Privy-Council commit one, he is not bailable by any Court of Juſtice*, and that *Stamford*'s Opinion was ſo, *Folio* 72; and that his Opinion was the ſame on the Reſolution in the 34th of *Eliz.*

Sir Edward Coke.

Sir *Edward Coke* ſaid, that in Truth, when he read *Stamford*, he was of that Opinion; but of late, looking into the Records that had been cited, he was of another Mind. (From whence Sir *Edward's* Enemies inferred, that his Opinion was not much to be regarded, having been of one Mind while he was in Office, and of another after he was diſmiſſed from Employment.)

The Matter having been debated ſeveral Days in the Houſe of Commons, they came at length to the following Reſolutions, *Nemine contradicente.*

Reſolutions of the Commons, on the Subject of Liberty.

1. That no Freeman ought to be detained, or kept in Priſon, or otherwiſe reſtrained, by the Command of the King, or Privy-Council, or any other, unleſs ſome Cauſe of the Commitment, Detainer, or Reſtraint be expreſſed, for which by Law he ought to be committed, detained, or reſtrained.

2. That the Writ of *Habeas Corpus* may not be denied, but ought to be granted to every Man that is committed or detained in Priſon, or otherwiſe reſtrained, though it be by the Command of the King, the Privy-Council, or any other, he praying the ſame.

3. That if a Freeman be committed or detained in Priſon, or otherwiſe reſtrained, by the Command of the King, the Privy Council, or any other; no Cauſe of ſuch Commitment, Detainer, or Reſtraint being expreſſed, for which by Law he ought to be committed, detained, or reſtrained; and the ſame be returned upon an *Habeas Corpus*, granted for the ſaid Party; then he ought to be delivered, or bailed.

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They alſo unanimouſly reſolved, that it is the antient and indubitable Right of every Freeman, that he hath a full and abſolute Property in his Goods and Eſtate; that no Tax, Tallage, Loan, Benevolence, or other like Charge, ought to be commanded, or levied by the King, or any of his Miniſters, without common Conſent by Act of Parliament.

The Commons afterwards, at a Conference with the Lords, on the ſeventh of *April*, communicated theſe Reſolutions to them; when ſeveral of the Committee of the Commons made Speeches on the Occaſion, to induce the Lords to concur with them in theſe Reſolutions.

Sir Dudley Digg's *Speech at a Conference with the Lords, ſhewing the Antiquity of the Common Law.*

Sir *Dudley Diggs* opened the Conference, and ſaid, he was confident their Lordſhips would cheerfully join with the Commons, in acknowledging God's great Bleſſing, in their good King *Joſiah*, in whoſe Reign, as in that of *Joſiah* of old, they had found (he could not ſay a Book of the Law, but) many fundamental Points thereof neglected and broken, which had occaſioned their Deſire of this Conference.

He ſaid he was commanded to ſhew, that the Laws of *England* were grounded on Reaſon, more antient than Books, conſiſting much in unwritten Cuſtoms, yet ſo full of Juſtice and true Equity, that their moſt honourable Predeceſſors and Anceſtors many Times propugned them with a *nolumus mutari*; ſo antient, that from the *Saxon* Times, they had continued for the moſt Part the ſame, as appeared in old remaining Monuments of the Laws of *Ethelbert*, the firſt Chriſtian King of *Kent*, *Ina* King of the *Weſt-Saxons*, *Offa* of the *Mercians*, and of *Alfred*, that great Monarch, who united the *Saxon* Heptarchy, whoſe Laws were yet to be ſeen.

That it was an undoubted and fundamental Point in this antient Common Law of *England*, That the Subject had a true Property in his Goods and Poſſeſſions, preſerving ſacred that *meum & tuum*, which was the Nurſe of Induſtry, and Mother of Courage; but this undoubted Birthright of free Subjects had lately been invaded and prejudiced by Preſſures, the more grievous, as they had been followed by Impriſonment, contrary to the Franchiſes of the Land; and when Redreſs had been ſought for, in a legal way, by demanding the Writ of *Habeas Corpus*, and a Diſcharge, or Trial according to the Law of the Land, they had failed of Succeſs; which had compelled the Commons to examine, by Acts of Parliament, Precedents, and Reaſons, the Reality of *Engliſh* Subjects Liberty, which he left to the learned Gentlemen that were to ſpeak after him, to communicate to their Lordſhips.

Sir Robert Cotton's *Speech, ſpecifying the Acts made in Behalf of Liberty and Property.*

Then Sir *Robert Cotton* (or, as others relate, Mr. *Littleton*) recited and explained the ſeveral Acts of Parliament, made in Behalf of Liberty and Property.

The firſt of theſe, he obſerved, was the *Grand Charter of Liberties*, firſt granted in the 17th Year of King *John*, renewed in the 9th Year of *Henry* III, and ſince confirmed in Parliament thirty Times; the Words whereof were, *Nullus liber homo capiatur vel impriſonetur aut diſſeiſietur, de libero tenemento, &c. Niſi per legale judicium parium ſuorum, vel per legem terræ.*

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From whence it was evident, that no Freeman ought to be taken or impriſoned, but by the lawful Judgment of his Peers, or Equals, or *by the Law of the Land*; and *by Law of the Land*, he inſiſted, muſt be underſtood *due Proceſs of Law*.

That by 5 *Edw.* III. it was enacted, That no Man ſhould be attached by any Accuſation, nor forejudged of Life or Limb, nor his Lands, Goods, or Chattels, ſeized into the King's Hands, contrary to the Great Charter, and the Law of the Land: That the 25th of *Edw.* III. cap. 4. recites, that whereas it is contained in the Great Charter, that no Freeman ſhall be impriſoned, or put out of his Freehold, or free Cuſtom, unleſs it be by the Law of the Land; it is thereby eſtabliſhed, that, from thenceforth, none ſhall be taken by Petition, or Suggeſtion, made to our Lord the King, or to his Council, unleſs it be by Indictment, or Preſentment; or by Proceſs, made by Writ Original, at the Common-Law.

By the 28th of *Edw.* III. cap. 3. It is enacted, That no Man, of what State or Condition ſoever he be, ſhall be put out of his Lands or Tenements; nor be taken, impriſoned, diſinherited, or put to Death, without he be brought in to anſwer by due Proceſs of Law.

That in a Parliament Roll of the 36th of *Edw.* III. The Commons petitioned, that the Great Charter, the Charter of the Foreſt, and other Statutes, made for the Profit of the King, and his Commonalty, might be firmly kept, without giving Diſturbance, or making Arreſt contrary to them, *by ſpecial Command*, or in other Manner. And the Anſwer to the Petition, which made it an Act of Parliament, was, Our Lord the King, by the Aſſent of the Prelates, Dukes, Earls, Barons, and Commonalty, hath ordained and eſtabliſhed, that the ſaid Charters and Statutes be held, and put in Execution, according to the ſaid Petition.

In a Parliament Roll of the 36th of *Edw.* III. there is a Petition and Anſwer of the like Tenor: The 37th of *Edw.* III. cap. 18. agrees in Subſtance with it. By the Statute of 42 *Edw.* III. cap. 13. it is enacted, That no Man ſhall be put to anſwer, without Preſentment before Juſtices, or Matter of Record, or by due Proceſs and Writ Original, according to the old Law of the Land; and, if any Thing be done to the contrary, it ſhall be void in Law.

As to what was objected from the Statute of *Weſtm.* 1. cap. 15. which ſays, That a Man is not repleviable, who is committed by the Command of the King; and conſequently, that the Command of the King, without any Cauſe ſhewed, was ſufficient to commit a Man to Priſon, and detain him there:

He anſwered, That there was a Difference between *Repleviable*, which was always by the Sheriff, upon Pledges, or Sureties given, and *Bailable*, which was by a Court of Record, where the Priſoner is delivered to his Bail; and they are his Jailors, and may impriſon him, and ſhall ſuffer for him, Body for Body: As appeared by 33 and 36 *Edw.* III. Tit. *Mainprize*, 12 and 13. And, if the Words of the Statute were obſerved, it would plainly appear, that they extended only to the Sheriff, and other Inferior Officers, but did not bind the Hands of the Judges: For, in the Preamble, it is ſaid, Foraſmuch as *Sheriffs and others*, have taken and kept in Priſon, Perſons detected of Felony, &c. And in another Place, *Under-Sheriffs, Conſtables, and Bailiffs, are mentioned:* And in another Place, the Words are, *Sheriffs and others, which have taken and kept in Priſon:* And as every one knew, the Judges do neither arreſt, or keep Men in Priſon; that was the Office of Sheriffs, and other inferior Miniſters; and conſequently the Statute intended ſuch only, and not the Judges; they might ſtill bail Priſoners, by whomſoever committed.

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This Interpretation he confirmed by the Authority of *Newton*, Chief Juſtice, 22 *Hen.* VI. 46. where he ſays, It cannot be intended that the Sheriff did ſuffer him to go at large by Mainprize; for, where one is taken by the Writ of the King, or the Commandment of the King, he is Irrepleviable; but in ſuch caſe his Friends may come to the Juſtices from him, if he be arreſted, and purchaſe a *Superſedeas:* Here the Judge declares, That the Sheriff had no Power, but the Judges had Power to deliver him that was committed by the King's Command; and both the antient and modern Practice manifeſt as much; for he that is taken for the Death of a Man, or for the Foreſt, is not Repleviable by the Sheriff: But the Juſtices of the King's Bench do bail for Murder, and for Offences done in the Foreſt, which they could not do, if the Word *Irreplievable* in *Weſtm.* 1. were meant of the Judges, as well as of the Sheriffs; concluding, that he conceived, he had now cleared the Declaration of perſonal Liberty, an antient and undoubted Truth, which, he obſerved, was fortified by ſeven Acts of Parliament, and not oppoſed by any Statute, or Authority of Law whatever.

Mr. Selden's *Speech, ſhewing the Precedents for bailing Perſons committed by the King, or Council.*

Mr. *Selden*, being appointed to open and explain the Precedents, for bailing ſuch Perſons as were committed by the King's ſpecial Command, or by the Command of the Privy-Council, ſaid, That in all Caſes, where any Right or Liberty belonged to the Subject, there was alſo a Remedy by Law, for the enjoying, or regaining, this Right or Liberty, when it was taken from him.

That the Writ of *Habeas Corpus*, or *Corpus cum cauſa*, was the only Remedy for him that was impriſoned by the ſpecial Command of the King, or the Lords of the Council, without ſhewing the Cauſe of the Commitment; and this Writ could not be denied the Subject: That the Precedents which concerned this Point, were of two Kinds: 1. Such as ſhewed expreſly, that Perſons committed by the Command of the King, or of the Council (without other Cauſe ſhewed) had been enlarged upon Bail, when they prayed it; whence it appeared plainly, that they were bailable, and to be ſet at Liberty: For, though they ought not to have been committed without a Cauſe ſhewn of their Commitment, yet the Judges, it was true, had always paid ſuch Reſpect to ſuch Commitments by the Command of the King, or Council, that upon the *Habeas Corpus* they rarely diſcharged the Perſon abſolutely at firſt, but only enlarged him upon Bail. 2. The ſecond Kind of Precedents, he ſaid, were ſuch, as it had been pretended, would prove the Law to be

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be otherwiſe; and that Perſons ſo committed ought not to be bailed.

Of the firſt Kind, he ſaid, there were twelve, fully and directly in the Point, to prove, that Perſons ſo committed, were to be delivered upon Bail: And of the ſecond, he averred, there was not one that proved the contrary: And having cited the ſaid ſeveral Precedents, and made his Comments upon them, he left them with their Lordſhips, for their further Conſideration.

Sir Edward Coke *appointed to ſhew the Reaſonableneſs of theſe Laws.*

The famous Sir *Edward Coke* being appointed by the Commons, to ſhew the *Reaſonableneſs* of admitting Men to Bail, that were committed by the King, or Council, made a heavy Declamation on that Subject; which having very little in it to the Purpoſe, but what had been inſiſted on before by others, I ſhall forbear taking any further Notice of it.

The Arguments for bailing Priſoners, committed by the King, &c. anſwered by Mr. Attorney.

After this, the Attorney-General anſwered the Arguments of the Committee of the Houſe of Commons; and they replied to him. Both Sides inſiſted, it ſeems, on the ſame Acts of Parliament, Records, and Precedents; but differed in the Interpretation of them: And it was often remembered, that Sir *Edward Coke* had declared himſelf of one Opinion, both in the Council Chamber, and the Court of *King's-Bench*, while he was in Place; and of another, when he was turned out, and became a Malcontent.

Serjeant Aſhley's *Argument, for the King.*

Serjeant *Aſhley*, King's Serjeant, was afterwards permitted to deliver his Sentiments on this great Caſe, at a Conference of both Houſes.

He obſerved, that it had been given out, that the King's Counſel had yielded up the Cauſe, becauſe they acknowledged the Statute of *Magna Charta*, and the other Statutes confirming it, were yet in Force: But this would not follow upon their Acknowledgment; for then no Impriſonment could be juſtified, but by Proceſs of Law, which he utterly denied; for that a Conſtable might *ex officio*, without any Warrant, arreſt and reſtrain a Man, to prevent an Affray, or to ſuppreſs it. Alſo, any Man, that was no Officer, might apprehend a Felon, without Writ, or Warrant. The Judges of the ſeveral Courts might commit a Man, either for Contempt, or Miſdemeanor, without either Proceſs or Warrant. Nor could the Counſel, on the other Side, deny, but if the King would alledge Cauſe, he might commit a Man, as the Judges do, without Proceſs, or Warrant: Whereupon, he ſaid, he did poſitively, and with Confidence, affirm, that Impriſonment, in many Caſes, might be lawful, without Proceſs, and was not prohibited by any Statute.

That the King, or Council, might commit to Priſon, *per legem terræ*: That there were ſeveral Juriſdictions, or Laws, in this Kingdom, which were reckoned the Law of the Land, beſides the Common Law; as the Eccleſiaſtical Law, the Admiral's Juriſdiction; and, in Time of War, Martial Law; and there was a particular Law, for Merchant-Strangers.

In like Manner, there was a Law of State: When the Neceſſities of the State required, they might proceed by natural Equity. Infinite were the Occurrences of the State, to which the Common Law extended not.

That if the King, or his Council, might not commit, how ſhould they compel Obedience to Acts of State: But the very Act of *Weſtm.* 1. ſhewed plainly, that the King might commit, and that his Commitment was lawful; or elſe that Act would never have declared a Man to be irrepleviable, who was committed by the Command of the King. God had given to Kings, Scepters, Swords, and Crowns: Scepters to inſtitute, and Swords to execute, Laws; and Crowns, as Enſigns of that Power and Dignity, with which they were inveſted: And could we imagine, that the King had ſo far transferred the Power of his Sword, to inferior Magiſtrates, that he had not reſerved ſo much of his ſupreme Power, as to commit an Offender to Priſon? We called him the Fountain of Juſtice, and would we ſo far exhauſt that Fountain, as to leave it dry? But thoſe that admitted he had ſo much Power, required he ſhould expreſs the Cauſe: This might be of miſchievous Conſequence: There was no State, or Government, whether Monarchical, or of any other Frame, which had not ſome Secrets of State, not communicable to vulgar Underſtandings; of which he gave this Inſtance: If a King employed an Ambaſſador to any foreign State, with Inſtructions, and he purſued them not, whereby Danger and Diſhonour accrued to the Kingdom, might he not be committed by his Majeſty? And yet his Inſtructions, and the Manner of his miſcarrying, might not be fit to be declared to every Keeper of a Priſon, and by him certified to the Judges, and debated in the Preſence of the Multitude: He concluded therefore, that the King, and his Council, had Power to puniſh by Impriſonment, without ſhewing particular Cauſe; eſpecially where it might tend to the diſcloſing Secrets of State: But, if he might freely ſpeak his Mind, he thought it a Queſtion too high to be agitated: For, however it ſhould be determined, the King, or his Subjects, or both, would be Loſers. If the Subject prevailed, he would loſe the Protection of the Government; and if the State prevailed, it might end in abſolute Sovereignty; but the King would loſe the Hearts of his Subjects, the firmeſt Support of his Throne. The beſt Way therefore, he conceived, would be to find out ſome *Medium*, to accommodate the Difference.

Mr. Serjeant having ended his Speech, the Lord Preſident acquainted the Commons, that, though at this free Conference Liberty had been given by the Lords, to the King's Counſel, to ſpeak what they thought fit for his Majeſty; yet the Serjeant had no Authority, or Direction, from them, to ſpeak in the Manner he had done; and he was committed to Cuſtody: But, upon his declaring his Sorrow for any haſty Expreſſion he might have uſed, he was diſcharged.

Serjeant Aſhley *committed.*

During theſe Conferences between the two Houſes, *viz.* on the 14th of *April*, the Earl of *Suffolk* was charged in the Houſe of Commons, with having ſaid, *That Mr.* Selden *had razed a Record, and deſerved to be hanged, for going about to ſet Diviſions between the King and his*

The Earl of Suffolk *charged with affronting the Commons.*

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his Subjects: Whereupon the Commons resolved, that a great Injury had been done them, Mr. *Selden* having been employed by them in the Conference with the Lords, in the great Cauſe, concerning the Liberty of the Subject; and ſent a Meſſage to the Lords, by Sir *Robert Phillips*, to demand Juſtice againſt the Earl of *Suffolk*, and to inform them, that the Words were ſpoken to Sir *John Strangeways*, a Member of the Commons Houſe.

Who demand Juſtice againſt him.

To whom the Lords anſwered, that the Earl of *Suffolk*, being a Man of great Place and Honour, had voluntarily proteſted, upon his Honour and Soul, that there paſſed no ſuch Words as thoſe from him to Sir *John Strangeways*.

On reporting which Anſwer, Sir *John Strangeways* proteſted in the Houſe of Commons, that, notwithſtanding the Earl's Denial, he did ſpeak thoſe Words unto him; and he would maintain it, any Way fitting a Member of that Houſe, or a Gentleman of Honour.

On the 17th of *April*, Sir *John Elliot* reported from the Committee, appointed to take into Conſideration, what was fit to be done, for the Juſtification of Sir *John Strangeways*: That they had examined Sir *Chriſtopher Nevill*, who being in the Lords Committee-Chamber, the Earl of *Suffolk* ſaid to him; *Mr. Attorney hath cleared the Buſineſs, and made the Cauſe plain on the King's Side*; and further ſaid, *Mr.* Selden *hath razed a Record, and deſerved to be hanged*; *and the Lower Houſe would do well, to join with the higher, in a Petition to the King to hang him*; *for he went about to divide the King from his People*, or Words to that Effect: That Mr. *Littleton* alſo depoſed, he heard the Earl of *Suffolk* ſay, that he would not be in Mr. *Selden*'s Coat for 10000 *l.* and that Mr. *Selden* deſerved to be hanged. Whereupon the Commons reſolved; 1. That the Earl of *Suffolk*, notwithſtanding his Denial, had laid a moſt unjuſt and ſcandalous Imputation upon Mr. *Selden*, a Member of the Houſe, employed in the Service of the Houſe, and therein upon the whole Houſe of Commons. 2. That the Houſe, upon due Examination, was fully ſatisfied, that Sir *John Strangeways* had affirmed nothing but what was moſt true and certain; and, 3. That the Earl of *Suffolk* be again charged with it, at the Lord's Bar; and the Lords deſired to proceed in Juſtice againſt the Earl, and to inflict ſuch Puniſhment upon him, as an Offence of ſo high a Nature deſerved: *But the Matter ſeems to have been accommodated amicably.*

After theſe Debates, the Houſe of Peers required the Judges of the *King's-Bench*, to give their Reaſons, for the Opinions they had delivered in that Court, againſt bailing the Gentlemen, who had brought their Writs of *Habeas Corpus* to be bailed: Which the Judges at firſt excuſed themſelves from doing, till they had obtained the King's Leave; but having his Majeſty's Permiſſion, they very readily declared the Grounds they went upon.

The Judges give their Reaſons againſt bailing the Gentlemen.

And, firſt, Judge *Whitlock* ſaid, they were very ready, by their Lordſhip's Appointment, to clear any Aſperſion of the Houſe of Commons, in their late Preſentment on the *King's-Bench*, for a Wrong done the Subject (as they ſaid), by a Judgment lately given there; though if there had been any ſuch Thing, their Lordſhips, and not the Commons, had Power to queſtion and adjudge the ſame: But he averred, there was no Judgment given, whereby either the Prerogative might be enlarged, or the Right of the Subject trenched upon. It was true, in *Michaelmas* Term laſt, four Gentlemen did bring their Writs of *Habeas Corpus*, and the Return was *per ſpeciale mandatum Domini Regis*; and had they delivered them preſently, it muſt have been, becauſe the King did not ſhew the Cauſe, and ſo ſhould have adjudged, the King had done Wrong, which was beyond their Knowledge; for he might have committed them for other Matters than they imagined; and if it was objected, that thus theſe Gentlemen might have remained in Priſon all their Days: He anſwered, No; they did remit them only, till they might adviſe of the Matter: Had they bailed them immediately, they muſt have reflected on the King, that he had unjuſtly impriſoned them: And it appeared in *Dyer*, 2 *Eliz.* that divers Gentlemen being committed, and requiring Writs of *Habeas Corpus*, ſome were bailed, and others remitted; whereby it appeared, much was left to the Diſcretion of the Judges: And, at laſt, this was no Judgment; Mr. Attorney, indeed, had preſſed to have a Judgment entered for his Majeſty's Service: But they had commanded the Clerk to make no Entry, but in the old Form. He had ſpent his Time, he ſaid, in this Court, and never knew, by any Record, that, upon ſuch a Return as that, a Man was bailed, before the King was conſulted.

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Judge *Jones* alſo declared, that no Judgment had been given: The Matter of Fact was, he ſaid, as his Brother had related it; adding, that if one had been committed by the Houſe of Commons, they would not have taken it well, if he had been bailed at his firſt Appearance in Court; nor would the King have done ſo in this Caſe.

Judge *Dodderidge* ſaid, upon conſideration of the Statutes and Records, they did not think they came ſo cloſe to the Caſe, as that Bail thereupon ſhould be immediately granted; but they might have had a new Writ the next Day; and he wiſhed, they had; for then they had ſeen more, and they had been eaſed of a great deal of Trouble: That the Attorney, on granting a *Remittitur*, preſſed for an Entry: But they all ſtraitly charged the Clerk, that he ſhould make no other Entry, than ſuch as their Predeceſſors had uſually made: And, as for the Difference that ſome had made, between a *Remittitur* and a *Remittitur quouſq*; he never yet met with any, though he had ſat in that Court fifteen Years.

The Lord Chief Juſtice, Sir *Nicholas Hyde*, ſaid, It was true, if the King could not commit, they had done wrong; but he knew of no ſuch Statute, that declared, the King might not commit: That, as to the Precedents the Priſoner's Counſel brought, they had ſhewn them they were miſtaken; and if they had erred, they had erred with their Fathers: There could be no Precedent ſhewn, where their Predeceſſors had not done as they had done; ſometimes bailing, ſometimes remitting, ſometimes diſcharging; but they never bailed any,

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committed by the King, or his Council, till his Pleaſure was firſt known. *Thus did the Lord Chief Juſtice* Coke *in* Raynard's *Caſe*. It was objected, indeed, that this would have been done, if the King had not written: But, why then was the Letter read, and publiſhed, and kept? And why was the Town-Clerk ſent carefully to enquire, whether the Men offered for Bail, were Subſidy Men, as the Letter directed? The Letter alſo ſhewed, that *Beckwith* was committed for Suſpicion of being concerned in the Powder-Plot; but no Proof being produced, the King *conſented*, he ſhould be bailed.

The Commons draw up a Petition of Right.

There were ſome Speeches afterwards made in the Houſe of Lords, ſome approving, and others cenſuring the Judges Conduct: The Commoners in the mean Time were framing a Petition of Right, about which they had ſeveral Conferences with the Lords, to obtain their Concurrence: At one of theſe Conferences, on the 25th of *April*, 1628. Doctor *George Abbot*, Archbiſhop of *Canterbury*, ſaid, he was directed by the Lords to obſerve to them, that his Majeſty's Service, and the Safety of the Kingdom, required they ſhould diſpatch the Buſineſs before them with all Expedition; and that their Lordſhips did in general agree with them, and did not doubt, but the Commons would agree with the Lords, to maintain and ſupport the Fundamental Laws of the Kingdom, and the Liberty of the Subject: That they did not reject what had been offered them by the Commons; but then their Lordſhips had drawn up ſome Propoſitions agreeing with them in Subſtance, which ſhould be read to them; and, if the Commons differed with their Lordſhips, he deſired, they would ſtrike out, alter, or diminiſh, as they thought fit, that they might arrive at the End they both ſo much aimed at.

The Lords offer them five Propoſitions.

Which are read.

Then the Lords five Propoſitions were read, and are as follow:

1. That his Majeſty would be pleaſed graciouſly to declare, that the good old Law, called *Magna Charta*, and the ſix Statutes, conceived to be Declarations and Explanations of that Law, do ſtill ſtand in Force, to all Intents and Purpoſes.

2. That his Majeſty would be pleaſed graciouſly to declare, that, according to *Magna Charta*, and the Statutes aforenamed, as alſo according to the moſt ancient Cuſtoms and Laws of the Land, every free Subject of this Realm, hath a fundamental Property in his Goods, and a fundamental Liberty of his Perſon.

3. That it is his Royal Pleaſure, to ratify and confirm unto all and every his loyal and faithful Subjects, all their ancient, ſeveral, juſt Liberties, Privileges, and Rights, in as ample and beneficial Manner, to all Intents and Purpoſes, as their Anceſtors did enjoy the ſame under the Government of the beſt of his moſt noble Progenitors.

4. That his Majeſty would be pleaſed graciouſly to declare, for the good Content of his loyal Subjects, and for the ſecuring them from future Fear, that in all Caſes, within the Cognizance of the Common Law, concerning the Liberties of the Subject, his Majeſty would proceed, according to the Common Law of this Land, and according to the Laws eſtabliſhed in the Kingdom, and in no other manner or wiſe.

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5. As touching his Majeſty's Royal Prerogative, *intrinſical to his Sovereignty*, and intruſted him withal from God, *Ad communem totius populi ſalutem, & non ad deſtructionem*, his Majeſty would reſolve not to uſe the ſame to the Prejudice of any of his loyal People, in the Property of their Goods, or Liberty of their Perſons. And in caſe, for the Security of his Majeſty's Royal Perſon, the common Safety of his People, or the peaceable Government of this Kingdom, his Majeſty ſhall find juſt Cauſe, for Reaſons of State, to impriſon, or reſtrain, any Man's Perſon, his Majeſty would graciouſly declare, that *within a convenient Time*, he ſhall, and will, expreſs the Cauſe of the Commitment, or Reſtraint, either general or ſpecial; and upon a Cauſe ſo expreſſed, will leave him immediately to be tried, according to the common Juſtice of the Kingdom.

To theſe Propoſitions, Sir *Dudley Diggs*, at the ſame free Conference, replyed, That the Commons would be as ready to propugn the juſt Prerogative of his Majeſty, as their Lordſhips: But, as they are a great Body, that muſt adviſe upon all new Propoſitions, they could not give a preſent Anſwer to them, but would faithfully report them to the Houſe; from whence, in due Time, their Lordſhips ſhould receive an Anſwer.

The Senſe of the Commons, on theſe Propoſitions.

The next Day, being the 26th of *April*, the five Propoſitions being reported in the Houſe of Commons, Mr. *Selden* made a Speech upon the Occaſion, and obſerved, that the firſt of theſe Propoſitions, (*viz.*) To declare, that *Magna Charta*, and the ſix Statutes conceived to be Declarations and Explanations of that Law was ſtill in Force, was of no Uſe; for no Body doubted it: And, for the ſecond, That his Majeſty would declare, that every Subject had a Property in his Goods, and Liberty of his Perſon, he never heard it denied, but in the Pulpit, which was of no Weight: For the third, that his Majeſty would confirm all their juſt Liberties, none could tell what that would produce: For the fourth, It was not fit to be aſked, *viz.* That in all Caſes, within the Cognizance of the Common Law, concerning Liberty, his Majeſty would proceed according to the Common Law. If Perſons were committed, the Courts of Juſtice were open for the Parties to ſeek Juſtice. And, if any Thing was done againſt Law there, it was the Fault of them that ſat there: So they ſhould take it. His Majeſty did nothing againſt Law: And as for the fifth, It was not fit to be had, and therefore not fit to be aſked. If they had a Law to that Purpoſe, it would deſtroy their fundamental Liberties: What ſhould be interpreted, *Convenient Time? Who ſhould judge of it, but the Judges?* Any Man might be committed by that Clauſe, at pleaſure; none were exempted: At this little Gap every Man's Liberty might in Time go out.

His Majeſty obſerving that the Commons ſpent their whole Time in Debates on theſe Propoſitions, came to the Houſe of Peers the 28th of *April*, and the Commons being ſent for up, the Lord Keeper made a Speech to both Houſes: Wherein he told them, his Majeſty's

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Affairs were ſo preſſing, that they would admit of no Delay; and foreſeeing that their Debates would probably take up more Time than the Affairs of Chriſtendom would allow; his Majeſty had thought of this Expedient to ſhorten the Buſineſs, by declaring the Clearneſs of his own Heart and Intention; and, therefore, had commanded him to let them know,

The King's Declaration, on this Subject.

That he holdeth the Statute of Magna Charta, *and the other Statutes inſiſted upon for the Subject's Liberty, to be all in Force; and aſſures you, that he will maintain all his Subjects in the juſt Freedom of their Perſons, and Safety of their Eſtates; and, that he will govern according to the Laws and Statutes of this Realm; and, that ye ſhall find as much Security in his Majeſty's Royal Word, and Promiſe, as in the Strength of any Law ye can make; So that hereafter ye ſhall never have cauſe to complain.* And therefore deſired no Doubt, or Diſtruſt, might poſſeſs any Man, but that they would proceed ſpeedily and unanimouſly in the Buſineſs.

Secretary Cook's Speech, for the King.

The Commons being returned to their Houſe, Mr. Secretary *Cook* endeavoured to perſuade them to comply with the King: He ſaid, it was to be preſumed his Majeſty's Government would be according to Law: They could not but remember what his Father ſaid, *He is no King, but a Tyrant, that governs not by Law:* This Kingdom was to be governed by the Common Law, as his Majeſty had aſſured them it ſhould; all their Difference was in the Application of that Law: The general Government of the Kingdom in State Affairs, was in the Council-board, which might vary from the Common Law of the Kingdom in extraordinary Caſes: As in the Time of Dearth; Property of Goods might in ſuch a Time be forced, and the Owners compelled to bring Corn, and other Proviſions, to Market: When Coals have been held up at exceſſive Rates, the Council-board had cauſed them to be brought out and ſold: In Time of Peſtilence, Men might be reſtrained of their Liberties: If a Schiſm aroſe in the Church, the State might enquire into the Favourers of it: And if an Invaſion was threatned and managed by the King's Subjects, it was in the Power of the Government to reſtrain ſuch diſloyal Subjects of their Liberties: They daily ſaw all Laws broken, and all Laws would be broken for the publick Good: That his Majeſty had aſſured them, they ſhould never have Cauſe to complain for the future, and they ought to rely on his Royal Word: And as he had ſhewed himſelf the beſt of Kings, they would do well to acknowledge his Goodneſs, and promote that Union which they all deſired.

Sir Benjamin Rudyard's, on the other Side.

On the other Side, Sir *Benjamin Rudyard* ſaid, That Liberty was a precious Thing, and he that did not value it, deſerved to be valued accordingly: That the very Scope and Drift of *Magna Charta*, was to reduce the *Regal* to a *Legal* Power, in Matter of Impriſonment, or elſe it had not been worthy ſo much contending for. That it was true, no Court of Juſtice in *England* would diſcharge a Priſoner committed by the King *Rege inconſulto*, without acquainting the King, yet this good Manners was never made a legal Part of the Delivery.

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It had been objected, that the King ought to have a Truſt repoſed in him; God forbid but he ſhould: He owned that it was impoſſible to take it from him; for the Wit of Man could not deviſe a Law that could comprehend all Particulars, all Accidents; extraordinary Caſes would happen, and when they came, if the Adminiſtration was for the common Good, there could be no Law urged againſt it; but the Law muſt be general, otherwiſe Admiſſions and Exceptions would fret, and eat out the Law to nothing. The King's Prerogatives were rather beſides the Law, than againſt it; and when they were directed to right Ends for the publick Good, they were not only concurring Laws, but Laws of ſingular Excellence. The King was certainly very tender of his preſent Honour, and of his Fame hereafter; and would think it hard, to have a worſe Mark ſet upon his Government, than upon any of his Anceſtors, by extraordinary Reſtraints; but as his Majeſty was good as well as great, he had intimated to them, that he would willingly have the Abuſe of Power reformed. By which he verily believed, his Majeſty well underſtood, what a miſerable Power it was, that had produced ſo much Weakneſs to himſelf, and to the Kingdom. That he ſhould be glad to ſee that good old decrepit Law of *Magna Charta*, that had been long bed-rid, as it were, walk abroad again, with new Vigour and Luſtre, attended by the other ſix Statutes: He doubted not but, upon a Conference with the Lords, they ſhould happily agree upon a Bill againſt Impriſonment for Loans, and Privy-Seals. As for *Intrinſecal Power* and *Reaſon of State*, they were Matters in the Clouds, where he deſired to leave them: Only as to Reaſon of State he would ſay, that in the Latitude it had been uſed, it had eaten out, not only the Laws, but all the Religion of Chriſtendom: But recommended it to them, that they would ſo carry Things, that they might ſee Parliaments on Foot; for as long as they were frequent, there would be no irregular Power; there could be no total or final Loſs of Liberty, but by the Loſs of Parliaments. As long as they laſted, what they could not get at one Time, they might at another.

Biſhop Hall's Letter to the Commons, for an Accomodation.

The ſame 28th of *April*, Doctor *Joſeph Hall*, Lord Biſhop of *Exeter*, ſent a Letter to the Houſe of Commons on this Subject, wherein he adviſes them, to be wiſe in their well-meant Zeal, and not argue away that precious Time that could never be recalled; obſerving, that while they diſputed, their Friends in *Germany*, the (*Palatinate* and *Rochelle*) periſhed, and they muſt follow them, adding: *Where are we if we break? (and I tremble to think) we cannot but break if we hold ſo ſtiff. Our Liberties and Properties are ſufficiently declared to be ſure and legal; our Remedies are clear and irrefragable: What do we fear? Every Subject now ſees the Way chalked out for future Juſtice, and who dares from henceforth tread beſide it? Let us not, while we over-rigidly contend for an higher Strain of Safety, put ourſelves into a Neceſſity of Ruin, and utter deſpair of Redreſs. Let us not, in Suſpicion of Evils that may be, caſt ourſelves into preſent Confuſion. If you love yourſelves and your Country,*

remit

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remit ſomething of your own Terms; and ſince the Subſtance is yielded by our noble Patriots, ſtand not too rigorouſly upon Points of Circumſtance. Fear not to truſt a good King, who after the ſtricteſt Laws are made, muſt be truſted with the Execution. Think that your Country, nay Chriſtendom, lies at the Mercy of your preſent Reſolutions. Relent, or farewel Welfare.

From him, whoſe faithful Heart bleeds in a vowed Sacrifice for his King and Country,

EXETER.

The King's Meſſage, if they would rely on his Word?

Still the Commons continued their Debates on the Violation of their Liberties and Properties; whereupon Mr. Secretary *Cook* brought them a Meſſage from his Majeſty, on the firſt of *May*, deſiring to know, whether the Houſe would reſt ſatisfied with his Royal Word, declared to them by the Lord Keeper? And aſſuring them if they did, it ſhould be Royally performed.

Mr. Secretary Cook's Speech upon it.

Upon this a profound Silence following, Mr. Secretary *Cook* roſe up again, and ſaid, I am ſtill confident of a good Iſſue of this Parliament, for I know his Majeſty is reſolved to do as much as ever King did for his Subjects: But if they conſidered his Majeſty, a young King, juſt come to his Crown, engaged in War, and yet denied neceſſary Supplies; what could they expect, when he was reduced to ſuch a State? That his Majeſty had called this Parliament to make up the Breach; aſſured them they ſhould have no further Cauſe to complain; aſſured them that the Laws ſhould be eſtabliſhed; and what could they deſire more? The Diſpute was, concerning the Liberty of the Subject, and the King's Prerogative; he hoped they did not mean to add any Thing to themſelves to depreſs him: Did they expect greater Liberties than their Forefathers had, and deſign to put the Crown into a worſe Condition than ever? He durſt not adviſe his Majeſty to admit of that: If what they now deſired was no Innovation, it was all mentioned in the Acts and Statutes that had been cited; and whatever they would add more, muſt be a Diminution of the King's Power, and an Addition to their own. They had a wiſe and prudent Prince to deal with, who had a Sword in his Hand for their Good; and this Good muſt be ſupported by Power: Did they think by their Debates, and putting Law-Caſes, they could make that not to be Law, which in Experience they every Day found neceſſary?

He muſt tell them freely, that he knew by Experience, and by the Place he held under his Majeſty, if he would diſcharge his Duty, he muſt commit, and neither expreſs the Cauſe to the Jaylor, nor to the Judges, nor to any Counſellor in *England*, but to the King himſelf; and deſired them to recollect, if thoſe who had been in the ſame Place, had not thus committed Men, without any Scruples or Doubts made of their Authority, or any Complaint made by the Subject. But, ſhould he do this without real Cauſe, and could not make the Neceſſity of it appear, when he was called upon, he muſt expect a heavier Puniſhment from his Majeſty than the Law could inflict.

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They inſiſt on a Bill for their Security.

The Houſe were ſtill divided, whether they ſhould reſt ſatisfied with his Majeſty's Royal Word, for the Eſtabliſhment of their Liberties, or inſiſt on their being ſecured in a parliamentary Way: Sir *Thomas Wentworth*, who concluded the Debate, ſaid, ſince there had been a publick Violation of the Laws by his Majeſty's Miniſters, nothing would ſatisfy him, but a publick Amends: Their Deſire to vindicate the Subjects Right by Bill, was no more than their Anceſtors had ſhewn in the like Caſes.

Another Meſſage from his Majeſty.

During theſe Debates the Commons received another Meſſage from his Majeſty, by Mr. Secretary *Cook*, declaring, That however they proceeded, his Reſolution was to govern them according to the Laws and Cuſtoms of the Realm: That he would maintain them in the Liberties of their Perſons, and Properties of their Goods, ſo that they might enjoy as much Happineſs as their Forefathers did in the beſt Times: That he would rectify what had been amiſs, ſo that there ſhould be no juſt Cauſe to complain. And, as his Majeſty would rank himſelf among the beſt of their Kings, and ſhew he had no Intention to invade their lawful Liberties or Rights, ſo he would have them match themſelves with the beſt Subjects, not encroaching on that Sovereignty and Prerogative, which God had put into his Hands for their Good; but by containing themſelves within the Bounds and Laws of their Forefathers, without reſtraining, or enlarging them, by new Explanations, Expoſitions, and Additions, which he ſhould never give way to: That the Affairs of Chriſtendom were come to ſuch a Criſis, that they would admit of no longer Delay; and therefore he ſhould put an end to the Seſſion on *Tueſday* ſeven-night; and, if the Houſe was not ready in that Time to do what was fit for themſelves, it would be their own Faults.

Upon reading this Meſſage, Sir *John Elliot* ſaid, he feared his Majeſty was miſinformed, in what they were about, and propoſed their repreſenting to him, that they were not about making any thing new; obſerving, they had received many Interruptions by Meſſages, founded upon Miſreports, and Miſrepreſentations, to his Majeſty.

Their Grievances ſummed up.

Sir *Miles Fleetwood* ſaid, the Breach of this Parliament would be the greateſt Miſery that ever befel them: The Eyes of Chriſtendom were upon them: All their Proteſtant Friends were ready to be ſwallowed up by the Emperor's Forces: Their own Kingdom in a miſerable State: Their Religion invaded by the *Roman* Catholicks, under Colour of a Commiſſion, that was intolerable: The Defence of the Realm, by Shipping, decayed: The King's Revenue ſold, and gone; and where ſhould Relief be obtained, but in Parliament? propoſing they ſhould proceed by way of Bill, to eſtabliſh the fundamental Laws of Liberty and Property. *At length the Commons agreed upon an Anſwer to all the King's Meſſages, which was preſented to his Majeſty, on the 5th of* May, *by their Speaker.*

The Commons Anſwer to the King's Meſſages.

In this Meſſage they thank his Majeſty, for his many ample Expreſſions, of his Affection and Promiſes of governing them according to Law, and to maintain their Liberties and Properties:

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perties: And as his Majeſty deſired to know, if they would reſt upon his Royal Word and Promiſe; they aſſured him, their greateſt Confidence was in his Grace and Goodneſs; without which, nothing they could frame, would be of any Safety, or Value to them; deſiring he would believe, they had as full Confidence in his Royal Word and Promiſe, as any Houſe of Commons ever repoſed in their beſt Kings.

But as there had been, of late, a publick Violation of the Laws, and the Subjects Liberties, by ſome of his Majeſty's Miniſters, they conceived, nothing leſs than a publick Remedy would raiſe the dejected Hearts of his loving Subjects, to a chearful Supply of his Majeſty; and *begged Leave to lay hold of that gracious Offer, of ſecuring their Rights and Liberties, by way of Bill:* That it was far from their Intentions, to encroach on his Sovereignty, or Prerogative; nor had they the leaſt Thought of ſtretching, or enlarging, the Laws, by any new Interpretations, or Additions: Their Deſires extended no farther, than to ſome neceſſary Explanation on that, which was truly comprehended within the Meaning of thoſe Laws; with ſome moderate Proviſion for Execution and Performance, as in Times paſſed, on like Occaſions, had been uſed.

His Majeſty's Reply.

To this his Majeſty replied, by the Lord Keeper *Coventry*, that he expected an Anſwer by their Actions, and not by dilatory Diſcourſes: They pretended to acknowledge a Truſt and Confidence in his Majeſty, but did not expreſs it in their Words and Actions; for what needed Explanations, if they doubted not the Performance of the true Meaning of theſe Statutes? Explanations would hazard an Encroachment on his Prerogative: And what needed a new Law, to confirm an old, if they repoſed any Confidence in the Declarations his Majeſty made to both Houſes, (as they themſelves acknowledged they did)? But, to ſhew clearly the Sincerity of his Majeſty's Intentions, he was content, that a Bill be drawn for the Confirmation of *Magna Charta*, and the ſix other Statutes, inſiſted upon for the Liberties of the Subject; but without Additions, Paraphraſes, or Explanations.

But if they ſought to tie the King's Hands, by new and impoſſible Bonds, they muſt be accountable to God and their Country, for the ill Succeſs of this Parliament. It was his Majeſty's Pleaſure, that, without further Replies, or Meſſages, or other unneceſſary Delays, they ſhould do what they meant to do ſpeedily, remembring the Shortneſs of the Time.

This Reply being debated by the Commons, Mr. Secretary *Cooke* again propoſed their relying on the King's Word, as more advantagious than a Bill, as it would engage his Majeſty's Affections to his People.

Sir *Edward Coke*, on the other Side, ſaid, It was never known, that general Words were a Satisfaction for particular Grievances: Never any Parliament relied on Meſſages. He did not diſtruſt his Majeſty; but Kings muſt ſpeak by Record, and in Particulars, and not in Generals. All ſucceeding Kings would ſay, *Ye muſt truſt me, as you did my Predeceſſors; and truſt my Meſſages.* Let us put up a Petition of Right; not that I diſtruſt the King, but that I cannot take his Truſt, but in a Parliamentary Way.

The Commons agree upon a Petition of Right.

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And the Houſe agreeing to the Motion of Sir *Edward Coke*, the Petition of Right was finiſhed, and delivered to the Lords, at a Conference, for their Concurrence. In the mean Time their Lordſhips received a Letter from the King, importing, that his Majeſty, being deſirous of nothing more, than the Peace and Proſperity of his People, had permitted free Debates on the higheſt Points of his Prerogative, which his Predeceſſors had ever reſtrained, being Matters they would not ſuffer to be diſcuſſed in Parliament: That he had alſo condeſcended to the Deſires of his Subjects, in other things, ſo far, that it might fully ſatisfy all moderate Minds, and free them from all Fears and Jealouſies: But ſtill he found it inſiſted upon, that in no Caſe whatever, neither he, nor the Privy-Council, had any Power to commit a Man, without the Cauſe ſhewed: But ſhould he depart from that Rule of Government, practiſed for ſo many Ages, it would ſoon diſſolve the very Foundation and Frame of the Monarchy: Wherefore, as he had already made ſuch Propoſitions to the Commons, as might equally preſerve the juſt Liberty of the Subject; ſo he thought good to let their Lordſhips know, that without the Overthrow of Sovereignty, he could not ſuffer this Power to be impeached: However, his Majeſty declared his Reſolution to be, That neither he, nor his Privy-Council, ſhould at any Time after, commit, or command to Priſon, or otherwiſe reſtrain, the Perſon of any, for not lending Money, or for any Cauſe, which did not concern the publick Safety: And that in all Caſes of this Nature, which ſhould happen for the future, he would, upon the Petition of the Party, or the Addreſs of the Judges, readily expreſs the true Cauſe of Commitment, ſo ſoon as with Convenience and Safety the ſame was fit to be diſcloſed; and that in all criminal Cauſes, of ordinary Juriſdiction, the Judges ſhould proceed to deliver, or bail, the Priſoner, according to the known Laws of the Land, *Magna Charta*, and the other ſix Statutes, inſiſted on; which, he acknowledged, remained in full Force: This, he thought fit to ſignify to them, to ſhorten their Debates on this great Queſtion; the Seaſon of the Year, and the great Occaſions of the State, not allowing many more Days, for the Continuance of this Seſſion.

The King's Letter to the Lords, declaring his Intentions.

Given at our Palace at Weſtm. 12 May, *in the 4th Year of our Reign.*

The Lords communicated this Letter to the Commons; and at a Conference, the 17th of *May*, propoſed the following Addition to their Petition of Right, (*viz.*)

We preſent this, our humble Petition to your Majeſty, with the Care, not only of preſerving our own Liberties, but with due Regard to leave entire, that Sovereign Power, wherewith your Majeſty is entruſted, for the Protection, Safety, and Happineſs of the People.

The Lords offer a Clauſe, to be added to the Petition of Right.

Upon reporting this Addition in the Houſe of Commons, it was ſaid, What is this *Sovereign* Power? By this we ſhall acknowledge a *Regal*,

Debates in the Houſe of Commons, upon the Clauſe.

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Regal, as well as a *Legal* Power: This ſeems to be another diſtinct Power, from the Power of the Law. Sir *Edward Coke* ſaid, This will overthrow all our Petition: There never was a Petition, with a ſaving of the King's Sovereignty; *Prerogative* was a Point of the Law; but *Sovereign Power* was no Parliamentary Word: If we grant this, we give a Sovereign Power above all Laws. Sir *Thomas Wentworth* ſaid, If we admit of this Addition, we leave the Subject worſe than we found him: Let us leave all Power to his Majeſty, to puniſh Malefactors; but our Laws are not acquainted with Sovereign Power: We deſire no new Thing, nor do we offer to trench on his Majeſty's Prerogative: We muſt not recede from this Petition, either in the Whole, or in Part.

The Lords Reaſons for this Addition.

The Lords, however, at a Conference, inſiſted on this Addition, and ſaid, they intended to give no new Power, which the King had not before; but, as he was a King, he was a Sovereign, and muſt have Power, to be executed, for the Safety of the People; this could never be a Grievance: That both Houſes had already agreed, in a Manner, that the King was veſted with Sovereign Power: The Commons had acknowledged it, in a Speech, their Speaker lately made to his Majeſty, wherein he ſays, *We have not a Thought to encroach on the King's Sovereignty*; and they might as well therefore add it to their Petition.

The Commons Reaſons againſt it.

To this the Commons anſwered, That their Petition concerned, firſt, the levying Money, by Way of Loan. 2. The Impriſonment of their Perſons. 3. The Unlawfulneſs of billeting Soldiers in private Houſes; and, 4. The exerciſing Martial Law, in Time of Peace.

Theſe Things, they ſaid, they had repreſented to be againſt the Law of the Land, in their Petition: But ſhould they admit theſe Words, *To leave entire that Sovereign Power, wherewith your Majeſty is entruſted*, they ſhould admit a Sovereign Power in the King, above the Laws and Statutes of the Realm; and all the Grievances they complained of, might be exerciſed, and put in Practice again, by virtue of that *Sovereign Power*. This Clauſe, therefore, if it ſhould be admitted, would take away the Effect of every Part of the Petition, and become deſtructive to the Whole.

The Scope of their Petition, was not to mend their Caſe, but to reſtore them to the ſame State they were in before: But if that Clauſe was added, inſtead of mending the Condition of the Subjects, whoſe Liberties, of late, had been miſerably violated by ſome Miniſters, they ſhould leave them worſe than they found them: They ſhould intimate to their Poſterity, that there was a Truſt repoſed in the King, of *Sovereign Power, ſuperior to all Laws*, which he might exerciſe on any Emergency, and thereby ſuſpend all the Laws and Statutes of the Realm; which was a Truſt, they believed, very far from being deſired by his Majeſty; and which, being tranſmitted to a Succeſſor, of a different Temper, might enable him to alter the whole Frame of the Commonwealth, and diſſolve that Government, which had flouriſhed in this Kingdom for ſo many Ages.

They ſaid, They were very ready to acknowledge, in general Terms, his Majeſty's Sovereign Power; where it did not mean a Power of controuling and ſuſpending thoſe Laws they were petitioning for a Confirmation of, as it muſt do, in this Addition to their Petition. They would maintain his Sovereign Power conſtantly, even to the Hazard of their Lives, if there was Occaſion, as they were bound to do, by their Oath taken, this very Seſſion, in theſe Words: *I*, A. B. *do utterly* teſtify, *and declare in my Conſcience, That the King's Highneſs is the ſupreme ſovereign Governor of this Realm, in all Cauſes*, &c. *And to my utmoſt Power, will aſſiſt and defend all Juriſdictions, Privileges, Preeminencies, and Authorities, granted, or belonging to the King's Highneſs, or united, or annexed, to the Imperial Crown of this Realm*, &c.

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But ſtill it was not proper, to make this Addition to their Petition of Right; becauſe it would overthrow and annihilate the Right, pretended to by them in the Petition itſelf.

The Lords and Commons agree, to leave out the Addition, and preſent the Petition.

The Lords afterwards agreed, to leave out the Addition, and inſiſted only on the Word *Means*, inſtead of *Pretext*, in the Petition; and on the Words *not warrantable*, inſtead of the Word *unlawful*: To which the Commons conſenting, the Petition was preſented to his Majeſty. On the 2d of *June*, the King came to the Houſe of Peers, and the Commons being ſent for up, his Majeſty ſaid,

The King's Anſwer.

I am come hither, to perform my Duty: I think no Man can think it long, ſince I have not taken ſo many Days in anſwering the Petition, as you ſpent Weeks in framing it; and I am come hither to ſhew you, that as well in formal things, as ineſſential, I deſire to give you as much Content, as in me lies.

Lord Keeper's Speech.

Then the Lord Keeper ſaid, that his Majeſty took it in good part, that both Houſes generally profeſſed, they had no Intention to diminiſh his Prerogative; and as they had cleared their Intention, ſo he came to clear his, and to ſubſcribe a firm League with his People, which was ever likely to be moſt conſtant and perpetual, when the Conditions were equal: That they could not be in a more happy State, than when their Liberties ſhould be an Ornament and Strength to his Majeſty's Prerogative, and his Prerogative a Defence of their Liberties. For his Part, he was reſolved, to give an Example, in the uſing of his Power, for the Preſervation of their Liberties, that for the future, they ſhould have no Cauſe to complain.

The Petition read.

Then the Petition was read, wherein they recite, that whereas it had been declared, and enacted, by a Statute made in the Reign of King *Edw.* I. entitled, *Statutum de Tallagio non concedendo*, that no Tallage or Aid ſhould be levied, but by Conſent of Parliament: And by a Statute of the 25 *Edw.* III. that no Perſon ſhould be compelled to make any Loan againſt his Will, or charged to pay any Benevolence: And by another Statute, that no Subject ſhould be compelled to pay any Tax, Tallage, or Aid, without Conſent of Parliament. Notwithſtanding which, divers Perſons had been required to lend his Majeſty ſeveral Sums of Money; others ſummoned before the Council, and impriſoned, for their Refuſal: And ſeveral other Charges had been levied on the

1628. 4 Car. I. the People, by the Command of his Majeſty, or the Privy-Council: And that, whereas by *The Great Charter*, it is declared, That no Freeman ought to be diſſeized of his Lands, or Liberties, but by the Laws of the Land; many of the King's Subjects had, nevertheleſs, of late been impriſoned, without any Cauſe ſhewn, and Bail refuſed on their bringing Writs of *Habeas Corpus*: And that Soldiers and Mariners had been quartered on the King's Subjects, againſt their Will; and Perſons had been tried and condemned by martial Law, who ought to have had the Benefit of the Laws of the Land.

They did, therefore, humbly pray, that no Man might be compelled, for the future, to make or yield any Gift, Loan, Benevolence, Tax, or ſuch like Charge, without common Conſent by Act of Parliament: And, that none be called to make Anſwer, or to take an Oath, or to give Attendance, or be confined, or otherwiſe be moleſted, or diſquieted, concerning the ſame, or for Refuſal thereof: And that no Freeman, in any ſuch Manner as is beforementioned, be impriſoned, or detained; and that his Majeſty would be pleaſed to remove the ſaid Soldiers and Mariners; and that his People might not be ſo burthened in Time to come: That the aforeſaid Commiſſions, for proceeding by martial Law, might be revoked and annulled; and that, for the future, no Commiſſions of the like Nature might iſſue to any Perſon whatſoever, to be executed as aforeſaid, leaſt, by Colour of them, any of his Majeſty's Subjects ſhould be deſtroyed, or put to Death, contrary to the Laws and Franchiſes of the Land.

All which they moſt humbly prayed of his moſt excellent Majeſty, as their Rights and Liberties, according to the Laws and Statutes of this Realm: And, that his Majeſty would alſo vouchſafe to declare, That the Awards, Doings, and Proceedings, to the Prejudice of of his People in any of the Premiſſes, ſhould not be drawn into Conſequence, or Example: And, that his Majeſty would alſo be graciouſly pleaſed, for the further Comfort and Safety of his People, to declare his Royal Will and Pleaſure, that in the Things aforeſaid, all his Officers and Miniſters ſhould ſerve him, according to the Laws and Statutes of this Realm, as they tendered the Honour of his Majeſty, and the Proſperity of the Kingdom. To which his Majeſty anſwered by the Lord Keeper.

The King's Anſwer to the Petition.

The King willeth, that Right be done, according to the Laws and Cuſtoms of the Realm; and that the Statutes be put in due Execution; that his Subjects have no Cauſe to complain of any Wrong, or Oppreſſions, contrary to their juſt Rights and Liberties; to the Preſervation whereof, he holds himſelf in Conſcience as well obliged, as of his Prerogative.

It gives no Satisfaction.

Upon Reading the King's Anſwer, in the Houſe of Commons, it appeared to be generally diſliked; and Sir *John Elliot* ſuggeſted, that it was Evaſive, and propoſed the drawing up a Remonſtrance of their Grievances; among which Doctor *Manwaring*'s Sermon was mentioned in theſe Debates, being none of the leaſt: The Commons thereupon charged the Doctor, with advancing arbitrary Doctrines at the Lords Bar; and he was ſentenced to be impriſoned, fined 1000 *l.* ordered to be ſuſpended for three Years,

Dr. Manwaring *ſentenced for his arbitrary Doctrines.*

and his Books burnt; and, that he ſhould make a publick Acknowledgement of his Faults at the Bar of the Houſe. 1628. 4 Car. I.

Two Meſſages ſent to the Commons.

His Majeſty, in the mean Time, ſent two Meſſages to the Houſe, to haſten the Diſpatch of the Buſineſs before them, and not ſpend their Time in aſperſing his Adminiſtration; intimating, that he ſhould put an End to the Seſſion on the 11th Inſtant. Theſe Meſſages incenſed the Commons ſtill more; and Sir *John Elliot* was beginning to make ſome Reflections on the Miniſters, when the Speaker ſtood up, and ſaid, There was a Command laid upon him, not to ſuffer them to proceed in this Manner: Whereupon there was a profound Silence, till Sir *Nathaniel Rich* ſtood up, and ſaid, *We muſt ſpeak now, or for ever hold our Peace.* And when ſome ſuggeſted, that Sir *John Elliot*'s former Speeches, probably, had given his Majeſty Offence, the Houſe came to a Reſolution, That every Member of their Houſe was free from any undutiful Speech, from the Beginning of that Parliament to that Day: And the Houſe was immediately turned into a Grand Committee, to conſider of the Safety of the Nation; no Man being ſuffered to go out of the Houſe, but the Speaker. In this Committee ſeveral Members, particularly Sir *Edward Coke* and Mr. *Selden*, charged the Duke of *Buckingham*, with being the Author of all their Grievances; which they were putting to the Vote, when the Speaker returned with a Meſſage from his Majeſty, commanding them to adjourn till the next Morning; and that in the mean Time all Committees ſhould ceaſe.

The Commons charge the Duke of Bucks, as the Author of their Grievances.

The next Morning the King ſent them another Meſſage, by the Speaker, aſſuring them, he never intended to bar them of their Rights; but only to prevent all ſcandalous Reflections on his Councils, and Actions paſſed: This Meſſage not ſatisfying them, both Houſes addreſſed his Majeſty for a clear and ſatisfactory Anſwer to their Petition of Right. Whereupon his Majeſty came to the Houſe of Peers, (*June* 7.) and the Petition being again preſented to him, he anſwered, in a parliamentary way, *Soit droit comme il eſt deſire:* Which his Majeſty obſerved, was a full Anſwer; and yet no more than he granted them in the firſt; for the Meaning of that was to confirm their Liberties, knowing, according to their own Proteſtations, that they neither meant, or could, hurt his Prerogative; adding, that as he had ſhewn his Readineſs to ſatisfy their Demands; if this Parliament had not a happy Concluſion, the Sin muſt be theirs: And they were ſo good afterwards, to grant his Majeſty five Subſidies, and to confirm the five Subſidies granted by the Clergy. And now, it was imagined, all Differences were compoſed: But, a little after, the Commons preſented a Remonſtrance to the King, ſhewing, that both the Church and Commonwealth were ſtill in great Danger, the Laws not being put in Execution againſt the *Roman Catholicks*: Many of whom were in great Favour at Court; particularly the Counteſs of *Buckingham* (the Duke's Mother) by whoſe Protection, their Number, Power, and Inſolence, encreaſed; That *Arminianiſm* was encouraged by Doctor *Neale* Biſhop of *Wincheſter*, and Doctor *Laud* Biſhop of *Bath* and *Wells*, who, though Proteſtants,

Both Houſes addreſs the King, for a more ſatisfactory Anſwer to their Petition. He gives a full Anſwer.

The Commons preſent a Remonſtrance of their Grievances.

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testants in Appearance, were in Reality Jesuits; recommending it to the King, to encourage painful Orthodox Preachers, observing that such were too much discountenanced: They again reminded his Majesty, of the illegal Methods that had been taken to raise Money by way of Loan; represented the Danger of keeping a Standing Army on Foot; the Terror they were under from his Majesty's *German Troops*; the Illegality of his taking Tonnage and Poundage; the Miscarriages of the Isle of *Rhee*; the Weakness of his Majesty's Forts; the Destruction of Trade by the *French* and *Spanish* Privateers; and the Loss of the Sovereignty of the Narrow-Seas: The principal Cause of all which Evils, they conceived to be the excessive Power of the Duke of *Buckingham*, and the Abuse of that Power; submitting it to his Majesty's Wisdom, Whether it was safe for himself, or his Kingdoms, that so great a Power by Sea and Land should be reposed in him; intimating, that they could not be satisfied, while he remained in Possession of the great Offices he enjoyed, and was continued in his Majesty's Councils.

Accuse the Duke of Bucks, *as the Author of them.*

The King's Answer.

To which the King answered, *He little expected such a* Remonstrance, *after he had passed* their *Petition of Right*; and soon after he sent them a Message, that he should put an End to the Session, the 26th Instant (*June*:) Whereupon they immediately set about framing another Remonstrance, against the King's taking Tonnage and Poundage; wherein they beseech him, to forbear receiving it; and, that he would not take it ill, if his Subjects refused paying Tonnage and Poundage for the future; telling him, they intended to prepare a Bill, to impower his Majesty to receive it, if they had been permitted to sit longer.

They resolve on another Remonstrance.

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But the King, understanding they designed to clog the Bill with many Restrictions, and to continue these Duties but from Year to Year, whereas his Predecessors enjoyed them for Life, his Majesty did not think fit to encourage the Bill; and, in order to prevent the Commons presenting their second Remonstrance, came to the House sooner than they expected, and put an End to the Session, having first made a Speech to both Houses: Wherein he desired they would observe, that by granting their Petition of Right, he had not granted them any new, but only confirmed their antient Rights and Liberties: And as for Tonnage and Poundage, it was a Thing he could not want; it was never intended to be asked by them in that Petition, nor did he ever intend to part with it; of which he directed the Judges to take Notice. Concluding, that the Houses of Parliament, neither jointly, or separately, had any Power eito make, or declare, a Law, without his Consent, what new Doctrines soever had been taught. After which the Lord-Keeper declared the Parliament to be prorogued to the 20th of *October*.

The King's Speech on proroguing the Parliament.

The following Proceedings relating to the same Subject (viz.) *The Bailing of Gentlemen, on bringing their Writs of* Habeas Corpus; *I shall defer my Remarks, till I have gone through those Cases.*

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Stroud's Habeas Corpus.

Proceedings against WILLIAM STROUD Esq; WALTER LONG Esq; JOHN SELDEN Esq; and others, on bringing their Writs of *Habeas Corpus*, to be bailed in the *King's-Bench*, in *Easter* Term, 1629, 5 *Car.* I.

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Stroud, &c. summoned before the the Council.

THE Privy-Council, on the 3d of *March*, 1628. issued a Warrant, directed to *Denzil Holles* Esq; Sir *Miles Hobart*, Sir *John Elliot*, Sir *Peter Hayman*; *John Selden*, *William Coriton*, *Walter Long*, *William Stroud*, and *Benjamin Valentine*, Esquires, commanding their personal Appearance, before the Board, the Day following: At which Time *Holles*, *Elliot*, *Coriton*, and *Valentine*, appearing, and being examined, concerning the Disorders committed by them in the House of Commons, they refused to answer, as to any thing that had been said or done in their House, and were thereupon committed; and Warrants issued, for Sealing up the Studies of *Holles*, *Selden*, and *Elliot*: *Long* and *Stroud* absconding some time, a Proclamation was issued for apprehending them; and they afterwards surrendered: His Majesty intending to proceed against these Gentlemen in the Star-Chamber, the Attorney-General, by his Majesty's Directions, proposed several Queries to the Judges, concerning the Legality of such a Proceeding against Parliament-Men, for what had been said and done in the House: But it being afterwards resolved to drop the Proceedings in the Star-Chamber, I shall take no further Notice of them here.

Refuse to answer, as to what had been done in the House. And are committed.

They bring their Writs of Habeas Corpus.

In the mean Time, the Prisoners remaining in Custody, Mr. *Stroud* brought his Writ of *Habeas Corpus*, in *Easter* Term, 5 *Car.* I. to be admitted to Bail; and appearing in the Court of King's-Bench, the Return of the *Habeas Corpus* was read, importing, that *William Stroud*, Esq; was committed by Virtue of a Warrant under the Hands of twelve of the Lords of the Privy-Council; which Warrant was in the following Words:

The Return.

The Warrant for their Commitment.

You are to take Knowledge, That it is his Majesty's Pleasure and Commandment, that you take into your Custody the Body of William Stroud, *Esq; and keep him close Prisoner, till they receive other Order, either from his Majesty, or this Board: For so doing, this shall be your Warrant.* Dated 2 *April*, 1629. and directed, *To the Marshal of the* King's Bench, *or his Deputy.*

That he was also detained in Prison by Virtue of a Warrant under his Majesty's Hand, of the following Tenor:

C. R.

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C. R.

A ſecond Warrant.

Whereas you have in your Cuſtody the Body of William Stroud, *Eſq; by Warrant of the Lords of our Privy-Council, by our ſpecial Command, you are to take notice, that this Commitment was for notable Contempts by him committed againſt our Self and our Government, and for ſtirring up Sedition againſt Us, for which you are to detain him in cloſe Cuſtody, and to keep him cloſe Priſoner, until our Pleaſure be farther known concerning his Deliverance.*

Given at *Greenwich*, 7 *May*, 1629. in the fifth Year of our Reign.

Directed, *To the Marſhal of our Bench for the Time being*; who returned, *Et hæ ſunt cauſæ captionis & detentionis prædict. Gulielmi Stroud.*

Walter Long Eſq; brought his Writ of *Habeas Corpus* alſo, at the ſame Time, whoſe Caſe was exactly the ſame.

Stroud's Counſel argues the Return inſufficient.

Mr. *Aſk*, of Counſel with Mr. *Stroud*, argued, that that the Return was inſufficient; for the firſt Warrant mentioned in it, being from the Lords of the Council, ſhewed no Cauſe of Commitment, which was expreſly contrary to the Reſolution of Parliament, and the Petition of Right granted by this King: And that the ſecond Warrant by the King was inſufficient; becauſe the King himſelf could impriſon no Man: He objected alſo, that the Commitment was too general and uncertain, being for *notable Contempts:* There were Contempts, he ſaid, of various Natures, and it appeared not to the Court, of what kind this Contempt was; and, as to the Word *notable*, every Contempt againſt the King was notable. The Words, *againſt our Government*, were likewiſe uncertain; a Contempt of any Court being a Contempt of the King and Government. The Words, *for ſtirring up Sedition againſt Us*, he obſerved, likewiſe, were indefinite and general: This Term was generally uſed adjectively, as for *ſeditious Books*, or *ſeditious News*. The Statute of 1 and 2 *Phil. & Mar.* ſays, If any Perſon ſpeak any falſe, ſeditious, or ſlanderous News of the Queen, he ſhall loſe his Ears, and pay a Fine of 100*l.* So that the Penalty of ſuch Sedition, was but a Fine, which is no Cauſe of Impriſonment without Bail: And what was the Sedition intended here, was not to be gathered from the Words, they were ſo general: As to the Words *againſt Us*, they were redundant; for every Sedition was againſt the King; and having cited ſeveral Caſes, to ſhew that Pleadings had been held vicious for the Generality and Uncertainty; as the 18th of *Edw.* III. where a Man was indicted *quia furatus eſt equum*, and did not ſay *felonicè*; whereupon it was adjudged ill, 29. *Aſſ.* 45. A Man was indicted, for that he was *communis latro*; and the Indictment held vicious, becauſe it was too general: He concluded with the Caſe of *Peak* and *Paul*, *Hil.* 33 *Eliz.* where the Defendants ſaid of the Plaintiff, *Thou art a mutinous and ſeditious Man, and maintaineſt Sedition againſt the Queen*; and the Words were adjudged not actionable.

The Argument of Mr Long's Counſel, againſt the Return

Mr. *Maſon*, of Counſel with Mr. *Long*, alſo argued, That a Commitment by the King, without ſhewing Cauſe, could not be good, ſince his Majeſty's granting the Petition of Right.

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But what he principally inſiſted on, was, that *Sedition* was not any determined Offence in our Law; there was no Crime in Law called *Sedition:* That the Civilians defined it to be *Seditio, or ſeceſſio, cum pars Republicæ contra partem inſurgit:* So that Sedition, according to them, was nothing but Diviſion: That *Bracton* and *Glanvile* uſed the Word, Sedition, generally: That 25 *Edw.* III. which declared what Offences ſhould be Treaſon, did not mention Sedition amongſt them, and, conſequently, Sedition could not be interpreted Treaſon at this Day. To raiſe Tumults was Sedition; and yet one guilty of this Offence, was indicted only for a Treſpaſs, *Trin.* 21 *Edw.* III. *Rot.* 23. *B. R. Garbart's* Caſe. *Pope* was appealed by the Wife of *J. S.* becauſe he feloniouſly and ſeditiouſly murdered *J. S.* from whence it appeared, that Sedition was not to be taken as a Subſtantive; but might be applied adjectively to Treaſon, Treſpaſs, or other Offences. The 35 *Eliz.* cap. 1. is made againſt ſeditious Sectaries, that abſent themſelves from Church, the Penalty whereof was 10*l. per* Month. And *Coke* 4. 13. Lord *Cromwell's* Caſe, the Word Seditious is referred to Doctrine; from whence it appeared the Word was variouſly taken, according to the Subject treated of: That there were Offences of a higher Nature than Sedition, that were not Treaſon. 17 *R.* II. cap. 8. Inſurrections of Villains and others, is made Treaſon; which ſhewed, that before that Act it was not Treaſon; and that Act was repealed. By the Statute of 3 & 4 *Edw.* VI. cap. 5. To aſſemble the People to alter the Laws, is made Treaſon, if they continue together an Hour after Proclamation made; but if they diſperſe upon Proclamation made, it is not Treaſon: And if the *ſtirring up Sedition againſt the King*, was not Treaſon, there could be no Colour for detaining his Client, Mr. *Long*, in Priſon; and therefore he prayed, he might be diſcharged.

Berkley's Argument, for the Sufficiency of the Return.

Berkley, the King's Serjeant on the other Side, argued, That a Commitment, either by the King, or the Privy-Council, was good: It was every Day's Experience. 33 *Hen.* VI. 28. *Poignes's* Caſe was expreſs in it: The Petition of Right alſo admitted, they might commit: The Grievance there was, becauſe the particular Cauſe of Commitment was not expreſſed. It was not, indeed, fit for the King in Perſon to arreſt a Man; but he might command another to do it. This Impriſonment, before Conviction, is not a Puniſhment for any Offence, but rather an Arreſt, or Reſtraint, to prevent further Inconveniences. 14 *Hen.* VII. 8. A Juſtice of Peace may arreſt Men riotouſly aſſembled, for Prevention of further Miſchief. If a Houſe was on Fire, every Man might pull down the next, to prevent further Dammage: So, where there were Incendiaries in the State; they ought to be reſtrained and ſuppreſſed, leſt others ſhould be ſtirred up by them to ſubvert the Government. 22 *Aſſ.* 56. and 22 *Edw.* IV. 45. In falſe impriſonment, the Defendant juſtified, becauſe the Plaintiff was mad, and out of his Wits, and having done ſome harm, he bound and beat him, to avoid farther Harm; and the Juſtification was held good: So in Matters of Government, to avoid Commotions, the King ought to uſe his coer-

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cive Power againſt Men that are enraged, leſt they throw all into Confuſion.

As to that Objection, that the Return was general, and uncertain, he obſerved, That the Counſel for the Priſoners had divided the Words of the Return, which was an offering Violence to it; for an Expoſition ought not to be made by Fractions, but upon the whole Matter: Though the *ſtirring up Sedition againſt Us*, might be but an Offence fineable; yet, joined with the former Words, ſhewed it to be an Offence of the higheſt Nature; and, although Sedition itſelf might be too general an Expreſſion, yet, where it was *Sedition againſt Us and our Government*, it was particular enough, and could not be miſunderſtood: And, beſides, this being in the Caſe of a Return upon a *Habeas Corpus*, ſuch a preciſe Certainty was not required as in Indictments and Pleadings; therefore that Objection, that Sedition was not a Law Term, and that no Indictment for Sedition generally was ever ſeen, was of no Weight, though in ſome Caſes an Indictment for Sedition might be good; for it might amount to Treaſon. He agreed in *Peak*'s Caſe, that for the Words, ſeditious Fellow, no Action lay; becauſe thoſe Words did not imply an Act done, but only an Inclination to do it: But, if a Man had uttered Words, importing, that Perſon had committed Sedition, they would be actionable, as was reſolved in *Philips*'s and *Badby*'s Caſe, 24 *Eliz. Coke* 4. 19. *Thou haſt made a ſeditious Sermon, and moved the People to Sedition this Day*, adjudged actionable: He agreed to *Garboyl*'s Caſe, *&c.* for in thoſe Caſes Sedition was only taken adjectively, and ſhewed an Inclination only to do a ſeditious Act; and ſo Sedition might be applied to other Offences beſides Treaſon: That the Word Sedition is found in ſeveral Statutes; and *Bracton*, in his Book *De Corona*, ſays, If any by raſh Attempt, plotting the King's Death, ſhould act or cauſe any Act, to the Sedition of the Lord the King, or of his Army, it is Treaſon: And *Glanvile* ſays, To do any Thing in Sedition of the Kingdom, or of the Army, is High Treaſon. And *Britton*, *fol.* 16. It is High Treaſon to diſinherit the King; and Sedition tendeth to the Diſinheritance of the King: From whence it appears, that the Word Sedition is no Stranger to our Law; and, that ſuch Sedition as ſevers the People from the King, is Treaſon: That the Sedition mentioned in the Return might be High Treaſon, and yet the King might make it an Offence fineable: For he might proſecute the Offender in what Manner he pleaſed; and if it was Treaſon, the Offender was not bailable: That the Word Sedition was never taken in a good Senſe; it was always coupled with Treaſon, Rebellion, Inſurrection, and ſuch heinous Offences; and therefore prayed, the Priſoner might be remanded.

Littleton's *Argument, for Mr.* Selden.

In *Trinity* Term, 5 *Car.* I. Mr. *Selden* being in like Manner brought into the Court of King's Bench, by *Habeas Corpus*, and his Caſe being exactly the ſame with that of Mr. *Stroud*, Mr. *Littleton*, (aftewards Lord Chief Juſtice of the Common-Pleas, and Lord Keeper) of Counſel with Mr. *Selden*, moved, that his Client might be bailed. ——— He ſaid, he did admit that the King might commit a Man; and that a Man committed by the King was not repleviſable by the Sheriff, but he was evidently bailable by that Court, as appeared by the Petition of Right, and the Anſwer to it; and therefore he ſhould labour that Point no further: But lay down, as a Ground of his following Argument, that as Offences were of two Natures, either Capital, or as Treſpaſſes; ſo they were puniſhed in two Manners, *viz.* Capitally, or by Fine, or Impriſonment. For Offences of the firſt Kind, ſuch as Treaſon, and the like, Impriſonment was was only for the ſafe Cuſtody of the Offender; but for Miſdemeanors of the ſecond Nature, Impriſonment was impoſed on him as a Puniſhment. Then he laid it down as a Ground, That no Freeman that is impriſoned, only for Miſdemeanors before Conviction, could be detained in Priſon without Bail, if it was offered; unleſs in ſome particular Caſes, where it was ordained by a particular Statute.

That the Warrant of the Privy-Council, which ſignified the King's Pleaſure to commit the Priſoner, might be a good Ground for his Commitment; but it was no Ground for detaining him without Bail: And this the King had acknowledged, as the antient Right of the Subject, in the Petition of Right, and therefore was not now to be diſputed: That the Warrant of the King, as certified in the Return, contained no ſufficient Cauſe for detaining the Priſoner: The ſole Queſtion was, *If the Return contained in it any Capital Offence*; for if it contained only a Treſpaſs, or Miſdemeanor, then the Party was bailable. Then he conſidered the ſeveral Parts of the Return; the firſt Part whereof was, *For notable Contempts by him committed againſt our Self, and our Government:* But all Contempts, he obſerved, were, mediately or immediately, againſt the King, and his Government; and the Word *notable*, ſignified no more than notorious and manifeſt: It was but an emphatical Expreſſion of the Nature of the thing, and altered it not. *Againſt Us:* All Riots, Routs, Batteries, and Treſpaſſes, were againſt the King's Crown and Dignity; and the Nature of the Contempt ought to be expreſſed, that the Court might judge thereof: For Contempts in general, before Conviction, the Party could not be impriſoned without Bail.

The ſecond Part of the Return was, *for ſtiring up Sedition againſt Us*, which the other Side had ſaid, was ever taken in the worſt Senſe: That was true; but it did not follow from thence, that the Party which committed it, was not bailable. *Sedition*, in this Return, muſt be underſtood to be either as Treſpaſs, or High Treaſon: He ſhould conſider, therefore, 1. In what Senſe the Word *Sedition* was uſed. 2. How it ſhould be expounded here; and 3. what Senſe the Words *againſt Us* ſhould have here.

That Sedition was not to be found in the Diviſion of Offences in our Law, but as it was mingled and coupled with other Offences: Routs, Riots, and unlawful Aſſemblies, were much of the ſame Nature with it, and well expreſſed the Nature of Sedition: That the *Engliſh* Word was taken from the *Latin*, *Seditio*, which was uſed in the Bible, by Poets, Hiſtorians, and Orators, for Tumult, Uproar, or confuſed Noiſe: In *Tacitus*, it ſignified a Mutiny of the Army, when they repined againſt their Captain. In *Italian*, the elder Son of *Latin*, Sedition and Diſcord were

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were all one. In the Bible *Seditio* is tranſlated *chiding*, or *murmuring*; *In ſeditione Corah*, is engliſhed, *In the Company of Corah: Facta eſt ergo ſeditio in Ephraim*, is tranſlated, *The Men of Iſrael gathered themſelves together*: In *Acts* xv. 2. *Facta eſt ergo Seditio*, is tranſlated, *Diſſenſion*, and *Diſputation*; and *Acts* xxv. 5. *Tertullus*, the Orator, accuſes *Paul*, for moving *Sedition*; and the ſubſequent Words are, *a Ring-Leader of the Sect of the Phariſees*; ſo that his Sedition was but a Schiſm: The Lord *Bacon* has an Eſſay on Sedition, the Title whereof is, *Of Seditions and Tumults*; which ſhewed they were of the ſame Nature. And there is a Prayer in the Litany, *From Sedition and Hereſy*, &c. where Sedition ſignifies Schiſm, or the being of a Sect. In like manner, in the Act againſt *Lollards*, 2 *Hen.* IV. *cap.* 16. Sedition is taken for Diſſenſion and Diviſion in Doctrine, which is not made Treaſon by that Statute. 1 *Phil.* & *Mar.* againſt ſeditious Words, makes the Puniſhment only Pillory, o ra Fine of 100*l.* 13 *Eliz.* c. 2. makes the ſeditious bringing in of the Pope's Bulls Treaſon, which implies it was not ſo at Common Law. 23 *Eliz.* c. 2. enacts, That writing, or printing any Book, containing ſeditious and ſlanderous matter, to the ſtiring up Rebellion, was Felony; and in an Indictment on that Statute, *Coke's Entries*, *f.* 352, 353. there are the Words *Rebellionem & ſeditionem movere*; and yet it was but Felony.

Mich. 33 *Eliz.* *Cawdry's* Caſe, *Coke's* 5th Report, *p.* 1. Sedition and Schiſm are deſcribed thus: As Schiſm is a Separation from the Unity of the Church, ſo Sedition is a Separation from the Unity of the Commonwealth: And another Author ſays, a ſeditious Perſon differs from a Schiſmatick; becauſe the one oppoſeth the Spiritual Truth, the other the Temporal: And, as Schiſm of itſelf is not Hereſy, ſo Sedition, without other Adjuncts, is not Treaſon: And whereas it is objected, that both *Bracton* and *Glanvile* made Sedition Treaſon: He granted it; but they were obſcure: Theſe Authors neither remembered Law nor Language: And ſhall that which ſignifies *ſeditio Regis*, or *tumultus Regis*, be the ſame in Senſe with *ſeditio contra Regem?* Though theſe Authors reckon Sedition amongſt the Crimes *læſæ Majeſtatis*, they were old and obſolete, and not looked upon as Authorities in Law; as in *pl.* 356. and *Coke* 8. 35. But, if they were, they had them ſometimes on their Side; for *Glanvile* ſays, in his fourth Book, That a Man accuſed of ſuch a Crime ſhall be bailed. And *Bracton* ſays, If no Accuſer appears, they ſhall be ſet at Liberty: *Hengham* alſo reckons the Breach of the Peace amongſt the Crimes *læſæ Majeſtatis*; ſo does *Glanvile*, and *Fleta*, a Follower of *Bracton*, who tranſcribes from him, and calls Sedition *Seductionem* of the Lord the King. By the Civil Law, indeed, which is much cited by thoſe old Authors, Sedition is Treaſon; but we are not governed by the Civil Law: And he confidently affirmed, that there could not be ſhewn any Record, Book, or Statute, after the making of the Statute of 25 *Edw.* III. in which Sedition is taken to be a Capital Offence: But admitting that Sedition imported a greater Offence than a Tumult, yet there was no Colour to ſay it was Treaſon, it not being contained in the 25 *Edw.* III. which had aſcertained what ſhould be Treaſon: Beſides, the Words *raiſing Sedition againſt Us*, could not be intended Treaſon; for if it had been ſo, the King would not extend a Fault beyond the Magnitude thereof, ſo he would give to every Offence its true and genuine Name: The King ſtiles himſelf *Us* in his Writs; and every Diſobedience to a Writ may be ſtiled *Sedition againſt Us*: Riots, Routs, and unlawful Aſſemblies, might well be called, *Sedition againſt us*: But for ſuch Offences, a Man ſhall not be reſtrained of his Liberty upon an *it may be*. That ſuch a Return was neceſſary, by which the Court might be truly informed of the Offence; for the Writ of *Habeas Corpus* was, to ſubmit and receive what the Court ſhould ordain. Though he would not affirm, that it ought to be as certain as an Indictment; yet out of the Return the Subſtance of the Offence ought always to appear: The Return ought to have ſo much Certainty in it, that, if it be falſe, the Party grieved may have his Action on the Caſe: And, that the Court may judge of the Legality of the Cauſe.

Then he conſidered the Parts of the Return as they were coupled together —— *for notable Contempts by him committed againſt Our Self, and Our Government, and for ſtirring up Sedition againſt Us.* Here the King joins Sedition with notable Contempts; and in a manner ſays, that Sedition was one of thoſe notable Contempts mentioned in the firſt Part of the Return; ſo that he made it but a Contempt. Then as to the Generality and Uncertainty of the Return. *M.* 9 *Edw.* III. *Roll.* 39. *B. R. Peter Ruſſel's* Caſe is expreſs in the Point. The Return was, that he had committed divers Seditions againſt our Lord the King; and for that Cauſe he was detained, and no other: And becauſe the Return mentioned not, what Sedition in ſpecial, he was bailed, but not diſcharged: And he deſired the Bailment of the Priſoner only, and not his Deliverance. He deſired alſo, it might be obſerved, that, in *Ruſſel's* Caſe, there was an actual Sedition raiſed againſt the King; here the Priſoner was only charged with ſtirring up Sedition. 33 *Eliz.* it was reſolved by all the Judges of *England*, as appears by Judge *Anderſon's* Book, which was produced in Parliament, 3 *Car.* That all Men committed by the Privy-Council are bailable, if the Commitment be not for High-Treaſon: And had the Accuſation, mentioned in *Ruſſel's* Caſe of Sedition, been an Accuſation of Treaſon, the Judges ought not to have bailed him of Right: And he ſtill inſiſted, That the Priſoner being committed before Conviction of any Offence, and it being impoſſible to underſtand this Offence to be Treaſon, was baileable here; for which he offered two further Reaſons: 1. The Return here was for Sedition, and there was an Information in the Star-Chamber againſt the Priſoner for ſeditious Practices againſt the King and his Government: Though he did not affirm they were the ſame Offence, there was a Probability they were the ſelf-ſame; and, if they were the ſame, the Sedition here intended was not Treaſon, and ſo the Party was bailable: 2. The Priſoner was ready at that Bar, the laſt Term, and a Grand-Jury and the King's Counſel preſent; and yet no Indictment was preferred againſt the Priſoner:

Which

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Which induced him to be of Opinion, that the Offence mentioned in the Return was not Treaſon, or ſo great as was pretended; and, upon the whole, concluded, that the Priſoner ought to be bailed.

The reſt of the Priſoners rely on Mr. Littleton's Argument.

Sir *Miles Hobart*, and *Benjamin Valentine*, and *Denzil Holles*, Eſquires, being brought to the Bar, the ſame Day, by virtue of their reſpective Writs of *Habeas Corpus*, would not give the Court the Trouble of hearing their Counſel, but all declared, they would rely upon the Argument made by Mr. *Littleton*.

The Attorney-General's Argument, for the Sufficiency of the Return.

Sir *Robert Heath*, Attorney-General, argued, on the other Side, that the Return was good, and the Priſoners ought not to be bailed; for that within the Return, there appeared good Cauſe of their Commitment, and of their detaining alſo. The firſt Warrant, indeed, was general; that it was by the Command of the King; and this, in former Times, was held a good Return, when due Reverence was paid to Government; but, *tempora mutantur*. However, he was ſtill of Opinion, that the firſt Commitment might be general; for if, upon Commitment, the true Cauſe ſhould be revealed to the Goaler, the Fact would be divulged, and the Accomplices eſcape Puniſhment. When the Cauſe was returned into Court, more Certainty was requiſite; for then, as had been objected, ſomething ought to be expreſſed, to which the Party might anſwer, and upon which the Court might ground their Judgment. And to prove this, the Petition of Right had been inſiſted on; though he did not think the Law was altered by that Petition. The Law remained as before, as appeared by the King's Anſwers to it, and by the King's Speech, the 26th of *June*, 1628. where he ſays, *It muſt not be conceived, I have granted any new, but only confirmed the antient Liberties of my Subjects*; and the People ought not to ſtretch the Words beyond the King's Intention. The Opinion of the Sages of the Law formerly was, that a Perſon committed by the Command of the King, or Council, without Cauſe ſhewn, was not bailable. The firſt Commitment was always held to be lawful, although it was by a Juſtice of Peace, or a Conſtable, and general: But here was a Commitment by the Council, and a particular Cauſe returned, ſufficient for detaining the Priſoners.

It had been objected, indeed, that *Sedition* was not a Word known in our Law; but it could not be miſunderſtood in this Place, where it was for *ſtirring up Sedition againſt Us*. The Word had various Acceptations, 'twas true, according to the Subject treated of: But here the Words *againſt Us* fixed the Senſe. Mr. *Littleton* had ſhewn, how *Tacitus* uſed it, and the Acceptation of this Word in ſeveral Places of Scripture, which Mr. Attorney conceived made for him, as *Numb.* xx. 3. *populi verſi ſunt in ſeditionem*, where *ſeditionem* is engliſhed *murmuring*; and the Fact was evidently High-Treaſon, againſt their Governor, and againſt God himſelf. *Numb.* xxvi. 9. *In ſeditione Corah*, it was manifeſt there was a great Inſurrection. *Judg.* xii. 1. *Facta eſt ergo ſeditio in Ephraim*, the *Ephraimites* roſe againſt *Jephtha*, who was then their Judge and Governor, and conſequently were in Rebellion. *Acts* xix. 40. The Town-Clerk there knew not how to anſwer for *that Day's Sedition*, or Inſurrection. *Acts* xxiv. 5. *Tertullus* accuſed *Paul* of Sedition, as a peſtilent Fellow, and an Enemy to the Government, though in reality he taught the Goſpel.

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It had been objected, that if Sedition was a Capital Offence, it muſt be Treaſon; but as it was not compriſed within the Statute of 25 *Edw.* III. it could not be Treaſon. To which he anſwered, that upon an Indictment for Treaſon, ſuch a Sedition as this might be given in Evidence, and perhaps prove Treaſon. The Return was not, that he was ſeditious, which ſhewed only an Inclination; but that he ſtirred up Sedition, which might be Treaſon, if the Evidence would bear it. Then he cited a great many Acts of Parliament, where the Word Sedition was uſed; and ſhewed, that it was always coupled with Inſurrection, or Rebellion, which proved, that Sedition was a Word well known in our Law, of dangerous Conſequence, and which could not be expounded in a good Senſe: And from theſe Statutes it appeared, that there was but a narrow Difference, between Sedition and Treaſon, if there was any Difference at all.

It was objected alſo, he obſerved, that every Impriſonment was for Cuſtody, or Puniſhment; and if it was for Cuſtody, the Party, upon tendering ſufficient Bail, was bailable: But this was not always true; for Impriſonment for Cuſtody was for two Intents; one, that the Party which had offended, ſhould not avoid the Judgment of the Law. 2. That he ſhould do no Miſchief in the Interim, before his Trial: And though it had been ſaid, that the Party bailed was, notwithſtanding, impriſoned, he denied it: Nor ſhould the Bail ſuffer the like Puniſhment as ought to have been inflicted on the Party; the Bail could only be impriſoned. Serjeant *Berkley* had juſtly called a ſeditious Man, an Incendiary in the Government; and, as a common Incendiary, ſuch a one ought to be reſtrained of his Liberty. A mad Man might be reſtrained, on account of the Hurt he might do himſelf, and others, while he was at Liberty: A ſeditious Man was a mad Man in the publick State and Commonwealth, and therefore ought to be reſtrained: A Leper might be impriſoned, leſt his Leproſy ſhould infect others. The Infection of Sedition was as dangerous as any Diſeaſe, and therefore it was not wiſe, or ſafe, to ſet ſeditious Men at Liberty, by admitting them to Bail.

And though *Ruſſel*'s Caſe, *M.* 9. *E.* 3. *Roll.* 39. had been objected to be in Point, it was not to the Purpoſe; for the Commitment was by a Juſtice of *North-Wales*; and the Party was accuſed of Seditions and Indecencies, where the latter Word qualified the former: But here the Detainment was by the King himſelf, for ſtirring up Sedition; and he deſired, it might be obſerved, that *Ruſſel* came into Court, upon a *Habeas Corpus*, 20 *Sept.* but was not delivered till *Hillary* Term following; and that after it was found, he was not guilty of the Offence, with which he was charged.

As to the Objection, that the Parties had been a long Time impriſoned, and no Proceedings yet againſt them; it was well known, there had been Proceedings againſt them; and they

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they declined to anſwer: And the King intended to proceed farther againſt them, in convenient Time: Beſides, more than three Months were requiſite for the Preparation of ſuch Proceedings: Some of the Offenders alſo had been delivered, as *Coryton*, and Sir *Peter Hayman*: And if any Injury was done the Priſoners, they themſelves were the Occaſion of it, by refuſing to ſubmit themſelves to the King.

That the Reſolution of the Judges, in 34 *Eliz.* had been much relied on: But that Reſolution was, that the Cauſe ought to be certified generally, or ſpecially; and here the general Cauſe was *ſpecified, if the ſpecial Cauſe was not.* Upon the whole, he held, the Bailment of the Priſoners was left to the Diſcretion of the Court. He had ſhewed them the Diſcretion of their Predeceſſors; and if any Danger appeared in their Bailment, he was confident the Court would not bail them: They would firſt conſult the King, who would ſhew them where the Danger lay, and prayed they might be remanded.

The King's Letter to the Judges, acquainting them, the Priſoners were removed to other Priſons.

A Day being afterwards appointed, for the Judges to deliver their Opinions, they received a Letter from his Majeſty, the Night before, importing, that whereas, by his ſpecial Command, Sir *Miles Hobart*, *Walter Long*, and *William Stroud*, had been lately removed from their ſeveral Priſons, and ſent to the *Tower* of *London*; and underſtanding, it was reported, he had done it to decline the Courſe of Juſtice, he thought fit to let them know the Occaſion thereof, and why he commanded, that theſe, and the other Priſoners, ſhould not come before them, *viz.* That he had heard, moſt of them had carried themſelves inſolently, and unmannerly, both to his Majeſty, and their Lordſhips; and he could not but reſent the Diſhonour that was done to himſelf, and his Courts of Juſtice, ſo far, as to let the World know, how much he diſliked it: And underſtanding, that their Lordſhips, and the reſt of the Judges, had not yet reſolved the main Queſtion, he did not think the Appearance of the Priſoners neceſſary; and until he found their Temper and Diſcretion to be ſuch, as might deſerve it, he was not willing to afford them Favour; however, he was content, that *Selden* and *Valentine* ſhould attend them to Morrow.

Given at *Greenwich*, 24 *June*, in the 5th Year of our Reign.

A ſecond Letter.

About three Hours after the Receipt of this Letter, the Judges received another from his Majeſty, importing, that upon mature Conſideration, he had reſolved, that all the Priſoners ſhould receive the ſame Treatment, and none of them ſhould come before the Court, until he had Cauſe to believe, they would expreſs more Modeſty and Civility, both towards himſelf, and their Lordſhips, than at their laſt Appearance they did.

The Priſoners not being brought to the Bar, according to the Rule of Court that had been made for that Purpoſe, Proclamation was made, for the Keepers of the ſeveral Priſons to bring in their Priſoners: Whereupon, the Marſhal of the *King's-Bench* (none of the other Keepers appearing) informed the Court, that Mr. *Stroud*, who was in his Cuſtody, was removed the Day before, to the *Tower* of *London*, by the King's own Warrant: And it appearing, the reſt of the Priſoners alſo had been removed from the Priſons where they were before, their Counſel moved the Judges, that they would, however, deliver their Opinions in the Caſe: But were anſwered, that could be to no Purpoſe; for the Priſoners being abſent, they could not be bailed, delivered, or remanded: And the Gentlemen were continued in Priſon, during the long Vacation that followed: But before the End of it, the Judges received Letters from the Privy-Council, requiring them to come to Town by *Michaelmas-Day*, becauſe his Majeſty had urgent Occaſion for their Service; and being come up accordingly, the next Morning, about 4 a-Clock, Letters were brought from Mr. *Trumbal*, Clerk of the Council, to the Lord Chief Juſtice, that he, and Judge *Whitlock*, ſhould attend the King, at *Hampton-Court*, that Morning, as ſoon as conveniently they could: And the Chief Juſtice, and Judge *Jones*, attending his Majeſty accordingly, he let them know, that he was content the Gentlemen ſhould be bailed, though they were ſo obſtinate, that they had refuſed to petition for their Liberty, and declare, they were ſorry they had offended him; but ſaid, he was reſolved to proſecute them at Common Law, and drop the Proceedings in the *Star-Chamber*. Theſe Judges, it ſeems, were of Opinion, that the Offence was not Capital; and that, by Law, the Priſoners ought to be bailed, on giving Security for their good Behaviour: Whereupon, his Majeſty ſaid, *He would never be offended with his Judges, ſo as they dealt plainly with him, and did not anſwer him by Oracles and Riddles.*

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The Gentlemen continued in Priſon.

The Judges attend the King.

He is content the Priſoners ſhould be bailed.

Mr. *Maſon* moving the Judges of the *King's-Bench*, the firſt Day of *Michaelmas* Term, for their Reſolution in relation to the Priſoners, the Court declared, they were unanimous in their Opinion, that they might be bailed, finding Sureties for their good Behaviour, as was done in *Ruſſel's* Caſe, 9 *Edw.* III. which had been ſo often cited. To which Mr. *Selden* anſwered, in the Name of himſelf, and the reſt of the Priſoners, that they had their Sureties ready for Bail, but not for the good Behaviour; and deſired Bail might be firſt accepted, and that the Court would not inſiſt on the other, for the following Reaſons:

The Priſoners refuſe to find Sureties for their good Behaviour.

1. Firſt, The Caſe had been long depending: They had been impriſoned thirty Weeks: Many Arguments had been made, for and againſt their being admitted to Bail; but Sureties, for their good Behaviour, had never yet been demanded.

2. Becauſe the finding Sureties for good Behaviour, was ſeldom inſiſted on, on Returns of Felonies, or Treaſons; and it was an Implication they were culpable.

3. They demanded to be bailed, in Point of *Right*; and if it was not grantable of *Right*, they did not demand it: But the finding Sureties for the good Behaviour was merely a Point of Diſcretion; and they could not comply with it, without greatly offending the Parliament, where thoſe Matters were acted, which were ſurmiſed by the Return.

To which the Court anſwered, that the Return did not mention any thing done in Par-

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liament; and they could not take Notice theſe things were done there: And Judge *Whitlock* obſerved, that the giving Sureties for the good Behaviour, was only for the Prevention of any Damage that might happen to the State: It was an Act of Government and Juriſdiction, and not of Law: And Judge *Croke* obſerved, it was no Inconvenience to the Priſoners; for the ſame Bail, and the ſame Recognizance, might ſerve both: And the Attorney-General *Heath* declared, he had an Information, ready in his Hand, to deliver into Court againſt them.

The Lord Chief Juſtice *Hyde* acquainted the Priſoners, that if they now refuſed to find Sureties for their good Behaviour, and were for that Cauſe remanded, they might not afterwards, perhaps, grant a *Habeas Corpus* for them, inaſmuch as they were acquainted with the Cauſe of their Impriſonment.

Then Serjeant *Aſhley* offered to be Bail for his Son-in-Law Mr. *Holles*; but Mr. *Holles* refuſing to be bound himſelf, the Court would not admit of it, as being contrary to the Courſe of the Court, to accept Bail, where the Principal refuſes to be bound: And Mr. *Long* having already found Sureties for his good Behaviour, at the Chief Juſtice's Chambers, ſeeing the Reſolution of his Companions, refuſed to continue his Sureties any longer, and was again remanded to Priſon, with the reſt, for not finding Sureties for his good Behaviour.

They are again remanded to Priſon.

Removed to the Gate-Houſe, on account of the Plague.

Selden, *Hobart*, *Stroud*, and *Valentine*, having been committed to the *King's-Bench*, and the Plague being very rife in *Southwark*, the three laſt petitioned the Judges of the *King's-Bench*, in *Trinity* Term, 6 *Car.* I. to be delivered over to the *Gate-Houſe*, *Weſtminſter*, to avoid the Infection; and the Judges thereupon iſſued a Writ to the Marſhal of the *King's-Bench*, commanding him to deliver them to the Keeper of the *Gate-Houſe*; ſending Writs alſo to the Keeper to receive them. Mr. *Selden* would not aſk this Favour of the Judges, while they were in Town; but when they were gone into the Country, applied himſelf to the Lord Treaſurer, to move the King, that he might be ſent to the *Gate-Houſe* alſo, to avoid the Danger: Which the Lord Treaſurer did; and his Majeſty agreeing to it, the Treaſurer ſent a Warrant to the Marſhal, ſignifying his Majeſty's Pleaſure, to remove Mr. *Selden* to the *Gate-Houſe*; and he was removed accordingly.

This the Judges repreſented to the Lord Treaſurer, at their coming to Town (in *Michaelmas* Term, 6 *Car.* I.), to be irregular; and that Mr. *Selden* had neglected to apply himſelf to the Court, as he ought to have done. The Lord Treaſurer anſwered, he did not move the King to remove him, till Mr. *Selden* aſſured him, on his Credit, that it was a legal Way; and if they thought fit, they might remove him back again; for the King did not intend to do any Thing contrary to the Rules of that Court: And Writs were ordered the ſame *Michaelmas* Term, to ſend the four Priſoners back again to the *Marſhalſea*.

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Some of the Priſoners proſecuted for an Eſcape.

On the 23d of *January*, the Attorney-General exhibited two ſeveral Informations againſt the ſaid *William Stroud*, and Sir *Miles Hobart*, for Eſcapes from the Priſon of the *Gate-Houſe*. Their Caſe was as follows: When they were ſent in the Manner above related, from the *Marſhalſea* to the *Gate-Houſe* at *Weſtminſter*, the Keeper received them into a Houſe, lately built and adjoining to the Priſon of the *Gate-Houſe*, but no Part thereof; and the ſame Night gave *Stroud* leave to go to his Chamber in *Gray's-Inn*, and reſide there. Sir *Miles Hobart* alſo, being ſick, was allowed to reſide at his Lodgings in *Fleet-Street*, with his Keeper. And afterwards, the Plague increaſing in *London*, they were permitted to retire, with their reſpective Keepers, to their Seats, in the Country, for ſix Weeks; and then in *Michaelmas* Term following, they returned to the Keeper's Houſe, adjoining to the *Gate-Houſe* Priſon: But in all the Time they were in the Cuſtody of the Keeper of the *Gate-Houſe*, it could not be proved, they were in any Part of the old Priſon, unleſs when they once withdrew thither to a Cloſe-Stool: And being brought to their Trials, for this Eſcape, they were both acquitted: It being alledged, that they could not be convicted of an Eſcape, becauſe they were not confined in the Priſon: But the Judges, it ſeems, held, that their voluntary retiring to the Cloſe-Stool, made them Priſoners. It was reſolved alſo, that if a Priſoner depart from the Priſon, with his Keeper's Licence, it is, however, an Offence in the Priſoner (and puniſhable), as well as in the Keeper: And this Difference was made, between Breach of Priſon, and an Eſcape, that the firſt was againſt the Keeper's Will, and the other with his Conſent; to which the whole Court agreed.

And acquitted.

Some Points reſolved by the Judges.

The

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The King against Elliot, &c.

The KING against Sir JOHN ELLIOT Knight, DENZIL HOLLES, and BENJAMIN VALENTINE, Eſquires, for *Seditious Words, for Contempt, and for an Aſſault on the Speaker of the Houſe of Commons, Hillary* Term, 1629. 5 *Car.* I.

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The Information.

AN Information was exhibited againſt them, by Sir *Robert Heath* Attorney-General, reciting, that a Parliament was ſummoned to be held at *Weſtminſter*, 17 *March*, 3 *Car.* and that Sir *John Elliot* was duely elected, and returned Knight, for the County of *Cornwal*; and the other two, Burgeſſes of Parliament, for other Places; and Sir *John Finch* choſen Speaker: That Sir *John Elliot*, *machinans & intendens, omnibus viis & modis ſeminare & excitare* Diſcord, evil Will, Murmurings, and Seditions, as well *verſus Regem, magnates, proceres, & juſticiarios, & reliquos ſubditos Regis, & totaliter deprivare & avertere regimen & gubernationem Regni Angliæ, tam in Domino Rege, quam in conſiliariis & miniſtris ſuis cujuſcunq; generis, & introducere tumultum & confuſionem* in all Eſtates and Parts, *& ad intentionem*, that all the King's Subjects ſhould withdraw their Affections from the King. The 23d *Feb. Anno* 4*to Car.* in the Parliament, and Hearing of the Commons, *falſo malitioſe & ſeditioſe*, uſed theſe Words: THE KING'S PRIVY-COUNCIL, HIS JUDGES, AND HIS COUNSEL LEARNED, HAVE CONSPIRED TOGETHER, TO TRAMPLE UNDER THEIR FEET, THE LIBERTIES OF THE SUBJECTS OF THIS REALM, AND THE PRIVILEGES OF THIS HOUSE: And afterwards, upon the 2d of *March*, *Anno* 4*to.* aforeſaid, the King appointed the Parliament to be adjourned, until the 10th of *March* next following, and ſo ſignified his Pleaſure to the Houſe of Commons: And that the three Defendants, the ſaid ſecond Day of *March*, 4*to Car. malitioſe* agreed, and amongſt themſelves conſpired, to diſturb and diſtract the Commons, that they ſhould not adjourn themſelves, according to the King's Pleaſure, before ſignified: And that the ſaid Sir *John Elliot*, according to the Agreement and Conſpiracy aforeſaid, had maliciouſly *in propoſitum & intentionem predict'* in the Houſe of Commons aforeſaid, ſpoken theſe falſe, malicious, pernicious, and ſeditious Words precedent, *&c.* And the ſaid *Denzil Holles*, according to the Agreement and Conſpiracy aforeſaid, between him, and the other Defendants, then and there, *falſo malicioſe & ſeditioſe* uttered *hæc falſa, malitioſa, & ſcandaloſa verba precedentia, &c.* And that the ſaid *Denzil Holles*, and *Benjamin Valentine*, *ſecundum agreamentum & conſpirationem predict' & ad intentionem & propoſitum predict'* uttered the ſaid Words upon the ſaid ſecond Day of *March*, after the ſignifying the King's Pleaſure, to adjourn: And the ſaid Sir *John Finch* the Speaker, endeavouring to get out of the Chair, according to the King's Command, they, *vi & armis & manu forti & illicito*, aſſaulted, evil entreated, and forcibly detained him in the Chair: And afterwards, he being out of the Chair, they aſſaulted him in the Houſe, and evil entreated him, *& vicenter manu forti & illicito*, drew him to the Chair, and thruſt him into it: Whereupon there was a great Tumult and Commotion in the Houſe, to the great Terror of the Commons there aſſembled, againſt their Allegiance, *in maximum contemptum*, and to the Diſheriſon of the King, his Crown, and Dignity, *&c.* For which, *&c.*

Plea to the Juriſdiction.

To this Information the Defendants appearing, pleaded to the Juriſdiction of the Court: That the Court ought not to have Cognizance thereof, becauſe it was for Offences done in Parliament, and ought to be there examined and puniſhed, and not elſewhere. To which Plea the Attorney-General demurred, and the Defendants joined in Demurrer; and the next Term Mr. *Maſon*, of Counſel for the Defendants, endeavoured to ſupport their Plea, obſerving, that they were charged, 1. With ſeditious Speeches. 2. Contempts againſt the King, in reſiſting the Adjournment; and, 3. With a Conſpiracy to keep the Speaker in the Chair.

Demurrer thereupon.

Arguments of the Defendants Counſel, in Support of their Plea

That the Speeches contained Matter of Accuſation againſt ſome great Peers, of which the King could not take Notice. The Parliament was the King's Grand Council; and Councils ought to be ſecret and cloſe; none ought to have Acceſs to the Councils of Parliament; nor ought any of the Members to diſcloſe them, without the Conſent of the Houſe: The King ought to give no Credit to any private Reports of their Proceedings: That the Liberty of accuſing Gentlemen, had always been held parliamentary: And theſe Liberties and Privileges of Parliament, were to be diſcuſſed there, and not in other Courts, or by the Common, or Civil Law.

2. As to the Contempt of the King's Command, for adjourning the Parliament, he ſaid, it was a Queſtion, Whether the King could adjourn the Parliament, eſpecially by a verbal Meſſage? though he might prorogue it. The Judges, indeed, had reſolved, the King might adjourn the Houſe by Commiſſion, 27 *Eliz.* But it was not reſolved, he might do it by a verbal Command, ſignified by another. He admitted, the King might adjourn the Houſe in Perſon, or under the Great Seal, but not by a verbal Meſſage: None was bound to give Credit to ſuch a Meſſage: And where there was no legal Command, there could be no Contempt for Diſobedience. Beſides, as the Information was, there could be no Contempt; for the Information ſaid, that the King had Power to adjourn Parliaments; but here he commanded, *they* ſhould adjourn themſelves: And this was not in Purſuance of the Power he was ſuppoſed to have; the Adjournment of the Houſe was to be their own voluntary Act, which the King could not compel.

3. As

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3. As to the Conſpiracy, to lay violent Hands on the Speaker, and keeping him in the Chair; the Houſe were privileged to detain him in the Chair; and other Speakers had been ſo ſerved: That the King could not prefer an Information of Treſpaſs; he ought to have been informed by a Jury, *viz.* by Indictment, or Preſentment: Nor could this be a Contempt, becauſe it appeared not, that the Houſe was adjourned; and, if ſo, the Speaker ought to remain in the Chair; for without him the Houſe cannot be adjourned: That the preſent Caſe was of great Importance, and without Precedent, and therefore was not determinable any where, but in Parliament. By the ſame Reaſon theſe Members were queſtioned, all the Members of the Commons might be queſtioned; and the Debates in Parliament muſt be ſubjected to the Determination of a petty Jury, if theſe Proceedings ſhould be allowed: No Man would dare to accuſe any great Offender, for the future, if Freedom of Speech in Parliament was to be puniſhed by Fines and Impriſonment: Gentlemen would neglect the publick Good, rather than hazard their own Ruin.

Further Arguments in Support of the Plea.

Mr. *Calthorpe*, alſo of Counſel for the Defendants, argued, that an Aſſault, or Conſpiracy, of the Members, could not be queſtioned out of Parliament; though he admitted, that Capital Offences, committed in Parliament, might.

That a Conſpiracy and Aſſault in Parliament, could not be examined in the *King's-Bench*, becauſe theſe Facts might be juſtifiable there. The bringing the Speaker to the Chair, might be by the Votes of the Commons, for ought appeared; and to determine theſe Matters here, was to make a ſuperior Court ſubject to an inferior Court. There never was any Precedent, that the *King's-Bench* had puniſhed Offences of this Nature, committed in Parliament, where a Plea was put in to the Juriſdiction of the Court, as in this Caſe; and where there was no Precedent, Non-Uſage was a good Expoſition of the Law: If that Court had Juriſdiction, there might be contradictory Judgments; the Parliament might determine one Way, and the *King's-Bench* another. He inſiſted alſo, as Mr. *Maſon* had done, that this Information ought to have been founded on an Indictment, or other Matter of Record, and not upon a bare Advertiſement, or Intelligenee, given to the King.

The Attorney-General's Arguments, on the other Side.

To theſe Arguments of the Defendants Counſel, the Attorney-General anſwered, that Informations of this kind, for Offences that were not Capital, were frequently brought in that Court: That it was true, Freedom of Speech ought to be permitted in Parliament; but not ſeditious Speeches, tending to the Subverſion of the Government: That the Biſhop of *Carliſle*, 1 *Hen.* IV. was arraigned in the Court of *King's-Bench*, for ſuggeſting in Parliament, that the King had no Right to the Crown; to which he did not plead Privilege of Parliament, but that he was *Epiſcopus unctus*, &c. That though the Court of *King's-Bench* was ſaid to be an inferior Court, it did, in many Caſes, judge of the Privileges of Parliament, as well as of Acts of Parliament: And it was reſolved, in the Time of Queen *Elizabeth*, by the Judges, that Offences done in Parliament, might be puniſhed there, out of Parliament.

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The Defendants Plea to the Juriſdiction, over-ruled.

Then the Judges delivered their Opinions, that the Court of *King's-Bench*, as this Caſe was, had Juriſdiction, notwithſtanding theſe Offences were committed in Parliament; and that the impriſoned Members ought to anſwer over.

The Lord Chief Juſtice *Hyde* ſaid, it was true, an inferior Court could not meddle with the Judgments of a ſuperior Court; but if a particular Member of a ſuperior Court offended, he might be puniſhed in an inferior Court: As if a Judge committed a Capital Offence in that Court, he might be arraigned for it in a Court of *Oyer* and *Terminer*, at the *Old-Bailey*, which was an inferior Court to the *King's-Bench*.

Mr. Juſtice *Whitlock* ſaid, that all the Judges of *England* had reſolved this Point: And though it had been objected, that the Offence could not be examined here, unleſs it was Capital, he held, this Court had Cognizance of it, if it was Criminal, as the ſowing Sedition, to the Deſtruction of the Commonwealth was: That the Diſpute was not between the Judges of that Court, and the Parliament, or between the King and the Parliament; but between ſome private Members of the Houſe of Commons, and the King himſelf. Here the King himſelf queſtioned them, for theſe Offences, as well he might. Indeed, that which was done by the Conſent of the whole Houſe, could not be queſtioned elſewhere: But, if private Members would move, and ſtir up, Sedition in the Houſe, there was no ſuch Sanctity within theſe Walls, that they could not be queſtioned for it in other Courts. If a Burgeſs of Parliament becomes mutinous, he ſhall not plead the Privilege of Parliament, in Juſtification of his Diſloyalty. The Behaviour of Parliament-Men ought to be Parliamentary: No outragious Speeches againſt Great Miniſters of State, were ever ſuffered to go unpuniſhed: That it was univerſally agreed, Privilege of Parliament did not extend to Treaſon, Felony, or Breach of the Peace: And the laſt was the preſent Caſe, and therefore the Court of *King's-Bench*, might well take Cognizance of it.

Croke alſo held, that all Offences againſt the Crown were puniſhable in this Court: The Parliament, indeed, was a higher Court; but every Member was not a Court. If he committed an Offence, he might be queſtioned here: This being the Opinion of the whole Court, it was ruled, the Defendants ſhould plead over: But they refuſing to put in any other Plea, than to the Juriſdiction, Judgment was pronounced againſt them, by Mr. Juſtice *Jones*, the laſt Day of the Term, *viz.* that Sir *John Elliot* ſhould be committed to the *Tower*, and pay a Fine of 2000 *l.* and, upon his Enlargement, find Sureties for his good Behaviour: That *Holles* ſhould pay a Fine of 1000 Marks, be impriſoned, and find Sureties, in like Manner: And that *Valentine* ſhould pay a Fine of 500 *l.* be impriſoned, and find Sureties likewiſe.

Judgment by Nihil dicit. againſt the Defendants.

The Parliament of 1640. vote Sir John Finch Speaker, guilty of Breach of Privilege.

In the next Parliament, which met the 13th of *April*, 1640. it was referred to a Committee of the Commons, to conſider of the Breach of their Privileges, by Sir *John Finch* Speaker of the Commons, 5 *Car.* by refuſing to put the Queſtion

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Queſtion on the Command of the Houſe to do it: And on the 20th of *April*, it was reported from the Committee, that Sir *John Finch* did not ſay, *He would not put the Queſtion*; but that, *he durſt not put it*; and, that *he left the Chair, not to diſobey the Houſe, but to obey his Majeſty*: Whereupon the Houſe reſolved, That it was a Breach of Privilege, for the Speaker not to obey the Commands of the Houſe; and that it appeared, the Speaker did adjourn the Houſe by the Command of the King, without Conſent of the Houſe, which was alſo a Breach of Privilege.

The next Parliament, of 1640. enquire into the Caſe of the impriſoned Members, 3 & 5 Car.

They were alſo about to enquire into the Impriſonment of Sir *John Elliot*, Mr. *Holles*, Mr. *Selden*, and the reſt of the Members of the Houſe of Commons, in the 3d and 5th of *Car.* but being ſuddenly diſſolved, no Progreſs was made in that Enquiry: Another Parliament meeting on the 3d of *November* 1640. and a Committee being appointed, to conſider of the Caſes of the impriſoned Members, Mr. Recorder *Glyn* reported from the Committee the Sufferings they had undergone in Defence of the Liberties of the Subject: Whereupon the Houſe, on *July* 6. reſolved, 1. That the iſſuing Warrants by the Privy-Council, compelling Mr. *Holles*, and the reſt of the Members of that Parliament, to appear before them, during the Continuance of Parliament, was a Breach of Privilege.

The ſummoning Members before the Council, voted a Breach of Privilege. Further Votes concerning them.

2. That the committing them was a Breach of Privilege.

3. As was alſo the Searching and Sealing the Chambers, Studies, and Papers, of Mr. *Holles*, Mr. *Selden*, and Sir *John Elliot*, and iſſuing Warrants for that Purpoſe, during the Parliament.

4. That the exhibiting an Information in the Star-Chamber, againſt Mr. *Holles*, and the reſt, for Matters done in Parliament, was a Breach of Privilege.

5. That Sir *Robert Heath*, Sir *Humphrey Davenport*, Sir *Heneage Finch*, Mr. *Hudſon*, and Sir *Robert Berkley*, who ſubſcribed their Names to the Information, were guilty of Breach of the Privilege.

6. That there was a Delay of Juſtice in the Caſe of Mr. *Holles*, and the reſt, who brought their Writs of *Habeas Corpus*, in that they were not admitted to Bail in *Eaſter* and *Trinity* Term, 5 *Car.*

Votes againſt the Judges.

7. That Sir *Nicholas Hyde*, then Chief-Juſtice of the King's-Bench, was guilty of this Delay.

8. Reſolved, That Sir *William Jones*, then one of the Juſtices of the King's Bench, was guilty of this Delay.

Some Judges favoured.

9. That Sir *James Whitlocke*, then one of the Juſtices of the King's-Bench, was not guilty of this Delay.

10. Reſolved on the 8th of *July*, That Sir *George Croke* Knight, then one of the Judges of the King's Bench, was not guilty of this Delay.

11. That the Continuance of Mr. *Holles*, and the reſt of the Members, in Priſon, 3 *Car.* by the then Judges of the King's-Bench, for not putting in Sureties for their good Behaviour, was without juſt or legal Cauſe.

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12. That the exhibiting the Information againſt Mr. *Holles*, Sir *John Elliot*, and Mr. *Valentine*, in the King's Bench, for Matters done in Parliament, was a Breach of Privilege.

13. That the over-ruling of the Plea, pleaded by Mr. *Holles*, Sir *John Elliot*, and Mr. *Valentine* (upon the Information) to the Juriſdiction of the Court, was againſt the Law, and Priviledge of Parliament.

14. As was the Judgment given by *Nihil dicit*, the Fines impoſed, and their ſeveral Impriſonments thereupon.

15. That the proſecuting them in the Star-Chamber, and the King's Bench, was a Grievance.

Satisfaction voted to the ſuffering Members to be made them by the Lords of the Council, and Judges.

16. That Mr. *Holles*, Mr. *Stroud*, Mr. *Valentine*, and Mr. *Long*, and the Heirs and Executors of Sir *John Elliot*, Sir *Miles Hobart*, and Sir *Peter Hayman*, reſpectively, ought to have Reparation for their reſpective Damages and Sufferings, againſt the Lords and others of the Council, by whoſe Warrant they were apprehended and committed, and againſt the Counſel, that put their Hands to the Information in the Star-Chamber, and againſt the Judges of the King's-Bench.

Whitaker ſent to the Tower, for ſearching their Chambers.

17. That Mr. *Laurence Whitaker*, being a Member of the Parliament 3 *Car.* and entring the Chamber of Sir *John Elliot*, then likewiſe a Member of Parliament, ſearching his Trunks and Papers, and ſealing them, was guilty of a Breach of Privilege, being done before the Diſſolution of the Parliament.

18. Reſolved, That the ſaid Mr. *Whitaker* be forthwith ſent to the *Tower*; there to remain a Priſoner, during the Pleaſure of the Houſe.

Then Mr. *Whitaker* was called down to hear his Sentence; and, kneeling at the Bar, did not deny his ſearching and ſealing up the Chamber, Trunk, and Study, of Sir *John Elliot*, between the 2d and 10th of *March*, 3 *Car.* during which Time the Parliament was adjourned: But endeavoured to extenuate his Offence, by the Confuſion of the Times, and the length of Time ſince that Crime was committed, being thirteen Years; and the Command that was laid on him by the King, and twenty-three of the Privy-Council.

Further Report, That the Warrants, for ſummoning the Members, and ſealing up their Papers, were read.

Mr. Recorder *Glyn* afterwards made this further Report to the Houſe of Commons, *viz.*

That the Warrant, which ſo iſſued, and was ſubſcribed by twelve Privy-Councillors, to ſummon the nine Members of the Commons, 3 *Car.* to appear before them during the Parliament, *viz.* Mr. *William Stroud*, Mr. *Benjamin Valentine*, Mr. *Denzil Holles*, Sir *John Elliot*, Mr. *John Selden*, Sir *Miles Hobart*, Sir *Peter Hayman*, Mr. *Walter Long*, and *William Coriton*, dated the 3d *Mar.* 4 *Car.* and the Names of the twelve Privy-Councillors that ſigned this Warrant, were read, (the Parliament being adjourned the 2d of *March* to the 10th, and then diſſolved.)

The Warrants under the Hands of ſixteen Privy-Councillors, for committing of Mr. *Denzil Holles*, Sir *John Elliot*, Mr. *John Selden*, Mr. *Benjamin Valentine*, and *William Coriton*, cloſe Priſoners to the *Tower*, dated 4 *Mar.* 4 *Car.* during the Parliament, were read, with the Names of the Privy-Councillors that ſubſcribed them. The Warrants under the Hands of twenty-two

1629. 5 Car. I. Privy-Councillors, directed to *William Boſwel*, Eſq; to repair to the Lodgings of *Denzil Holles*, Eſq; and to *Simon Digby*, Eſq; to repair to the Lodgings of Mr. *John Selden*, and to *Laurence Whitaker* Eſq; to repair to the Lodgings of Sir *John Elliot*, requiring them to ſeal up the Trunks, Studies, and Cabinets, or any other Things that had Papers in them, of the ſaid *Holles*, *Selden*, and *Elliot*, were read; and likewiſe, the Names of the Privy-Councillors that ſubſcribed the ſaid Warrants: A Warrant under the Hands of thirteen Privy-Councillors, for the Commitment of Mr. *William Stroud* cloſe Priſoner to the King's-Bench, dated 2 *April*, 1628. was read, and the Names of the Privy-Councillors who ſubſcribed it; and the like Warrant, for the Commitment of Mr. *Walter Long* cloſe Priſoner to the *Marſhalſea*. Whereupon the following Reſolution was made.

5000 *l.* given to Holles, *for his Sufferings.*

Reſolved, That Mr. *Holles*, ſhall have the Sum of 5000 *l.* for his Damages, Loſſes, Impriſonments, and Sufferings, ſuſtained and undergone by him, for his Service to the Commonwealth in the Parliament of 3 *Car.*

To Selden, 5000 *l.*

Reſolved, That Mr. *Selden* have the like Sum of 5000 *l.* for the like Services, *&c.*

Elliot, 5000 *l.*

Reſolved, That the like Sum be aſſigned for the Services, *&c.* done by Sir *John Elliot* (deceaſed) to be diſpoſed of as the Houſe ſhall direct.

Reſolved, that 2000 *l.* paid into the Court of Wards by Mr. *Elliot*, Heir of Sir *John Elliot*, for marrying Sir *Daniel Norton*'s Daughter, be repaid Mr. *Elliot*.

Ordered, That it be referred to a Committee after what Manner Sir *John Elliot* came to his Death; his Uſage in the *Tower*; and to view the Rooms and Places where he was impriſoned, and where he died.

Hayman, 5000 *l.*

Reſolved, That 5000 *l.* be paid to the Repreſentatives of Sir *Peter Hayman*, for his Sufferings, *&c.* for the Service of the Commonwealth, 3 *Car.*

Long, 5000 *l.*

Reſolved, That Mr. *Walter Long* have 5000 *l.* for the like Services.

Stroud, 5000 *l.*

Reſolved, That 5000 *l.* be aſſigned for the Sufferings, *&c.* ſuſtained by Mr. *Stroud* deceaſed.

Valentine 5000 *l.*

Reſolved, That Mr. *Benjamin Valentine* have 5000 *l.* for the like Sufferings, *&c.*

Hobart 5000 *l.*

Reſolved, That 5000 *l.* be diſpoſed of, for the erecting a Monument to Sir *Miles Hobart*, in Memory of his Services, *&c.*

Die Martis 12 *Novembris*, 1667.

Reſolutions of the Commons, ann. 1667. *concerning the ſaid impriſoned Members, and Freedom of Speech.*

Mr. *Vaughan* made a Report from a Committee of the Houſe of Commons, appointed to conſider of the Freedom of Speech: To which the Houſe agreed, *viz.* That the Act made 4 *Hen.* VIII. entitled, An Act concerning *Richard Strode*, was a general Law, and extended to indemnify the Members of both Houſes of Parliament, for and touching any Bills, Speaking, Reaſoning, or Declaring, any Matter or Matters in and concerning the Parliament, to be communed and treated of; and was a declaratory Law of the ancient and neceſſary Rights and Privileges of Parliament. And it was further reſolved, on the 23d of *November*, That the Judgment given 5 *Car.* againſt Sir *John Elliot*, *Denzil Holles*, and *Benjamin Valentine*, in the King's-Bench, was an illegal Judgment, and againſt the Freedom and Privilege of Parliament. 1629. 5 Car. I.

On the 11th of *December*, 1667. the Commons, at a Conference with the Lords, communicated theſe Reſolutions to their Lordſhips, deſiring their Concurrence; and acquainted them with their Reaſons for making them.

The Commons offer their Reaſons to the Lords, for theſe Reſolutions.

They ſaid, the Houſe of Commons was accidentally informed of certain Books, publiſhed under the Name of Sir *George Croke*'s *Reports*; in one of which a Caſe was publiſhed, which very much concerned this great Privilege of Parliament; and which, paſſing from Hand to Hand, amongſt the Men of the Long-Robe, might come in Time to be a received Opinion as good Law; and read the Caſe itſelf to their Lordſhips out of *Croke*'s Reports, fol. 3. (*which has been recited already.*)

Then the Commons obſerved, that there was ſome conſiderable Differences, between the printed Book and the Record itſelf: For the Crime alledged conſiſting partly of *Words* ſpoken in the Houſe, and partly of *criminal Actions*, pretended to be committed; the Gentlemen accuſed pleaded ſeverally, *viz.* ſpecially to the Words, and a ſeveral Plea apart to the Criminal Actions: But, that the Court dealt ſo craftily, that they over-ruled the whole Plea mingled together, and took it in general; ſo that, perhaps, whatſoever was criminal in the Actions might ſerve for a Juſtification of their Rule, and might make it ſeem in Time to become a Precedent, and a ruled Caſe, againſt the Liberty of Speech in Parliament; which they durſt not ſingly and bare-faced have done.

That the Houſe of Commons did enquire, what ancient Laws fortified this the greateſt Privilege of both Houſes, and found in the 4th of *Hen.* VIII. an Act concerning one *Richard Strode*, who was a Member of Parliament, and fined at the Stannary Courts, in the *Weſt*, for condeſcending and agreeing, with other Members of the Houſe, to paſs certain Acts to the Prejudice of the Stannaries: This Act was made occaſionally for him; but did reach to every Member of Parliament that then was, or ſhould be: The Words being as follow:

The Tenor of Strode's Act, relating to Liberty of Speech.

And over that, it be enacted by the ſame Authority, That all Suits, Accuſements, Condemnations, Executions, Fines, Amercements, Puniſhments, Corrections, Grievances, Charges, and Impoſitions, put or had, or hereafter to be put or had, unto or upon the ſaid Richard, *and to every other Perſon or Perſons afore-ſpecified, that now be of this preſent Parliament, or that of any Parliament hereafter ſhall be, for any Bill, Speaking, Reaſoning, or Declaring, any Matter or Matters concerning the Parliament to be commenced and treated of, be utterly void, and of none effect: And over that, be it enacted, by the ſaid Authority, That if the ſaid* Richard Strode, *or any of the ſaid other Perſon or Perſons, hereafter be vexed, troubled, or otherwiſe charged, for any Cauſes as is aforeſaid, that then, he or they, and every of them, ſo vexed or troubled, of or for the ſame, to have Action upon the Caſe againſt every ſuch Perſon or Perſons, ſo vexing or troubling any, contrary to this Ordinance and Pro-*

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Proviſion: In the which Action, the Party grieved ſhall recover treble Damages, and Coſts; and that no Protection, Eſſoine, or Wager of Law, in the ſaid Action, in any wiſe be admitted or received.

No Privilege for Criminal Actions in the Houſe, though there is for Words.

The Commons ſaid, It was very poſſible the *Plea* of thoſe worthy Perſons *Denzil Holles*, Sir *John Elliot*, and the reſt, was not ſufficient to the Juriſdiction of the Court, if they took in their Criminal Actions all together: But, as to the Words ſpoken in Parliament, the Court could have no Juriſdiction, while this Act of 4 *Hen.* VIII. was in force; which extended to all Members that then were, or ever ſhould be, as well as to *Strode*, and was a publick general Law, though made upon a private and a particular Occaſion.

They recommended alſo, to their Lordſhip's Conſideration, the Time when theſe Words in Sir *George Croke*'s Reports were ſpoken, *viz.* 2 *March*, 4 *Car.* being the Parliament which began the Year after the Judgment, given in the King's-Bench about the *Habeas Corpus*, was newly reverſed, which concerned the Freedom of their Perſons: Thus their Liberty of Speech was invaded, as the Liberty of their Perſons had been before: And, not long after, the ſame Judges (with ſome others) joined with them in the Caſe of Ship-Money, invaded the Property of their Goods and Eſtates; ſo that their Lordſhips found every Part of thoſe Words, for which thoſe worthy Perſons were accuſed, juſtified.

If any Man ſhould ſpeak againſt any of the Great Officers; as the Chancellor, or Treaſurer, or any of the reſt recited in thoſe Acts (*De Scandalis Magnat.*) by accuſing them of Corruption, ill Counſel, or the like, he might poſſibly juſtify himſelf, by proving it: But in this Caſe it was impoſſible for him to do it, becauſe thoſe Judgments had preceded and concluded him.

The Commons obſerved further, That the Words in this Caſe are charged to be done *ea intentione*, which ought not to be; becauſe, by Law, whatever is not in itſelf lawful, cannot have an unlawful Intent annexed to it. Things unlawful might be made higher Crimes by the Illneſs of the Intent: For inſtance, taking away a Horſe is a Treſpaſs only; but the intending to ſteal him, makes it Felony: Borrowing a Horſe, though intending to ſteal him, was not Felony; becauſe borrowing is lawful: And there would be no Uſe of Freedom of Speech, if the depraved Intention might be annexed to this, or to any the moſt juſtifiable Action. If a Man drank Water, he might, at this Rate, be accuſed of a depraved Intention of ſubverting the King's Government, by deſtroying his Revenues of Exciſe and Cuſtoms.

Whatever is enacted, is lawful; but nothing can be enacted, till it be firſt moved or propounded by ſome Body: And if the Act wrongs no Body, neither can the propounding of it; and to that End the Members muſt be as free as the Houſes: There muſt be Debates, before any thing can be enacted.

In the Reign of *Hen.* VIII. when ſo many Perſons, *viz.* Abbots and Priors, were removed out of the Lords Houſe, and all religious Houſes and Lands taken away; an Information againſt any Members of Parliament, for propoſing ſo great an Alteration in Church and State, would have been very ſtrange. 1629. 5 Car. I.

Religion was further altered, they obſerved, in the Reign of *Edw.* VI. In Queen *Mary*'s Reign, the Nation returned to Popery; and, in Queen *Elizabeth*, the Proteſtant Religion was reſtored: But, ſhould Informations have been allowed in the King's-Bench, in theſe Times, againſt Members, for propounding or debating theſe Matters, ſuch Changes could have never been effected.

Theſe, the Commons ſaid, were the Reaſons and Inducements they had to paſs the following Votes, to which they deſired their Lordſhips Concurrence, *viz.*

Reſolutions of the Commons, in which the Lords concurred.

Reſolved, *&c.* That the Act of Parliament of 4 *Hen.* VIII. commonly entitled, An Act concerning *Richard Strode*, is a general Law, extending to indemnify all and every the Members of both Houſes of Parliament, in all Parliaments, for and touching any Bills, Speaking, Reaſoning, or Declaring, of any Matter, or Matters, in and concerning the Parliament to be communed and treated of; and is a declaratory Law of the ancient and neceſſary Rights and Privileges of Parliament.

Reſolved, *&c.* That the Judgment given 5 *Car.* againſt Sir *John Elliot*, *Denzil Holles*, and *Benjamin Valentine*, Eſquires, in the King's-Bench, was an illegal Judgment, and againſt the Freedom and Privilege of Parliament.

In both which Votes, the Lords agreed with the Commons.

Writ of Error ordered to be brought by Lord Holles.

Their Lordſhips alſo taking into Conſideration the ſaid Judgment given in the Court of King's-Bench, in *Michaelmas* Term, 5 *Car.* I. againſt Sir *John Elliot* Knight, *Denzil Holles*, and *Benjamin Valentine*, Eſquires: Ordered, That the ſaid *Denzil Holles* (now Lord *Holles*, Baron of *Ifeild*) do cauſe the Roll of the Court of King's-Bench, wherein the ſaid Judgment is recorded, to be brought before the Lords by a Writ of Error, to the End, ſuch further Judgment might be given upon the ſaid Caſe, as the Houſe ſhould think fit. And the Roll being brought in accordingly, a *Poſtea* was added to the Record, wherein it is recited, that the Attorney-General came into Court, and acknowledged, that the aforeſaid *Denzil Holles* had paid his Fine; and, that the Attorney afterward brought into Court the King's Letters Patents, under his Privy-Seal, whereby his Majeſty remitted to the ſaid *Benjamin Valentine* his Fine, and all the reſt of the Judgment; and prayed, that the ſame might be enrolled and allowed: And Judgment was given on the Attorney's Prayer, that the ſaid *Benjamin Valentine* ſhould be diſcharged: And that the ſaid *Denzil Holles* afterwards brought a Writ of Error upon the ſaid Judgment, returnable in Parliament; and having aſſigned for Error, that the Words mentioned in the Information were ſpoken in Parliament, and were not, therefore, cognizable in any other Court: And that the ſaid *Denzil Holles* was alſo charged in the ſaid Information, with an Aſſault upon the ſaid Sir *John Finch*, the Speaker, to which the ſaid *Denzil Holles* had put in two ſeveral Pleas, and yet the Court had given but one Judgment on the Whole; whereas there ought to have been two

Attorney-General acknowledges the Receipt of Lord Holles's *Fine.*

Valentine's Fine remitted.

The Errors aſſigned by Lord Holles.

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two ſeveral Judgments, and ſeveral Fines impoſed.

That the Lords having heard Counſel on the 15th of *April*, 1668. as well to argue the Errors aſſigned by the Lord *Holles*, Baron of *Ifeild*, upon the Writ of Error brought againſt the ſaid Judgment given in the Court of King's-Bench 5 *Car.* I. againſt the ſaid Lord *Holles*, by the Name of *Denzil Holles* Eſq; and others; as alſo to maintain and defend the ſaid Judgment on his Majeſty's Behalf: *Upon due Conſideration had of what had been offered on both Parts thereupon, The Lords Spiritual and Temporal in Parliament aſſembled, do order, and adjudge, that the ſaid Judgment, given in the Court of King's-Bench,* 5 Car. I. *againſt the ſaid* Denzil Holles, *and others, ſhall be reverſed.*

The Judgment againſt Lord Holles, *&c. reverſed by the Lords.*

And the following Form was thereupon affixed to the Tranſcript of the Record, *viz.*

The Form of the ſaid Reverſal recorded.

Et quia Curia Parliamenti de judicio ſuo de & ſuper præmiſſis reddend' nondum adviſatur, dies datus eſt tam prædict' Galfrido Palmer *Militi & Baronet. qui ſequitur, &c. quam prædict'* Denzil *Domino* Holles, *coram eadem Curia uſq; ad diem* Mercurii *decimum quintum diem* Aprilis *tunc proximum ſequentem apud* Weſtmonaſt' *in Comitat'* Midd' *de judicio ſuo inde audiend' eo quod Curia prædict' nondum, &c. Ad quem diem coram Curia prædict' venit tam prædict'* Galfridus Palmer *qui ſequitur, &c. quam prædictus* Denzil *Dominus* Holles *in propriis perſonis ſuis. Super quo viſis, Et per eandem Curiam nunc hic plenius intellectis omnibus & ſingulis præmiſſis, maturaque deliberatione inde habita, conſideratum eſt per Curiam prædict' Quod Judicium prædict' ob errores prædictos & alios in Recordo & proceſſu prædictis compertos, revocetur, adnulletur, & penitus pro nullo habeatur. Et quod prædict'* Denzil *Dominus* Holles *ad omnia quæ idem Dominus* Holles *occaſione Judicii prædict' amiſit, reſtituatur.*

Jo. Browne *Cleric. Parliamentorum.*

Remarks on the Caſe of Darnel, *&c. on their bringing their Writs of* Habeas Corpus, *to be bailed.*

Among the Gentlemen that were committed, by the King and the Privy-Council, 3 *Car.* I. for not lending his Majeſty Money, on Privy-Seals for the Repayment thereof within the Space of 18 Months, five of them, *viz.* Sir *Thomas Darnel*, Sir *John Heveningham*, Sir *Walter Earl*, Sir *Edmund Hampden*, and Sir *John Corbet*, brought their reſpective Writs of *Habeas Corpus*, returnable in the Court of King's-Bench; and, upon their appearing in that Court, their Counſel moved, that they might be admitted to Bail.

Sir *Thomas Darnel* behaved himſelf with a great deal of good Manners and Temper, on this Occaſion; and ſeems to have been bailed, or diſcharged, by his Majeſty's Conſent upon the firſt Motion; for we hear nothing of him afterwards: But the other four, *viz.* Sir *John Heveningham*, Sir *Walter Earl*, Sir *Edmund Hampden*, and Sir *John Corbet*, inſiſted ſtrenuouſly, by their Counſel, that they ought, *of Right*, to be admitted to Bail by the Court of King's-Bench; and refuſed to make any Submiſſion, or Application to his Majeſty, for their Liberty; though it was intimated to them, both publickly and privately, that upon making ſuch Application, they might be diſcharged.

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The Counſel for the Priſoners inſiſted, That the Returns of the reſpective Writs of *Habeas Corpus* were inſufficient, both in Form and Subſtance: As to the Form, they ſaid, the Return was uncertain and contradictory: But the Court over-ruled this Objection, and declared it to be certain, and not contradictory; neither did the Counſel for the Priſoners ſeem to relie much upon their Exceptions, as to the Form: The grand Objection was to the Subſtance, *That they were committed by his Majeſty's ſpecial Command, without any Cauſe expreſſed in the Warrant*; and there being no Cauſe expreſſed, they urged, that they ought to be admitted to Bail of courſe, it was a Right which the Judges of the King's-Bench could not refuſe them, on their being brought into Court by their reſpective Writs of *Habeas Corpus*.

But their Counſel, in arguing this Caſe, carried the Matter much farther: They did not only inſiſt, that their Clients ought to be admitted to Bail; but that neither the King, or the Privy-Council, had Power to commit any Man to Priſon; or, if they had, they could not do it without expreſſing the Cauſe in the Warrant: Nay, they urged, that no Man could be impriſoned, without a Preſentment, or Indictment, by any Authority whatever, according to *Magna Charta*, and ſix ſubſequent Statutes, made for the Explanation and Confirmation of that Statute.

To which the King's Counſel anſwered, That this could not be underſtood of the firſt Apprehenſion, or Commitment; becauſe every Court of Juſtice, every Juſtice of Peace, or Petty Conſtable, might arreſt and commit; and it was every Day's Practice to do it, without Preſentment, or Indictment: That *Magna Charta*, indeed, ſaid, that no Man ſhould be impriſoned, unleſs by Preſentment, or Indictment: But then it was added, *aut per legem terræ*, or by the Law of the Land. So that, if Commitments by the King, by the Privy-Council, or by a Juſtice of Peace, *&c.* were lawful Commitments before; the Statute of *Magna Charta*, and thoſe other Statutes made in Confirmation of it, had not altered the Law in this Reſpect; and that *Magna Charta* could only intend, that no Man ſhould be *adjudged*, or *condemned*, to be impriſoned, but by Preſentment, Indictment, or other legal Proceſs; and this ſeems to have been agreed alſo, at length, by the Priſoners Counſel.

The only Queſtion that continued to be diſputed, both at the King's-Bench Bar, and in Parliament afterwards, was, whether a Perſon committed by the King's ſpecial Command, or by the Command of the Privy-Council, *without Cauſe expreſſed in the Warrant*, ought, *of Right*, to be bailed by the Court of King's-Bench, on his being brought thither by an *Habeas Corpus*.

Many Precedents were produced by the Priſoners Counſel, to ſhew, that where Perſons had been committed, by the King, or Council, and no Cauſe ſhewn, they had been bailed by the Court of King's Bench.

On the other Hand, the King's Counſel inſiſted, that thoſe very Precedents, and many more, evidently ſhewed, that where Perſons were committed by the King, or Council, without Cauſe ſhewn,

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ſhewn, they were never bailed, until the King's Pleaſure was known.

The Lord Chief Juſtice, who delivered the Opinion of the whole Court, declared, that they, having viewed and conſidered all the Precedents, could not find that one Perſon, *no, not One*, committed by the King, without Cauſe expreſſed, that had been admitted to Bail without the King's Direction; and, thereupon, the four Gentlemen were remanded to Priſon, where they remained till the 29th of *January* following; when his Majeſty ordered them to be ſet at Liberty.

A Parliament being ſummoned to meet about ſix Weeks afterwards, *viz.* the 17th of *March*, $162\frac{7}{8}$, and the Gentlemen who had been impriſoned for the Non-payment of the Loan, elected Members of the Houſe of Commons: The Houſe was no ſooner met, but, amongſt the reſt of their Grievances, they fell upon this, of the Impriſonment of the four Gentlemen, for Non-payment of the Loan, and the Court of King's-Bench's refuſing to bail them, on bringing their reſpective Writs of *Habeas Corpus*.

If this was Law, ſome ſaid, there was an End of all their Liberties and Properties at once. If the King could demand fifteen or twenty Pounds of a Gentleman, by the ſame Rule he might require his whole Eſtate; and by the ſame Law, he impriſoned theſe Gentlemen for not lending their Money, he might impriſon all the Gentlemen in the Kingdom, and doom them to perpetual Impriſonment, if none of the Courts of Juſtice could admit them to Bail: That it was in vain for the King to aſk Supplies of his Parliament; for, if this was Law, they had nothing left to give: The King was already, in effect, the Grand, and, indeed, only Proprietor of all the Eſtates of the Kingdom, and his Subjects in a worſe Condition than Bondmen, or Villains of old; for, even thoſe, their Lords could not doom to perpetual Impriſonment without Cauſe. That a Priſoner thus committed, without a Cauſe expreſſed, was in a worſe Condition than one committed for Treaſon, or Felony; for ſuch Criminals muſt either be brought to Trial, or bailed: But theſe Gentlemen had no Proſpect of being ever delivered by Law; and, if the King had not been ſo gracious to conſent to their Enlargement, muſt have been Priſoners for Life.

On the other hand, it was ſaid, That a Truſt muſt be repoſed in the King, in whom the executive Power was lodged: That it was impoſſible for any written Laws to provide againſt all Exigencies of State: That there were many other Prerogatives the King had, that were as inconvenient as this of commiting Men without ſhewing Cauſe. The King might embaſe the Coin: The King might lay an Embargo on all Merchant Ships; and, in the Time of Peſtilence, reſtrain Men of their legal Liberties: But it was not to be preſumed his Majeſty would do any of theſe Things, unleſs there was a Neceſſity for them. If the King, or Council, could not commit a Man without expreſſing their Reaſons for it, all Secrets of State muſt be diſcloſed; Enemies muſt be made Maſters of our Councils; and Accomplices in Treaſon, or Rebellion, might be furniſhed with Opportunities of ruining the Government, or, at leaſt, of eſcaping Puniſhment: That it was the conſtant Practice, for the King and Council to commit, without ſhewing Cauſe, when the Diſcovery of it might be of ill Conſequence to the State; and they were the only proper Judges of State-Affairs; and that, upon Petition to his Majeſty, it was uſual to diſcharge Priſoners, after the Dange was over; but, that Judges of the King's-Bench never bailed, or diſcharged, any Man in theſe Caſes, without firſt conſulting the King, and receiving his Orders: And there was no Reaſon his Majeſty ſhould not be entruſted with this Power, or Prerogative, as his Predeceſſors had been: And, indeed, the Gentlemen on the other Side did acknowledge, that it was uſual for the Judges of the King's-Bench to acquaint the King, before they bailed ſuch Priſoners as were committed by the King, without Cauſe expreſſed, and receive his Majeſty's Conſent; but they would have this to be Matter of Compliment only; and, that the Court ought of Right to bail or diſcharge ſuch Priſoners, whether the King conſented to it, or not; otherwiſe the Liberties and Properties of all the People of the Kingdom would be at his Majeſty's Diſpoſal; and they were no better than Vaſſals, or Tenants at Will to the Crown.

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Thus we ſee Matters were carried to very great Extremes, when by the Wiſdom of ſome of the Members of both Houſes (who well underſtood, that the true Intereſt of the Nation did not conſiſt, either in depreſſing the Crown, or giving up the Liberties and Properties of the Subject) theſe Differences were in a manner accommodated. The Parliament gave the King five Subſidies, to ſupply the Exigencies of the State: And his Majeſty, on the other hand, granted their Petition of Right, wherein he confirmed all the Statutes that prohibited raiſing Money by Loans, or Benevolences, and relinquiſhed his Right of impriſoning the Subject without Cauſe ſhewn.

The Hiſtory of the Parliament of 4 & 5 Car. I. 1627, 1628.

But it appeared, that there was a Set of Men in the Houſe that were not to be ſatisfied; Men, who fomented theſe Diviſions between the King and his People on ſeveral Accounts. There were thoſe, who were determined never to let fall the Cry of Jealouſies and Fears, till the Duke of *Buckingham*, the King's Prime Miniſter, was deſtroyed: There were others, Puritans and Preſbyterians in their Hearts, who could never reſt, till they ſaw the eſtabliſhed Church ſubverted, and their own Superſtition triumphant; which they apprehended was not to be done, but by the Deſtruction of the Civil Government: And there were alſo great Numbers of pure Commonwealthſmen, who were ready to join with the laſt to pull down the Monarchy, in order to ſet up Ariſtocracy, in which they and their Friends propoſed to have the greateſt Share of the Adminiſtration.

All theſe joined in the common Cry of Popery and Tyranny; and in fomenting Jealouſies and Fears among the People; while many more were influenced by their Numbers, Aſſurance, and ſpecious Pretences, to fall in with them in diſtreſſing the Government.

The King, therefore, had no ſooner granted the Petition of Right, but the Commons drew up a Remonſtrance, repreſenting to his Majeſty,

1628. 4 Car. I. that both the Church and Commonwealth were ſtill in great Danger, the Laws not being put in Execution againſt *Roman* Catholicks, and the Doctrine of Arminianiſm (the Freedom of the Will) encouraged, praying, that Orthodox (Puritan or Calviniſt) Preachers might be preferred, and their Adverſaries diſcountenanced: And having repeated their former Complaints of the Adminiſtration, in raiſing Money by Way of Loan, impriſoning the Refuſers, keeping up a Standing Army, *&c.* (though it was in a Time of actual War) they fall again directly on the Duke of *Buckingham*, the Prime Miniſter; declaring, they would never be ſatisfied, while he had any Share in the Adminiſtration; for he was the Author of all their Grievances.

To which the King anſwered, *He little expected ſuch a Remonſtrance, after his granting their Petition of Right.*

The Commons, however, proceeded to frame another Remonſtrance againſt the King's receiving Tonnage and Poundage; which his Majeſty being acquainted with, came on a ſudden to the Houſe of Peers, the 26th of *June*, and declared, that by paſſing the Petition of Right, he had not granted them any new, but only confirmed their antient Rights and Liberties; and, that as for Tonnage and Poundage, it was a thing he could not want: That it was never intended to be aſked by that Petition; nor did he ever intend to part with it: After which the Parliament was prorogued to the 20th of *October* following.

Soon after the riſing of the Parliament, the Duke of *Buckingham* aſſembled a very formidable Fleet and Army, to go to the Relief of the *French* Proteſtants at *Rochelle*: But while he lay at *Portſmouth*, juſt ready to embark, he was aſſaſſinated on the 23d of *Auguſt*, by one *Felton*, a diſcarded Lieutenant, and a zealous Fanatick, who ſtabbed the Duke to the Heart, with a Knife, as he paſſed out of one Room into another, under a Tapeſtry Hanging. The Villain, it ſeems, had a double Inducement to commit the Fact: Firſt, to revenge himſelf on his Grace, for not giving him a Captain's Commiſſion, to which he pretended: And, ſecondly, to deliver his Friends, the Puritans, from their great Enemy, the Duke: And, accordingly, we find, the Wretch gloried in the Murder, believing he had done God and his Country good Service; and never attempted to make his Eſcape, or oppoſe thoſe who came to apprehend him. He was tried, and condemned; and being executed the 29th of *November* following, was afterwards hung in Chains.

In the mean Time, the People were further diſguſted at the Impriſonment of ſome Merchants, who refuſed to pay the Duties of Tonnage and Poundage: And the creating Sir *Richard Weſton* Lord Treaſurer, and Prime Miniſter, who was ſuppoſed to be popiſhly affected, ſtill increaſed their Fears and Jealouſies: Inſomuch that, though the Duke of *Buckingham*, who ſeemed to be the principal Butt and Object of the People's Fury, was now dead; when the Parliament met on the 20th of *January*, $162\frac{8}{9}$. the Houſe of Commons appeared as clamorous as ever, falling immediately upon the Illegality of the King's receiving Tonnage and Poundage: Whereupon the King ordered both Houſes to attend him at *Whitehall*; and acquainted them, that it was not his Intention to challenge Tonnage and Poundage, as his Right; but that he took it only *de bene eſſe*, for the neceſſary Support of the Government, till it ſhould be granted him by Parliament: And, as they had now an Opportunity of preparing a Bill for that Purpoſe, he expected they would do it, without Loſs of Time, according to the Profeſſions they had frequently made, of their Readineſs to gratify him in this Particular. 1628-9. 4 & 5 Car. I.

This gave the Faction Occaſion to clamour more than ever. Inſtead of going upon the Bill of Tonnage and Poundage therefore, as his Majeſty deſired, they exclaimed againſt the Growth of Popery and Arminianiſm, which that Incendiary *Elliot* cried out, were breaking in upon them, like an Inundation; averring, that ſome of the Biſhops themſelves were not Orthodox, or ſound in Religion. They proceeded to ſend one of the Sheriffs of *London* to the *Tower*, for levying the Duties of Tonnage and Poundage; called the Officers of the Cuſtoms before them, for ſeizing the Goods of Mr. *Rolls*, one of their Members, for refuſing to pay Cuſtom: And when the King ſent them a Meſſage, that the Officers acted by his expreſs Orders, they cried out, *Adjourn*, *Adjourn*, breaking up in a tumultuous Manner. Being aſſembled again, two or three Days after, *Elliot* roared out again, that he found the Lord Treaſurer *Weſton* was building on the Foundation laid by his Maſter the Duke: That the Miniſters were for breaking Parliaments, leſt Parliaments ſhould break them; and that all Prieſts and Papiſts were protected by the Treaſurer: And when, on the 2d of *March*, $162\frac{8}{9}$. 4 *Car.* the Speaker delivered a Meſſage from his Majeſty, commanding them to adjourn, *Elliot* offered a Remonſtrance againſt Tonnage and Poundage; and, the Speaker refuſing to read it, Sir *Miles Hobart* locked the Door of the Houſe, and took away the Key. *Coriton*, another zealous Member, aſſaulted and ſtruck Mr. *Winterton*, who was for obeying his Majeſty's Command, while *Elliot* read the Remonſtrance himſelf, and the Speaker was urged by Mr. *Selden* and others, to put the Queſtion: But he anſwered, he was expreſly commanded by his Majeſty, to riſe as ſoon as he had delivered his Meſſage, and accordingly left the Chair: But Mr. *Denzil Holles*, *Benjamin Valentine*, and others, pulled him back again, and held him in the Chair by Force: And when ſome of the Privy-Council endeavoured to releaſe the Speaker, *Holles* ſwore, *by God's Wounds, he ſhould not ſtir, till they gave him leave to riſe*; and proceeded to read the following Proteſt, *viz.*

" Whoever ſhall bring in Innovation in Reli-
" gion, or by Favour ſeek to extend, or in-
" troduce, Popery, or Arminianiſm, or other
" Opinions, diſagreeing from the true and or-
" thodox Church, ſhall be reputed a Capital
" Enemy to the Kingdom and Commonwealth.
" 2. Whoever ſhall counſel or adviſe the take-
" ing and levying the Subſidies of Tonnage
" and Poundage, not being granted by Parlia-
" ment, or ſhall be an Actor, or Inſtrument,
" therein,

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" therein, ſhall be reputed an Innovator in the " Government, and a Capital Enemy to this " Kingdom and Commonwealth. 3. If any " Merchant, or Perſon, whatſoever, ſhall vo- " luntarily yield, or pay, the Subſidies of Ton- " nage and Poundage, not being granted by " Parliament, he ſhall likewiſe be reputed a " Betrayer of the Liberties of *England*, and " an Enemy to the ſame."

The King, being informed of theſe tumultuous Proceedings in the Houſe, ſent a Meſſenger for the Serjeant, and his Mace (becauſe, had the Mace been taken off the Table, they would have been no longer a Houſe): But the mutinous Members kept the Serjeant locked in, and would not ſuffer him to attend his Majeſty. Then he ſent the Uſher of the Black-Rod, to order them to adjourn; but they would not admit him, or receive his Meſſage: Whereupon the King ſent for the Band of Penſioners, with an Intention (as 'tis ſaid) to force an Entrance: Whereupon the Commons roſe ſuddenly, having firſt adjourned themſelves to the 10th of *March*.

The Day after the Tumult, *viz.* on the 3d of *March*, Warrants were iſſued by the Privy-Council, ſummoning nine of the moſt diſorderly Members, mentioned in the Proceeding againſt *Stroud*, *&c.* to appear before the Board; which were obeyed by *Holles*, *Elliot*, *Coriton*, and *Valentine*; and the reſt afterwards were brought in, or ſurrendered themſelves: But they abſolutely refuſed to anſwer before the Council, for any thing that had been ſaid or done in Parliament: Whereupon they were committed to ſeveral Priſons.

On the 10th of *March*, the Day the Commons were adjourned to, the King came to the Houſe of Peers; and, without ſending for the Commons, acquainted their Lordſhips, that it was merely the undutiful and ſeditious Carriage of the Lower Houſe, that brought him thither, to diſſolve the Parliament. He did not, however, judge all that Houſe guilty: But there were, he ſaid, ſome Vipers among them, who caſt this Miſt of Undutifulneſs over moſt of their Eyes: And as theſe muſt look for Puniſhment, their Lordſhips, on the other hand, might juſtly expect from him, all the Favour and Protection that a good King owed to his loving and faithful Nobility. *After which, the Lord Keeper diſſolved the Parliament, there being but few of the Commons preſent, as his Majeſty had not thought fit to command their Attendance.*

Thus much of the Hiſtory of that Parliament which ſat in the 4th and 5th Years *Car.* I. ſeemed abſolutely neceſſary, to underſtand the Caſe of Mr. *Stroud*, and the reſt of the obnoxious Members, who brought their Writs of *Habeas Corpus*, to obtain their Liberty, in *Eaſter* Term, 5 *Car.* I. I ſhall proceed in the next Place to make ſome Remarks on the detaining thoſe Members in Priſon.

Remarks on the Habeas Corpus *brought by* Stroud, *&c.*

The Reader will remember, that the Counſel for Mr. *Stroud*, and the reſt of the nine impriſoned Members, inſiſted, that the Return of the *Habeas Corpus* was inſufficient, becauſe the firſt Warrant, mentioned in the Return, expreſſed no Cauſe of the Commitment; and the ſecond only ſaid, they were committed *for notable Contempts, committed againſt Ourſelf, and our Government, and for ſtirring up Sedition againſt Us*; obſerving, that the firſt Warrant was directly againſt the Petition of Right; and the Offences expreſſed in the ſecond, were not Capital, and conſequently the Priſoners ought to be bailed: And this appears to have been the Senſe of the Judges, though they had not an Opportunity of delivering their Opinions in open Court, in *Trinity* Term, 1629. the Priſoners being removed from their reſpective Goals, to other Priſons. 1629. 5 Car. I.

But it appears alſo, that it was the unanimous Opinion of the Judges of the *King's-Bench*, when the Priſoners appeared in Court, on the firſt Day of the following *Michaelmas* Term, that as they ſtood charged with Contempts againſt his Majeſty, and with ſtirring up Sedition, which were Criminal Matters, they ought to give Security for their good Behaviour: And as they refuſed to do this, their future Impriſonment muſt be aſcribed, in ſome Meaſure, to their own Obſtinacy; which leads me in the next Place to conſider, the Proceedings againſt three of the nine Members, *viz.* *Elliot*, *Holles*, and *Valentine*, againſt whom the Attorney-General, the ſame *Michaelmas* Term, preferred an Information, for ſeditious Speeches, for a Contempt, and for an Aſſault on their Speaker. To which their Counſel anſwered, that it was lawful, and Parliamentary, to charge Great Men, in the Houſe, with Crimes committed againſt the Conſtitution: That it was no Contempt, to refuſe to adjourn, upon a verbal Command; and that it was lawful for the Houſe to detain the Speaker in the Chair. However, that, theſe things being done in Parliament, they could only be queſtioned for them there; and therefore they pleaded to the Juriſdiction of the Court; and refuſing to put in any other Plea, Judgment was given againſt them by *nihil dicit*, and they were ſentenced to be fined, and impriſoned, as has been related already. *Remarks on the Proceedings againſt* Elliot, *&c. for* Sedition, &c.

As to the Reſolutions of the Commons, who raiſed the Rebellion in 1641. they will not be much regarded in this Caſe; after we have ſeen them, not only conſpire the Deſtruction of the King and Government, but fully accompliſh and execute their Treaſons: And though the Parliament, in the Year 1667. thought fit to aſſert their grand Privilege of Freedom of Speech, and reverſe the Judgment given, in the Court of *King's-Bench*, againſt *Holles*; yet they ſeem to have admitted, that a Breach of the Peace (ſuch as the Aſſault upon their Speaker, and forcing him into the Chair) might be taken notice of, and puniſhed by the Courts in *Weſtminſter-Hall*; for they obſerved, that the Judges cunningly blended the Speeches and the Aſſault together, in their Judgment, to give them a Colour for pronouncing it: And one of the Errors aſſigned for reverſing the Judgment is, that the Court gave but one Judgment, as to the Words and the Aſſault, when the Defendants pleaded two ſeveral Pleas; ſo that the antient Maxim ſtill remains unſhaken, that to a Charge of Treaſon, Felony, or Breach of the Peace, Privilege of Parliament cannot be pleaded: And had the Judgment been for Breach of the Peace alone,

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it had probably never been cenſured, or reverſed: There is no doubt to be made, that a Member, who is aſſaulted in the Houſe by another Member, may ſtill have an Action againſt the Aggreſſor, in the Courts of *Weſtminſter-Hall*. There is nothing ſo ſacred within thoſe Walls, as the then Attorney-General obſerved, as to privilege the Members to commit all Manner of Outrages there, with Impunity.

But, notwithſtanding the Commons did then ſo loudly exclaim againſt the Court of *King's-Bench*, for refuſing to bail Perſons committed by the King and Council, without Cauſe ſhewn; we have ſeen the Houſes themſelves, ſince that Time, aſſuming a Power, equal, if not ſuperior, to that the Crown then exerciſed; ſending Gentlemen to Priſon, without expreſſing any Cauſe, and not ſuffering them to be bailed, or delivered, on their bringing Writs of *Habeas Corpus:* And the Judges have ſo revered the Commitments of either Houſe, as not to dare to diſcharge the Priſoners, till the Parliament has been prorogued; and, in ſome Caſes, till it has been actually diſſolved; and that notwithſtanding the *Habeas Corpus* Act, that was made for the Protection of our Liberties: Which leads me to enquire, how the Law ſtands, in Regard to our Liberties at this Day.

The Law, concerning Bail, in Criminal Caſes, at this Day.

By a Statute made the 31ſt *Car.* II. *cap.* 2. it is enacted, That every Perſon committed for any Crime (unleſs it be for Treaſon, or Felony, plainly, and ſpecially, expreſſed in the Warrant) ſhall have a Writ of *Habeas Corpus*, returnable, *immediate*, before the Lord Chancellor, or one of the Judges, who may diſcharge him from his Impriſonment, taking a Recognizance, with one or more Sureties, for his Appearance, in the *King's-Bench*, the next Term, or at the next Aſſizes, Seſſions, *&c.* where the Offence was committed, unleſs it ſhall appear, that the Party, ſo committed, is detained upon legal Proceſs, Order, or Warrant, out of ſome Court, that has Juriſdiction of Criminal Matters; or by a Warrant ſigned and ſealed by a Judge, or ſome Juſtice of Peace, for ſuch Offence, as, by Law, the Priſoner is not bailable.

And if any Perſon ſhall be committed for Treaſon, or Felony, plainly and ſpecially expreſſed in the Warrant; and if upon his Prayer, or Petition, in open Court, the firſt Week of the Term, or the firſt Day of the Aſſizes of *Oyer* and *Terminer*, to be brought to his Trial, he ſhall not be indicted the next Term, or Seſſions, after his Commitment, the Judges, upon Motion made to them in Court, by the Priſoner, or any for him, the laſt Day of the Term, or Seſſions, are required to ſet at Liberty ſuch Priſoner, upon Bail: And if ſuch Priſoner ſhall not be indicted, and tried, the ſecond Seſſions after his Commitment, or ſhall be acquitted upon his Trial, he ſhall be diſcharged.

And if any of the Courts of *Weſtminſter*, in Term Time, or any Judge of the ſaid Courts, in the Vacation, ſhall deny ſuch Writ of *Habeas Corpus*, they ſhall ſeverally forfeit five hundred Pounds, to the Party grieved.

And it was further provided by this Act, That no Subject ſhould be ſent Priſoner into *Scotland*, *Ireland*, *Jerſey*, *Guernſey*, *Tangier*, or any Place beyond Sea: And that any Perſon ſo impriſoned, ſhould have an Action of falſe Impriſonment againſt the Perſons, by whom he ſhould be ſo committed, detained, impriſoned, ſent Priſoner, or tranſported; and againſt all Perſons, who ſhould make, or ſign, any ſuch Warrant, or be adviſing, aiding, or aſſiſting, in the ſame; and that the Plaintiff ſhould recover treble Coſts, beſides Dammages; which Dammages ſhould not be leſs than five hundred Pounds; and that the Offender ſhould incur a *Præmunire*, and be incapable of a Pardon.

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And it was further provided, That, after the Aſſizes proclaimed, no Priſoner ſhould be removed from the common Goal of the County, but ſhould be tried before the Judge of Aſſize. However, after the Aſſizes, he may have his *Habeas Corpus*. And it is now held, that the Court of *King's-Bench* have a diſcretionary Power, of bailing Perſons, almoſt in every Caſe, even for Treaſon, or Felony, and are not bound, by the Statute of *Weſtminſter* 1. *cap.* 15. as Sheriffs and Juſtices of Peace are: And though they have of late paid a much greater Deference to a *General* Commitment of either Houſe of Parliament, than to a Commitment by the King himſelf, or the Privy-Council, during the Continuance of a Seſſion; yet, as has been obſerved, they do uſually venture to bail ſuch Priſoners as have been committed by either Houſe, after a Prorogation, or Diſſolution: And there has been an Inſtance of this Court's bailing a Nobleman, impeached of High-Treaſon, when the Parliament was diſſolved, *Hawk.* 111. A Commitment for Diſobedience to a Decree of the Court of *Chancery*, however, is held ſtill to be good, without ſhewing what the Decree was: And the Perſon committed, is not bailable by the Court of *King's-Bench*, notwithſtanding the *Habeas Corpus* Act: Nor will the *King's-Bench* bail a Perſon committed by any other Court of Record; unleſs it appear, the Perſon is committed for a Fact, which is indeed no Crime; or not within the Juriſdiction of the Court committing him; or where a Proſecution appears to be malicious, or the like. *Hawk.* 112.

And though the Court of *King's-Bench* may admit to Bail, Perſons excluded by the Statute of *Weſtm.* 1. *cap.* 15. yet they pay a great Regard to the Rules preſcribed by that Statute. There are few Inſtances of Perſons charged with Felony, or notoriouſly guilty of Treaſon, or Manſlaughter, that have been admitted to Bail, without ſome ſpecial Motive to induce the Court to grant it. As where a Perſon outlawed alledges Error in the Record; or a Perſon is convicted contrary to Evidence; or the Plaintiff, in an Appeal, hath unreaſonably delayed Proſecution; or where a Priſoner is in Danger of his Life, by Famine, or ſome malignant Diſtemper. *ibid.*

It is the Practice of the Court of *King's-Bench*, in admitting a Perſon to Bail, who is actually preſent in Court upon an Indictment, or Appeal, of Felony, or other Crime, puniſhable with the Loſs of Life, or Member, to take a general Recognizance to the King in a certain Sum, from each of the Bail, that the Priſoner

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Priſoner ſhall appear at a certain Day, *&c.* And alſo, that the Bail ſhall be liable, in Default of his Appearance, Body for Body: And it ſeems left to the Diſcretion of the Juſtices, in admitting a Perſon to Bail for Felony, to take the Recognizance either in a certain Sum, or Body for Body. But at this Day, Perſons bound Body for Body, are not liable, on the Forfeiture of the Recognizance, to ſuch Puniſhment as the Principal would be, if found guilty; but can only be fined. 2 *Hawk.* 115.

A Perſon bailed for Felony, ought to have two Sureties at leaſt: And, it is the Practice of the King's-Bench, not to admit a Perſon to Bail upon a *Habeas Corpus*, on a Commitment for Treaſon, or Felony, without four Sureties. *Pract. Reg.* 110.

Theſe Proſecutions ſaid to be the Occaſion of the Grand Rebellion.

Give me Leave to obſerve further, That the Ruin of King *Charles* I. and the utter Subverſion of the Conſtitution, has been aſcribed, by ſome, to the Proſecution of the Gentlemen laſt mentioned. It is ſuppoſed, if his Majeſty had never levied Money without Conſent of Parliament, impriſoned the turbulent Members of the Houſe of Commons, and queſtioned them in the Court of King's-Bench, for their Behaviour in the Houſe, he might have gone in Peace to his Grave: That theſe Proceedings gave the People a Handle, to encroach on his Prerogative, embarraſs his Affairs, and uſurp an Authority to controul, and even ſubdue the Crown; without which, they were taught, their Liberties and Properties could never be ſecured.

But, ſurely, it is poſſible to fall into ſuch Times, that all the Wiſdom and Virtue that ever any Prince poſſeſſed, cannot preſerve him; and, if ever there was ſuch an unhappy Conjuncture, it was in this Reign: The Enemies of this Prince dwelt altogether on his arbitrary Diſpoſition, and the illegal Ways he took to raiſe Money, in order to juſtify their Rebellion and Uſurpation: But they are very ſilent as to the unparalelled Provocations they gave him, and the Neceſſities they reduced him to; which in a manner compelled him to take thoſe extraordinary Ways: Such was the undutiful Behaviour of the Commons, to this young Prince, at his Acceſſion, before they could diſcern whether his Adminiſtration would be good or bad, that, though they had drawn the Crown into a War, they would not raiſe one Penny of Money to ſupport it; whereby the Expedition againſt *Spain* miſcarried in the firſt Year of his Reign; and in the ſecond, the Princes of *Germany* and the *Danes*, in Confederacy with *England*, were defeated and ruined: Nay, they went farther, and denied to ſettle the Duties of Tonnage and Poundage on him, for the ſupport of his Houſhold, under Pretence, that he had taken them, on his Acceſſion, without their Leave, though his Anceſtors had ever done the ſame. And when they had diſtreſſed him to ſuch a Degree, what could they expect? His Majeſty ſaw the Government muſt ſink, and be diſſolved, if he had no Revenue to ſupport his Adminiſtration; and the Parliament would not give him a Penny, unleſs he would diſcard the Duke of *Buckingham*, and ſuch of his Miniſters as they had taken a Prejudice to, and ſuffer their Leaders to govern all his Councils: And when the King declared, that the Duke was innocent, of his own Knowledge, of what they charged him with; even this would not ſatisfy them: Now, unleſs it be ſaid, that a King is obliged to deliver up his Miniſters, how faithful and able ſoever, and transfer his Authority to ſuch Men as a powerful Faction ſhall impoſe upon him, I cannot ſee how he could avoid taking extraordinary Ways to raiſe Money, which was, indeed, what his Enemies wanted, and rejoiced to ſee him driven to theſe Extremes: There were a great many Gentlemen among the Commons, it is true, that were for accomodating Matters, by granting Supplies, and relieving the King's Neceſſities. But we find the Enemies of the Miniſtry, the Puritans and Republicans, were too hard for them: When one Grievance was remedied, they immediately ſtarted another, and diſtracting the People with imaginary Jealouſies and Fears, threw all into Confuſion; and by the ſame Acts they might have ruined any Prince that every reigned.

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We have no Inſtance of a King of *England*, of more Virtue, Parts, and Learning, than King *Charles* the Firſt was; and, whatever his Enemies may ſuggeſt to the contrary, farther from aſſuming an arbitrary Dominion: All he deſired was, to retain the legal Prerogatives his Anceſtors enjoyed: He would, perhaps, have been contented with much leſs Power than many of them exerciſed, had he not ſeen the Commons aiming at Dominion, and daily encroaching on the Regal Prerogatives; and found, if he gave way to their inſatiable Demands, they would infallibly deſtroy the Conſtitution both in Church and State. It is ſufficiently evident, that the Ambition of the Commons, joined with the reſtleſs Zeal of the Puritans, to deſtroy the Church of *England*, and eſtabliſh their Idol, Preſbytery, were the principal Sources of the Grand Rebellion; and that thoſe People who reduced King *Charles* to the Neceſſity of raiſing Money by thoſe extraordinary Ways, were greater Enemies to their Country than thoſe, who adviſed him to uſe thoſe Means for his Preſervation.

Neceſſity has no Law, according to the Proverb; or rather, all Laws muſt give way to Neceſſity: This is a Doctrine the Saints themſelves inculcated ſoon after, urging the *Neceſſity* of Rebellion againſt their Sovereign, to preſerve their Rights and Liberties; and taxed the Subject more arbitrarily and extravagantly, to ſupport their Rebellion and Uſurpation, than any King had ever done.

The rude Treatment of the Laws by their Hero *Cromwell*, when ſome urged *Magna Charta*, in Defence of their Liberties and Properties, will never be forgot; that mighty Advocate for Liberty and Property, when he had depoſed his Sovereign, and uſurped his Throne, gave the grand Charter of the Peoples Liberties the Title of *Magna Farta*, and appears to have looked upon the reſt of the Laws of the Kingdom with equal Deriſion and Contempt; taxing, impriſoning, decimating, tranſporting, and murdering the Nobility and Gentry, at Pleaſure; who ſoon ſaw their Error, in contributing to the Deſtruction of the Monarchy; and no doubt, heartily wiſhed for King *Charles*'s Adminiſtration again.

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But not to inſiſt on the Examples of Rebels and Uſurpers, who exclaim the loudeſt againſt the Invaſion of Liberty and Property, when they are out of the Adminiſtration, and are the the moſt intolerable Oppreſſors themſelves, when poſſeſſed of Power: Let us but ſuppoſe that when King *George* I. came to the Crown, he had found it engaged in War with two potent Enemies, by the Advice of Parliament, (which was the Caſe of King *Charles* I.) and the Parliament would not have raiſed one Penny of Money, either for the Support of the War, or the Maintenance of his Houſhold; while our good Allies periſhed for want of our Aſſiſtance; the Faction at the ſame Time, attacking and reviling his Adminiſtration, before he had been ſix Months upon the Throne, and it was impoſſible to diſcern whether it would be good or bad: Would King *George*'s Friends, in ſuch a Caſe, have thought themſelves obliged to ſtand ſtill with their Arms a-croſs; and, becauſe the Parliament proved ſullen or peeviſh, have ſuffered the Succeſſion of the *Hannover* Family to have been defeated, and his Enemies triumph over them? Would they not rather have exerted their utmoſt Efforts, and raiſed Men and Money, by all the Methods they could invent, whether legal or illegal, to preſerve the Crown on his illuſtrious Head; and would they not have juſtified themſelves, as the Miniſters of King *Charles* the Firſt did, by that Almighty Plea of Neceſſity.

Far be it from me to juſtify the Ways that were taken in the Reign of King *Charles* I. for raiſing Money, ſuppoſing it were poſſible to have avoided them; but Neceſſity, it ſeems to be agreed on all Hands, will juſtify taking Meaſures that are not ſtrictly legal: And if a Prince of King *Charles*'s Wiſdom and Virtue was puſhed upon thoſe unwarrantable Ways and Means by the Perverſeneſs of a Faction; I wiſh, when ever any of his Succeſſors find themſelves in the like unhappy Situation, they may extricate themſelves out of their Difficulties by Ways leſs oppreſſive than thoſe that Prince was compelled to make uſe of. But to proceed; The Friends of Monarchy are frequently repreſented, by their Enemies, as in love with Slavery, and ready to ſacrifice their Liberties and Properties to every ambitious Prince: But I would have the Republicans know, That the Loyaliſts have as great a Value for thoſe ineſtimable Bleſſings of Liberty and Property, as any *Whig* of them all: The only Difference is, That the former apprehend their Laws and Liberties are more likely to be preſerved under a Monarchichal Form of Government; and the latter imagine, That Liberty is no where to be found but in a Commonwealth.

For my Part, if we are to be tyrannized over, I had rather have one than five hundred Tyrants; I had rather ſee one upon the Throne, than a Tyrant in every Pariſh almoſt: But it is very notorious, there is much more Danger of Oppreſſion and Tyranny under a Commonwealth than a Monarchy; for the Weight of the Nobility and Gentry of a Nation will ever prove a Balance, ſufficient to prevent our Kings committing any great Exceſſes; they will not ſee their Laws trampled on, and their Properties invaded, without oppoſing ſuch Encroachments, and repreſenting their Grievances to the Throne; as we find by Experience they have frequently done with good Succeſs, even in the Reigns of our greateſt Princes, ſuch as *Edward* the Third, *Henry* the Fifth, that of Queen *Elizabeth*, &c. But then they were ſo wiſe to be content with their antient Privileges, and did not attempt to ſtrip the Crown of all its Prerogatives: Where-ever this has been attempted it has always ended in Confuſion, and the Subverſion of the Government. And let the People's Grievances and Oppreſſions be never ſo inſupportable under a Commonwealth, there is no Redreſs to be expected; the Tyrants are ſo numerous, and are Men of that Wealth and Intereſt in every Part of the Nation, and have ſuch an Influence over the inferior People, among whom they reſide, that there is no contending with them: In thoſe unhappy Times, when this was our own Caſe, we ſee the State would not ſuffer the People ſo much as to petition for a Redreſs of Grievances, or find any Fault with their Adminiſtration, how deſtructive ſoever to Liberty and Property. And if we look abroad into the Commonwealths of *Venice*, *Genoa*, and *Holland*, their Governments are more deſpotick than that of the Grand Seignior; they will not ſo much as ſuffer the People to mention, much leſs oppoſe, their Adminiſtration; and if they ſuſpect any of their Subjects to have a Deſign to demand any Alteration in the Adminiſtration, they are immediately apprehended by a kind of Secret Committee, thrown into Dungeons, and perhaps put to death, without being ſuffered the Benefit of an open Trial; Theſe are ſome of the Liberties and Privileges uſually annexed to a Republican Form of Government, which ſome People are ſo fond of, and which ſurely none can heartily deſire, unleſs they expect to conſtitute Part of the State, and enjoy the Privilege of domineering over their Prince as well as their Fellow-Subjects.

Great Encomiums are beſtowed upon thoſe Patriots, who have from Time to Time contended to clip the Wings of the Prerogative, and make the Crown in a Manner dependant on the People: But what did they ever get by this Conduct? King *Charles* II. being treated in this Manner, when he ſaw it was impoſſible otherwiſe to ſupport his Dignity and Authority, and he was in Danger of becoming ſubject to the Commons, made the leading Men amongſt them his Penſioners, and by that means procured their Conſent to a Standing Army; governing as abſolutely in the latter Part of his Reign, as ever his Predeceſſors had done before the Prerogative was reduced.

Whereas had thoſe wiſe Men been content with the antient Conſtitution, neither Penſionary Parliaments, or Standing Armies, had been thought neceſſary to force the Subjects Obedience: They need not then have raiſed Taxes to pay their Repreſentatives for doing the Buſineſs of the Court, and pay thoſe Troops that were raiſed to bridle their Fury.

Our wiſe Patriots, by aiming at an unbounded Liberty, and to be freed from the Dominion of their lawful Prince, compelled him to raiſe Forces for his Preſervation, which might have been fatal to their Liberties, if he had had any Inclination

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clination to invade them. It was happy for us, he desired no more than that all his Subjects might be easy and happy, and did not make use of those Forces to render himself absolute: If he had, we might have thanked those Patriots for it, whose Ambition in a manner forced him into those Measures.

Give me leave to observe further, That the Puritans have been the most implacable Enemies to the Constitution and Peace of their own Country of any set of Men in it since the Reformation: We have seen them in Queen *Elizabeth*'s Reign, attacking her Government, and threatening to depose her, unless she would destroy the established Church, and introduce their Sect into the Administration: Nay, we find they were ready to join with the Pope and the *Spaniard* in the memorable Year 1588. to the utter Ruin both of our Religious and Civil Rights: But the Queen, by hanging up some of these seditious Betrayers of their Country, put a stop to their Encroachments, and maintained the Dignity of the Crown; and yet were her Subjects then the happiest People upon the Face of the Earth; nor did the Nation ever make a greater Figure in the World, than under her Administration.

King *James* I. on the contrary, unhappily relaxed the Reins of Government, and suffered the People to dispute and controul his Administration to such a Degree, that, according to his Son's Expression, *they put the Dice upon him*, and made him dependant on them.

Instead of the *Stuarts* endeavouring to establish a despotick Power, it is evident, the Puritans and Republicans, from the Time of their Accession to this Throne, have endeavoured to deprive that Family of all its just Rights, and entirely to subvert the Constitution in Church and State, which they unhappily effected in the Reign of King *Charles* I. And yet we have seen some of our young Nobility and Gentry, whose Ancestors fell with the Crown, and in Defence of it, stupidly celebrating that melancholly Day as a Festival, which the Nation justly solemnizes as a Fast, for the detested Murder of one of our greatest Monarchs, dressing up Calves Heads, making Bonfires, and pouring out red Wine, to shew how they approved of the spilling the Blood of that King; and that they would gladly have embrued their own Hands in it, if they had lived in those Days: What an Affront must this be to the *Stuarts* Race; to the Prince, who now happily fills the Throne, and even to Monarchy itself? For those Rebels gloried, they had destroyed the King, and Monarchy with him; and perjured the whole Nation, by compelling them to abjure the *Stuart* Family, and all Kingly Government.

This the Saints then made the pious Test for admitting Men to Offices in the State, and all other Preferments; though they exclaim now against the Government, for requiring any Test of their Loyalty and Affection for the Establishment.

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I shall conclude these Remarks with some Account of Sir *John Elliot*, that grand Incendiary, who may be said to have laid the Foundation of the Civil Wars, though he did not live to see the glorious Confusion he aimed at.

This Gentleman, Mr. *Echard* informs us, was not of a very antient Family, but had a good Estate in *Cornwall*: That he had been a Fellow-Traveller and an intimate Companion of the Duke of *Buckingham*'s, before his Advancement, and afterwards as great a Flatterer of him as any Man: That in the same Parish with *Elliot* lived another Gentleman of a fair Character, named *Moyle*, some time a Member of Parliament, with whom *Elliot* having had a Difference, went to his House under pretence of a Visit, and whilst *Moyle* was drinking a Glass of Wine, *Elliot* treacherously stabbed him; and leaving the Gentleman, who hospitably entertained him, dead, as he imagined, made his Escape to *London*: Where he applied himself to *Buckingham*, and by his Means obtained a Pardon for the supposed Murder (pretending *Moyle* had been killed in a Rencounter.) *Elliot* was obliged, however, to advance a considerable Sum of Money to get the Pardon expedited, lest the Baseness of the Fact should be discovered before it had passed the Seals: And it was no sooner sealed, but *Elliot* received Advice, that Mr. *Moyle* was in a fair Way of Recovery: Whereupon he applied himself to the Duke again, to have his Money returned, which his Grace did not gratify him in, but procured him the Honour of Knighthood, as an Equivalent for it; which was, however, far from satisfying *Elliot* for the Money he had paid. He vowed, therefore, to be revenged on the Duke for the Injustice he apprehended was done him, by one who had formerly been his Equal, and his Friend; and did not fail to make good his Threats on every Occasion. Mr. *Moyle* out-lived this Outrage above forty Years, and gave this Relation of the Fact himself to the celebrated Dean *Prideaux*, from whom Mr. *Echard* had it: So that all this pretended Zeal of *Elliot*'s for his Country, was founded in Revenge; and the greatest Patron of Religion and Liberty among the Commons, appears to have been an infamous Assassin: He afterwards died a Prisoner in the *Tower*, where he was confined for refusing to give Security for his good Behaviour, after having been guilty of numberless Insults on the the Government, raised a Tumult in the House of Commons, and laid violent Hands upon their Speaker, which was the Occasion of his Commitment and Prosecution in the *King's-Bench*: And though the Lords afterwards reversed the Judgment against *Holles* for Error, it is remarkable that they were so sensible of the Merits, or rather Demerits, of this pretended Patriot *Elliot*, that they never did reverse the Judgment against him, but it remains upon Record to this Day.

The

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The Trial of JAMES Lord *Uchiltrie*, for *Leaſing-making*, and *Calumnies, uttered by him againſt* James *Marquis of* Hamilton, *the Earls of* Haddington, Roxburgh, *and* Buccleugh, *tending to the ſowing Diſcord between his Majeſty and the ſaid* Scotiſh *Noblemen, at* Edinburgh, 30 *Novemb.* 1631. *6 Car.* I.

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The Indictment.

THE Dittay, or Indictment, ſets forth, That whereas, by ſeveral Statutes of the Kingdom of *Scotland*, it is enacted, that all Leaſing-makers, and Tellers of Lies, which may engender Diſcord between the King, his Barons, Great Men, and Lieges, ſhall forfeit Life and Goods to the King. Notwithſtanding which, the ſaid *James* Lord *Uchiltrie*, in the Month of *May*, then laſt paſſed, having heard by the Relation of *Donald* Lord *Rea*, that certain Speeches, Surmiſes, and Informations, were made unto him (the ſaid Lord *Rea*) by *David Ramſay*, *Robert Meldrum*, and ſeveral other Perſons beyond Sea, in *Sweden*, *Pomerland*, and *Holland*, reſpectively; and by the ſaid *David Ramſay*, and divers other Perſons, within the Kingdom of *England*, anent ſome Plot, and dangerous Purpoſe, intended againſt the King, Queen, and Prince, and againſt the Land, by ſurpriſing the King's Houſes and Caſtles of *Edinburgh*, *Stirling*, and *Dunbarton*; and for ſeizing the Town of *Lieth*. The ſaid Lord *Uchiltrie*, not contented with revealing what the Lord *Rea* had informed him of, out of a malicious Deſign, and in order to create Diſcord betwixt the Lord Marquis of *Hamilton*, the Earls of *Haddington*, *Roxburgh*, and *Buccleugh*, and his Majeſty, did, on the 17th of *May*, then laſt paſſed, ſignify to his Highneſs, that the Buſineſs was Treaſon intended againſt his Majeſty; and that the principal Party was the Marquis of *Hamilton*, as he was informed; and to induce his Majeſty to believe him, he delivered to the Lord Treaſurer (*Weſton*) a Liſt of Names, to ſhew his Majeſty, the Strength of the ſaid Marquis of *Hamilton*'s Party and Adherents in *Scotland*: Wherein he named the Marquis of *Hamilton*, the prime Agent, and named the Earl of *Melros*, now Earl of *Haddington*, the Earl of *Roxburgh*, and the Earl of *Buccleugh*, to be Plotters: And that upon the Marquis's Arrival at *London*, from *Scotland*, the ſaid Lord *Uchiltrie* went to his Majeſty, when he was at Dinner, and boldly, and male-pertly, ſpoke theſe Words to him; *Sir, now you know the Buſineſs, but know not the Time; and therefore, Sir, either do, or die*; doing thereby, what in him lay, to move his Majeſty to take ſome ſudden and violent Courſe, for the Subverſion of the Life and Honour of the ſaid Marquis; and that the ſaid Paſſages were maliciouſly forged, invented, and practiſed by the Panel (the Priſoner), without any Foundation, or Authority, from the Relation of the Lord *Rea*, as was manifeſt, from his own Depoſitions, and by the Declaration of the ſaid Lord *Rea*, who had averred, that he knew nothing againſt the Perſon of the Marquis, but that he was as good a Subject, as any the King's Majeſty had; and that the Panel (the Priſoner) and not the Lord *Rea*, did name the Earl of *Buccleugh*, as one who would take up Arms in *Scotland*, to aſſiſt the Marquis. By which Leaſings, Calumnies, and ſlanderous Speeches, untruly plotted, deviſed, and vented, by him, againſt the ſaid Marquis of *Hamilton*, the Earls of *Haddington*, *Roxburgh*, and *Buccleugh*, his Majeſty's faithful Counſellors, and loyal Subjects, he had manifeſtly contraverted the Tenor of the ſaid Statutes, and incurred the Pains therein mentioned, *viz.* the Puniſhment of Death, which ought to be executed on him, with all Rigour, to the Terror and Example of others.

The Evidence produced.

The Evidence produced againſt the Lord *Uchiltrie* was, firſt, his own Examination before ſome Lords at *London*, the 20th of *June*; wherein he ſays, that about the 7th of *May* laſt, the Lord *Rea* told him (at the *Bear*, near *London-Bridge*), that he believed there was a Plot againſt this Land; and though he had no certain Ground for it, if he had ſtaid but five Weeks longer in the *Low Countries*, he ſhould have known the Certainty: That on the 13th of the ſame Month, he came to his, the Examinant's Chamber, and told him, he had learned more Certainty; and that the Purpoſe of the Marquis of *Hamilton*'s Levies, as divers of his Officers and Followers had informed him (the ſaid Lord *Rea*) was, that either they ſhould not go out of *England*, or *Scotland*; or, if they did, they ſhould return to *England*, or *Scotland* again, and ſurprize the King's Houſes and Caſtles in *Scotland*, *viz.* the Caſtles of *Edinburgh*, *Stirling*, and *Dunbarton*, and fortify themſelves in *Leith*, and ſhould afterwards take *Berwick*, and march into *England*, where they intended to ſeize the King's Perſon, and impriſon him; to ſend the Queen to a Cloyſter; to captivate the young Prince with his Father, and to ſtrike off the Heads of all the principal Men about the King, both *Engliſh*, and *Scots*; and particularly the Lord Treaſurer of *England*, the Earl of *Monteith*, Sir *William Alexander*, and Sir *Thomas Hope*: That the Lord *Rea*, thinking it fitter to be diſcovered by the Examinant than by himſelf, leſt thoſe, whom it concerned, might ſuſpect the Matter, deſired the Examinant to acquaint his Majeſty, or the Lord Treaſurer, therewith; and that he accordingly attended the Treaſurer, and told him, he had Something to reveal, that concerned his Majeſty, and all his Kingdoms, and Poſterity; and that the Lord Treaſurer thereupon inſtantly went

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went up to the King, and returning, told the Examinant, that his Majeſty had given him Commiſſion to hear his Relation.

The Examinant further ſaid, that the Lord *Rea* told him, he had much of this beyond Sea, from *Robert Meldrum*, and *David Ramſay*: But that, ſince his coming into *England*, he had ſpoken with Sir *James Ramſay*, Sir *James Hamilton*, Colonel *Alexander Hamilton*, and Captain *Douglas*, and had gotten ſomething out of every one of them; and that he had alſo ſpoken with the Lord *Seaforth*, and underſtood ſomewhat from him.

That, on *Monday*, the 16th of *May*, the Examinant attended the Lord Treaſurer at *Whitehall*, and told him, the Matter he had to relate concerned the Lord Marquis of *Hamilton*, and his Actions; and delivered to the Treaſurer a Liſt of Names, to repreſent the Strength of the Lord *Hamilton*'s Party and Adherents in *Scotland*: But he no ſooner mentioned the Marquis of *Hamilton*'s Name, than the Treaſurer ordered him to defer his Relation, till he had acquainted the King again: That the Examinant, attending the King, by the Treaſurer's Direction, the Thurſday following, he told his Majeſty, that the Buſineſs was Treaſon againſt his Majeſty; and the Party was the Marquis of *Hamilton*, as the Examinant was informed: That it was the filthieſt Treaſon that ever was intended; and he was ſorry any *Scotiſh* Man ſhould have a Hand it; for it was a Shame to the whole Nation: And then the Lord *Rea* himſelf coming in, made his Relation to his Majeſty, who ſent them both to the Lord Treaſurer; and his Lordſhip directed the Lord *Rea*, to put his Relation in Writing: Whereupon the Lord *Rea*, and the Examinant, went away together, and ſat up all Night: And the Lord *Rea* firſt putting it into Writing, the Examinant wrote it out of the Lord *Rea*'s Papers, who carried it the next Day to the Lord Treaſurer; but the Examinant was not then preſent. However, attending the Treaſurer afterwards, he demanded whoſe the Hand-Writing was; and the Examinant acknowledged, it was his; and it not being ſubſcribed, the Examinant carried the Lord *Rea* to the Treaſurer's, where he read over the Paper, and ſigned it, ſaying, *He would ſeal it with his Blood*. The Examinant further ſaith, that he told the Lord Treaſurer, that the Lord *Rea* informed him, he had yet more, and would ſay ſo much, that the Marquis ſhould not have the Face to deny it; which the Lord *Rea*, then preſent, affirmed: Inſomuch that the Lord Treaſurer ſaid, *Then is the Buſineſs at an End, and there needs no Writing*.

That the Lord *Rea* told the Examinant, on the Sunday Morning, when the Marquis of *Hamilton* arrived Poſt from *Scotland*, that the Lord *Seaforth* aſſured him (Lord *Rea*), that their Purpoſe was to take the King, the Queen, and the Prince: And the Examinant demanding, how they would effect it, the Lord *Rea* replied, the Lord *Seaforth* had told him, they were great with the Earl of *Dorſet*, who had the Cuſtody of the Prince; and that he (Lord *Rea*) alſo ſaid, he was aſſured by the Lord *Roxburgh*, that the Marquis, and his Company, would haſten their Purpoſe; adding, that the *Hamiltons* had ſurely taken ſome Vent of the Buſineſs: That *Rea* alſo ſaid, Sir *James Ramſay* told him, he had 1500 Men in Readineſs; but they ſhould not come to *London*, till their Buſineſs was ready withal; which the Examinant, the ſame Morning, acquainted the Lord Treaſurer with, and wiſhed the Lord Treaſurer to adviſe the King, to go to *London*, for his Security: And that the ſame Day, when the King was at Dinner, the Examinant acknowledges he ſpoke theſe Words, *Sir, now we know the Buſineſs, but know not the Time; and therefore, Sir, either do, or die.*

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Then the Lord *Rea*'s Examination, the 21ſt of *June*, was read, wherein he acknowledged, that two or three Days before the Marquis of *Hamilton* went to *Scotland*, he (Lord *Rea*) did ſay to the Lord *Uchiltrie*, that his Lordſhip was better acquainted with the Laws of this Land, than the Examinant; and therefore deſired to know, what Danger it was, if any Man, hearing beyond Sea of things that might be dangerous to the King or State, ſhould not reveal it? To which the Lord *Uchiltrie* anſwered, *No leſs than your Head, and Eſtate*: And this was all that paſſed between them, at that Time: But that going to the Lord *Uchiltrie*'s Lodgings again, about ten Days after, he aſked him the ſame Queſtion, and deſired his Advice: And the Lord *Uchiltrie* promiſed readily to adviſe him, when he ſhould be acquainted with the Particulars; and that he would not reveal the Matter, without his Conſent: Whereupon, he (the Lord *Rea*) told the Particulars to the Lord *Uchiltrie*, who ſaid, it was neceſſary the Matter ſhould be diſcovered, and doubted the Examinant had concealed it too long already. To which he (Lord *Rea*) replied, that conſidering it concerned one ſo near the King, as the Marquis of *Hamilton*, he thought it not fit to break it to the King himſelf, leſt his Majeſty ſhould reject it; but it was fitter for ſome other to do it; and therefore deſired his Opinion, how to diſcover it: And that the Lord *Uchiltrie*, by his (the Lord *Rea*'s) Conſent, went the next Morning to the Lord Treaſurer's, to lay the Matter before him: But the Lord Treaſurer then refuſed to hear him, till he had a Warrant from the King: And that both the Lord *Uchiltrie*, and the Examinant, attending the King afterwards, at *Greenwich*, he (Lord *Rea*) made a full Relation to his Majeſty: And that the King demanding, why he had not told him ſooner of it, he, the Examinant, anſwered, that conſidering the Nearneſs of the Marquis of *Hamilton* to his Majeſty, he was afraid his Majeſty would have been impatient with him (the Examinant): That thereupon they were referred to the Lord Treaſurer, who directed him (Lord *Rea*) to put the Relation in Writing: Whereupon he and the Lord *Uchiltrie* ſat up together all Night; and the Examinant writing it firſt down, the Lord *Uchiltrie* wrote it, Sheet after Sheet, out of the Examinant's Paper, who carried it to the Lord Treaſurer; but not having ſigned it, he, (Lord *Rea*) and the Lord *Uchiltrie*, went to the Lord Treaſurer's again, two or three Days after, where he (Lord *Rea*) ſigned it, and ſaid, *He would make it good with his Blood*: That the Examinant afterwards had further Particu-

Lord Rea's *Examination read.*

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lars from the Lord *Seaforth*, which he communicated to the Lord *Uchiltrie*, who told the Examinant, on Sunday Morning, that he had been with the Lord Treaſurer, and had told him of the Paſſages with the Lord *Seaforth*, and of the Marquis's Return from *Scotland*; and that he conceived his Majeſty might be in Danger at that Time. To which the Examinant replied, he had done ill; for there was no ſuch ſudden Danger to be feared; and that the Examinant being the ſame Afternoon with his Majeſty, after he had been ſo advertiſed of preſent Danger, the Examinant told him, he had been with the Lord *Seaforth*, but had not the Certainty of things, deſiring he might go to the Lord *Seaforth*'s again, and he ſhould learn all: And his Majeſty declaring, what Danger had been ſuggeſted to him, on the Return of the Marquis, the Examinant proteſted, he knew nothing againſt the Perſon of the Marquis; but that he was, for ought the Examinant knew, as good a Subject as any the King had.

A ſecond Examination of Lord Rea.

Then a ſecond Examination of the Lord *Rea*, taken the ſame 21ſt of *June*, 1631. was read, wherein he ſays, that having deliberately read over the Examination of the Lord *Uchiltrie*, taken the 20th Inſtant, he acknowledged, it was all true in Subſtance, unleſs in the following Particulars, *viz.* that he did not tell the Lord *Uchiltrie*, the 13th of *May*, that he had learned more Certainty than ever he had before; but that he had learnt more Certainty, ſince he came to *England*, than he had before; and that inſtead of ſaying, they intended to ſtrike off the Heads of all the principal Men about the King, the Examinant ſaid, he was informed, they would ſtrike off the Heads of the *Spaniſh* Faction; and named the Lord Treaſurer, the two Biſhops, the Earl Marſhal, the Earl of *Carliſle*, Sir *Francis Cottington*, the Lord *Monteith*, Sir *William Alexander*, Sir *Thomas Hope*, and Sir *Kenelm Digby*; and that he was ſo informed, touching the *Spaniſh* Faction, by Mr. *Meldrum*, and *David Ramſay*; and touching the *Scots*, by the Earl of *Seaforth*. He acknowledge, he ſaid, that ſince his coming to *England*, he had ſpoken with Sir *James Ramſay*, Sir *James Hamilton*, and Captain *Douglas*, and gotten ſomewhat out of every one of them; but denied, he had ſpoken with *Alexander Hamilton*, ſince his coming to *England*.

He denied, that either he, or the Lord *Uchiltrie*, ſaid, that he could ſay ſo much, as the Marquis ſhould not have the Face to deny it; but that he ſaid, he could bring as honeſt a Man, as this Examinant, that would tell to the Marquis's Face, more than this Examinant would do: And this he meant of the Lord *Seaforth*.

He confeſſed, he ſaid, Sir *James Ramſay* told him, he had fifteen hundred Men in Readineſs; but that he would not bring them together, till the Parties in *Scotland* were firſt ready: That Sir *James* told him as much; and that there were good Officers; and the Earl of *Eſſex*, and the Archbiſhop of *Canterbury*, were Sureties for ſome of them; which was all he ſaid concerning the fifteen hundred Men.

That he was not acquainted with the Liſt of Names delivered by the Lord *Uchiltrie* to the Lord Treaſurer; nor had any thing to do therein.

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A ſecond Examination of Lord Uchiltrie.

After which, the ſecond Examination of the Lord *Uchiltrie*, taken the 24th of *June*, 1631. was read; wherein he ſays, he was acquainted with the Buſineſs concerning the Marquis of *Hamilton*, by the Lord *Rea*: But that the Lord *Rea* was not privy to the Liſt of Names this Examinant delivered to the Lord Treaſurer; and that the Reaſon he did in that Paper mention the Lord Marquis, to be the prime Agent, was, the Lord *Rea*'s telling him, the Lord Marquis's Followers had ſaid, the Intent of the Marquis's Levies was to invade *Scotland*: And if, out of his Care for the King's Safety, he had gone too far, he truſted his Majeſty would impute it to his Duty.

That being aſked, Why, in the ſaid Paper, he made the Earls of *Melros*, *Roxburgh*, and *Buccleugh*, to be Plotters, he ſaid, the Lord *Rea* told him, the Lord *Seaforth* had affirmed to him, that the Earls of *Melros* and *Roxburgh* were acquainted with the Particulars and Secrets of the Buſineſs; and that the Lord *Rea* ſaid, he could not gueſs who elſe ſhould be in the Plot, unleſs the Lord *Buccleugh*; of whom the Lord *Rea* ſaid, he heard him ſpeak terrible and preſumptuous Words againſt the King, at his own Table, in *Holland*.

That he might have miſtaken, when he ſaid, they intended to ſtrike off the Heads of *All* the principal Men; for, ſince he recollected himſelf, he believed the Lord *Rea* ſaid, they would ſtrike off the Heads of *Many*.

That he did ſtill avow, he ſaid before the Lord Treaſurer, that the Lord *Rea* could ſay ſo much, as the Marquis ſhould not have the Face to deny it: And that the Lord *Rea* being then preſent, and hearing it, did not gainſay it.

A third Examination of Lord Rea.

A third Examination of the Lord *Rea*, the 24th of *June*, alſo was read; wherein he ſays, that the firſt Time the Lord *Seaforth* had any Speech with him, touching the Earls of *Melros* and *Roxburgh* being privy to the Particulars and Secrets of the Lord Marquis's Buſineſs, was on Monday, after the Marquis's coming out of *Scotland*; and that the Lord *Uchiltrie* having ſome Diſcourſe with this Examinant, who might be likely to take Arms in *Scotland*, if the Marquis of *Hamilton* ſhould take up Arms; the ſaid Lord *Uchiltrie*, and not this Examinant, named the Lord *Buccleugh*; and that thereupon the Examinant told him, that at the Siege of the *Boſch*, he heard the Lord *Buccleugh* uſe ſome Words, whereby this Examinant took him to come malcontent out of *England*.

Lord Uchiltrie's Defence.

Theſe Examinations having been read in Evidence againſt the Lord *Uchiltrie*, his Advocates (or Counſel) objected, that they ought not to proceed againſt him in *Scotland*, but in *England*; and by the Laws of that Kingdom, as the Offence is alledged to be committed there.

To which the Lord Advocate anſwered, that his Majeſty, by his Letter, had ordered the Council, that he ſhould be tried by the Laws of *Scotland*; and that his Majeſty's Letter was grounded on the Civil and Common Law.

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The Priſoner's Counſel replied, That his Majeſty's Letter muſt be underſtood without Prejudice to his lawful Defence; and, that the alledged Crimes contained in the Indictment, might be lawful in *England*, though criminal in *Scotland*: That there was no reaſon the Priſoner ſhould be puniſhed in *Scotland*, for a Fact committed in *England*, not puniſhable by the Laws of *Engiand*.

That the Facts laid in the Indictment had no Dependance, or Relation, to the Leaſings mentioned in the Acts therein recited: That it was incumbent on every Subject, that ſhould hear treaſonable Speeches, to reveal them, whether they were true or falſe; for that the Hearer was no Judge of: This could not be conſtrued a telling of Lies, to create Diſcord between the King and his People, but rather to ſuppreſs and prevent the ſame: That the concealing Treaſon was puniſhable by the Laws of all Nations, as well as thoſe of that Kingdom, and particularly by the Acts that had been cited; and conſequently the the Diſcovery of it could not be Criminal: That the ſame Acts that were made againſt *Leaſing-making*, required the Hearer of Treaſon, to reveal it on Pain of Death; ſo that the Priſoner was under a Neceſſity of diſcovering it.

Reply of the King's Advocate.

The King's Advocate replied, That if the Priſoner had confined himſelf within his Duty of Revealing the Treaſon, although it had been falſe, he would have deſerved to have been rewarded for it, rather than puniſhed: But when he had heard only ſome conjectural Speeches from the Lord *Rea*, and had thereupon poſitively charged the Marquis of *Hamilton*, and the Earls of *Haddington*, *Roxburgh*, and *Buccleugh*, with Treaſon, without ſufficient Grounds, adding twenty or thirty other Noblemen, as Adherents to them, and had uſed that Motto, *Sir, Now either do or die*, in order to incenſe his Majeſty to take ſome violent Courſe againſt the Marquis's Perſon, or Life; this might well be interpreted *Leaſing-making*, within the Acts of Parliament mentioned in the Indictment: The Priſoner was not proſecuted for relating what he had heard of the Lord *Rea*, but for the Additions and Comments he had made on that Relation.

The Priſoner's Defence continued.

The Priſoner's Counſel urged on the other Side, That he had added nothing but what might be ſupported by the Relation he had received from the Lord *Rea*; and that, if it agreed in Subſtance with what the Lord *Rea* had depoſed, and might be fairly deduced from it, the Priſoner could not be charged with *Leaſing-making*: There was no Neceſſity of his repeating the very Words the Lord *Rea* had uttered; and they inſiſted, that the Lord *Rea*'s firſt Examination on the 18th of *May*, and ſigned by him, might be read in the Priſoner's Juſtification,

An Examination of Lord Rea *read as Evidence for the Priſoner.*

which was with a great deal of Difficulty, at length, allowed to be read by the King's Advocate; in which the Lord *Rea* depoſed, That while he was at *Stockholm*, Colonel *Alexander Hamilton*, Brother to the Earl of *Haddington*, Sir *James Hamilton*, Son to the ſaid Earl, and two more of the *Hamiltons*, who were Officers in the King of *Sweden*'s Army, quitted that Service, to ſerve under the Marquis of *Hamilton*: That drinking Healths one Night with the ſaid *Hamiltons* and *David Ramſay*, the Examinant aſked Colonel *Alexander Hamilton* the Marquis's Chriſtian Name, who anſwered, *James, by the Grace of God*; and Sir *James* added, *King of* Scotland, *and it ſhould be ſo*: That the ſame Night, being alone with *David Ramſay*, he told the Examinant of many Abuſes in the Court of *England*, laying the blame upon the Lord Treaſurer, and ſaid, Popery and *Arminianiſm* had ever come from the Biſhops: That there was nothing looked for, but Deſolation and Change in Religion; and that the poor Soul the King was blinded to his Ruin; and he had retired from Court, becauſe no honeſt Man could live there: And when the Examinant anſwered, there was no Remedy but Patience, *Ramſay* replied, By God, *Donald*, I will uſe your own Phraſe, *We muſt help God to amend it*: That demanding, what Content my Lord Marquis had at home, he ſaid, None; for the King had forced him to marry a Wife that was a very Beaſt: Adding, that the Lord Marquis was a good Proteſtant, and before it were long, he would let the World ſee his Aim was the Defence of Religion: To which the Examinant anſwered, it availed them little to make the Goſpel a fair Paſſage in *Germany*, if they loſt it at home: Whereupon *Ramſay* ſaid, There were many honeſt Men in their Land, and the Marquis would uſe his Army to protect them, which was his only Aim: That in *July* the Examinant met Mr. *Meldrum* at *Stockholm*, and aſking him, what News from *England*, he anſwered, Matters were worſe and worſe; the King gave greater Way to *Papiſts* and *Arminians* than before: That *Cottington* was gone to beg Peace with *Spain*: However, the Marquis governed all; was made Keeper of *Windſor*, and Knight of the Garter, and was to be Admiral of *England*: That the Examinant telling *Meldrum*, his Couſin *David Ramſay* had ended his Negotiation to his Mind; and that *Alexander Hamilton* was to get Powder, Arms, and Ammunition, for the Marquis, from *Sweden*; *Meldrum* threw down his Cap, cut a Caper, and ſaid, Good News; I am made for ever: But, good my Lord *Rea*, is this true? To which the Examinant anſwered, Yes; for I have one Double of the Contract; I am egaged in the Buſineſs to *David Ramſay*, *Alexander Hamilton*, and Sir *James Hamilton*, and by Letter to my Lord *Hamilton*. O! my Lord, ſaid *Meldrum*, that was the Work of God, and not Man, to inſpire your Lordſhip to go with us.

That *Meldrum* told *Lindſay*, a Friend of the Examinants, That ſix thouſand trained Soldiers would do the Turn, with their own Faction in the Country: That the next Day *Meldrum* ſaid to the Examinant, that King *Charles* was good for nothing; created for nothing but Deſolations, and undoing of Kingdoms, Religion, and People: There was no way but to immure him, or clap him in a Dungeon, which was eaſy to be done; for after the Men were liſted in *Scotland*, they might take a Month's Time to learn to handle their Arms at *Leith*, without Suſpicion; and might ſeize on the Caſtles of *Edinburg*, *Stirling*, and *Dumbarton*, in one Night; and having fortified *Leith*, and taken *Berwick*, they might afterwards march into *England*: That *Meldrum* added, he was writing a Declaration of the Juſtice of the Mar-

1631. 6 Car. I. Marquis's Quarrel, with the tyrannical Uſage and Sufferings of the Church under King *James*, and now worſe groaning under his Son, with the *Hamilton*'s clear Title to the Crown; and that nine of the beſt Earls in *Scotland* would live and die with them: That the Body of *England* was alſo with them, and ſome of the Nobility, for evil Will to the Treaſurer: That the next Day, there coming News of the Birth of the Prince, the Examinant demanded, if that would cool the Marquis's Intentions; whereupon *Meldrum* ſighed, and ſaid, Not if the King and Queen of *Bohemia* would give their Daughter to the Marquis, as they had promiſed.

That meeting *Meldrum* afterwards at *Leſlie*'s Tent, *Meldrum* took the Examinant aſide, and related ſome Converſation he had with the Secretary of *Sweden*: Said, he told the Secretary, that it was greatly for the Advantage of his Maſter, whoſe Ambition was without Limits, that the Marquis ſhould raiſe a War in *Britain*; for, if the King of *Sweden* would reduce *Denmark*, his *Britiſh* Majeſty would not be able to aſſiſt his Uncle; and the *Swediſh* Secretary anſwered, That we care not for, nor do we fear your King; for if he would not help his own Siſter, he will never help his Uncle: That *Meldrum* added, they intended to caſt the Prince into Priſon with his Father, and ſend the Queen home to her Mother: That they would impriſon their Adverſaries, till all was their own; and the Marquis would take Pledges of all that ſtood Neuter.

That the Examinant going afterwards to *Holland*, met *David Ramſay* at *Amſterdam*, who brought him a Letter of Compliment and Thanks from the Marquis: Told him, all went right with the Marquis; and he had gotten ten thouſand Pounds from the King, and the Wine-Cuſtoms of *Scotland* for ſixteen Years, which he would ſell: That all Things went on without Obſtacle; they only ſtaid for Arms and Ammunition, eſpecially Powder, and deſired the Examinant to preſs the *Swediſh* Ambaſſador hard for ſome: That aſking where their Forces were to meet, *Ramſay* ſaid upon the Sea, and afterwards land in *Scotland* or *England*; but he would ſay no more: The Marquis would communicate things to him that he durſt not.

Ramſay alſo ſaid, That *England* had made a Peace with *Spain* very prejudicial to the *Hollander*: That *Carliſle*, *Cottington*, *Kenelm Digby*, and the *Spaniſh* Faction, had prevailed on the King to bar the *Hollander* from Fiſhing, which fell out luckily for them; and deſired the Examinant to make an Intereſt with the Prince of *Orange* and the States, to aſſiſt the Marquis; which he did.

That at the Examinants coming to *England*, he waited on the Marquis, who returned him Thanks, and ſaid, he would detain him with him, aſſuring the Examinant, that he that would hazard himſelf with him in this Buſineſs, it ſhould be a tye to him and his Poſterity, to hazard his Fortune and Eſtate with him and his.

That the Marquis going down to *Greenwich* in a Barge, with Sir *James Ramſay*, Sir *James Hamilton*, and ſome other *Scots* Gentlemen, the Marquis's Dependants, it was moved, If they went to make an Inſurrection, where they ſhould begin; and the Marquis anſwered, he would march to *London* directly; and the ſame Day the Marquis told the Examinant, he would ſell the Wine Cuſtoms, for he expected no more from *England*: That Captain *Douglas* told the Examinant, that they ſhould have a hundred Barrels of Powder from the King, and they would make a ſhift for Arms: That Sir *James Ramſay* told the Examinant the laſt *Sunday* at *Greenwich*, he had 1500 Men in Readineſs on a Week's Notice, or leſs; and he ſtaid only till he heard the Men of *Scotland* were ready; and that he ſhould meet them at the Rendezvous at *Norwich*; and Sir *James Hamilton* told him, the *Engliſh* Rendezvous would be at *Harwich*: That the Earl of *Roxburgh* told the Examinant, that he, and others, the Marquis's Friends, were at firſt againſt theſe Courſes; but ſince they ſaw his Lordſhip ſo far engaged, and, that he only aimed at the Glory of God, he and all his Friends would put to their helping Hand: That the Marquis thought himſelf ever bound to the Examinant, and ſo did all his Friends; and he (Lord *Roxburgh*) aſſured him, he truſted him; and that he never took a more faſt and real Friend by the Hand. 1631. 6 Car. I.

After the reading this Depoſition of the Lord *Rea*'s, the King's Advocate obſerved, that it was plain the Priſoner had affirmed the Treaſon poſitively; and that the Marquis was prime Agent; together with the Speeches ſpoken to his Majeſty on the *Sunday* after Dinner; as alſo his calling the Earls of *Haddington*, *Roxburgh*, and *Buccleugh*, Plotters: And that he had no Warrant from the Lord *Rea* for theſe Allegations; for the Repreſentation made by the Priſoner of the prime Agent and Plotters, was given in on the 16th of *May*, whereas the Lord *Rea*'s Examination was not given in till the 18th of the ſame Month.

To this the Priſoner's Counſel anſwered, that when he charged the Marquis, and the other three Lords, with Treaſon, he did not do it of his own Knowledge, but added, *as he was informed*, which acquitted him of being a Leaſing-maker, or Forger of Lies: And, that he ſpoke it by Information, was clear by his own Depoſitions, as well as by the Depoſition of the Lord *Rea*, who acknowledged the Priſoner's Depoſition to be true, in all Points, to the beſt of his Knowledge: Nor was it ever heard, or practiſed, that any Subject being neceſſitated by Law to reveal what concerned the King or the State, and revealing the ſame with his Informer, and conſtantly abiding thereby, and willing to maintain the ſame upon any Torture, or Trial, whatever, that the Revealer, upon the Party's Denial, ſhould be called in Queſtion of his Life, as the Deviſer and Forger: And, if this ſhould now be made a Precedent, Conſpirators againſt the Government might be ſecure; becauſe no Man durſt reveal their Treaſons for the future.

And, whereas it is objected, that the Priſoner could not have his Information from the Lord *Rea*, becauſe he gave in a Liſt of the Lords concerned in the Plot on the 16th of *May*, and the Lord *Rea*'s Depoſitions were not made till the 18th; they anſwer, that the Lord *Rea* gave this Information verbally to the Priſoner, on the 13th of *May*, though he did not put it in writing till the 18th; and this appear-

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As to the Repreſentation, and Liſt of Names given in by the Priſoner, his Counſel anſwered, That theſe were written and given in upon the Lord Treaſurer's enquiring into the Friendſhips, Blood, and Intereſt of the Lord Marquis, that he might make an Eſtimate of his Power and Influence in *Scotland*, in caſe his Friends ſhould join him; and this was clear from the Writing itſelf, wherein it is ſtiled a Repreſentation, and not an Information, or Accuſation; there was no Intention to caſt any Reflection on the Lord Marquis, or the other three Noblemen, by that Writing.

As to the Words *do or die*, it was a uſual Phraſe, and imported no more than *ſee to your Safety*; being a faithful Advice to his Majeſty, and not a malicious Counſel to draw Miſchief upon any other: He had no Intention to inſtigate, or ſtir up his Majeſty, to any violent Courſe againſt the Marquis's Life and Honour; but to prevail on his Majeſty to go to *London* for his Security, as appeared by other Words he uſed at the ſame Time: Nor could the Words, *do or die*, be interpreted Leaſing-making, becauſe they were not Words of Affirmation, but of Counſel or Advice: That, whether the Lord *Rea*'s Information was true or falſe, the Priſoner could not be charged with Leaſing-making, ſince it appeared, what he related came from the Lord *Rea*, who, at his firſt Examination, when the King aſked him, Why he had not revealed the Matter ſooner, anſwered, becauſe it concerned the Marquis of *Hamilton*, who was ſo near to his Majeſty; from whence it appears, that the Lord *Rea* accuſed the Marquis, and that the Priſoner only revealed what he had from that Lord: And, as for the Lord *Rea*'s ſaying, he knew nothing againſt the Perſon of the Marquis afterwards, it was not to be regarded, becauſe it contradicted what he ſaid before. It was inſiſted alſo, that the Lord *Rea* was but one Witneſs; that he was not upon Oath; and, that he ought to have given his Teſtimony *viva voce*: And, beſides, his Evidence ought not to be admitted in this Caſe, becauſe it tended chiefly to excuſe himſelf, and to aſperſe the Priſoner, who, according to his Duty, had revealed theſe Treaſons, as he heard them, to the King, which he was obliged to do, whether they were true or falſe: The Lord *Rea* was to anſwer for the Truth of the Facts he acquainted the Priſoner with.

The King's Advocate replied, That the Priſoner could not juſtify himſelf by any Thing the Lord *Rea* had related to him; for he received no poſitive Information from the Lord *Rea*, againſt the Marquis; or had any Warrant from him to call him Party or Prime Agent; and in Matters of this high Nature, ſuch as Treaſon, no Illation by Conſequence was to be permitted, at the Peril of him who made the Inference. That in all *Rea*'s written Relation, there was not a Word ſpoken directly againſt the Marquis, neither by *David Ramſay*, or by *Robert Meldrum*; but only ſome mad frantick Speeches uttered by *Meldrum* on his own Imagination, or Wiſh to have it ſo, for the Diſturbance of the State, by expreſſing the manner, how ſuch an Enterprize, according to his fooliſh Opinion, might be performed. Not a Word of *Meldrum*'s hearing that from my Lord Marquis, or from any, who declared they heard the Marquis ſpeak it: And, as to *Ramſay*, the worſt that he ſaid was, that the Marquis was diſcontented; and, that his Deſign in levying Forces was for the Protection of Religion, meaning that glorious Enterprize for the Aſſiſtance of the King of *Sweden*, which could never ſupport the Speeches ſpoken by the Priſoner to his Majeſty, *viz. That it was a Treaſon*; *an odious Treaſon*; *and the Lord Marquis a Party*; *That it was the filthieſt Treaſon that ever was intended*; *and, that he (the Priſoner) was ſorry that any* Scotchman *ſhould have fallen into it, it being a Shame to the whole Nation.* Which was a poſitive Affirmation, *not as the Priſoner was informed*, but as he himſelf did infer, upon the Relation made to him by the Lord *Rea*, who would give the Priſoner no Aſſurance he had any certain Grounds, as was manifeſt from the Priſoner's Depoſition on the 20th of *June*.

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The Priſoner's Counſel ſtill inſiſted, that he could not be charged with Leaſing-making, becauſe the Lord *Rea* was preſent, when he informed the Lord Treaſurer and the King of the Treaſon, and did not contradict any Part of the Information, but aſſented to the Truth of it: That the Form of Speech was not in queſtion here, but the Matter; and if the Priſoner had reported in other Words, or by a Deſcription, or Paraphraſe, that which the Lord *Rea* related to him, without changing or altering the Subſtance, he had committed no Fault, nor could be eſteemed a Leaſing-maker.

The Priſoner, having repeated the Subſtance of his Defence to the Jury, added, that he did not charge the ſaid four Noblemen with Treaſon; he only charged the Lord *Rea* as his Informer and Author; humbly atteſting, that if the Lord *Rea* contradicted him in any eſſential Points, he did him Wrong; and, if his Majeſty would pleaſe to let the Lord *Rea* be confronted with him, his Innocence would appear: But, if not, he was ready to hazard his Life to the Glory of God, and the clearing the Truth of the Buſineſs, with a Proteſtation, that he carried no Malice againſt the Lord *Rea*: That, if the Buſineſs could not be decided this Way; or, if his Majeſty was pleaſed to admit of Torture before a Trial by Duel, he (the Priſoner) was ready to bear out the Torture with him, and to be tried thereby with the ſaid Lord *Rea*.

Then his Majeſty's Letter to the Privy-Counſel of *Scotland* was read, wherein he declares the Marquis of *Hamilton*, and the other three Lords, innocent of what they were accuſed; and that the prime Informer had cleared them upon Oath, teſtifying them (as his Majeſty knew them to be) as good and faithful Subjects as were in his Kingdoms: And whereas he had formerly recommended to them, the promoting the Levies, and Tranſportation of the Men that were to ſerve under the Marquis; he again, required them to contribute their beſt Help and and Authority to effect the ſame.

Dated at Greenwich, *the 29th of* June, 1631.

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After which, the Lord Advocate ſummed up the Evidence for the four Lords, and made his his Obſervations upon it, as the Priſoner's Counſel did on his Part. But I do not meet with any Arguments, but what had been made uſe of before, and, therefore, it is not neceſſary to take any further Notice of them.

The Court being adjourned to the 1ſt of *February*, I preſume the Jury then found the Priſoner Guilty; but the Editor is perfectly ſilent in that Matter, and only relates, that he was then ſentenced to perpetual Impriſonment; and, it appears, he remained a Priſoner in *Blackneſs* Caſtle twenty Years.

Remarks on the Trial of the Lord Uchiltrie.

As I cannot pretend to any Knowledge in the Laws of *Scotland*, my Remarks on this Trial will be but ſhort. It muſt be confeſſed, that there are ſome Things that appear very extraordinary in it; and particularly the ſending down a Nobleman to *Scotland*, to be tried in that Kingdom for a Fact committed in *England*. Nor was it leſs ſtrange, that he ſhould be tried for his Life, for revealing a Treaſon, when he produced the Perſon himſelf who gave him the Information, and actually atteſted the Subſtance of it: The Influence of the *Hamiltons*, and his Majeſty's Confidence in them, was certainly very great at that Time, and their ſubſequent Conduct gave the World but too much Reaſon to ſuſpect that the Lord *Uchiltrie* had very hard Meaſure. I ſhall ſay no more, but leave the Reader to judge of the Caſe, from theſe Proceedings, and the Hiſtory of this Reign. 1631. 6 Car. I.

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Lord Audley's *Trial, for a Rape, and Sodomy.*

The Trial of MERVIN Lord AUDLEY, Earl of *Caſtlehan*, for a *Rape* and *Sodomy*, before the Lord Keeper *Coventry*, Lord High Steward, and the reſt of the Peers commiſſioned to try him, 25 *April*, 1631. 7 *Car.* I.

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Three Indictments found againſt him.

THREE Indictments had been found againſt this Lord by the Grand Jury at the preceding *Lent* Aſſizes for *Wiltſhire*. The firſt for a Rape on his own Wife, whom he held by Force, while one of his Servants lay with her: And the other two Indictments were for Buggery with a Man.

Reſolutions of the Judges, in Caſes of Rape and Sodomy.

Before the Trial, the Judges came to the following Reſolutions, on certain Queries, ſent them by the Lord High Steward:

1. That a Peer could not be tried by a common Jury, but muſt be tried by his Peers.

2. That a Peer could not challenge any of his Peers.

3. That a Peer could not have Counſel, but on Points of Law.

4. That his own Examinations taken without Oath, might be read againſt him; but the Examinations of others muſt be upon Oath.

5. That the Wife, in caſe of a Rape, being the Party wronged, may be Evidence againſt her Huſband.

6. That where one ſtood mute in a Rape he might have his Clergy; but not in Buggery.

7. That to denominate the Offence a Rape, there muſt be Penetration.

8. That the Lords Triers might eat and drink before they agreed; but could not ſeparate, or adjourn, till they gave their Verdict.

9. That a Peer could not be convicted by leſs than twelve Peers.

10. That if a Priſoner ſtood mute in an Appeal, he muſt be hanged; for that it was an Attainder.

11. That a Peer ſtanding mute in an Indictment, might be preſſed to Death.

12. That the Lord High Steward, after a Verdict, might take Time to adviſe upon a Point of Law; and his Office continued till Judgment given.

It was reſolved alſo, That if a Woman was a Whore, ſhe might however be raviſhed: But it was a good Plea for the Man, that ſhe was his Concubine. And that, if a Man took a Maid by Force, and raviſhed her, and ſhe afterwards gave her Conſent, and married him, this would not purge the Offence, but it was ſtill a Rape.

The ſaid ſeveral Indictments being certified, and brought into Court, and the Priſoner commanded to the Bar, the Evidence was produced: And firſt, the Examination of the Lady *Audley*, as to the Rape, who depoſed, that her Lord (the Priſoner) called his Servant *Brodway*, into his Bed while ſhe was aſleep: That ſhe waked, and made all the Reſiſtance ſhe could; but his Lordſhip held both her Hands, and one of her Legs, till *Brodway* lay with her: That, as ſoon as ſhe got from him, ſhe would have killed herſelf with a Knife, and that *Brodway* forced it from her. *Brodway*'s Examination alſo was read, who confeſſed, that his Lordſhip called him into his Bed, and bid him lie with his Lady; and, that he did lie with her, whilſt his Lord held one of her Legs and both her Hands.

The Lady's Evidence of the Rape.

The Raviſher's Examination read.

As to the Sodomy, *Brodway* depoſed, That the Earl uſed his Body as the Body of a Woman; but never pierced it, only emitted between his Thighs.

Evidence of his Sodomy with Brodway.

Fitz-Patrick, another Servant, depoſed, That his Lord had twice committed Sodomy with him (the Deponent): That *Henry Skipwith*, another Servant, had lain with the Lady *Audley*, by his Lord's Command, and in his Preſence: But the Lady, in her Examination, ſays, ſhe cried out, and that *Skipwith* did not lie with her.

With FitzPatrick.

Evidence of the Pains Lord Audley *took, to debauch his Wife and Family.*

The Lady *Audley* alſo depoſed, That the firſt or ſecond Night after ſhe was married, her Lord called *Ampthill* (who had been his Page, and to whom he had married his Daughter) to his Bedſide

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ſide, and ſaid, Now her Body was his, and, if ſhe loved him, ſhe muſt love *Ampthill:* That he made *Skipwith* come naked into his Chamber; and delighted to call in his Men-ſervants, and ſhew her their Nudities, recommending the largeſt to her.

His Son's Wife abuſed

Skipwith alſo depoſed, That his Lord made him lie with the young Lady *Audley*, his Son's Wife, who was then but twelve Years of Age: That he could not enter her at firſt, and the Lord *Audley* fetched Oil to open her Body, but ſhe cried out, and he could not enter her yet; then his Lord ordered Oil to be brought a ſecond Time, and the Deponent entered her.

The young Lady alſo depoſed, That the Lord *Audley* ſaw *Skipwith* lie with her ſeveral Times; and, that nine Servants of the Family alſo had ſeen it: That ſhe had no other Maintenance than what ſhe had from *Skipwith*; and that, among other Arguments the Priſoner uſed to make her lie with *Skipwith*, he told her her Huſband did not love her; and threatened to turn her out of Doors, if ſhe would not: Adding, that he would tell her Huſband ſhe did, if ſhe did not; and confirmed the Circumſtance, of their uſing Oil to penetrate her Body.

That the Priſoner made his Servants lie with a Whore before him.

Fitz-Patrick alſo depoſed, That his Lordſhip kept a Whore in the Houſe; and, that he made four or five of his Servants lie with her in his Preſence; and his Lordſhip lay with her in their Sight.

Other Points of Law reſolved by the Judges.

The Judges Opinion being demanded on ſome Parts of the Evidence, reſolved, That it was Buggery within the Statute, where the Body is uſed ſo far as to emit thereon, without Penetration: And ſo, where there was an Emiſſion upon a Woman's Belly, it ought to be adjudged a Rape: And that in a Rape a Woman is not limited to any Time to make her Complaint, if the Proceſs be by Indictment; but in an Appeal ſhe is.

Lord Audley's Defence.

The Lord *Audley*, in his Defence, ſaid, That his Wife's Teſtimony ought not to be regarded, ſince ſhe had confeſſed her lying with *Brodway*. To which it was anſwered, he could not urge that Fact in his Defence, ſince he had forced her to ſuffer it. Then he ſaid, that his Wife and his Servants were not competent Witneſſes; and that they were put upon practiſing againſt him by his Son, who ſought his Life: Adding, That his Wife had been falſe to his Bed, and had a Child in his Abſence; and then made Proteſtations of his Innocence. But Woe to that Man (he ſaid) whoſe Wife and Servants ſhould be admitted Witneſſes againſt him, and whoſe Son conſpired his Death! His Son was now come of Age, and wanted his Lands, and his Wife a young Huſband, now he was grown old, and had therefore plotted his Deſtruction.

He is convicted both of Rape and Buggery.

The Lords Triers having been withdrawn ſome Time, returned, and were unanimous in their Opinion, that the Priſoner was GUILTY of the Rape: But as to the Sodomy, eleven of his Peers were of Opinion, that he was NOT GUILTY, and ſixteen declared him GUILTY; which Difference of Opinion ſeems to have ariſen from the Evidence that *Brodway* gave, that the Lord emitted between his Thighs, but never penetrated him.

He is executed.

Judgment was afterwards paſſed upon the Priſoner, that he ſhould be hanged: However, he obtained the Favour of being headed; when he profeſſed himſelf perfectly innocent of the Crimes he was charged with. 1631. 7 Car. I.

Fitz-Patrick *tried, and convicted of Sodomy.*

The Lord *Audley*'s two Servants, *Lawrence Fitz-Patrick* and *Giles Brodway*, were brought to their Trials, the firſt for Sodomy, and the other for a Rape, *June* 27. 1631; when *Fitz-Patrick*'s Confeſſion was produced againſt him, as Evidence of his having committed Sodomy with his Lord; and the Jury deſired to be informed, if the Perſon who ſuffered the Buggery to be committed upon him, could be ſaid to commit Buggery, as the Words of the Statute were. To which the Lord Chief Juſtice anſwered, That every Acceſſary to a Felony, was a Felon in Law: And the Priſoner voluntarily proſtituting his Body, when he was not only of Underſtanding and Years, to know the Heinouſneſs of the Offence, but of Strength to reſiſt his Lord, he was guilty of Buggery.

Another Point of Law reſolved.

Fitz-Patrick's *Defence.*

The Priſoner in his Defence inſiſted, That the Evidence he had given for the King, at his Lord's Trial, ought not to be produced againſt him at a Trial for the ſame Fact: But the Court anſwered, it might; and that it was ſufficient to convict him: Whereupon the Jury found him GUILTY.

Brodway *tried, and convicted, of a Rape.*

At *Brodway*'s Trial the Lady *Audley* appeared in Court, and gave the ſame Evidence of the Priſoner's committing a Rape upon her, while her Huſband held her, as ſhe had done at her Lord's Trial: And the Court demanding, whether the Priſoner entered her Body, when he forced her, ſhe anſwered, He did; and ſhe intended to have expreſſed as much at the Lord *Audley*'s Trial: And *Brodway* having confeſſed as much before, the Jury found him *Guilty*; and they were both hanged, confeſſing the Facts at their Executions.

They are both executed.

Remarks on the Trial of Lord Audley, and his Servants.

In theſe Trials it appears, That Emiſſion, either in Rape, or Buggery, compleats the Offence, though there were no Penetration; for Emiſſion is ſaid to be, *prima facie*, an Evidence of Penetration. But where it was poſitively ſworn, that there was no Penetration, as in the Trial of this Buggery, the Evidence ſurely ought to have been taken entire, and no Preſumption allowed againſt poſitive Proof. And, when both *Brodway* and *Fitz-Patrick* had been Evidence for the King againſt the Lord *Audley*, it ſeems a little hard, to produce their own Depoſitions againſt themſelves, and hang them upon that Evidence. Wherever an Offender is made an Evidence againſt his Accomplice at this Day, his Life is ſpared: Nor is it any Objection to his Teſtimony, that he ſwears to ſave his own Life; though, were he convicted, or but indicted for the Offence, it is admitted, he could not be a Witneſs againſt his Fellow-Priſoners: But, for my Part, I cannot ſee why his Teſtimony is not as good, after he is indicted, as before; for, in both Caſes, he gives his Evidence to ſave himſelf.

It may be gathered alſo, from theſe Trials, that this old laſcivious Lord had continued theſe infamous Courſes in his Houſe for many Years; for the Lady depoſes, that he propoſed his Servants lying with her, and inſiſted on her ſubmitting to their Luſt, the very firſt or ſecond Night of their Marriage. And upon this, it appears to have been made a Queſtion, Whether the

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the Lady ſhould be admitted an Evidence of the Rape on her Body, after ſo many Years elapſed, when ſhe had never complained of it before? And, though it was reſolved ſhe might; yet, it is allowed to be a ſtrong Preſumption againſt a Woman, if ſhe make no Complaint in a reaſonable Time. Indeed, it ſeems pretty plain, that this Lord had been ſo ſucceſsful in debauching his Family, and contributing to his own Diſhonour, that he had made them almoſt as bad as himſelf: The Lady, after ſhe had been expoſed to his Servants, and forced to lie commonly in the ſame Bed with them and her Lord, ſeems to have loſt all Modeſty at length, and to have ſubmitted to their Embraces: For he inſiſts upon it in his Defence, that ſhe was a leud Woman, and was got with Child in his Abſence; which, probably, was the Occaſion of that Queſtion, Whether a Woman, that was voluntarily a Whore to ſome, ſhould be allowed to ſwear a Rape againſt others? And we find the Lady inſiſting, that ſhe never had ſubmitted to any Man till ſhe was raviſhed by *Brodway*; which ſeems to admit, ſhe did afterwards: And we find that poor young Lady, his Son's Wife, acknowledging, that after *Skipwith* had once lay with her, ſhe ſubmitted to his Embraces frequently, by her Father-in-Law's Command, even in the Preſence of this Lord and his Servants; which muſt certainly give his Son, the young Lord *Audley*, the laſt Uneaſineſs, and put him upon proſecuting his Father. Another Reaſon, that the Lady and her Son commenced this Proſecution, after they had forborne ſo long, was, that they ſaw his Lordſhip ſettling great Part of his Eſtate upon that infamous Pack of Servants, who had been the Partners of his Crimes, and that they ſhould be reduced to a ſtarving Condition, by his Bounty to them, if there was not a Stop put to it. And though it may be objected, that the Son's impeaching his Father was the Way to loſe his Eſtate, which would be forfeited to the Crown by his Conviction; there was no doubt to be made, but ſo virtuous a Prince as King *Charles* I. would reſtore it to the Son, who had been ſo notoriouſly wronged by his Father, both in the debauching his Wife, and ſquandering away the Eſtate of the Family on ſuch vile Wretches.

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1632. 8 Car. I. Sherfield's *Trial.*

The Trial of HENRY SHERFIELD, Eſq; Recorder of *Salisbury*, for *Breaking a painted Glaſs-Window in the Church of St.* Edmonds *in the ſaid City*, before the Court of Star-Chamber, 6 *Feb.* 1632. 8 *Car.* I.

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The Information.

THE Information, exhibited by Sir *Robert Heath* the Attorney-General, ſet forth, That, whereas his Majeſty was ſupreme Head of the Church: That all Churches were ſacred, and both founded and maintained by Regal Power; and that no Perſon ought to make any Alterations in the Structure or Ornament of Churches, without Licence of the Biſhop of of the Dioceſe, or the Ordinary for the Time being, who derived their Authority from the King: Nevertheleſs, the ſaid *Henry Sherfield*, the Defendant, being an Inhabitant of the ſaid Pariſh of St. *Edmonds*, did, in *January*, in the 5th Year of this King, conſpire with ſome factious Perſons, to deface a Window in the ſaid Church, which was an antient fair Window, containing the Hiſtory of the Creation: And that, notwithſtanding the Biſhop of *Sarum* commanded the contrary, and made a publick Act thereof, the Defendant, in *October* following, getting the Keys of the Church, locked himſelf in, and there beat down the ſaid Window, and utterly defaced it; and afterwards boaſted that he was a Defacer of Idolatry; for which Offence the Attorney-General demanded Juſtice.

The Defendant's Anſwer.

To this Charge the Defendant put in his Anſwer, and ſaid, that the Church of St. *Edmonds* antiently belonged to a Monaſtery, and with it came to the Crown in the Reign of King *Henry* VIII. and there remained till King *James* granted it to *Gouge* and *Lloyd*, who afterwards granted it to *Bartholmew Tookey*, and others, to the Uſe of the Pariſh of St. *Edmonds*; ſo that the Right of the Church was in the Pariſhioners (of whom he was one) and they were ſeized thereof, as of their Lay-Fee; and that the ſaid Church was exempt from the Juriſdiction of the Biſhop of *Sarum*: That they, as lawful Owners, had Power, without the Biſhop, to take down or ſet up any Window, and to do any other thing in repairing, or adorning the ſaid Church, and for *Reformation* of ſuch Things as were amiſs in the ſame.

That the Pariſhioners and Veſtry-Men of the ſaid Pariſh, had, Time out of Mind, made Orders for the making of new Windows, for Alterations in the Seats, and many other Things for Ornament, and otherwiſe, without the Licence of the ſaid Biſhop, or any other Ordinary.

That as to the Window, ſaid to contain the Hiſtory of the Creation; it was not a true Relation, or agreeable to the Deſcription contained in the Books of *Moſes*: That there was the Figure of a little old Man in a blue and red Coat, for God the Father. And in placing the ſeveral Days Works of God in the Creation, they had ſet the fourth before the third; and that which was done on the 5th Day, to be done on the 6th Day: And in one Place God the Father was repreſented as creating the Sun and Moon, with a Pair of Compaſſes in his Hand, as if he had done them according to geometrical Rules.

That it was not one of the faireſt Windows in the Church, but an ordinary Window, and the Damage done to it very inconſiderable: And he conceived, the defacing this prophane Repreſentation of God the Father, was not ſo

heinous

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heinous a Crime as to deſerve the Cenſure of that Court: That, in his Judgment, it was utterly unlawful to make ſuch Repreſentations of God the Father; and he looked upon himſelf to be juſtified in defacing it, by the Orders iſſued in Queen *Elizabeth*'s Reign, for taking down and aboliſhing of ſuperſtitious Images and Pictures, eſpecially in Churches: That he had alſo the Authority of a Veſtry, for doing it; which being aſſembled in *January*, 1629. ordered, that the Defendant might, if he pleaſed, take down the ſaid Glaſs Window, ſo as, at his own Coſt, he repaired the ſame with plain Glaſs: And that the Glazier might not miſtake the Window, he confeſſed he pulled down with his Staff, two or three ſmall Quarreys of Glaſs, and ſo left it to the Church-wardens, to repair it.

That the Defendant's Seat in this Church happened to be ſo placed, that he had the ſaid Window always in his Eye, which had troubled his Conſcience for twenty Years; and this had induced him to procure the ſaid Order of Veſtry: That he had done it without any Diſturbance; not to arrogate to himſelf any Authority, but as bound to do what he did, to preſerve a good Conſcience: That he, and the other Defendants, were Juſtices of Peace, and not altogether private Perſons, and were alſo entruſted by the Pariſhioners to ſee the thing done.

And he denied, that the Biſhop of *Sarum* ſent to him, to forbid his taking the Window down, or that he had any Notice of ſuch Inhibition: But, that on the contrary, he often attended the Biſhop, and his Lordſhip never mentioned the thing to him; and therefore the Charge, that it was done againſt the Biſhop's Directions, was not true: But this Defendant did aver, that what he had done, was lawfully done: And to all the other Offences he pleaded NOT GUILTY.

The Solicitor's Obſervations on it.

Upon reading the Anſwer in Court, the Solicitor-General obſerved, that the Defendant had confeſſed the Charge, and juſtified it; ſo that there was no Occaſion for any further Examinations, or Interrogatories; the ſole Queſtion was, Whether a Pariſhioner might of himſelf pull down, and ſet up, what he conceived to be idolatrous, and ſo take upon him to be a Reformer?

The Evidence againſt the Defendant.

Then the Depoſitions of the Witneſſes were read, who teſtified, that a little after *Michaelmas*, about Four in the Afternoon, the Defendant went to the Sexton's, and having gotten the Key of the Church-door, locked himſelf into the Church, and ſtanding upon one of the Seats, broke the Window with a little black Staff, with a Spike at the End of it: That while he was doing this, he fell off the Seat, and hurt himſelf to that Degree, that he lay groaning on the Floor a conſiderable Time, and was carried home on Horſeback; and that he was forced to keep his Houſe for a Month: That the Window was broken in eleven Places; and that after this, the Windows of the Church were broken by others: Inſomuch that, they were forced to ſet a Watch for a Fortnight, to prevent further Miſchief.

Another Witneſs depoſed, that he heard the Defendant ſay, he would have taken down the Window, but the Biſhop's Chancellor oppoſed him, though he knew not why he ſhould; for it was a Lay-Fee.

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Another depoſed, that Mr. *Sherfield* moved the Veſtry about this Matter; and they all conſented to it, except two, who ſaid, they deſired to have the Biſhop's Leave for doing it; and *Sherfield* anſwered, *Do not trouble yourſelves; I will give my Lord Biſhop Satisfaction:* That the Deponent was afterwards Church-warden of the Pariſh; and the Biſhop, having heard of the Order of Veſtry, ſent for him, and commanded, that it ſhould not be executed; and that the Biſhop made a publick Act thereof. The Counſel for the Biſhop alſo acknowledged, that the Church was a Parochial Church, and ſubject to the Biſhop's Juriſdiction; and that their Client was miſtaken in that Point, when he put in his Anſwer; and did not now inſiſt on it.

Obſervations of the King's Counſel on the the Evidence.

Then the King's Counſel obſerved, that the Queſtion was not, what was fit to be in a Church; but that he had taken upon him to determine, what was fit: That the Church was governed by Biſhops, and this was a Parochial Church, the Defendant knew very well, being himſelf a Pariſhioner; and though his Counſel declined it, his Defence was, that it was a Lay-Fee, and that he had Authority to pull down the Window: That he was well acquainted with the Biſhop, and yet never deſired his Leave to take it down; but applied to the Veſtry, for Power to do it: That he pretended to juſtify the Fact alſo, as he was a Juſtice of Peace; but the Matter appertained to the Eccleſiaſtical Juriſdiction: And it was ſtrange, if the Defendant being a Veſtry-man, had not Notice of the Biſhop's Inhibition: That, if it was done by the Agreement of the Veſtry, why was it done ſo privately, and none of the Veſtry with him? And laſtly, why was not the Order of Veſtry purſued, by taking down the Glaſs, and putting up other Glaſs in the Room of it? What Authority had the Defendant to break the Window, inſtead of repairing it, as the Veſtry ordered?

The Defendant's Counſel anſwer the Charge.

To this the Defendant's Counſel anſwered, that they acknowledged he did take down Part of the Glaſs; but ſaid, it did not appear he had any Notice of the Biſhop's Inhibition: That their Client was no Sectary, or factious Perſon, as was charged, but always comformable to the Rights and Ceremonies of the Church, and had been very active in his Station, to puniſh Separatiſts: That he had not done this of his own Head, or out of a private Spirit, but that the Paſtor of the Church, and the Veſtry, as well as himſelf, conceived the Picture to be idolatrous, and that it ought to be removed, and accordingly made an Order for removing it; and that it was not done in Oppoſition to the Church-Government, or Governors: And, beſides all the Canons and Conſtitutions for taking away ſuch ſuperſtitious and idolatrous Relicks, they ſhould prove, in Fact, that there had been much Idolatry committed with this Picture. They did not go about to entitle the Veſtry to any Juriſdiction; they knew they were ſubordinate to the Biſhop, and he might puniſh them, if they abuſed their Power: But though they have not legally

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a Juriſdiction, they do *de facto* meet, and do ſuch Things: And the Queſtion was, Whether it could be a Crime, when the Curate and Church-wardens aſſented to it, according to the Statute.

The Defendant's Proofs.

Then the Injunctions in the Reign of Queen *Elizabeth* were read, empowering Commiſſioners to take away things of this Nature; and the like in the firſt of King *James*.

The Depoſitions of the Defendant's Witneſſes alſo were read, who teſtified, that he was conformable to the Church, and received the Lord's Supper kneeling.

That the Veſtry-men of the ſaid Pariſh had often ordered Seats in the Church to be taken down, and new ones made; and taken down Windows, Walls, and Pieces of the ſame Church; altered the Reading-Deſk, and ſet up the Pulpit in a new Place; without any ſpecial Order from the Biſhop, or Ordinary.

That on the 16th of *January*, 1629. there was an Order of Veſtry, for taking down the ſaid Window, becauſe it darkened the Church; and for that it was ſuperſtitious; and that five of the Veſtry-men were Juſtices of Peace in the ſaid City of *New Sarum*.

The Vicar of the Pariſh alſo depoſed, that the Defendant was conformable; and that the Damage done to the Window, was a Trifle: That there was in it a Picture of God the Father, creating the Heavens, Earth, Sun, Moon, and all Animals: But this Hiſtory of the Creation contained many Miſtakes, Falſities, and Abſurdities: That he had ſeen ſome People kneeling down, and adoring the old Man in it, which repreſented God the Father.

The King's Counſel reply.

Then Mr. Attorney obſerved, that there was a great deal of Difference between *Repairing* and *Reforming*: That Reformation ought always to be done by the Supreme Power, not by private Men. When private Perſons, or Veſtries, took upon them Reformation, he would be bold to ſay, This was the ready Way to bring all into Confuſion. If this was ſuffered, what would they do next? Some held our Churches unclean and idolatrous, becauſe Common Prayers were ſaid in them, and Maſſes had heretofore been ſaid in them; and they would proceed ſhortly to take away the Churches themſelves. As to the kneeling down to the Windows, ſome would do the ſame to the Picture of a Saint, or a Prophet; and by the ſame Rule Mr. *Sherfield* might pull down the painted Windows of *Lincoln's-Inn* Chappel (where he was a Bencher): But, if he thought the Window an Occaſion of Idolatry, why did not he complain of it to the Ordinary, in all the twenty Years, he ſaid, it had been an Offence to him? If he thought it an Occaſion of Idolatry, others might think the contrary; and ſo a Tumult might have been raiſed about it, and an Inſurrection might have followed, which had many Times happened, on more trifling Grounds.

As to the late Queen's Injunctions, *&c.* that had been read, they were to authorize the Ordinary, to enquire of things fit to be reformed in Churches by Church-wardens, and other Officers; and they were to preſent them to the Ordinary; and ſo they were to be reformed by the Power of the Ordinary, and not by the Church-wardens, or Veſtries: And though it was ordered, that all Relicks of Idolatry and Superſtition ſhould be taken away, yet every Memorial, or Story, of a Saint, or Prophet, was not a Relick of Idolatry, or Superſtition, and to be pulled down. They might as well take upon them, to pull down Cathedral Churches, becauſe they were built in Form of a Croſs; and other Churches, becauſe they ſtood Eaſt and Weſt, which was held ſuperſtitious by ſome. Reformation had always been a Work of publick Authority, and private Men had been puniſhed in this Court heretofore, for attempting it. In the late Queen's Time, many went about, breaking down Croſſes, Images, and Pictures, of all Sorts, and were ſentenced for it; and others, in King *James*'s Reign, were fined an hundred Marks a-piece, for defacing Croſſes in the Highways, in the Night Time; and they are ſaid to be refractory *Browniſts* and Puritans in the Sentence; concluding, that the Defendant had no Authority for what he did, and therefore left him to their Lordſhips Cenſure.

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The Sentence of the Court.

Then the Lord *Cottington*, Chancellor of the *Exchequer*, proceeded to ſentence the Defendant. He ſaid, theſe were the Actions of *Browniſts* and Puritans, as appeared upon Record: He conceived, his Anſwer was againſt him; and though he now quitted that Part of his Juſtification, it ſhewed what Spirit he was of. It had been ſaid, he was a wiſe Man, and an old Man, and learned in the Laws; but it had been a better Argument of Extenuation, if they had ſaid, he was a weak Man, or a mad Man: That great Miſchiefs might follow, if theſe things were ſuffered: That it was a great Offence and Preſumption in him, that knew the Law ſo well: If he had applied to the Ordinary, or to his Majeſty, to have the thing done, he had incurred no Blame, and might have received Thanks for it; but it was not in the Power of him, or the Veſtry, to do it. This Attempt might have occaſioned a Tumult; it was done in Contempt of the Church, and the King's Supremacy; and therefore his Sentence was, *That he ſhould loſe his Place of Recorder; be bound to his good Behaviour; make a publick Acknowledgment of his Fault in the Church, and in the Cathedral; and pay a Fine of* 1000 l. *to the King.*

Sir *Robert Heath*, Lord Chief Juſtice of the *Common-Pleas*, (but Attorney-General when the Information was exhibited) ſaid, he did agree it was an Offence: He durſt not give Encouragement to any private Man, to do any publick thing in the Church, or Commonwealth, of his own Authority; but however, he was for mitigating the Sentence of Lord *Cottington*; for he ſaid, it did not appear, that the Defendant did this againſt the Biſhop's Authority, but without it. There was Cauſe, he was ſatisfied, for the removing the Window, there being a Picture of God the Father in it: But ſtill they ſhould have told the Biſhop of it; which ſince neither Mr. *Sherfield*, nor the Veſtry did, he was not to be excuſed in that: He ſhould therefore agree, to ſentence him for his Fault; but he was not for removing him from his Places of Recorder, or Juſtice of Peace; or bind him to his good Behaviour: But he would have him acknowledge his Fault before the

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the Biſhop of *Sarum*; and for the Fine, he thought 1000*l.* too much for an Error, as there appeared no Contempt; and therefore he ſet a Fine but of 500 Marks upon him.

The Lord Chief Juſtice *Richardſon* ſaid, that the Defendant was guilty of an Offence, in arrogating to himſelf a Power not belonging to him; and his Zeal, and good Intention, would not excuſe him: But as it was an involuntary Error, and not done in Contempt, and that he knew the Defendant to be a good Magiſtrate; to have given a great Check to Vice in the City of *Saliſbury*; that he was conformable to the Church, and not diſaffected to the Government; *he ſhould not lay more than a Fine of* 500 l. *upon him*; *nor was he for taking away his Place of Recorder, or Juſtice of Peace*; *but would have him make a Submiſſion and Confeſſion of his Fault, before the Biſhop of* Saliſbury.

Mr. Secretary *Cook* was not for inflicting any other Puniſhment upon him, than his making a Confeſſion of his Fault, and Submiſſion to the Biſhop; and the reſt of the Court having delivered their Opinions, it appeared, that nine of the Lords were for ſetting a Fine of 1000*l.* upon Mr. *Sherfield* the Defendant; that he ſhould be put out of his Place of Recorder; be bound to his good Behaviour, and make an open Acknowledgment of his Fault in the Church of St. *Edmond*, where the Offence was done; and likewiſe in the Cathedral Church of *Sarum*, before the Biſhop there, and the Deans and Prebendaries of that Church: And nine others (the Lord Keeper being one) were of Opinion, that he ought not to loſe his Place of Recorder; but that he ſhould make an Acknowledgment in private to the Biſhop of *Sarum*, of the ſaid Offence, and in ſuch Manner, and before ſuch Perſons, as the ſaid Biſhop ſhould think fit: And as to the Fine, theſe were again divided; four (whereof the Lord Keeper was one) ſet no Fine; five gave their Voices for a Fine; four of them ſet 500 Marks, and one of them, *viz.* the Lord Chief Juſtice *Richardſon*, 500*l.* which Fine of 500*l.* was taken for the King; it having been a Rule of the Court of *Star-Chamber*, when there was a Difference of Fines, and an odd Number, the King was to have the middle Fine.

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Fined 500 l.

The Trial of WILLIAM PRYNNE Eſq; for a *Libel*, entitled, *Hiſtriomaſtix*; *or, a Scourge for Stage-Players*, &c. as alſo of MICHAEL SPARKES, for *Printing*, and WILLIAM BUCKNER, for *Licenſing the ſaid Libel*; and four others, *concerned in Printing Part of it*; before the Court of *Star-Chamber*, in *Hillary* Term, 1633-4. 9 *Car.* I.

1633. 9 Car. I.

1633. 9 Car. I.

The Trial of Prynne, *for Libelling the Government.*

The Charge.

THE Information was brought in the Name of the Attorney-General *Noy*, and ſet forth, That the Defendant, *Prynne*, compiled, and put the ſaid Libel to the Preſs, condemning all Plays, Dancings, Maſques, Feſtivals, *&c.* And though he knew their Majeſties, and the Miniſters of State, were ſometimes preſent at ſuch Entertainments, yet the Defendant railed, and inveighed againſt them, and all that were preſent at them: That he condemned Hunting, and all other rural Sports; the keeping *Chriſtmas*, and other publick Feſtivals, and holy Days; and even the making Bonfires, the erecting May-Poles, and the dreſſing up Houſes with Ivy; endeavouring to move and incite the People to Rebellion, and to lay violent Hands on their Prince, for ſufferring ſuch things: That this Libel alſo contained many infamous Expreſſions againſt his Majeſty, and his Houſhold, and caſt ſeveral Aſperſions on the Queen, and uncharitable Cenſures on all Chriſtian People, recommending factious and diſcontented Perſons, ſuch as Dr. *Leighton*, and *Mariana* the Jeſuit, in order to withdraw the King's Subjects from their Allegiance: That he dealt with *Sparkes*, a common Publiſher of unlawful Books, to print this Libel; and with *Buckner*, another Defendant, to licenſe it; and with the other four Defendants, to print Part of the ſame, to the great Scandal of the Government, *&c.*

Prynne, in his Anſwer, confeſſed his compiling of the ſaid Book, which, he ſaid, was nothing elſe but a Collection of Arguments, againſt Stage-Plays; and he did not intend to reflect on the King and State; and that it was duly licenſed, and entered at *Stationers-Hall*, as the Law required: That he was ſo far from encouraging Schiſm, or Sedition, that he had with much Joy and Thankfulneſs acknowledged the Happineſs and Peace, he, and the reſt of his Majeſty's Subjects, enjoyed under his Government: And if any thing in his Book ſhould, contrary to his Deſign, be conſtrued, to tend to Schiſm, or Sedition, he craved Pardon and Grace; and deſired the Court to take into their Conſideration, that he had already been a Year Priſoner in the *Tower*.

Prynne's Anſwer.

The Attorney-General obſerved, in opening the Charge, That the Defendant's Book was the Evidence againſt him, where he did not only rail at Plays and Dancing, and at his Majeſty, the Court, and all that were preſent at them, but againſt Hunting, rural Sports, Feſtivals, holy Days, Biſhops, Church-Muſick, and Church-Ceremonies, promiſcuouſly; and even againſt the long Hair of Men and Women, and Perukes; and againſt Cards, Tables, and

The Charge, opened by the Attorney-General.

1633. 9 Car. I. and all manner of Diverſions; inſinuating we were returning into Paganiſm again; and adviſing People, to leave the Kingdom, and go and ſerve God in other Countries: That, tho' it might be lawful for thoſe that had a Miſſion, to write againſt the Abuſe of Plays in modeſt Terms, that would not excuſe Mr. *Prynne*, who could pretend to no ſuch Miſſion, and had raked together all the vileſt Terms, and *Billingſgate* Language, to revile the Government, and all Mankind.

Paſſages in his Book produced as Evidence. Then ſeveral obnoxious Paſſages were read out of the Book, as Evidence againſt him; and particularly that, where he reſembled his Majeſties Government to that of *Nero*'s, (viz) *The Multitude of our* London *Play-haunters are ſo augmented, that all the antient Devils Chapels, though five in Number, are not ſufficient to contain their Troops; whence we ſee a ſixth now added to them: Whereas, in vicious* Nero's *Reign, there were but three ſtanding Theatres in Pagan* Rome, *though far more ſpacious than Chriſtian* London: In the ſame Libel, he calls Church-Muſick, *the Bleating of brute Beaſts*; and ſays, *the Choriſters bellow the Tenor, as if they were Oxen; bark a Counter-point, like a Kennel of Dogs; roar a Treble, as if they were Bulls; and grunt out a Baſe, like a Parcel of Hogs.*

The Defence made by Prynne's *Counſel.* The Defendant's Counſel ſaid in his Defence, That many of the Paſſages in his Book were relatively ſpoken, and moſt of them the Opinions of other Authors; and, that he had no Thoughts of comparing the preſent Times with thoſe of *Nero*'s; but they could not wholly excuſe him: They ſuppoſed he had ſo fixed his Eyes on the Abuſes of the Stage, that he had neglected to guide his Pen; and adviſed him to lay hold on the Rock of the King's Favour, and the Mercy of the Court: They begged, their Lordſhips would believe his Intentions were fair and honeſt, though his Expreſſions harſh; and hoped, that the Abuſe of Plays would a little plead his Excuſe: That thoſe who had licenſed the Book, were rather guilty than he; and none but unlicenſed Books had yet been brought before that Court: That the Charge againſt him was made out by Inferences and Conſequences that were forced and ſtrained; and that the Paſſages quoted did not of Neceſſity carry that Meaning that had been put upon them; deſiring their Lordſhips would conſtrue his Intentions as he had explained them in his Anſwer upon Oath; and, as that had been admitted Evidence againſt him, as to his compiling the Book, ſo they would alſo admit it to be Evidence for him, to clear the Integrity of his Heart.

The Lords cenſure Prynne. Three Days having been ſpent in Hearing this Cauſe, on the fourth the Lords proceed to give Judgment in it: And firſt, the Lord *Cottington*, Chancellor of the Exchequer, gave his Opinion. He ſaid, the Defendant ſtood charged with publiſhing a libellous Book, (or, rather, a Volume of Libels, containing 1000 Pages) againſt his Majeſty and the State: That *Prynne* had here vented his Malice againſt the King, Prince, Peers, Prelates, Magiſtrates; againſt all Mankind, and againſt all Things; but moſt remarkably againſt the Church, and the Government thereof: But, that being no Part of the Information, he ſhould not cenſure him for his Reflections on the Church, but for his endeavouring to enflame the People againſt the King and Government. 1633. 9 Car. I.

That his Expreſſions were to be taken according to their plain genuine Senſe, and not according to the Interpretation he was now pleaſed to put upon them: That he did not ſpeak relatively, as his Counſel ſuggeſted, but poſitively, when he ſaid, *That our* Engliſh *Ladies, ſhorn and frizled Madams, had loſt their Modeſty: That Plays were the chief Delight of the Devil, and they that frequented them were damned; and, that Princes dancing in their own Perſons, was the Cauſe of their untimely Ends:* That though he pretended his Intention was only againſt publick and common Plays, the Tenor of his Book run againſt Plays in Princes Palaces: That his Book was levelled againſt the King and State: That he deſerved another kind of Trial; and the Defence he had made, did but aggravate his Offence; therefore his Sentence was, *That the Book be burnt by the Common Hangman: That he be put from the Bar, and excluded from the Society of* Lincoln's-Inn; *and, that he be degraded by the Univerſity of* Oxford: *That he ſtand in the Pillory at* Weſtminſter *and in* Cheapſide, *and loſe an Ear at each Place; and ſtand with a Paper on his Head, declaring his Offence to be, the publiſhing an infamous Libel againſt both their Majeſties, and the Government: That he be fined five thouſand Pounds, and ſuffer perpetual Impriſonment.* *The Sentence againſt* Prynne.

Sentence againſt the other Defendants. As to *Buckner*, who repreſented, that he was Chaplain to the late Archbiſhop of *Canterbury*, and licenſed but Part of the Book, and ſaid, he abhorred and deteſted the Cenſures againſt Eccleſiaſticks; the Court ſet a Fine of 50 *l.* upon him: As to *Sparkes*, he pleaded, that the Book was licenſed before he printed it; but 64 Pages only appearing to be licenſed, he was fined five hundred Pounds: As to the reſt of the Defendants, the Attorney-General not having proceeded further againſt them, they were not cenſured.

The reſt of the Lords were unanimous in the Cenſure and Sentence againſt *Prynne*; and the Lord Chief Juſtice *Richardſon* declared, That his Offence would have been adjudged High-Treaſon, if he had been indicted for it in the Courts of Common Law.

Remarks on Prynne's *Trial.* This Man's Sentence has been the Subject of many a Lamentation. But ſhould a Writer at this Day, take upon him to denounce, That all who frequented Plays were damned, when he knew the King and Royal Family were ſometimes at theſe Entertainments; ſhould he reflect perſonally on the Queen, as this Writer did, and prefer *Nero*'s Government to the preſent Adminiſtration; ſhould he take upon him to new-model both Church and State, and endeavour to incite the People to Rebellion, in order to accompliſh the wild Schemes he had formed; whether, as the Lord Chief Juſtice *Richardſon* obſerved at this Hearing, ſuch a one might not be indicted and convicted of High-Treaſon, I very much queſtion: And, if ſo, ſurely this Gentleman was mercifully dealt with, when he loſt only his Ears: And, indeed, it is reported of *Prynne* himſelf, when he ſaw what Confuſion ſuch ſeditious Libels had brought upon the Kingdom, *That the King had done*

1633. 9 Car. I. *done well, if he had taken his Head when he cropt his Ears*, which might have put a Stop to those Practices, and prevented the Subversion of the Government. 1633. 9 Car. I.

1634. 10 Car. I. *Lord* Balmerino's *Trial.*

The Trial of JOHN Lord BALMERINO, for a *Libel reflecting on his Majesty and the Government*, before *William* Earl of *Errol*, Great Constable of *Scotland*, Lord Justice-General, and his Assessors, at *Edinburgh*, 3 *Decemb.* 1634. 10 *Car.* I.

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The Charge.

THE Indictment recites, That, whereas by the Laws of *Scotland*, whoever defames his Majesty, depraves his Laws, or misconstrues his Actions, incurrs the Pain of Death: And that, whoever shall hear such scandalous Speeches, or Writings, and not reveal the same to some Magistrate, and apprehend the Author, if it be in his Power, shall incur the like Pain: And, whereas a scandalous and seditious Libel was found in the Custody of *John Dunmure*, and dispersed among the King's Subjects, reproaching his Majesty's Government and Behaviour in Parliament; depraving divers Acts of Parliament, and misconstruing his Majesty's Proceedings: Which said scandalous and seditious Libel, the said *John Dunmure* had of the said *John* Lord *Balmerino*, who was the Author, or Contriver, of it; or, at least, was guilty of hearing and concealing thereof; or, of not discovering *William Haig*, whom he affirmed to be the Author thereof: And was also guilty of divulging and dispersing the said Libel; and so far knew of the making the same, that he interlined it whith his own Hand; caused his Servant *Robert Dagliſh*, to make a Copy of it, and delivered it to the Earl of *Rothes*, and to the said *John Dunmure*, whereby it was dispersed, to the Dishonour of his Majesty, *&c.* He, the said Lord *Balmerino* had thereby incurred the Pain and Punishment of Death, which ought to be inflicted on him, to deterr others from attempting the like.

The Libel mentioned in the Indictment.

The Libel mentioned in the Indictment was entitled, *The humble Supplication of great a Number of the Nobility and others, Commissioners in the late Parliament:* In which the *Scotish* Malcontents express great Uneasiness at some Acts that had passed in the Parliament of *Scotland*, empowering his Majesty, with the Consent of the Clergy, to prescribe what Apparel the Clergy should wear in Time of Divine Service, and authorizing him, with a competent Number of the Clergy, to make Laws and Constitutions in Relation to Ecclesiastical Affairs; threatening his Majesty, if he did make use of the Authority given him by those Acts, and introduce any Thing new in Religious Matters, he would endanger losing the Hearts of many of his Subjects.

They tell him also, That no just Prince ever censured his Subjects for giving their Voices; and, that the Notes his Majesty took in the Parliament House, of the Names of those who dissented from those Acts, and his refusing to hear the Reasons of those that dissented, made them very apprehensive of Innovations in their Kirk.

They charge his Majesty also, with squandering away the Supplies granted in Parliament, and the Revenues of the Crown, upon extravagant Courtiers: That he allowed the printing of *Popish* and *Arminian* Books in *England*, and suppressed the Answers to them; and suffered *Arminianism* to be preached in *Scotland* with Impunity: They complain also, that Papists were permitted to sit in Parliament; of Abuses in the Coin; and of his slighting the Representations of their Grievances. *The greatest Part of which Libel is set forth in the Indictment.*

The Defence made by the Prisoner's Counsel.

The Counsel for the Prisoner represented in his Behalf, That it was not the Intent of the Legislature, to inflict Capital Punishments on the Authors of such Reproaches as were laid in the Indictment: That those Acts had never been put in Execution; or, if they had, they were long disused, and therefore ought to be looked upon as abrogated.

And further, that the Writing mentioned in the Indictment, was an humble Petition and Supplication to his Majesty, and not a Libel: That the Indictment was insufficient; because the Fact was not laid to be done with a seditious Intent: And he could not be charged with concealing the Libel; because the Indictment itself sets forth, that he delivered it to the Earl of *Rothes*, to deliver to his Majesty: That it could not be said, he was the Author of it, Mr. *William Haig* having under his Hand acknowledged himself the Author; and that the Prisoner's interlining it, could be no Argument of his contriving it.

That the hearing, and not revealing, ought not to be deemed Criminal, till the Writing was first declared infamous and seditious; and he ought not to be charged with the not apprehending the said Mr. *Haig*; because the apprehending intended by the Act, was only where the Party has been declared to be the Author.

The Reply, of the King's Counsel.

To this the Lord Advocate replied, that what had been offered by the Prisoner's Counsel, either related to the Sufficiency of the Indictment, which he left to the Court; or, to the Truth of the Facts, which he left to the Jury, (after he had made his Remarks on them.) And the Court, sitting the 20th of *December*, delivered their Opinions, as to the Sufficiency of the Indictment.

The Opinion of the Court, as to the Sufficiency of the Indictment.

1. As to the first Exception made by the Prisoner's Counsel, they declared, that the Acts of Parliament, on which the Indictment was founded, were still in force.

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2. That the Indictment had well purſued the ſaid Acts of Parliament.

3. They held, there might be more Authors than one; and that the Words of the Act included the Adviſer, Deviſer, and Conſulter.

4. They adjudged the Writing to be a ſcandalous and reproachful Libel.

5. As to the divulging, they leave that, with the other Facts, to be tried by the Jury; and declare, if that only ſhall be found, it is to be puniſhed arbitrarily at the Diſcretion of the Court.

The Evidence given to the Jury.

A Jury being impanneled on the 20th of *March*, conſiſting of eight Peers, and ſeven Commoners, the Evidence againſt the Priſoner was produced; and firſt, the Libel found in the Hands of *Dunmure*, and another Copy of it, interlined by the Priſoner, were read, with *Dunmure*'s Depoſition, that the Lord *Balmerino* delivered the firſt Copy to the Deponent, and enjoined him to keep it private.

Three Examinations of the Priſoner were alſo read, wherein he confeſſes, that he had the ſaid Libel of *Haig*; that he communicated it to the Earl of *Rothes* and Mr. *Dunmure*; and that he had received ſeveral Letters from *Haig*, ſince he abſconded: The Depoſition of *Robert Dagliſh*, the Priſoner's Servant, alſo was read, wherein he depoſed, that he copied the ſaid Libel by his Maſter's Order, and at the ſame time took a Copy for himſelf.

The Earl of *Rothes*'s Depoſition was read, wherein he ſays, he received the Supplication from the Lord *Balmerino*, to be communicated to his Majeſty; but that he always thought it ought to be ſuppreſſed.

The Priſoner convicted.

The Jury being withdrawn, and returning into Court brought in their Verdict; whereby they acquitted the Priſoner of being the Author, or Adviſer of the Libel; as alſo, of the not apprehending the ſaid *William Haig*; and they acquitted him of divulging and diſperſing the ſaid Libel: But found him GUILTY of the hearing the ſaid Libel; and of concealing, and not diſcovering the ſaid *William Haig*, whom the Priſoner affirmed to be the Author of it.

Whereupon the Lord Juſtice-General, by the Advice of the Aſſeſſors, declared, That the ſaid *John* Lord *Balmerino* had incurred the Pain of Death by the ſaid Acts of Parliament; but the Execution of the Sentence was ſuſpended, till his Majeſty's Pleaſure was known.

But pardoned. This Lord's Ingratitude.

It ſeems, his Majeſty afterwards pardoned this Lord: But, inſtead of acknowledging the Grace, he became one of his moſt implacable Enemies; and had a great Share in the *Scotiſh* Rebellion that happened ſoon after.

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The Factiontreaten to murder the Judges, and Jury.

Biſhop *Burnet* relates, That this Lord was ſo much the Darling of the Kirk, that the King durſt not puniſh him: That he was no ſooner condemned, but it was reſolved by the Faction, to break open the Priſon-doors, and ſet him at Liberty; or, if he ſhould be put to Death, to revenge it on the Court and Jurors who convicted him; and that ſome undertook to murder them; and others, to burn their Houſes.

Remarks on Lord Balmerino's Trial.

In Compiling the *State Trials*, it was thought fit to intermix ſome *Scotiſh* Trials, which might ſhew in what Inſtances their Proceedings differed from thoſe of *England*; and eſpecially ſuch as illuſtrated their Hiſtory and our own, as this Trial does, by exhibiting to our View ſome of thoſe Grievances, or pretended Grievances, for which the *Scots* fomented the Rebellion, that ended in the Subverſion of the Government of both Nations. And here we find, that a Nobleman is not tried by his Peers in *Scotland*, but in the Ordinary Courts, and by a Jury conſiſting of Peers and Commoners, who are always above thirteen (in this caſe fifteen) and their Verdict determined by a Majority of Voices. It is obſervable alſo, that the Court firſt determine whether the Facts in the Indictment amount to Treaſon, or Felony; and whether they are well laid; and afterwards a Jury is impaneled to try the Facts. Whereas in *England*, the Jury take both the Law and the Fact upon themſelves, and bring in a general Verdict, of GUILTY, or NOT GUILTY: Though, it is true, in *England* Exceptions may be taken to the Indictment before the Trial, and the Priſoner may move in Arreſt of Judgment after Conviction, where any Thing appears illegal, or inſufficient, on the Face of the Indictment. It is obſervable alſo, that where a Perſon was Capitally convicted in *Scotland*, it was uſual to execute him the ſame Day he is condemned, and not allow him Time to prepare for Death, as is practiſed in *England*: But then the Proceedings appear to be much longer depending in *Scotland* than in *England*; for this Trial of Lord *Balmerino*'s began the 3d of *December*, 1634. and the Jury did not bring in their Verdict, till the 20th of *March* following: And laſtly, it appears, that the Evidence conſiſted of Written Examinations and Depoſitions; and the Witneſſes were not produced perſonally in Court, to give their Teſtimony in the Preſence of the Priſoner, according to the Practice of the Courts of *England* in Capital Caſes.

Pro-

1637. 13 Car. I.

The King against Baſtwick, &c.

Proceedings againſt JOHN BASTWICK, M. D. HENRY BURTON Clerk, and WILLIAM PRYNNE Eſq; for *Seditious Libels*, in the Court of *Star-Chamber*, 14 *June*, 1637. 13 *Car.* I.

1637. 13 Car. I.

A very imperfect Piece.

THIS could never have gained Admiſſion among the State-Trials, if it had not been to ſhew the Sufferings of the Saints, for The Good Old Cauſe. The Editor does well to inform us, it was written by his *(or rather* their*) Friends; for there is very little that looks like a Trial in it. It conſiſts chiefly of the* Sayings *and* Lamentations *of the Priſoners, at their Condemnation, and in the Pillory; and a Speech of Archbiſhop* Laud's*, after the Sentence.*

Minutes of the Information.

All that we can learn of the Information exhibited by the Attorney-General is, That it was preferred againſt the ſaid *Baſtwick*, *Burton*, and *Prynne*, for Writing and Publiſhing Seditious and Schiſmatical Books againſt the Government, in Church and State.

The Anſwers omitted.

Theſe Gentlemen, it ſeems, drew up their reſpective Anſwers to the ſeveral Informations preferred againſt them; but they were found to be ſuch flagrant Libels on the Government, that their Counſel durſt not ſign them: Whereupon Mr. *Prynne* preſſed, that he might ſign his Anſwer himſelf; but was ordered to put in an Anſwer that was leſs offenſive, than the Libels, for which he was proſecuted: And *Prynne*, and the other two, refuſing to put in any other Anſwers, than ſuch as were repleniſhed with Sedition and Calumny, the ſeveral Informations, or Charges, were ordered to be taken *pro confeſſo*, and the following Sentence pronounced upon the Priſoners. Prynne *was condemned to be ſet in the Pillory in* Palace-Yard; *to loſe the Remainder of his Ears*; *to be branded with a hot Iron in each Cheek*; *to pay a Fine of* 5000 l. *and to be impriſoned in* Caernarvon *Caſtle.* Baſtwick *and* Burton *were ordered alſo to be ſet in the Pillory in* Palace-Yard; *to loſe their Ears*; *to pay a Fine of* 5000 l. *each, and to be impriſoned in the Caſtles of* Launceſton *and* Lancaſter.

They refuſe to put in any but ſcandalous Anſwers.

The Charge taken pro confeſſo.

The Sentence paſſed on them.

Archbiſhop *Laud* would not be concerned in the Sentence, becauſe, he ſaid, it might look like Revenge in him, theſe Libels being levelled againſt his Grace perſonally, as well as againſt Epiſcopacy, and the Eccleſiaſtical Government.

The Purport of Archbiſhop Laud's *Speech.*

The Tendency of the Archbiſhop's Speech, after the Sentence, was to ſhew, That notwithſtanding the Priſoners, and other diſaffected People, clamoured againſt Innovations in Religion, they, and their Adherents, were the grand Innovators; endeavouring to ſubvert and deſtroy the Church of *England*, eſtabliſhed by Statute Law, and introduce the *Geneva* Plan in the Room of it; and that they were perpetually inciting the People to take up Arms, and break out into Rebellion againſt the Government, in order to compel his Majeſty to enter into their Meaſures.

The Priſoners ſuffer.

The Priſoners were ſet in the Pillory, their Ears cut off, *&c.* in Purſuance of the ſaid Sentence, on the 30th of *June*, 1637. *Prynne* was confined in *Caernarvon* Caſtle, in *Wales*; and *Baſtwick* and *Burton*, in the Caſtles of *Launceſton*, and *Lancaſter*: But on the 27th of *Auguſt* following, by an Order of Council, *Baſtwick* was removed to the Iſle of *Scilly*; *Burton* to the Iſle of *Guernſey*; and *Prynne*, to a Caſtle in the Iſle of *Jerſey*; with Orders, that none ſhould have Acceſs to them, without Leave of the Governors of the reſpective Places, where they ſhould be confined: And, that they ſhould not be allowed Pen, Ink, or Paper, or any Books, reflecting on the eſtabliſhed Church: That all Letters and Parcels, directed to them, ſhould be opened, and the Wives of *Baſtwick* and *Burton* ſhould not be permitted to reſide in the Iſlands where they were reſpectively confined: And the Priſoners remained in the ſaid reſpective Iſlands, to which they were ſeverally ſent, untill they were ſet at Liberty by the Parliament, that begun the Grand Rebellion, in the Year 1641. when they were brought back to *London* in Triumph, as will be related hereafter.

Sent to diſtant Caſtles.

Removed to other Priſons.

Releaſed in 1641.

Prynne, the Reader obſerves in a former Trial, had his Ears cropped, for writing a Libel, called, *Hiſtriomaſtix*, reflecting on the King, the Court, and indeed on all Mankind, that were not of the *Geneva* Stamp; for which he remained a Priſoner, and ſtill continued Libelling the Government, till he was brought before the Court of *Star-Chamber* again, for theſe repeated Acts of Sedition. Theſe laſt bleſſed Eſſays are levelled chiefly againſt the Biſhops, and the eſtabliſhed Church: He ſtiles the Archbiſhop, *Arch-Agent for the Devil*; calls the Biſhops, *Luciferian Lords*, *execrable Traitors*, and *devouring Wolves*. *Baſtwick* the Phyſician was proſecuted chiefly for writing againſt the High Commiſſion Court; and *Burton* the Clergyman, for making it the conſtant Driſt of his Sermons and Converſation, to traduce the King and Government; but more particularly the Biſhops, and the Eccleſiaſtical State: And ſuch was the Matter contained in ſome of theſe Libels, that the Judges were of Opinion, that theſe harmleſs Saints might have been convicted of High-Treaſon, if Indictments had been preferred againſt them in the *King's-Bench*. However, the Miniſtry were ſo merciful, as to cauſe them only to be proſecuted for Miſdemeanors in the *Star-Chamber*. Notwithſtanding which Indulgence, they continued to aggravate their Crimes, by their inſolent Anſwers; which, whether they were fit for Counſel to ſign, may be gathered from the following Paſſages, *viz.* *That the Prelates were Invaders of the King's Prerogative Royal*; *Contemners and Deſpiſers of the Holy Scriptures*; *Advancers of Popery, Superſtition, Idolatry, and Prophaneneſs: That they abuſed the King's Authority, to the Oppreſſion of his Loyal Subjects*; *and therein expreſſed great Tyranny,*

Remarks on the Proceedings againſt Prynne, *&c.*

Part of the Priſoners Anſwers.

1637. 13 Car. I. *Tyranny, Cruelty, and Injuſtice: And that in the Execution of this Performance, they ſhewed neither Wit, Honeſty, nor Temperance; nor were they the Servants of God, as they ought to be, but of the Devil*; with a great deal more of the like Tenor.

Poſſibly there was not that Government in the World, except our own, but would have proceeded Capitally againſt ſuch Offenders, as they found ſtirring up the People to Sedition and Rebellion, eſpecially when they had the Impudence, in their Defence, to require the Deſtruction of the eſtabliſhed Church, and the Governors of it; without which, it evidently appeared, they were determined never to deſiſt from their traiterous Purpoſes: And in fact, we ſee, they never left off their Railing and Calumnies againſt the Adminiſtration in Church and State, till they entirely deſtroyed both, and brought the Nation into ſuch a State of Confuſion and Miſery, both in Spirituals and Temporals, as no People ever before experienced. Would our good Friends the *Dutch* ever have ſuffered ſuch an Attack upon their Calviniſtical Church, to have gone unpuniſhed, eſpecially if their State had been threatened, on a Refuſal to comply with ſuch Reformers? Would not our Neighbours of *Scotland*, call a Conſpiracy to ſubvert their Preſbyterian Kirk, an Invaſion on the Conſtitution, and proſecute thoſe who ſhould dare to revile and undermine their Preſbyterian Eſtabliſhment, with far greater Rigour than theſe Saints were proſecuted? Would ſuch Anſwers ever be ſuffered in a Court of Juſtice, as theſe Criminals would have put in, if they could have found Counſel hardy enough to have ſigned them? Or rather, would they not have been ſeverely puniſhed for this impudent Defence, or rather Offence, in the Face of one of the higheſt Courts of Juſtice? With what Reaſon then can their Friends and Succeſſors in Iniquity clamour at the Puniſhment inflicted on theſe Incendiaries, when it is evident to all the World, that, inſtead of loſing their Ears, they ought to have loſt their Heads, as *Prynne* himſelf confeſſed, when he ſaw the Uſurpation eſtabliſhed.

The Character Lord *Clarendon* gives of theſe pious Confeſſors, for the Faith of *Calvin*, is, "That they were three Perſons, moſt notorious "for their declared Malice againſt the Govern-"ment of the Church by Biſhops, in their ſe-"veral Books and Writings, which they pub-"liſhed to corrupt the People, with Circum-"ſtances very ſcandalous, and in Language "very ſcurrilous and impudent, and which all "Men thought deſerved very exemplary Puniſh-"ment. They were, *continues that celebrated "Hiſtorian*, of the three ſeveral Profeſſions, "which have the moſt Influence on the Peo-"ple; a Divine, a Common Lawyer, and a "Doctor of Phyſick; none of them of any "Intereſt, or Eſteem, with the worthy Part "of their ſeveral Profeſſions, having formerly "been all looked upon, under Characters of "Reproach; yet, when they were all ſen-"tenced, and for the Execution of that Sen-"tence brought out to be puniſhed as com-"mon and ſignal Rogues, expoſed upon Scaf-"folds, to have their Ears cut off, and their "Faces branded with hot Irons (as the pooreſt "and moſt mechanick Malefactors uſed to be, "when they were not able to redeem them-"ſelves by Fines, for their Treſpaſſes; or to "ſatisfy any Dammages, for the Scandals they "had raiſed againſt the good Name and Re-"putation of others) Men began no more to "conſider their Manners, but the Men; and "each Profeſſion, with Anger and Indigna-"tion enough, thought their Education, De-"grees, and Quality, would have ſecured them "from ſuch infamous Judgments, and treaſured "up Wrath for the Time to come." 1637. 13 Car. I.

But why ſhould theſe ſeveral Profeſſions think it a greater Diſgrace, that Criminals of their Degree, or Quality, ſhould be pilloried, and ſtigmatized, than that they ſhould be hanged, drawn, and quartered, for Sedition and Treaſon, as theſe Criminals certainly deſerved to be, by *Prynne*'s own Confeſſion? Poſſibly the Speeches they were ſuffered to make, when their Ears were cut off in the Pillory, had an ill Effect upon ſome of the *Engliſh* Audience, who are obſerved to overflow with Pity, when they ſee the moſt notorious Villains ſuffer for their Crimes; not conſidering the Miſchief they have done, and would do, if they were ſuffered to go on with Impunity: They conſider barely the Smart and Ignominy the Criminal undergoes, and, forgetting their Offences, look upon them as innocent Men: This, it muſt be confeſſed, is frequently the Caſe of the unthinking Mob: But one would not have expected ſuch a Conduct from Men of any Education, or Reflection: That theſe ſhould treaſure up Wrath and Revenge againſt their Governors, for inflicting infamous Puniſhments upon the moſt infamous Villains, is a little unaccountable, eſpecially when all Men (as the ſame noble Author obſerves) were agreed, they deſerved *a very exemplary Puniſhment*, and that they ought to have paid for their notorious, obſtinate, and repeated Offences, with the Loſs of their Lives, if they had been puniſhed according to their Demerits. Indeed the Parliament that begun the Rebellion in 1641. thought theſe Sufferers merited ſo much from them, by contributing to ſpirit up the People againſt their Sovereign, and the eſtabliſhed Religion, that after they had cauſed them to be brought quite through *England*, from their reſpective Priſons, in a triumphant Manner, that Aſſembly gave each of them a Reward of 4000 *l.* and upwards; and *Prynne* was afterwards, upon a Vacancy, elected a Member of that Parliament, and ſat in the Houſe during great Part of the Uſurpation: But he appears at length to have been as much out of Favour with the Uſurpers, as ever he was with his lawful Prince: He lived to ſee, and be convinced of the Miſchiefs he had brought upon his Country; and being elected a Member of Parliament, in the Year 1660. was as forward in reſtoring King *Charles* II. as he was in depoſing his Father King *Charles* I.

The Parliament of 1641. reward them with 4000 l. a-piece.

Prynne convinced of his Error. And contributes to the Reſtoration.

1637. 13 Car. I.

The King against Hampden.

The Trial between his Majesty King CHARLES I. and JOHN HAMPDEN Esq; *upon the Assessing Ship-Money on the Defendant*, 1637. 13 & 14 *Car.* I.

1637. 13 Car. I.

HIS Majesty King *Charles* I. in the Beginning of *February*, 163$\frac{6}{7}$. caused the following Case to be proposed to the Judges, *viz.*

The Case of Ship-money, proposed to the Judges.

CAROLUS *Rex.*

" When the Good and Safety of the King-
" dom in general is concerned, and the whole
" Kingdom is in Danger; Whether may not
" the King, by Writ under the Great Seal,
" command all his Subjects, at their Charge,
" to provide and furnish such Number of Ships,
" with Men, Victuals, and Munition, and
" for such Time as he shall think fit, for the
" Defence and Safeguard of the Kingdom,
" from such Danger and Peril; and by Law
" compel the doing thereof, in case of Refusal
" and Refractoriness? And whether, in such
" a Case, is not the King sole Judge, both of
" the Danger, and when, and how, it is to
" be prevented and avoided?"

The Judges Opinion of it.

To which the Judges answered, " We
" are all of Opinion, that when the Good
" and Safety of the Kingdom in general is
" concerned, and the whole Kingdom in Dan-
" ger, your Majesty may, by Writ under the
" Great Seal, command all your Subjects, at
" their Charge, to provide and furnish such
" Number of Ships, with Men, Munition,
" and Victuals, and for such Time, as your
" Majesty shall think fit, for the Defence of
" the Kingdom, and may by Law compel
" the doing thereof, in case of Refusal; and
" that your Majesty is the sole Judge, both
" of the Danger, and when, and how, the
" same is to be prevented and avoided."

The Names of the 12 that signed the Opinion.

Signed by all the twelve Judges, *viz.* *Jo. Brampston*, *Jo. Finch*, *Humph. Davenport*, *Jo. Denham*, *Rich. Hutton*, *W. Jones*, *Geo. Croke*, *Tho. Trevor*, *Geo. Vernon*, *Fra. Crawley*, *Rob. Berkley*, and *Fra. Weston*.

This Resolution his Majesty caused to be published, and entered in the Courts at *Westminster*, and directed the Judges to communicate it to the People, in their respective Circuits.

The Tenor of the Writ to the Sheriff of Bucks, to assess the County towards a Ship.

The Occasion of demanding the Opinions of the Judges was this: A Writ had been issued in the eleventh Year of King *Charles* I. directed to the Sheriff of *Bucks*, the Bailiff and Burgesses of *Buckingham*, &c. reciting, that his Majesty being given to understand, that the Sea was infested by Thieves, Pirates, and Sea-Robbers, as well *Turks*, Enemies to Christianity, as others, who took and plundered the Ships of his Majesty's Subjects, and those of his Allies, who used to be protected heretofore by the *English* Nation: That his Majesty considering also the Danger that in these Times of War hung over us; and desiring to provide for the Defence of the Kingdom, the maintaining the Dominion and Protection of the Sea, and the Security of his Subjects; he does therefore command the Sheriff, &c. upon their Faith and Allegiance, that they provide in this County, a Ship of War, of 450 Tons, with 180 Men, Guns, Gunpowder, double Tackling, and all other things necessary; and to bring the said Ship to *Portsmouth* by the 1st of *March* next, provided with Victuals, Mariners, Wages, and all other Necessaries, for twenty six Weeks, in order to proceed with his Majesty's other Ships of War, and those of his other Subjects, for the Defence of the Sea, and themselves: And the said Sheriff, &c. are further commanded, within thirty Days after the Receipt of this Writ, to assess every Person equally within the said County (who had no Share in the said Ship, and did not serve therein), towards the Charges of providing the said Ship, &c. according to their Estates and Employments; and the Portions so assessed, to levy by Distress, or other lawful Ways: And if any Person should be found rebellious, or refractory, in the Premises, to imprison him till further Orders.

The Tenor of the Scire facias, for Hampden to shew Cause, why he did not pay the Money assessed.

Some of the Inhabitants of the County of *Bucks* refusing to pay the Money required of them, for fitting out a Ship, a *Scire Facias* was issued to the Sheriff of *Bucks*, reciting, that whereas several Sums of Money, in a Schedule thereto annexed, had, by virtue of the above-said Writ of 4 *Aug.* 11 *Car.* been assessed upon divers Persons in that County, for providing a Ship of War, which were not yet paid: And that upon a *Certiorari*, dated 9 *March*, 13 *Car.* the said Sums, and the several Persons on whom they were assessed, were certified into *Chancery*; and from thence, by *Mittimus*, dated 5 *May*, were sent into the *Exchequer*, that Process might issue against the Defaulters. The Sheriff was thereupon commanded, *quod scire faceret* the several Defaulters, that they should appear in the *Exchequer*, *in Octab. Trin.* 13 *Car.* and shew Cause, why they should not pay the respective Sums assessed on them: And the Sheriff returned *quod scire fecit*, *John Hampden* Esq; who was assessed twenty Shillings, and had not paid it: Whereupon Mr. *Hampden* appeared, and demanded *Oyer* of the *scire facias*; of the Schedule of the Writ dated 4 *Aug.* 11 *Car.* the *Certiorari* and *Mittimus*; and of their several Returns; and demurred to them: And Mr. Attorney joining in Demurrer, the Cause was adjourned into the *Exchequer-Chamber*, to be heard before all the Judges of *England*.

Hampden *appears, and demurs to the Writ*, &c.

The Cause heard before all the Judges.

All the Judges being assembled in the *Exchequer-Chamber*, in *Hillary* Term, 163$\frac{7}{8}$. Mr. *St. John*, Counsel for Mr. *Hampden*, entered upon his Defence, and said, He admitted that the King was by Law entrusted with the Care and Defence of the Realm; that the Militia was

Mr. St. John's *Defence of Mr* Hampden.

1637. 13 Car. I.

entirely in his Hands; that no Man might ſend out a Ship of War, or erect a Bulwark upon his own Land, againſt an Enemy, without the King's Commiſſion; nor might the Subject, without a ſpecial Commiſſion, arm, or draw Troops together, or make any general Collection of Money of the Subjects, though with their Conſent: The *ſuprema poteſtas* was inherent in his Majeſty, as Part of his Crown and kingly Dignity: His Majeſty alſo was the ſole Judge of Dangers from abroad; and when, and how, the ſame ought to be prevented. He admitted further, that the Law had given the King a Power, by Writ, to command the Inhabitants of each County to provide Shipping, for the Defence of the Kingdom, and might compel the doing thereof; ſo that the Queſtion was not, in whom the ſupreme Power of giving the Authority to the Sheriff, which was mentioned in the Writ, did lie (for that was in the King); but the Queſtion was, *By what means* this ſupreme Power was to be communicated and applied, the Law of *England* having known Rules, which were neceſſary to be obſerved in ſuch Caſes?

As the King could not apply his Laws, in many Caſes, without the Aſſiſtance of his Judges; ſo, in other Caſes, he could not communicate, either his Power, or Juſtice, to his Subjects, without the Aſſiſtance of his Parliament: That it did not appear, that this Writ, which gave Power to ſell and alter the Property of the Defendant's Goods, iſſued from his Majeſty, ſitting in Parliament: And the Queſtion then would be, If it was not erroneouſly iſſued?

There were ſeveral known and undoubted Ways and Means, whereby the Law had provided for the Defence of the Realm, both by Land and Sea, without this Way in the Writ; as firſt, by the *Tenure* of Lands. The Kings had antiently all the Lands in their own Hands: Their Books agreed, that all the Lands in the Kingdom were held, mediately or immediately, of the Crown: And as the Law had intruſted the King with the Defence of the Kingdom, ſo had it intruſted him with the Reſervation of ſuch Tenures, as might ſerve for that Purpoſe.

Every Man, who held by Knight's Service, was to find a Man completely armed: He who held by a whole Knight's Fee, forty Days: He who held by half a Knight's Fee, twenty Days; and ſo in Proportion: And it appeared by the *Red Book*, that there were thirty thouſand Knights Fees held of the Crown, at the Conqueſt: And ſince the Tenants by Knight's Service, were obliged to ſerve but forty Days, other Tenures were reſerved; ſuch as Grand-Serjeanty, Tenures by Cornage, and Caſtle-guard; and, according to *Littleton*, there were eleven thouſand of theſe Tenures, for the Defence of Caſtles and Fortreſſes, within the Realm; moſt Part of which were upon the Sea-Coaſts, or upon the Frontiers of *Scotland* and *Wales*, the Places of greateſt Danger. Beſides which, there were Tenures by Petty-Serjeanty, which were intended for the finding of all ſorts of Armour and Munition for the War.

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The Cinque-Ports, and other Frontier Places, were allowed ſeveral Privileges; ſuch as, having all Juriſdiction within themſelves, *&c.* not only to invite People to ſettle in them, but, that the Inhabitants might never be obliged to remove from their Dwellings, and leave ſuch Towns expoſed to the Enemy: That the King was actually poſſeſſed of theſe Military Services, as he received the Profits of Wards, Marriages, Reliefs, *&c.* (the Fruits of them); and theſe Profits were to be laid out in the Defence of the Realm, as appeared by many Authorities.

That there were other Tenures reſerved for Sea Service: In the Regiſter, *fol.* 2. one Town is ſaid to hold by the Tenure of furniſhing five Ships annually: In the Iter Roll of *Eſſex*, 13 *Edw.* I. *Rot.* 7. it is preſented, that the Town of *Maldon* held by the Service, of finding one Ship; and from the Time of their Rendezvous, they were to remain in the Service forty Days at their own Expences. Many other Towns held by this Tenure of finding Ships: and, uſually, when the Tenants were ſummoned to the Land Service, theſe were ſummoned to perform their Services at Sea; and the Summons to each run in the ſame Words, (*viz.*) *cum toto ſervitio veſtro quod nobis debetis*: And in the 13th of *Edw.* III. *Pars* 1. *M.* 11. the King declares, That the Cinque Ports, and other great Towns and Havens, are franchiſed *pur eſtre mure inter nous & Aliens*, that they may be a Wall between us and Foreigners.

There were other Tenures created, whereby Rents were reſerved out of Lands for Servants Wages: All Men had not antiently an equal Right to Liberty and Property: The Villain's Perſon was not free; his Lord might impriſon him, and tax both his Lands and Goods *de haut & de baſs*. Tenants in Antient Demeſne and Burghers, had an abſolute Freedom in their Perſons; but were liable to be taxed for the Defence, and other neceſſary Affairs of the Realm, without Conſent of Parliament. Such Tenants in Antient Demeſne, were to plow and manure the King's Lands; and, according to an antient Manuſcript, the Corn, and other Proviſions ariſing thereby, were deſigned to ſtore the King's Garriſons: And ſuch Tenants were taxable at the King's Pleaſure, as Villains were, but only for the Defence of the Realm, and other Neceſſities of State: And there were ſtill a third ſort of Tenants, called Freeholders, who held by a certain Rent, and had an abſolute Freedom in their Perſons and Eſtates, and could only be taxed in Parliament.

Beſides theſe Tenures, the Law has conferred divers Prerogatives on the King, which were intended to be employed for the Defence of the Kingdom, and other publick Occaſions; ſuch as the Property of all Treaſure-Trove, and Gold and Silver Mines: In the Parliament Roll of 6 *Rich.* II. M. 42. the Commons petition, that the King will live on his Revenues; and that the Wards, Marriages, Reliefs, Eſcheats, Forfeitures, and other Profits of the Crown, may be ſpent in the Wars for the Defence of the Kingdom.

That Aids and Subſidies, and likewiſe Tonnage and Poundage, before they were granted

1637. 13 Car. I. the Crown for Life, were intended not only for the Protection of Merchants, and the ordinary Defence of the Sea, but for the Defence thereof in Times of extraordinary Danger, from the Incurſions of Enemies, *&c.* as appeared by the ſeveral Grants of them in the Parliament Rolls; and when they were granted for Life, it appears by 12 *Edw.* IV. 13. they were granted, that the King might always have Treaſure in Readineſs to oppoſe an Invaſion: That his Majeſty was in the actual Poſſeſſion of theſe, and had by his Proclamation declared, that they were granted to his Anceſtors for the Defence of the Seas, and the Safety of the Realm; and, that he received them for that Purpoſe.

That by the Statute of *Wincheſter*, 13 *Edw.* I. Every Man, according to the Value of his Lands and Goods, is to find Horſe and Armour for the Defence of the Realm; and by 5 *Hen.* 4. every Man is to find Armour againſt Invaſions.

He inſiſted, that the Service of the Cinque Ports, Tonnage and Poundage, and the other Duties above-mentioned, were the ordinary legal Ways appointed for the Defence of the Sea. The way by the Writ; by aſſeſſing and altering the Property of the Subjects Goods, without their Conſent, as it was an unuſual and extraordinary Way, ſo he ſhould ſhew it was not legal. If the Service of the Ports had been firſt required, and the Money, ariſing by the Ways aforeſaid, had been laid out in the Defence of the Kingdom, and theſe had not been ſufficient; if it ſhould be admitted, in that Caſe, that the Writ was legal, yet, in this Caſe, it could not be ſo; becauſe it was a Maxim in Law, that we ought not to have recourſe to extraordinary Means, when the ordinary Means were ſufficient: As no Man could ſue in Chancery, when he might have Remedy at Common Law; nor, ought any Man to be tried by a Court-Martial, while the Civil Courts were open. But he held, That the Property of the Subjects Goods could not be affected, or altered, without an Act of Parliament, though it were for the Defence of the Realm; which, he ſaid, was evident from the Aids and Subſidies which had been granted by Parliament; and from the antient Summons to Parliament: For when Aids were demanded, the particular Cauſe of Defence, and againſt what Enemy, were ſpecified: His Majeſty could not, without a Parliament, tax his Subjects, even for the levying Land-Forces for the Defence of the Kingdom; for maintaining his Forts and Caſtles; for warlike Stores, or Proviſions; for the Maintenance of Priſoners, or Hoſtages; or for preſerving the publick Peace; and, if he could not tax them for theſe Services, it was evident he could not tax them for any.

He admitted, that after the Statute of *Wincheſter*, every Man, according to his Eſtate and Abilities, was to find all manner of Arms, as well for the Defence of the Realm againſt Foreigners, as for the Preſervation of the Peace: And that, upon a ſudden Invaſion, or Rebellion, they were compellable to march out of their reſpective Counties to oppoſe either, where the King went in Perſon; as appeared by 11 *Hen.* IV. *cap.* 1 & 18. And he admitted, that as long as they remained at home in their ſeveral Counties, they were to have no Wages: But he denied, that the Subject was taxable for Wages, or Proviſions, or otherwiſe, for finding of Soldiers out of their reſpective Counties, for Defence of the Kingdom; or that they were compellable to do it at their own Charge. 1637. 13 Car. I.

He acknowledged, indeed, that before the Reign of *Edw.* III. Commiſſions had iſſued for that Purpoſe: To balance which, it was evident, that Armies of 30000 Men, beſides thoſe who were obliged to ſerve by their Tenures, had been maintained at the King's Charge, from the Time they marched out of their reſpective Counties. And, upon a Rebellion in the Reign of *Henry* VIII. againſt which the King intended to have gone in Perſon, Privy-Seals were ſent to moſt of the Gentry, to attend the King with their beſt Retinues; and they ſhould bring the Bills of their Expences with them, which were promiſed to be repaid: And it appeared, that thoſe who loſt their Horſes in Battel with the Enemy in the Reigns of *Edw.* I. and *Edw.* II. were entitled to Dammages for the Loſs of their Horſes: That the King alſo bore the Charge of ſuch Frontier Caſtles and Towns as were beſieged, appeared by the Allowances made in the *Exchequer*, *Trin.* 27 *Edw.* I. *Rot.* 47. *pro tuitione* NEW-CASTLE *contra* Scotos, *qui hoſtiliter Regnum in partibus illis invaſerunt*: And the Charge of maintaining Priſoners taken in defenſive Wars were frequently allowed in the *Exchequer*, 4 *Edw.* II. *Rot.* 22. *dorſ.*

Then he proceeded to ſhew, that Money borrowed by the King, for the Defence of the Realm, had not only been repaid upon Petition, but recovered by Suit in the ordinary Courts of Juſtice. *Comm' Paſch'* 31 *Rot.* 41. the King borrowed of *Henry Thomſon* 149 l. *pro defenſione Regni*; which was ſued for, and Re-payment ordered: And *Paſch'* 29 *Edw.* I. *Rot.* 18. The King *pro urgentiſſimis Regni negotiis & defenſione totius Regni*, having ſeized the Money of all the Abbies, Cathedrals, and Religious Houſes, and promiſed to return it: Upon Petition for it, at the Parliament held at *Lincoln*, he promiſed the Re-payment of it again, *Ita quod Regis conſcientia ſuper hoc exoneretur*. But, if the King had apprehended, when he wanted Money for the Defence of the Realm, he might have taxed his Subjects for it, he would never have anſwered, that he would repay it, *ad exonerandum conſcientiam*; for then, in Equity and Conſcience, the Parliament ought to have ſatisfied ſuch Debts.

That the Subject was not liable to ſuch Charges for the Defence of the Kingdom, he obſerved alſo, was evident from ſeveral Acts of Parliament; as 4 *Will.* I. where the King grants that all Freemen ſhould hold their Lands and Poſſeſſions free from all unjuſt Exactions and Tallages, *Niſi ſervitium ſuum liberum quod de jure nobis facere tenentur*. And the Grant or Statute, obtained of King *John* at *Runningmead*, That no Aid ſhould be levied but by the Common (or Grand) Council of the Kingdom. 25 *Edw.* I. *cap.* 5 & 6. That no Aids ſhould be taken, but by Conſent in Parliament; and by the Statute *De Tallagio*, that no Tallage, or Aid, ſhall be taken without Conſent: And it happened, that the Grievances which procured the

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the laſt Statute, were Exactions made by the King for the Defence of the Realm.

The Statute 14 *Edw.* III. *c.* 1. declares, That the People ſhall not be compelled to make any Aid, or ſuſtain any Charge, but in Parliament. He cited alſo 25 *Edw.* III. and 1 *Rich.* III. againſt the taking of Loans and Benevolences. And in the 3d Year of the preſent King, a Commiſſion iſſuing, for Aiding his Majeſty's Allies beyond Sea, or for the Defence and Safety of the Kingdom; that Commiſſion was condemned by both Houſes of Parliament, and cancelled in his Majeſty's Preſence.

He did admit, that the Danger might ſometimes be ſo preſſing, that the Subjects Goods might be taken away without their Conſent: There might be ſuch Times when Property ceaſed, and all Things reſolved again into the common Principles of Nature; as in Caſes of Fire, and ſudden Invaſions: Any Man may juſtify pulling down Houſes, in the firſt Caſe, or erecting Bulwarks upon other Men's Lands, in the other: In ſuch Times, not only his Majeſty, but every one, was empowered to take the Goods of another, pull down their Houſes, or burn their Corn, to cut off Proviſions from the Enemy, and do ſuch other Things as might conduce to the Safety of the Kingdom, without any Reſpect to Property, 12 *Hen.* VIII. 2 *Br. tranſ.* 406. 8 *Edw.* IV. 23. And when the King proclaimed War, the Law took Notice of it; the Subjects of the Nation againſt whom War was proclaimed, immediately left their Properties here, and could maintain no Action for them; and any of the King's Subjects might ſeiſe the Goods of ſuch a Foreigner: But here it did not appear by the Writ, that War was proclaimed againſt any Nation: So that the Point was, Whether the King, in Time of Peace, without Conſent of Parliament, could alter the Property of the Subjects, upon a Suggeſtion, that Money was wanting for the Defence of the Kingdom; eſpecially, when it appeared by the Writ, that the Time allowed for bringing in the Supply, was ſeven Months; and conſequently the Neceſſity, in reſpect of Time, was not ſuch, but that a Parliament might have been called, time enough to have raiſed a Supply.

The Argument of the Solicitor-General, for the King.

Sir *Edward Littleton*, the Solicitor-General, argued on the other Side in the Behalf of the King, and obſerved, That the Writ directed to the Sheriff of *Bucks*, 4 *Aug.* 11 *Car.* I. for providing a Ship for the Defence of the Kingdom, was the Ground of the Aſſeſſment; and the Reaſon ſet forth was, *Quia ſalus Regni periclitabatur*, which was not only confeſſed by the Demurrer, but teſtified by the King under the Great Seal: The ſole Queſtion therefore was, Whether the King, finding the Safety of the Kingdom neceſſarily required the Aid commanded in the Writ, might not require that Aid for the Preſervation of the Kingdom and People?

It was agreed, that the Kingdom was to be defended, and that the King was entruſted with that Defence; but it was denied, that he might do it out of Parliament: He was ſorry, there could be no Salvation for the People but in Parliament: Mr. *St. John* had admitted the King might do this, if there was an actual War, or a War proclaimed; and, why then might it not be done, when the Safety of the Kingdom was in Danger? The fundamental Rule, cited by himſelf, was, that *the Safety of the People was the Supreme Law*; and it would be ſtrange, if the King could by his Writ grant them a Remedy for the Recovery of their private Eſtates, and ſhould not have Power to iſſue a Writ for the Defence of the Kingdom, when it was in imminent Danger.

The Common Safety was to be preferred to our private Eſtate: Upon an Invaſion, it was lawful to erect Bulwarks on any Man's Land, for the Defence of the Kingdom; and ſhould not a King have Power to put our Out-works at Sea, our Naval Walls, in a Condition to oppoſe the Enemies Landing at our Doors: By the King's Command, the Suburbs of any Town might be burnt, or razed: And in 1588. great Armies of an 100,000 Men, and upwards, were raiſed by the Queen's ſole Authority, and maintained at the Subjects Charge; and Orders were given, if they could not prevent the Enemies landing, to burn the Towns, and deſtroy the Corn, and all manner of Proviſion that might afford them Suſtenance. Where was Property in that Caſe? There was no poſſibility of ſaving private Fortunes, if they ſuffered the Kingdom to be loſt.

The King had many Prerogatives that affected the Subjects Property; as digging in any Man's Houſe, or Lands, for Salt-Petre, and Royal Mines; and many things were made lawful by Neceſſity, which otherwiſe were not: It is abſurd to talk of obſerving Rules and Forms, when the Kingdom was in Danger of being loſt; when the keeping the Laws would be the Ruin of the Commonwealth. The King might lay a Charge upon the Subject for building the Walls of a Town, becauſe they have the Benefit of it in Time of Danger; and was not the whole Kingdom preſerved by keeping a Navy at Sea? It was agreeable to Law, that where the People received the Benefit, they ſhould contribute to the Charge: And in leſſer Matters, ſuch as Pontage and Paveage, the King might impoſe, or charge and diſtrein the *ter' tenents*, to make Contribution proportionable to their Eſtates and Abilities.

If there were but Rumours of Wars, the Laws were ſilent; much more, when the King foreſees the Danger, and declares it. In Queen *Elizabeth*'s Reign, greater Things were done upon leſs Occaſions: Ships were taken up, the Ports ſhut, and Men raiſed on the leaſt Apprehenſion of Danger. It would be ſtupid, to make no Preparations againſt an Enemy, till he was actually on our Coaſt; it might then be too late to prevent his landing.

The making War and Peace was a Royal Prerogative, the People had nothing to do with, nor were all Dangers fit to be communicated to them: The King beſt knew the Exigency of Affairs. It might not be prudent to have the Kingdom without a Navy, when ſuch great military Preparations were making in the neighbouring Kingdoms. Dangers ought to be prevented, as well as removed.

Before the Conqueſt, King *Ethelred* commanded, that every 310 Hides of Land ſhould find a Ship. *Danegelt* was paid annually before the Conqueſt, for the Maintenance of a Fleet,

as

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as well in Peace as War; but afterwards, only in Time of War: *Danegelt* is ſaid to be releaſed by the Confeſſor; becauſe he dreamed he ſaw the Devil dancing upon the *Danegelt*; but it appears by the *Black-Book* to have been reſumed, and paid in the Conqueror's Time; and it was paid alſo in the Reign of *Hen.* II. as appears by the Pipe-Roll; and though the Name was altered, the Thing continued. In King *John*'s Time they gave a fourth Part of their Revenues for the Defence of the Land. In th 48th of *Edw.* III. ſome Captains not being able to maintain themſelves, the King commanded they ſhould be paid *De Com. Comitat.* 48 Edw. III. M. 2. *de pecunia levand' circa tuitionem maris.*

In the Reign of *Hen.* III. the Citizens of *London* and Men of *Greenwich*, were commanded to guard the Mouth of the *Thames*. *Clauſ.* 48 *Hen.* III. *M.* 11. *dorſ.* And when any refuſed to attend the Defence, the King commanded to ſeize their Lands, take the Profits, and anſwer them into the *Exchequer*: The finding of Arms did not begin upon the Statute of *Wincheſter*; that Statute only appointed in what manner the Country ſhould be rated: The County of *Berks*, though an inland County, was aſſeſſed towards the Defence of the Sea, and upon a Refuſal, a *Capias in manus* was awarded to anſwer it in the *Exchequer*, 24 *Edw.* I. And having cited a great many Authorities, eſpecially in the Reign of *Edw.* III. he obſerved, that it was evident from thoſe Records, that both Sea and Land had been guarded by the Commons, when the King apprehended any Danger; and, if the Danger was great, no Age, or Sex, or Order, were exempted; the Refuſers being compelled by Impriſonment, or the Seizure of their Lands or Goods, to perform it: And the Writs ſignificantly expreſſed, that no Wages in theſe Caſes ought to be paid by the King: Then he cited ſeveral Commiſſions for Defence, in the Time of the Civil Wars between the Houſes of *York* and *Lancaſter*; and particularly a Commiſſion of Array, iſſued by King *Edw.* IV. to raiſe a Power againſt his great Adverſary and Rebel, *Hen.* VI. who lately enjoyed the Crown by Uſurpation; and ſhewed, that by the Statute of 1 *Hen.* VII. *cap.* 16. every Subject was bound by his Allegiance, to aſſiſt when Need required. Statute 35 *Hen.* VIII. *cap.* 13. recited, That the Subject was bound to aſſiſt the King, with Body, Lands, and Goods, in his Wars; and in 4 & 5 *Phil. & Mar.* Commiſſions of Array were iſſued to all Gentlemen. In 3 & 4 *Phil. & Mar. Calais* being beſieged, the Warden of the Cinque-Ports was commanded to make Proclamation in *Kent*, that all, from ſixteen to ſixty, ſhould repair to *Dover*, to ſave *Calais*, on Pain of Death. In the Reign of Queen *Elizabeth* a Commiſſion iſſued, to muſter all Men againſt *Scotland*; and with theſe Commiſſions went Inſtructions, that the Service was neceſſary, becauſe all our Neighbours were in Arms.

When the *Spaniſh Armada* threatened the Kingdom, in the Year 1588. the whole Kingdom was in Arms, at the Subjects Charge, by Orders from the Council-Table; and the City of *London* being required to find ten Ships, furniſhed out 20: Such was the Subjects Affection for their Prince and Country in thoſe Days;

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they did not diſpute, but obey: Letters were in like manner ſent to other Towns, to provide Shipping; and *Colcheſter* refuſing to contribute, was compelled to it: Nor did the Queen wait till the Year 88. while the Tops of the *Spaniſh* Ships might be ſeen from the Coaſt, but ſhe made theſe Preparations in the Year 1587. when there was only a Rumour, that the *Spaniards* intended to invade the Kingdom: Great Forces being aſſembled in *London*, in the Year 1599, for the Defence of the Queen againſt the Earl of *Eſſex*, the Charge was borne by the People, and even the Inns of Court contributed towards it; and where the Gentlemen did not aſſiſt in Perſon, ſhe had their Purſes. In the 2d Year of the preſent Reign a Proclamation iſſued, that all Men ſhould repair to certain Parts of the Kingdom, and continue there till the Danger was over; and the Reſolution of the Judges, the laſt Year, that the King might command the Subject to provide Shipping for the Defence of the Realm, he thought was ſufficient to ſatisfy all reaſonable Men of the Legality of ſuch Commands: However, the King had now given leave, that the Matter ſhould be publickly debated for the Satisfaction of his Subjects, and that the Records might be ſearched; and he obſerved Mr. *St. John* had taken great Pains in it: But the Records that had been cited by him were not of ſuch Weight as thoſe produced for the King; for, if his Predeceſſors had ſometimes, for the Eaſe of his Subjects, remitted any Thing, this was not of that Weight as the ſhewing the conſtant Uſe of that compulſive Power uſed by the Crown, and obeyed by the People: If any King had ſpoken in gentle Terms, as King *John* when he was depoſed, this would not be of that Force as the Words uſed in the Writs.

It had been ſaid, that the King had a private, and a legal Will: That he could not act in many Caſes but by certain Rules, and by the Mediation of others; and, particularly, that he could not ſit in Judgment himſelf, but muſt adminſter the Laws by his Judges; which he denied; for the Pleadings in the King's Bench were *coram Rege*. *Edward* IV. ſat there in a Trial of *Rape*; and the famous Judge *Popham* ſat at the King's Feet, and other Judges on each Side of him: And King *James* actually adjudged thoſe two Caſes, *Bellingham*'s and Sir *Thomas Lake*'s: Nor did the Book, cited to prove the contrary, ſay, the King ſhould not judge; but that, if one was convicted before the Judges, the King ſhould not ſet the Fine, becauſe he did not hear the Cauſe.

It had been urged, that this Writ of Shipping made a Change in the Law, which could only be altered by Act of Parliament; but here was no Change in the Law, it having been the Cuſtom of all Ages: Nor was it any Argument, that, becauſe the King could do a Thing by Parliament, he could do it no way elſe. As to the Survey that had been taken of the King's Revenues, Tenures by Knight's Service, the Profits of Wards, Reliefs, *&c.* there was no Authority to ſhew that theſe were intended for the Maintenance of Wars; for theſe were reſerved for the conſtant Support of the Government, whether in Peace, or War: Nor could theſe, and the Service of the Cinque, Ports be

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sufficient to defend the Nation againſt an Invaſion: The whole Body of the Kingdom muſt, and ever did, contribute to the Defence of it; in which all were concerned: Nor was Tonnage and Poundage ever intended for extraordinary Service, but only for the conſtant Guard of the Coaſts in Time of Peace: Queen *Elizabeth* had Tonnage and Poundage; the Service of the Cinque Ports, *&c.* and yet her People gave her Subſidies; and ſhe raiſed both Men and Money, for the Defence of the Realm, by her Commiſſions, beſides.

It was true, nothing ought to be taken from the Subject ordinarily, but in Parliament; but that did not prove, he was not to contribute to his own Defence in Caſes of imminent Danger: It was admitted, indeed, that the King ought to have the Direction of the War; but to what Purpoſe was this, if he could command neither Men, or Money? Nor was it a good Argument, that the King could not command the Aid of his Subjects, becauſe he ſometimes borrowed Money of his Subjects: And though it had been ſaid, our Kings had maintained Armies themſelves; it did not follow from thence, that the King could not command his People to attend him, or his Lieutenant, as had been the Practice of all Ages.

As to the Statutes that prohibited the levying Money on the People, without Conſent of Parliament; This muſt be underſtood of unjuſt Exactions, as appeared by thoſe very Statutes, and of ordinary Caſes; not where the whole Kingdom was in Danger, as was admitted by the Demurrer: And there might be Danger foreſeen by the King, though no War was actually proclaimed; of which the King was the only Judge.

Mr. Holborne's *Argument for Mr.* Hampden

Mr. *Holborne*, another of Mr. *Hampden*'s Counſel, obſerved on his Behalf, That upon the 4th of *Auguſt*, 11 *Car.* I. the Day of the Date of the Writ, the King could not charge the County of *Bucks*, to find a Ship at their own Charge; for that it did not appear by that Writ, that in the King's Judgment, the Kingdom was in Danger of being loſt; or, if it did, that the Danger was ſo inſtant and unavoidable, that it neceſſarily required this Aid, and could not expect a parliamentary Conſideration; and laſtly, that the Truth of this could not be legally proved by the King's Certificate.

The Writ only mentioned, Loſſes of Merchants by Pyrates and Sea-Robbers; no Danger to the Kingdom, or People in general, or ſuch inſtant Danger, at leaſt, as to require this Command in the Writ, even in the King's Judgment: There were above two hundred Days between the *Teſte* of the Writ, and the Rendezvous appointed by it: The ſummoning a Parliament required but forty Days; and in the remaining Time the Parliament might have conſidered of the Defence: The only Doubt was occaſioned by the *Mittimus*, which recites the Writ of the firſt of *Auguſt*, and then adds, *Quia ſalus Regni periclitabatur*, which, it was ſaid, the Defendant had confeſſed by his Demurrer: And, if that did not hold, that the King, who was the ſole Judge of the Danger, had certified it under the Great Seal: That the Words *Salus Regni periclitabatur* were but relative, and referred only to the Dangers mentioned in the firſt Writ; neither could any further Clauſes be legally added in this, tending to the ſame End; and conſequently, their Demurrer was no Confeſſion of any ſuch Danger.

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And had the Words been poſitive, the Word *Salus* was but a metaphorical Expreſſion, and the Law would not endure Metaphors in Writs and Pleadings: Nor did theſe Words import immediate Danger of the Loſs of the Kingdom; for applying the Word *Salus* to a Natural Body, the Doctor might ſay, his Patient was not in Health, and yet, he might be in no Danger of Death: And the ſame Senſe it muſt have in the Body Politick. The Words might imply Danger, yet not ſuch a Danger as to threaten the immediate Loſs of the Kingdom.

As to the King's having declared his Opinion under the Broad-Seal, they made no Doubt of the King's Word. They believed there was a Danger, though not ſo apparent to them: But in legal Proceedings, his Majeſty's Opinion, and Certificate in Things of Fact, were not binding: But what he chiefly relied on was, that though it did not appear by the *Mittimus*, that the 4th of *Auguſt* the Kingdom was in Danger of being loſt, that was not ſufficient in Law; nor could their Demurrer hurt them; becauſe this did not appear in the Writ of the 4th of *Auguſt* itſelf; for how could the Subject know by the Writ of the 4th of *Auguſt*, what Dangers would be declared afterwards? And, admitting the King had ſaid, the Kingdom was in ſuch inſtant Danger of being loſt, and that it could not be prevented any other way; yet, if the contrary appeared in the Record, then neither was the Demurrer, or Confeſſion, or the King's Certificate, concluſive: Every Conſideration but thoſe of protecting the Merchants from Pyrates and Robbers, and the ordinary Defence of the Sea, muſt be thrown out, becauſe they were not contained in the firſt Writ: He ſaid, he thought he might, without further Argument, venture his Client's Cauſe upon this; and he ſhould be glad, if the Caſe might receive a Determination on the penning of the Writ: He was willing to decline the main Queſtion out of Duty to his Majeſty, *(viz) Whether by the fundamental Policy of* England, *the King could charge the Subject, out of Parliament, for the Common Good, or, for the neceſſary Defence of the Realm, if in his Majeſty's Judgment the Danger was inſtant, and unavoidable?*

To which the Lord Chief Juſtice anſwering, *They did not uſe to judge of Caſes by Fractions*, Mr. *Holborne* proceeded, and ſaid, Since it was their Command he ſhould go on, he hoped his Majeſty would excuſe them for arguing what could not elſe be determined, profeſſing, both for himſelf, and his Client, that when they mentioned, how far a Governor, ſubject to Error and Will, might uſe Regal Power, they acknowledged their preſent Happineſs, in being bleſſed with ſo juſt a Prince, that, were his Majeſty immortal, as he deſerved, and they were ſure his Succeſſors would inherit his Virtues, they ſhould wiſh the Regal Power might be unlimited, and free from political Advice.

Then he proceeded to enquire, Whether the King could, out of Parliament, charge the Subject, either for the Guard of the Sea, or the Defence of the Kingdom, though he judges it in

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Danger of being loſt: As to the Diſtinction of Dangers, *ordinary* and *extraordinary*, there was no great matter in it, he thought; for, if the King was Judge of that Danger, then he had no Reſtraint but his own Will.

He acknowledged, indeed, that Property muſt yield to Neceſſity; and in Caſes of actual Invaſion, and inſtant Danger, it was not only in the Power of the King, but of a Subject, to enter upon another's Property: He may make Bulwarks, or do any Act upon any Man's Land, and invade any Man's Property towards Defence: Nay, he might prejudice the King himſelf, in Point of Property: He might take the King's Horſes, and blow up his Fortreſſes, to prevent their falling into the Enemies Hands: But then there muſt be actual and apparent Danger.

He knew it was held as a Maxim, *That the King could do no Wrong*; and that, therefore, the Law had repoſed this Truſt in him, of charging the Subject; but he could ſhew where the Law took notice, the King might do amiſs: The King had a double Capacity, as a King, and as a Man; and to ſay, as a Man, he could not err, was ſtrange: He was liable to Infirmities and Miſtakes, like other Men; and, leſt ſuch Infirmities ſhould injure the Body politick, the Law had provided Means to prevent it; as the Writ of *Ad quod damnum*, if any Dammage accrued to the Subject by the King's Grant, the Patent was naught: And though the King might grant Pontage, Paveage, and Murage, yet, he could not grant them, where there was no Occaſion, or a Sum that exceeded the Benefit the Subject was to receive by them: There were other Judges of the Juſtneſs of the Proportion, beſides the King, when a Patent came to be queſtioned: And, if the Law did not allow the King an abſolute Power in ſuch Trifles, it was not to be ſuppoſed he ſhould have it in Matters of this Importance; and that there ſhould be no Judge but himſelf, of the Occaſion, or Proportion.

Were the Law allowed the King to charge any one abſolutely, it was not as a Subject, but as a Tenant by reaſon of Tenure, which aroſe by a precedent Conſideration: But even in thoſe Charges in reſpect of the Tenancy, where the Charge might come often, it was not left to the King's Judgment; as in Eſcuage, which was to be aſſeſſed in Parliament: The Aids to make his Son a Knight, or to marry his Daughter, are Things that could happen but once, and ſo were left more to the King's Diſcretion; and, in theſe Caſes, the Law did not give the King a Power of charging the Subject, but in reſpect of ſome Benefit received; and it was but juſt, that they, who received the Benefit, ſhould bear the Charge: The Crown had not a Power to lay a Charge for the publick Good; if the King created an Office, with a Fee, it was void: The King granted a Rate upon every Barge that paſſed the Bridge, and it was held void; and ſo in ſetting up Lights for the Benefit of Sea-faring Men, he could not charge the Subject.

William the Conqueror granted, that all Men ſhould hold their Lands freed from all unjuſt Exaction, or Tallage; nothing was to be demanded but by Tenure; and ſuch Grants were as binding as Statutes now; and, if all Taxes were diſcharged, except thoſe ariſing by Tenure, conſequently, the Subject was liable to no other: The Exception explained the Rule: He inſiſted alſo, that the Charter of King *John*, *Magna Charta*, and the other Statutes made in Confirmation of it, extended to all manner of Taxes and Charges, except thoſe ariſing from Tenure: That thoſe Laws prohibited the laying any Taxes on the People, without Conſent of Parliament; and, if this was againſt Law, it was no matter what the Practice had been. They muſt reduce Precedents to Laws, and not Laws to Precedents; and, notwithſtanding the Practice, the Subject made a continual Claim againſt them.

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Danegelt, he ſuppoſed, was begun in the Time of the *Saxons*, by common Conſent, and raiſed but upon emergent Occaſions; and not intended as a Proviſion for all Times: He acknowledged, it was continued by ſome *Daniſh* Kings; but that it was generally decried by the People, and, at length, relinquiſhed by the Confeſſor: That the Conqueror, indeed, reſumed it, but the People made Terms with ſeveral of his Succeſſors, for laying it down; and the Charter of King *John* put an End to it. From whence he inferred, that though there were ſuch a Practice, under Pretence of defending the Sea, the People decrying it, it was not ſuch a Practice as could create a Law. When *Danegelt* was laid down, he acknowledged there was a Charge for providing Shipping in the room of it; but this too was generally decried; and by the Statute, *De Tallagio non concedendo*, 25 Edw. I. an End alſo was put to that; and in the 29th of the ſame Reign, the King contracted for Ships at his own Charges.

He admitted alſo, That in the Reigns of *Edw.* II. and *Edw.* III. Writs were iſſued for Shipping againſt the Enemy; but theſe were *pro ſalvatione Regni*, and the King ſent Money for the Soldiers Victuals; and, though *Edw.* III. broke theſe Rates, ſometimes he repented of it, and demanded Supplies for Shipping in a parliamentary Way; and theſe Ship Writs generally ended with *Edw.* III.

Then he proceeded to ſhew, That whatever Eſtate the King had, he had it in his politick Capacity, and was obliged, both in ordinary and extraordinary Caſes, for that Reaſon, to bear the Charges of the Defence of the Kingdom; and upon this Ground all Acts of Reſumption were founded; and the antient Lands of the Crown were not alienable. When all the Lands were in the King, he diſpoſed of ſome for the Service of the Kingdom, from whence Tenures originally aroſe; and divers Lands were given on Condition of finding Ships, beſides thoſe given to the Cinque Ports: And though it had been ſaid, theſe were not ſufficient for the Defence of the Kingdom, in caſe of a Foreign Invaſion; it appeared by *Domeſday-Book*, that the King had a great Navy, and no leſs than ſixty thouſand Knights Fees, in the Conqueror's Time: So that there was Proviſion made for Defence in the Inſtitution of our Government, and particularly for the Guard of the Sea: The King alſo had the old Cuſtoms, Tonnage and Poundage, *&c.* for this End.

And

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And though all Property must submit to Necessity, yet a distant Danger will not authorise a Man to invade another's Property. If Queen *Elizabeth*, did in the Year 1588. command the burning the Corn, and other Provisions, if the Enemy landed; he thought, she could not lawfully command them to burn their Corn, before the Enemy landed. The King might command burning the Suburbs of a Town, to prevent an Enemy's posting himself in them; but, if there was only a Fear of a War, the King could not command it. All positive Laws must cease, in Time of extreme Danger: But whether all Laws relating to our Persons and Properties ceased, when the Danger was but *conceived*, he submitted to their Lordships.

But admitting the King could command his Subjects to find Ships, Whether he could give a Power to the Sheriff, to make an Assessment, as the Writ directed, was a Question? In all politick Charges the Law provided they should be equal, as in the Case of Subsidies and Fifteenths; and in *Danegelt* they taxed by Hides: But how the Sheriff should have Knowledge to charge all Men's Estates equally, he was at a Loss to conceive. If the Law entrusted the King with this Power, it did not entrust the Sheriff, and Under-Sheriff: Assessments were usually laid by others, and not by the Sheriffs. If a Hundred was charged, they had Ways of laying it on themselves proportionably; and if such a Levy was made, it was a Question, Whether the Money could be brought into the *Exchequer* by *scire facias?* He believed, this was the first Writ that ever was of the kind: It not only gave a Power of levying the Money, but prescribed the Way; by Imposition, by Distress, and Sale: He knew no Case could match it.

The Attorney-General's Argument for the King.

Sir *John Banks*, the Attorney-General, replied to Mr. *Holborne*, the Defendant's Counsel: And first he laid down this Position; That the King, as he was King of *England*, *pro defensione regni*, *tuitione maris*, &c. when in his Judgment he conceived it a Time of such Danger, as necessarily required the Aid commanded in this Writ, might command and compel his Subjects, *per totam Angliam*, to set forth Ships, with Men and Ammunition, and double Skippage, as well by his Writ under the great Seal, as by Consent of Parliament; and held, that this Power was not derived from the People, but reserved to the King, when positive Laws first began. The Regal Power was not confined to the politick Advice of Parliament; he might exercise it without Consent of Parliament, and even when Parliaments were sitting, as his Ancestors had ever done.

The *Romans* governed this Island five hundred Years, by their Prefects, without Controul: The *Saxon* Kings succeeded them; and it appeared from antient Grants and Edicts, that the naval Power was commanded by those Princes, for the Defence of the Realm.

King *Edgar*, who began his Reign in the Year 959. set out a Navy of 3600 Ships, and commanded, that every Year, at *Easter*, a Fleet of 3000 Ships should be equipped for the Sea-Service. King *Ethelred*, in the Year 1008, fitted out a Royal Fleet, commanding every 310 Hides of Land to find a Ship, and every eight Hides to find a Man, to rendezvous at *Sandwich*, and oppose the *Danes*; at which Rate, there must be assembled 11000 Ships, and 45000 Soldiers, and upwards: And this was done by the King's sole Command, *per totam Angliam:* And in the 36th Year of his Reign, he commanded a Fleet to be ready every Year at *Easter*, under a certain Pain. King *Canutus*, the *Dane*, also commanded a naval Armament yearly; and this was done by the Advice of the Lords; and if these were to be deemed Acts of Parliament, or Laws, they were confirmed by *William the Conqueror*. He held, the King of *England* was an absolute Monarch; nothing could be ascribed to a King, but what was inherent in his Person, as appeared both by our Records, and Acts of Parliament: And, the Mirror that was written before and at the Conquest, declares, that the King had the Supreme Dominion by Sea and Land; and the very Soil of the Sea belonged to him, when the Waters left it.

As the Law had entrusted the King with War and Peace, no private Subject ought to distrust him, and insinuate, that he would cause Forces to be mustered, and Ships to be provided, where there was no imminent Danger: He was the sole Judge, and ought not to be questioned: He had no Superior, but God, according to *Bracton*.

It had been objected, indeed, that there must be a concurrent Power, a Politick Advice in Parliament: But Kings were before Parliaments, and might *statuere*, without the Aid of Parliament. There was a Time, when no municipal Laws were established, but Kings governed by natural Equity; and since there were positive Laws in *England*, it was evident from the Records, that they had prescribed the Time for issuing these Writs, the Number of Ships, the Time of Rendezvous, and how long they should remain upon the Sea, for the common Defence. The King, at this Day, could impower a Corporation, to make Laws for their Good; and it was strange he should not have that Power in himself, for the general Welfare of the Kingdom.

The Kings of *England* had at all Times commanded what was necessary for the common Defence; as the walling of Towns, of which the Precedents were numberless. He also laid Embargoes on Shipping, for the Defence of the Realm, and in all Ages made Ordinances, relating to the Royal Navy, by himself, by his Council, and by the Advice of the Peers; and such Ordinances had been obeyed, even while Parliaments were sitting; and granted other Supplies for the War; which was a strong Argument, that the King needed not the Aid of Parliament, to command his Forces: And in the 13th of *Edw.* III. when the King condescended to ask the Advice of the Commons, for the Guard of the Sea, the Commons declared, they had nothing to do with it; they had no Cognizance of it.

He said, he had collected five hundred Precedents, whereby it would appear to the Court, that these Writs had been issued by the King's Mandate, without Advice of Parliament; and should not these Precedents, some of them before *William* I. and continuing for so many

1637. 13 Car. I. hundred Years, obtain the Force of a Law, though they had been diſcontinued ſince the 50th of *Edw.* III. as Mr. *Holborne* affirmed, and in which it appeared he was miſtaken, there being great Numbers of Ships commanded into the Service, in like Manner, in the Reign of *Hen.* VI. And, though theſe Writs had ſometimes been petitioned againſt, it appeared, that the Service nevertheleſs went forward; and the Anſwer the King gave to them *le Roy s' aviſera* was always the Anſwer given when he refuſed a Bill. It appeared, the Service had always been done, the Mariners Wages paid by the Country, and that ſome Men had particular Diſcharges; for that they were in the King's Service, or that they lived near the Sea-Coaſts, 23 *Edw.* III. M. 14.

That theſe Writs were iſſued, not only in Time of actual War, or on an Invaſion, but when the King *conceived* Danger might enſue, *Rot. Clauſ.* 48 *Hen.* III. M. 2. It appears in the Reign of *Edw.* III. that the King, *hearing* the *French* had an Intention to invade the Realm, ſent out his Orders to provide Ships: The Words uſed in thoſe Writs were *Ut Audivimus: Ut Intelleximus: Quia vulgaris opinio Regnum noſtrum Angliæ invadere*; therefore he commanded a Fleet to be fitted out to Sea, and Forces to be levied by Land: And here he produced Precedents, ſhewing, theſe Writs had been iſſued at the ſame Time Supplies were given in Parliament for the War, and that this Service was required of the Inland, as well as of the Maritime, Counties, and obſerved, that the Rule in Law was, that every one, who received a Benefit, muſt afford Contribution.

By the Charter of *Edw.* I. the Ports were to find fifty two Ships: But when the Service required it, *All* their Ships were preſſed into the King's Service: That the Ports were utterly unable to perform this Service, now the greateſt Part of their Trade was gone: There were few Ports had any Trade at this Day, except *London*, *Newcaſtle*, *Briſtol*, and *Hull*. The Wealth of a ſingle Portſman in thoſe Days, was equal to the Wealth of a whole Town at preſent: And if the Ability of the Maritime Towns failed, it muſt be ſupplied by the reſt of the Kingdom; the Nation was not to be left defenceleſs. Before there were Commiſſions of Sewers, if a Man, who was obliged to defend the Sea Banks, was not able, the County were obliged to contribute to it; becauſe they might receive Profit or Loſs by it: And agreeable to this was the Caſe of the Iſle of *Ely*, where all that had *ſalvationem & damnificationem* were obliged to contribute. The Objection, that Inland Towns had been diſcharged upon Petition, was nothing to the Purpoſe, unleſs they had ſhewn the Reaſon of ſuch Diſcharges; for that the Town of *Beverly* inſtanced in, was diſcharged by virtue of a Charter of Exemption; and others had been diſcharged, as being exempt from the Admiral's Juriſdiction.

Then he produced Precedents to ſhew, that theſe Writs had been iſſued where no Cauſe had been declared, no manifeſt Danger expreſſed, or againſt what Enemy the Armament was intended, as *Rot. Pat.* 13 *Hen.* III. M. 5. a Writ commanding the Sheriffs of *Kent* and *Eſſex* to take up all Ships in thoſe Counties, to be ready at *Portſmouth*, to go upon ſuch Service as we ſhall command. So in the Reigns of *Edw.* I. *Edw.* II. *Edw.* III. and *Hen.* VI. Writs were iſſued, for fitting out Ships, and the Service concealed; nor was it always proper to divulge the Reaſons of warlike Preparations: And yet this was the great Objection made to the Writ of the 4th of *Auguſt*, that the King had not declared ſufficient Cauſe for iſſuing it: He had not acquainted the Counſel at the Bar, with what was not fit to be communicated even to the Privy-Council, but reſerved to the Council of War: But, had there been fewer Reaſons given, it had been more agreeable to former Writs; and, notwithſtanding what had been ſaid to the contrary, the ſame Power of Aſſeſſment had been granted by them, and ſometimes Levies made by Diſtreſs and Impriſonment; nay, by the Seizure of Lands and Goods, and the Charge laid on the Inland Towns, as well as the Maritime. *Rot. Scot.* 8 *Edw.* II. M. 9. *de navigio providend' &c.* That theſe Writs had been directed alſo to Sheriffs, as well as to Commiſſioners; and the Lands of Sheriffs had been extended for their Negligence in executing theſe Writs; and they had been commanded to levy the Money, by Diſtreſs and Impriſonment of thoſe that refuſed. 1637. 13 Car. I.

As to the Objection, that a Parliament might have been called Time enough, to have raiſed Supplies in the ordinary Way; it was known their Proceedings were very ſlow, and they might have diſappointed the King; and the Time of Preparation, and Continuance of the Service, was ever left to the King. It appeared by the Council Books, that the Preparations made againſt the *Spaniſh* Invaſion, were in *Octob.* 1687. and their Fleet did not ſet Sail from *Spain*, till *June*, 1688. Nor did the Queen think fit to call a Parliament in all this Time; but, by an Order of Council, ſhe commanded a Royal Fleet to be fitted out at the Charge of the Subject: From whence it appeared, that there was not any Particular contained in this Writ, but what was warranted by Precedents, and that in a much higher Degree. And here he produced ſeveral more Precedents, to ſhew, that ſuch Defence by Shipping, had been required, not only of the Maritime Places, but *per totam Angliam*.

As to the Charter of King *John*, which had been mentioned, it was obtained by Force of that King, in his Diſtreſs, at *Running Mead*, and recalled the next Year; nor was it ever after confirmed, or inſiſted on: And the Statute of *Magna Charta* took away nothing that of Right belonged to the Crown: Theſe Writs continued to be iſſued afterwards, which ſhewed that *Magna Charta* did not affect them. The ſame Anſwer he gave to the Statute *de Tallagio non concedendo*; for this was not properly an Aid, but a Contribution of King and People, for the Defence of the Realm; and the 25 *Edw.* I. expreſly excepts ſuch Aids as have been due and accuſtomed. The Practice in the Reigns of *Edw.* I. *Edw.* II. *Edw.* III. and *Rich.* II. ſhewed plainly, that thoſe Statutes never intended to take away this Branch of the Royal Power, which was one of the King's higheſt Prerogatives. The Statute of 1 *Edw.* III.

1637. 13 Car. I. indeed ſaid, that none ſhould be compelled to go out of his County, but where *Neceſſity* required; and this Writ required no more: There was a *Neceſſity* in the King's Judgment; and ſome of the following Statutes related to foreign Wars: That the 1 *Edw.* III. reſerved a Power in the Crown, in Caſes of *Neceſſity*: And as to that Reſolution, in 2 *Rich.* II. that the Commons could not be charged, but in Parliament; this was no Act, and was in the Non-age of a Prince, who did not aſſent to it: That the Acts of Tonnage and Poundage, which were ſaid to be given for the Defence of the Sea, appeared to have been given in the Reigns of Queen *Elizabeth* and King *James*, for the *ordinary* Defence of the Sea: And as to the Petition of Right, it was declared by all, that there was no Intention of leſſening the King's Prerogative by it: He did not inſiſt on a Power of laying Impoſitions on the Subject, out of Parliament; it was not in Queſtion here: No Man's Property was invaded, or Goods ſeized, unleſs he incurred a Forfeiture by Contempt; and by a wilful Contempt the Subject might loſe his Property. *Dyer* 16. & 13 *Eliz.* 296. if the King command a Subject to return home, and he refuſes, he ſhall forfeit his Goods for his Contempt: So if any one wilfully contemn the King's Writ, he ſhall be diſtreined: But this is no Invaſion of the Subject's Property.

As to that Objection, that the Revenues of the Crown would defray all ordinary and extraordinary Charges; and that the Tenures by Knight's Service, the Profits of Sturgeons, Whales, *&c.* were reſerved for theſe Purpoſes, every one knew, that the King's Revenues would not anſwer the Expences of his Civil Government, and much leſs were ſufficient for the Defence of the Kingdom: And to ſay, that every Man, by the Inſtinct of Nature, would contribute to the Defence of the Kingdom, when there was a *real Neceſſity*, was extremely ridiculous. If every Man was made Judge of the Danger, and of what Share he ought to contribute to the Defence, it was not to be expected there would be any Defence made to the Purpoſe: God was pleaſed antiently to appoint Captains and Leaders to his People: An Army left to themſelves (without a General, or Commander), to do what was right in every one's Eyes, was not likely to do much in the Defence of the Kingdom. This muſt be ſaid therefore only to captivate the People, by ſuggeſting, that every Man was veſted with a kind of ſovereign Authority, to direct and controul his Prince, whenever he ſaw fit.

It had been ſaid, that it was better to ſuſtain a Miſchief, than an Inconvenience, whereby every Man's Property might be taken from him, as often as the King pleaſed: But ſurely the Loſs of the whole Kingdom, wherein the Loſs of Liberty and Eſtate was included, muſt be of worſe Conſequence than the taking a ſmall Contribution, towards the common Defence, in a Caſe of Neceſſity. The former was a Miſchief that deſtroyed both the Head and the Members: He wondered therefore, to hear the Defendant's Counſel apply that Rule to this Caſe. As to that Exception, that a *Scire Facias* ought not to iſſue for the Debt; for that the Writ of the 4th of *Auguſt* directed it to be levied by Diſtreſs; and becauſe it was no Debt to the King; he anſwered, that whovever detained a publick Duty, might be queſtioned for it by the King; and whatever was *pro communi utilitate*, might be levied by Proceſs out of the *Exchequer*; concluding, that there was no Act of Parliament that deprived the King of the Power of commanding a Fleet to be equipped, at the Charge of the Subject, for the common Defence, when he found there was a Neceſſity for it: And, had there been no Law to compel the Performance of this Duty, Nature, and the inviolable Laws of Self-Preſervation, ought to move the Subject to obey it. The King was the Centre wherein they all met; the Soul of the Body politick, whoſe proper Act it was to command; and he humbly deſired their Lordſhips Judgments therefore for the King. 1637. 13 Car. I.

The Judgment of Sir Francis Weſton, *one of the Barons of the* Exchequer.

Then the Judges proceeded to deliver their Judgments in the Caſe: And firſt, Sir *Francis Weſton*, one of the Barons of the *Exchequer*, who ſaid, he conceived there was ſufficient Matter to charge Mr. *Hampden* with the twenty Shillings, aſſeſſed on him; and therefore he gave his Judgment for the King. There was a Rule in Law, he obſerved, that if a Man demurs generally to a Writ, he confeſſes all the Matters of Fact that are alledged: So that all the Dangers alledged in the Writ, were confeſſed by the Demurrer of the Defendant; and though it was objected, that the Allegations in the Writ of the 4th of *Auguſt* only were confeſſed, the Demurrer ſaid, that the Writ with the reſt of the Proceedings and Schedules, did not contain Matter ſufficient; ſo that they were to give Judgment on the whole: And the Writ of *Mittimus* ſaid, *Salus Regni periclitabatur*. It had been objected indeed, that *Salus* ſignified Health, but it ſignified Safety alſo; and though it was ſaid, the Danger was not fully ſet forth in the Writ of the 4th of *Auguſt*, he anſwered, it might not always be proper to divulge what Danger the Nation was in: But in the Writ of the 4th of *Auguſt*, there was not only a Danger from Pirates mentioned, but that the Dominion of the Sea was in Danger of being loſt; and that there were great Dangers apprehended from the Nations that were at War round about us; and they ought to believe this, if there was no other Reaſon for it, but that the King declared it: But it was evident to all Men, the Kingdom had actually been in Danger for three or four Years laſt paſſed, from the great Fleets that had been fitted out, and the Land Forces that had been raiſed, by the neighbouring Nations; and had we not had a good Fleet at Sea, we muſt have been expoſed to their Inſults and Invaſions.

It had been objected, that the Money thus raiſed for Shipping, might be applied to other Uſes: But there was no Colour for ſuch a Suggeſtion, nothing was ſaid of any Money to be paid to the King, but the Sheriff was to rate the County *ſecundum facultates*, towards providing a Ship.

And whereas it is ſaid, the Party was to be impriſoned, and his Goods taken away, he anſwered,

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ſwered, The *Scire facias* was not to ſhew Cauſe, why he ſhould not be impriſoned, or his Goods ſold; but, why he ſhould not be charged with the Money aſſeſſed upon him.

It was urged, That the Defence of the Kingdom lay upon the King; becauſe he had Knights Service, Eſcuage, and other Services, to enable him to do it: But theſe were Tenures reſerved on ſeveral Grants made by the King; and he was no more bound to defend the Kingdom on this Account, than his Subjects, who had the like Tenures: And, as to the Service of the Ports, every one knew that this was not a ſufficient Defence for the Kingdom at this Day; and cited abundance of Writs that had been iſſued for the Defence of the Sea. Then he obſerved, that, of the fifty two Counties of *England* and *Wales*, thirty three were Maritime Counties, and the Inland but nineteen, whoſe Contributions did not amount to above a fourth Part of the Charge; ſo that the Cauſe was not of that Conſequence as was imagined: Indeed, the Maritime Places received the greateſt Benefit by the Sea, and were better prepared againſt ſudden Invaſions; and therefore Writs, for the moſt Part, iſſued to the Maritime Places: But as the Inland Counties alſo received Protection from this Defence, they ought to contribute towards it when there was Occaſion, as it appeared they had actually done. *Clauſ.* 48. *Hen.* III. *M.* 2. A Writ was directed to the Mayor and Bailiffs of *Bedford*, to raiſe Horſe and Foot, and march to the Sea-Coaſts, to oppoſe an Invaſion. *Rot.* 26. *Edw.* I. *M.* 5. Writs were directed to the Sheriffs of *Hertford*, *Eſſex*, *Nottingham*, *Derby*, *Huntington*, *Cambridge*, &c. *pro cuſtodia Maritima*.

He did not think the Aid demanded by this Writ was within the Meaning of the Statute *de Tallagio non concedendo*; for by the Words *No Aid*, it was agreed, that the Aid for marrying the King's Daughter, or making his Son a Knight, were not meant; and if, by no Tallage, it had been intended the King ſhould demand no Money, then all Fines, Amerciaments, and all lawful Impoſitions due to the King, were taken away; and therefore, this could not be the Meaning of it: He conceived it was meant only, to take away all Taxes and Tallages that were unlawful.

The ſtrongeſt Statute that had been cited was, 14 *Edw.* III. which ſaid, That the Subject ſhould not be taxed, without a Parliament, for the Defence of the Kingdom; but then, they did not ſhew by any Act, that the King was to be charged with the Defence of the Kingdom; but, ſuppoſing the Act to be as ſtrong as they would have it, in the Caſe of a ſudden Invaſion, which the King was unable to reſiſt without the Aid of his Subjects, muſt they not give way to Neceſſity, and aſſiſt him, rather than the Kingdom ſhould be loſt? and, if they admitted, that Acts of Parliament muſt give way to Neceſſity, it was all that was contended for.

The King was no more obliged to call a Parliament, than Queen *Elizabeth* was, in the greateſt Danger in 1688, or on the Rebellion in the North: She raiſed Forces by Sea and Land, at the Subjects Charge, when there was but a *Rumour* of the *Spaniards* Intention to invade the Kingdom, and it was never complained of by the enſuing Parliament; on the contrary, they raiſed Money to repay what ſhe had expended, or borrowed; and the ſame Acts of Parliament were then in Force as were now. It was objected, indeed, that the King might pretend Danger where there was none; but, if this Power was in the King, it was not to be taken away, becauſe he might miſemploy it: If the Sums raiſed had been miſapplied, there might have been ſome Colour for a Complaint; but the Money was expreſly for a Ship; and if they would have taken any Advantage of that, they ſhould have pleaded it. There did not appear any Money to be coming into his Majeſty's Hands: Nay, the Writ expreſly ſaid, That *no Part of the Money ſhould be converted to any other Uſe, but that of Building a Ship*.

He thought the Sheriff a very proper Perſon alſo, to aſſeſs the County, as being beſt acquainted with it; and a *Scire Facias* might very properly iſſue for it: A Writ was ſent to the Mayor and Bailiffs of *Oxford*, to repair the Walls and Ditches of that Town; and the Subjects taxed for that End, notwithſtanding thoſe Acts which declared, that the Subject ſhould not be taxed for Defence, without a Parliament; and with much greater Reaſon ought the Subject to be charged, towards the Repair of the wooden Walls of the Kingdom: There was no Act for taking this Charge by Writ away; it was a general Cuſtom; and general Cuſtoms made the Common Law of *England*: They muſt try new Cauſes by the old Laws, and do as they had done in former Times: He was perſuaded in his Conſcience there was immediate Danger; and there was a Neceſſity this Danger ſhould be prevented: He conceived the Proceedings were legal; and that there was ſufficient Cauſe to charge the Defendant with the twenty Shillings aſſeſſed on him; and that he ought to pay it.

The Judgment of Sir Francis Crawley.

Sir *Francis Crawley*, one of the Juſtices of the Court of *Common Pleas*, gave his Judgment next: He admitted, that in ordinary Caſes the Charge of defending the Realm belonged to the King: He had the Cuſtoms, for the Protection of the Trade of the Nation againſt Pirates, and Enemies; and in extraordinary Caſes, the Charge of the Defence ought regularly to be ſupplied by Parliament, and could not be done without it. The ſame Law which required the King to defend his People, required the Subjects to grant him Aids towards that Defence. The Statute *De Tallagio non concedendo*, no doubt, was a Statute, and the Words were *Nullum Tallagium ſine aſſenſu Parliamenti*; and in 14 *Edw.* III. the King declares, he will impoſe no Charge, or Aid, on the Subject, but in Parliament: But ſtill, if Neceſſity, and the Danger of the Commonwealth required it, and would not admit of calling a Parliament, the King might lay a Charge without their Conſent: And the whole Iſland being concerned by the Event, the Charge ought to be borne in the inland Countries, as well as by thoſe that were more immediately expoſed: There were ſeveral Precedents, where Writs had gone to the inland Counties, for the Guard of the Sea, *Clauſ.* 48 *Hen.* III. 24 *Edw.* I. 26 *Edw.* III. Writs into *Berks*, *Oxon*, &c.

The

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The Kingdom had been conquered four Times: It concerned the King, the Head of the Commonwealth, to be circumſpect: Even Conjectures and Probabilities were to be regarded: If there was a violent Preſumption, that ſome potent Neighbour was preparing to invade us, was it not fit we ſhould inſtantly prepare for our Defence? And there might be juſt Reaſons of State, why theſe Things ſhould not be revealed in Parliament, and ſo communicated to the Enemy; and the King might in ſuch Caſes, *Jure Gentium*, charge the Subject without his Conſent in Parliament.

As to the Statutes of the 25th of *Edw.* I. 14 *Edw.* III. and the Petition of Rights, 3 *Car.* I. he anſwered, that if there were an expreſs Statute, that the King ſhould not have Aid of his Subjects, but in Parliament, were the Kingdom in never ſo much Danger, it would be a void Act; becauſe it was manifeſtly unreaſonable: To follow the Letter of the Law, in ſome Caſes, would be the higheſt Injuſtice and Folly; the Laws of God and Reaſon were an implied Exception, and underſtood in every general Law.

This Right of Impoſition without Parliament, appertained originally to the King, as he was a Sovereign, in Right of his Crown: They could not have a King without theſe Royal Rights: *No, not by Act of Parliament.*

And although the Word *ſalus* in the *Mittimus* was ſaid to be a metaphorical Word, he held it to be certain enough; for in the Writ of *Oyer and Terminer*, the Words were *Omnes qui habent damnum vel ſalvationem.* But he was of Opinion, that the Writ of the 4th of *Auguſt*, without this, contained ſufficient Matter for this great Preparation; for it ſaid, *Leſt we loſe the Dominion of the Sea*; and was not that a good Reaſon, to prevent other Powers becoming Maſters of the Sea? It was ſaid alſo *Conſideratis etiam periculis, &c.* conſidering the Danger is ſo evident and great in theſe warlike Times, that a Force is neceſſary by Sea and Land: They had alſo by their Demurrer confeſſed the Danger; and that it was preſent, imminent, and inſtant, and greater than the King, without the Aid of his Subjects, could reſiſt; and, conſequently, that it was dangerous attending the Delays of Parliament: He exhorted the Subject, therefore, to relie on their pious King, whoſe Prerogative and Right of Sovereignty it was to defend the Realm; and gave Judgment for his Majeſty.

The Judgment of Sir Robert Berkley.

Sir *Robert Berkley*, one of the Juſtices of the *King's Bench*, delivered his Judgment next: He obſerved, that the Defendant had demurred generally, without any Proteſtation; and, acknowledging the Matter to be true, put it upon the Sufficiency, or Inſufficiency, in Point of Law to charge him: He admitted, that the King could not, at all Times, and on all Occaſions, charge the Subject, without Conſent of Parliament: We were Freemen, not Slaves, or Villains, to be taxed *de alto & baſſo.* Although this was a Monarchy, and the King had *Jura ſummæ Majeſtatis*, his Government muſt be according to the Laws of the Kingdom; and by thoſe Laws the Subjects were not Tenants at Will of their Lands: They had a Property in their Poſſeſſions, and a Birthright in the Laws of the Kingdom: Theſe Laws could not be altered, or abrogated, without their Conſent in Parliament. 1637. 13 Car. I.

Then he proceeded to ſhew, that the antient *Danegelt*, which was levied for the Defence of the Sea, was not levied by Authority of Parliament, but by the King's Command: However, he obſerved, that the *Danegelt* differed from the preſent Charge in ſeveral Inſtances; for that was annual, this only in caſe of Neceſſity; that was collected by the Hides of Land, this out of the perſonal as well as real Eſtates; that was an Aid of Money, this of Shipping and Armour in kind; that was to protect Sea-faring Men againſt Pirates, this for the common Defence of Sea and Land: In that the Clergy were originally exempted; but this Charge was general upon all, without Exception: In the next Place he endeavoured to ſhew, that the Charge he demanded was not within the antient Acceptation of the Words, *Aids, Miſes, Priſes, Taxes, or Tallages*; or of the Word *Subſidy*: Theſe he agreed, could not be levied without Conſent of Parliament: That Aids were of two kinds; either 1. Such as were Aids and Services too; as to make the King's Son a Knight, or to marry his Daughter: Theſe Aids common Perſons had, who had Signiories, as well as the King; and, therefore theſe could not be meant by the Word Aids. 2. The ſecond ſort of Aids were granted the King for building Bridges, for his Wars: and ſometimes to be diſpoſed of at Pleaſure, *Rot. Parl.* 25 *Edw.* III. *n.* 12. *Miſes* were Preſents made to the King in Kind, at his coming to the Crown: *Priſes* were Part of the Subjects Goods taken from them, for the King's Uſe, without Pay; as Priſage of Wines: And Taxes and Tallages were Tenths, Fifteenths, or other Subſidies granted by Parliament.

Nor was the principal Thing commanded in this Writ to levy Money, but to provide a Ship; though the refuſing to pay the Duty, indeed, was, in effect, a Refuſal to obey the principal Command; for he that denied the Means, denyed the End: And this, concerning the Safety of the Nation; the King, as Head and Sovereign thereof, had, incident to his Regal Office, a Power of Coercion, and might enforce thoſe to pay it who refuſed their Quota's. The *Scire facias*, however, was not to have Execution, as to the King's Money, or for a Debt due to the King, but to bring on a declaratory Payment, that Mr. *Hampden* ought to be charged twenty Shillings towards providing a Ship for the County of *Bucks.*

Thus, having ſhewn what the Caſe was not, he came to the grand Queſtion, Whether his Majeſty, to prevent the Ruin of the Kingdom, might not by his own Authority, without the Conſent of Parliament, impoſe a Charge on his Subjects in general, to provide ſuch Shipping as he in his Judgment found neceſſary to join with his own Ships, and attend the Service as long as his Majeſty thought fit; and alſo to be at the Expence of victualling and furniſhing them with all manner of Tackling, Ammunition, and Proviſions.

For ſolving this Queſtion he ſaid, he would conſider the fundamental Policy, Maxims, and Rules of Law, for the Government of the Realm. And firſt, he thought it plain, that the Govern-

ment

1637. 13 Car. I. ment was originally Monarchical; and though Mr. *Holborne* had aſſerted, that the King could take nothing of the Subject without Conſent of Parliament, there were two Maxims which diſproved this: 1. *That the King was entruſted with the State of the Commonwealth*; 2. *That the King can do no wrong*. *Fitzherbert*, *Bracton*, and *Glanville* all held, that the King muſt have Arms as well as Laws: Forces to defend the Kingdom againſt foreign Enemies, as well as Laws to adminiſter Juſtice by at home: And, if he muſt have theſe, he muſt not want the neceſſary Means, or be dependant *ex aliorum arbitro*; for it was a Rule in Law, *Quando quis aliquid alicui concedit, concedit & id ſine quo res ipſa eſſe non poteſt*. He held alſo, that the King, of mere Right, ought to have, and the People were bound in Duty to yield him, Supplies for the Defence of the Kingdom in Parliament: The ſame Law which obliged the King to defend the People, obliged them to contribute towards their Defence: And the Kingdom wanting a preſent neceſſary Defence, and it being dangerous to wait for a parliamentary Supply, the Duty was not therefore loſt, becauſe they wanted Time to obſerve the Form. He acknowledged, the Parliament was the ſupreme Court, or Council, of the King and Kingdom; yet ſtill it was but a Council: The King might call, prorogue, or diſſolve it at Pleaſure; and what he did therein, was looked upon as juſt and neceſſary.

Great Bodies, he obſerved alſo, moved ſlowly; and, though ſome held Parliaments could not err, it was evident particular Members might; and others might have ſiniſter Ends, and create Delays and Diſturbances; and Parliaments themſelves had ſometimes been cenſured, as unlearned and unmerciful.

This Point, of maintaining the Dominion of the Sea, was a weighty Conſideration; not only the well Being, but the very Being, of the Commonwealth depended on it; and, therefore, it behoved the Subject to haſten to the Defence of it: *The Safety of the Publick was the ſupreme Law*; particular Intereſts were not to be conſidered, where the publick Welfare was at Stake: He obſerved alſo, that, though there had been many Writs of this kind, in ſeveral Reigns, there never was an Action brought, till now, for any thing done in purſuance of them, unleſs in the Abbot of *Robertſbridge*'s Caſe; and there it was confeſſed in the Pleadings, that the aſſeſſing Mens Lands to contribute to the Guard of the Sea, by the King's ſole Command, was good in Law: And, it was remarkable, that whenever a Charge had been impoſed, without Conſent of Parliament, in a Caſe of Neceſſity, there was not one Inſtance of a King's acknowledging ſuch a Charge, to be againſt Law. In none of the Statutes that had been cited was there any expreſs Clauſe, importing, that no Charge ſhould be impoſed for neceſſary Defence, without common Conſent; and, if ſuch a Clauſe had been offered, he queſtioned if it would have been of any Force: But all theſe Statutes, being general, muſt have a reaſonable and equitable Expoſition: The Defence of the Kingdom, and the Safety of the Commonwealth, muſt be underſtood to be clean out of thoſe Laws; otherwiſe the Laws that were made, for the Good of the Commonwealth, might prove the Ruin of it. He concluded, That, upon the Reaſons and Authorities cited, the twenty Shillings impoſed on Mr. *Hampden*, towards providing a Ship, was conſonant to Law; and, conſequently, Judgment ought to be given againſt him, *Quod one-retur*.

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The Judgment of Sir George Vernon.

Sir *George Vernon*, one of the Juſtices of the *Common Pleas*, contented himſelf with giving his Judgment, without offering his Reaſons for it. He ſaid, he held, That the King, for the Publick Good, might charge his Subjects for the Defence of the Kingdom; and, that a Statute derogatory to this Prerogative would not bind the King: He might in Caſes of Neceſſity diſpenſe with any Law, and therefore, concluded, that Mr. *Hampden* ought to be charged with the twenty Shillings aſſeſſed on him.

The Judgment of Sir Thomas Trevor.

Sir *Thomas Trevor*, one of the Barons of the *Exchequer*, did ſpeak to the Caſe; but his Argument is wanting; only it appears he gave his Judgment againſt the Defendant.

The Judgment of Sir George Crook, *with his Reaſons.*

Sir *George Crooke*, one of the Juſtices of the *King's-Bench*, argued on the other Side: He obſerved, that his Brethren had all argued one Way; and ſaid, he would willingly have concurred with them, if he could have ſatisfied his Judgment with their Reaſons; but he muſt not go with the Multitude againſt his Conſcience; declaring it to be his Opinion, that Judgment ought to be given for the Defendant; for which he offered his Reaſons.

He ſaid, it might be objected to him, that they had all reſolved the Caſe under their Hands; and he acknowledged, he had given his Opinion under his Hand in two Caſes; to the firſt voluntarily, in *December* 1635, as follows:

I am of Opinion, that where the Good and Safety of the Kingdom in general is concerned, and the whole Kingdom in Danger, of which his Majeſty is the only Judge, there the Charge of Defence ought to be borne by all in general.

This, he ſaid, he ſhould always maintain; for when the Kingdom was in Danger, the King might command every Man in the Nation, with all his Force, to come and defend it at all Times, and at all Places in the Kingdom; and if any one refuſed, he was fineable and puniſhable.

That the ſecond Opinion he ſigned, was in *February*, 1636. (*viz.*) *When the Good and Safety of the Kingdom in general is concerned, and the whole Kingdom in Danger, his Majeſty may, by Writ under the Great Seal, command the Subjects of this Kingdom, at their own Charges, to provide and furniſh ſuch a Number of Ships, with Men, Victuals, and Ammunition, and for ſuch Time as his Majeſty ſhall think fit, for the Defence and Safeguard of the Kingdom from ſuch Danger. And, that his Majeſty may compel the doing thereof, in Caſe of Refuſal and Refractorineſs; and in this Caſe his Majeſty is ſole Judge of the Danger; and where, and how, the ſame is to be prevented and avoided.*

He confeſſed, he ſubſcribed this Opinion; though he then diſſented, he ſaid, from his Brethren, and declared as much; for he conceived ſuch a Charge could not be impoſed but by Parliament; in which one of his Brothers agreed with him, and four others diſſented in ſome Particulars: But the greateſt Part ſeem-

1637. 13 Car. I. ing reſolved, and it being ſaid to be uſual, for the leſſer Number to ſubſcribe where there was a Difference; and it being agreed, that this Subſcription would not bind them, if it ſhould afterwards come judicially before them; and being aſſured, his Majeſty ſhould be acquainted which of them diſſented, he did conſent to ſubſcribe: But, this being before he had ſearched the Precedents, or heard any Arguments, he did not hold himſelf bound by that Opinion; and, if he had been once of that Opinion, yet, upon better Advice, he thought it no Shame to retract it.

Then he proceeded to his Argument, and obſerved, that this was the firſt Writ ſince the Conqueſt, that ever iſſued to an Inland County, to prepare a Ship with Men, *&c.* for ought appeared by any Record; and, where there was no Precedent, according to *Littleton*, the Law would not allow of any ſuch Writ.

The King, he admitted, might grant Tolls, Fairs, Pontage, Piccage, Murage, *&c.* which were for the Good and Eaſe of the People, and the Profit of thoſe who took the Benefit thereof, and where the Sums were ſmall and reaſonable; but if they were great Sums, the Law adjudged them void. As to the Caſe of an Inundation, the King alſo might by his Commiſſion cauſe all thoſe who had Lands, or Commons, in the Level, to be contributory to the Sea-Walls: But this could not be laid upon a Town, or County, in general; only on ſuch particular Men as might have Loſs, or Benefit thereby; and this was to be ſettled by a Jury; and ſo it was at this Day on a Commiſſion of Sewers. 10 *Coke* 142. *The Caſe of the Iſle of* Ely.

And, whereas it was alledged, that this Charge was impoſed for the Publick Safety, and every one reaped an Advantage by it; he did admit, that in caſe of imminent Danger, there muſt be a Defence made, by every Man in Perſon, when the King commanded it: Every Man was bound *per ſe & ſua* to defend the Kingdom: But the laying a Charge on the Kingdom, either for making or preparing Ships, or levying Money in lieu thereof, was not to be done but in Parliament: If this Writ was allowed, no Man could tell what his Charge might be: And, though his Majeſty would uſe his Power moderately, Judges in their Judgments were to have regard to future Times: *Danegelt* was firſt inſtituted, on Neceſſity, to defend the Kingdom from the Ravages of the *Danes*; and, though it was at firſt but 10000 *l.* within two hundred Years it encreaſed to 48000 *l.* and who knew what Bounds this would have?

Tonnage and Poundage, it appeared, where granted in the Reign of King *James*, that the Crown might have Money in Bank for the Defence of the Sea; and thoſe Duties were taken now, and, he preſumed, applied to the ſame Uſe.

The leaving it to the Sheriff, to tax the People at Pleaſure, he held alſo, to be illegal; it ought to be done by a Jury, as in the Caſe of Sea-Walls: And, though it had been doubtful by the Common-Law, whether ſuch a Charge might be impoſed by Writ; yet, ſince the Statutes *de Tallagio non concedendo*, and the other Acts that had been made, declaring, that no Impoſitions could be laid on the Subject, but in Parliament; the King could not charge his Subjects without their Conſent: Beſides, the Queſtion was only upon the Writ of the 4th of *Auguſt*; for the Writ of *Mittimus* reciting, that *Salus Reipublicæ periclitabatur* was iſſued a Year and a half after the Writ of the firſt of *Auguſt*, and conſequently could not help it: Nor was this notified to the Sheriff, or the Inhabitants of the County, to induce them to provide a Ship; it was only a Notification to the Barons of the *Exchequer*, ſhewing, that this was the Reaſon of iſſuing the former Writ: Nor was it poſitively affirmed, that there was any Danger; but only ſaid, *Quia datum eſt nobis intelligi* that Pirates had done Miſchief: He obſerved further, That untrue Suggeſtious were frequently inſerted in Writs and Patents, which did not effect the King's Conſcience: The Law ever imputed them to thoſe who miſinformed the King, and thruſt in ſuch Suggeſtions; and therefore all Patents, granted on untrue Suggeſtions, were void: He admitted that, on a ſudden Danger, the King might command Men from all Parts of the Kingdom, for the Common Safety; but he could not command the Money out of his Subjects Pockets, by diſtraining their Goods, or impriſoning their Perſons, he conceived. 1637. 13 Car. I.

If any Dangers were apprehended from abroad, by the Confederacies of Foreign Powers againſt the Kingdom, there would be Time enough for aſſembling the Parliament, which, by the Inſtitutions of King *Alfred*, was to aſſemble twice a Year; and by ſome Statutes made in the Reign of *Edw.* III. a Parliament was to be holden once a Year, and oftner, if need required: And as, in this Caſe, there were ſeven Months between the *Teſte* of the Writ and the Rendezvous appointed, there was Time for a Parliamentary Supply; and it was not to be preſumed a Parliament would have refuſed to contribute what was fit for their own Safety and Defence.

He admitted, if a Statute was made, that the King ſhould not defend the Kingdom, it would be void; but, a Statute that Money ſhould not be levied, or Men compelled to build Ships, without Conſent of Parliament, would be a good Law, and agreeable to Reaſon: The King might reſtrain himſelf from laying any ſuch Charge on the People; and he was a Prince of that Juſtice and Piety, that he would not do it, if he was truly informed it was againſt Law. The principal Fault, therefore, was in thoſe who deviſed theſe Writs, and in his Judges, who declared they were lawful. He would not ſpeak againſt the King's Prerogative, he ſaid; they were ſworn to maintain it; but if this Charge was againſt Common Law, and againſt ſo many Statutes, then there was no ſuch Prerogative. *The King could do no wrong* was indeed, a Maxim in our Law; for the Wrong was imputed to thoſe who adviſed and executed it, and not to the King, who might be abuſed by falſe Suggeſtions.

Royal Power, he admitted, might be uſed in Caſes of Neceſſity and imminent Danger, when ordinary Courſes would not avail; as in a Rebellion or ſudden Invaſion: In ſuch Caſes Martial Law might be uſed, they were not to

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ſtay for legal Proceedings. But in Times of Peace, and no extreme Neceſſity, legal Courſes were to be uſed, and not Royal Power. That the King being impowered to command all Perſons in the Kingdom to the Defence of the Sea Coaſts, and to preſs all Shipping for the Guard of the Sea in Time of Danger; theſe had ever been deemed ſufficient againſt any Power whatever, and there was no Neceſſity of iſſuing Writs to every County of *England* to prepare Ships at their own Charge. In the 23d Year of *Edw.* I. the *French* King prepared a Navy, the Roll ſays, to invade the Kingdom, *Et Linguam Anglicanam de terra delere*, to blot out the *Engliſh* Name; whereupon, the King commanded all Ships and Men with Arms, to be in a readineſs; and the like Commands were iſſued in the Reigns of *Edw.* III. *Hen.* IV. and *Hen.* VIII.

And if ſuch a Charge might be laid on Maritime Places, yet he held it was not legal to charge Inland Places, nor was there any Precedent for it; the Law did not require Impoſſibilities: This County had neither Ships nor Mariners; they were converſant in Huſbandry, and ſcarce ever ſaw a Ship; and they were not obliged to look for Mariners in another County. When Writs had been awarded, therefore, to inland Towns, ſuppoſing them to be maritime, they had been diſcharged when the Truth appeared. He had diligently peruſed the Records, he ſaid, and did not find any Precedent of a Writ ſent to a Sheriff of an Inland County, to command their building a Ship at the Charge of the County.

There had, indeed, been Writs ſent to the Maritime Towns, to provide Ships and Mariners, and ſend them to the Place of Rendezvous in the Time of Danger; but even thoſe were moſt commonly at the King's Charges, though ſometimes at the Charge of the Ports and the adjacent Towns; which, he ſuppoſed, occaſioned the making the Statute of 14 *Edw.* III. Cap. 1. After which there was but one Record of ſuch a Writ iſſued to a Maritime Town, except thoſe iſſued 1 *Hen.* IV. which were complained of and recalled.

Then he proceeded to ſhew, that the Motives in the Writ were inſufficient for the commanding a Royal Navy to be equipped: In former Times the Inducements mentioned in the Writs were, That great Princes, in open Hoſtility, had provided great Navies and Armies to invade the Kingdom; but that ſuch Preparations ſhould be made againſt Pirates was never known; againſt theſe the Vice-Admiral with a ſmall Squadron was uſually employed, and not the grand Fleet. There was no Fear of loſing the Dominion of the Sea from any Force that Pirates could raiſe, much leſs that every County ſhould be charged to ſend out Ships againſt them; and the Command, to provide Wages for the Mariners for twenty-ſix Weeks after the Rendezvous, was ſtill more illegal: Thoſe who held by Knights Service were obliged to be at their own Expences but forty Days. And in ſeveral Commiſſions of Array that had been iſſued, the People were to be at the King's Charges after marching out of their reſpective Counties; this Aſſeſſment, therefore, being entire, as well for Wages as other Charges, was utterly illegal.

Nor was the Command to aſſeſs Men at the Sheriff's Diſcretion, warranted by any Precedent; a Power given to Sheriffs to impriſon Men was illegal. No Man was to be arreſted, or his Goods ſeized, contrary to *Magna Charta*, as appeared from ſeveral Statutes that had been cited; and yet by colour of this Writ, the Sheriff might impriſon any Man, even a Peer. He held alſo that the *Certiorari* being awarded to the late Sheriff, was wrong awarded; for all Writs ought to be directed to the preſent Sheriff, requiring him to demand of the late Sheriff, what was done upon the former Writ; and the *Scire Facias* therefore grounded upon it was not good; nor did the *Scire Facias* ſhew to whom the twenty Shillings was to be paid, and conſequently was inſufficient. Upon the whole he concluded, that no Judgment could be given to charge the Defendant.

The Judgment of Sir William Jones.

Sir *William Jones*, another of the Juſtices of the *King's-Bench*, then proceeded to give his Judgment, together with his Reaſons for it. He ſaid the Queſtion was not, Whether the King could draw this into a perpetual Charge, for it was founded upon a Fear of Danger, and when that ceaſed, the Tax muſt likewiſe ceaſe. *Bro. tit' Protection.* it was held the King could not grant a Protection for three Years, but he might renew it every Year, as there was Occaſion: So here the King, upon an emergent Occaſion, might command Ships; but he could not make the Charge perpetual, becauſe the Occaſion might ceaſe.

They had already delivered their Opinions, he ſaid, in this Caſe, and ſubſcribed them: As for his Part, he was an old Man, ready to drop into the Grave, his Tongue and his Heart, therefore, ſhould go together. He declared he was ſtill of the Opinion he ſubſcribed; he ſaw no Reaſon to recede from it; he thought the Grounds of Law and Nature ſupported it; for theſe were undoubted Maxims; *Salus populi ſuprema lex. Qui ſentit commodum, ſentire debet & onus. Quod omnes tangit, ab omnibus debet ſupportari.* So that, when there was imminent Danger, the Charge of Defence ought to be laid on the whole Kingdom, which was not denied by the Defendant's Council. Indeed, it was not every Fear or Rumour that could draw this Burthen upon the Subject; but ſuch a Danger as the King in his Judgment declared did require a ſpeedy Defence; he was ſole Judge of the Danger, and how to prevent and avoid it: And *if the King was by Law to defend the Kingdom, he might certainly lay a Charge in order to it; for, if he could not, how ſhould he defend his People.* The King was by Law the Protector of the Perſons, Lands, and Goods of his Subjects; he had a Prerogative in them for this End, *not for his own Profit.* The King could not cut any Man's Woods, or dig Gravel in his Lands, for his private Uſe; but for the publick Good he might; and even erect Fortifications on any Man's Lands. And though the King could not command any Man to build his own Palace, yet he might command Pontage, Murage, *&c.* which were for the Subject's Benefit; and in the firſt Year of King *James* a Duty was laid upon Merchandize, without Conſent of Parliament, it being in a Caſe of Neceſſity, and for the public Good.

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The Objections he obſerved were many, and his Brother *Crooke* had doubled and redoubled them: Brother, *continued he*, We ſit next one another, antient Judges, though of different Opinions; I ſpeak according to my Conſcience, as you have done according to yours; you ſay, by the Laws of this Kingdom, the Subjects have a Property in their Goods, ſo that without their Conſent they cannot be taken away. I anſwer, This does not trench upon their Properties: If this be a lawful Prerogative, how is the Subjects Property invaded? The Law annexed this Charge to the Lands and Goods of the Subject from the Beginning, and made them liable to it by tacit Condition. He would not have Men clamour, therefore, he ſaid, as if the Subject was diveſted of the Property of his Goods; when the Duty was to be applied to the Defence of the Kingdom, in which his own was included.

He ſaw no Reaſon why a Difference ſhould be made neither between Inland and Maritime Places, ſince the Kingdom was one entire Body, and it was for the common Defence; the King might unite an Inland to a Maritime County; and, before the Diviſion of Counties, the Charge was general, all over the Kingdom. And whereas it was urged, that it would be a great Inconvenience, if the King might charge when and what he pleaſed by this Writ, he anſwered, as the Law repoſed this Truſt in his Majeſty, it was not to be preſumed he would require it of his Subjects, when there was no Occaſion.

It had been objected farther, that Dr. *Cowel* and Dr. *Manwaring* had been cenſured by Parliament for the like Tenets; but this was a Miſtake. He acknowledged they were deſervedly cenſured and puniſhed; for *Cowel* aſſerted, that the King might make Laws without a Parliament, and wrote againſt the Common Law: And Dr. *Manwaring*, in two Sermons, maintained, that the King was not bound to obſerve the Laws; that the Rights and Liberties of the Subject were at his Diſpoſal; and that the Authority of Parliament was not neceſſary for levying Subſidies: Whereas the preſent Queſtion was, Whether the King could not command the Subject to provide Ships, for the Defence of the Kingdom, in Time of Danger?

He held alſo, that no general Words in a Statute could extend to take away the King's Prerogative; for, if they could, the Aids for making the King's Son a Knight, and for marrying his Daughter, would have been taken away, which it was admitted they were not. His Brother *Crawley* held, that even ſpecial Words in an Act of Parliament would not take away the King's Prerogative of defending his Subjects. Aud he heard it reſolved in Parliament, in the firſt Year of King *James* I. when a Motion was made for diſſolving the Tenures by Knights Service, that ſuch an Act would have been void, becauſe they were inherent in the Crown, for the Support and Defence of the State; and 2 *Hen.* VII. an Act to reſtrain the King's *Non obſtante*, to diſpenſe with penal Laws, as not to pardon Murder, was held void. He was of Opinion alſo, that the Record expreſſed ſufficient Cauſe for the Crown to require this Aid. If the King affirmed there was Danger, this was not traverſable, and had he ſaid no more than *pro defenſione Regni*, it had been ſufficient. He gave Judgment, therefore, that Mr. *Hampden* ſhould be charged with the twenty Shillings, provided none of it came into the King's Purſe. 1637. 13 Car. I.

The Judgment of Sir Richard Hutton.

Sir *Richard Hutton*, one of the Juſtices of the *Common-Pleas*, delivered his Opinion next. He held, that this Charge could not be impoſed, but by Parliament: It was againſt *Magna Charta*, and the other Statutes made in Confirmation of it; which, he conceived, ſo ſecured the Subjects Property, that it could not be touched without an Act of Parliament. He cited *Forteſcue* alſo, who ſaid, in his 9th Chapter, That the King could not alter any Law: He governed his People, not only by Royal, but by Politick Power; and could lay no Charge on them, but in Parliament.

It had been objected, indeed, that this Royal Power was ſo inſeparable from the Prerogative, that an Act of Parliament could not take it away: And, he confeſſed, there were ſome ſuch inſeparable Prerogatives; as the Tenure *in Capite*, which the King could not releaſe: And, when a Law was propoſed, for the taking away the Court of Wards, in the Reign of King *James*, it was held, it would be a void Law: An Act of Parliament alſo, that the King ſhould not defend the Kingdom; or, that he ſhould have no Aids of the Subject towards the Defence, ſuch Acts would not be binding, becauſe they were againſt natural Reaſon: But here the King was not reſtrained from laying a Charge, but only tied to one Means; (*viz.*) to do it by Parliament: He did not ſee, but *Danegelt* might have been raiſed now, as well as formerly, if it had not been for the Statutes that had been cited; but, ſince thoſe Statutes, he held no Money could be levied on the Subject but by Parliament. As for Pontage, Murage, *&c.* the Law allowed them, becauſe the Subject had a particular Benefit by them.

And although it had been alledged, that in this Caſe there was no Money to be paid by the Subject, but only a Ship provided by the Sheriff; and it was admitted that, if the Writ had been to levy Money, it would have been void; it did not appear by the Record, that any Ship was provided; and if ſo, a Writ could not iſſue againſt the Defendant for Diſobedience: Beſides, it was known to all the World, that not *Ships*, but *Ship-Money*, was wanted. If a Ship had been alledged to have been built, it might have been traverſed; but as the Caſe was, Mr. *Hampden* could do nothing but demur. He confeſſed, he had ſubſcribed the Reſolution, with the reſt of the Judges; but his Opinion was always againſt it. He ſigned in Conformity to the greater Number, as was uſual: And though they had been of Opinion, the King might charge the Subject, in caſe of a general Danger, they never meant a Danger from Pirates. He was ſtill of Opinion that in Time of War, when an Enemy was in the Field, the King might uſe his Subjects Goods, but not elſe. In the latter End of Queen *Elizabeth*'s Reign, her Majeſty deſired a Benevolence, and Money was gathered even in the Inns of Court; he himſelf paid twenty Shillings: But when the Queen

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1637. 13 Car. I. was informed by the Judges, it was againſt Law, ſhe ordered the Money to be repaid; and he received his twenty Shillings again.

He held, there was not a ſufficient Danger expreſſed in the Writ; and the *Mittimus*, which iſſued almoſt two Years afterwards, wherein it was ſaid, *Salus regni periclitabatur*, could not make that legal which was not ſo *ab initio*; no ſubſequent Matter could help it: The Power given to the Sheriff alſo, to impriſon and deſtrain thoſe who refuſed, was againſt *Magna Charta*. And the commanding the Sheriff to aſſeſs Men, he conceived, was illegal; becauſe it made him both Judge and Party, if he was to pay any thing for his own Eſtate: Nor could the *Scire facias* be awarded to one who was not Sheriff at that Time: The Money alſo was directed to be raiſed by Diſtreſs, or Impriſonment, and conſequently could not be raiſed by *Scire facias*. He admitted, the King might lay Duties on Merchandize, becauſe he defended the Merchants from Pirates. In King *James*'s Reign five Shilling a Ton was laid upon Currants, and adjudged legal: But, as this Caſe was, he held, both as to Matter and Form, that they could not give Judgment for the King.

Judgment for the Defendant.

The Judgment of Sir Humphrey Davenport, *Lord Chief Baron.*

Sir *Humphrey Davenport*, Lord Chief Baron of the *Exchequer*, in his Argument on this Subject, ſaid, That, according to what he underſtood of the Laws of *England*, Judgment ought to be given for the Defendant; for when he conſidered the firſt Command in the Writ of the 4th of *Auguſt*, That the County ſhould provide a Ship at their own Charge, and the ſecond, for Taxation; the one ſeemed repugnant to the other: For the firſt Command was general to all, and by the laſt, a Power was limited to particular Perſons, the Sheriffs, Bailiffs, *&c.* who muſt be exempted from the firſt general Charge, becauſe they could not aſſeſs themſelves; it ought to have been done by a Jury, *per ſacramentum proborum hominum*. The firſt Act which the Sheriff was commanded to do, he conceived, was by the ſecond Power diſcharged; and, as theſe Powers did not cohere, they were not warranted by Law.

Where Things were reduced to a Certainty by the King's Courts, indeed, the Sheriff might execute, take a Man's Goods, or impriſon him; but, where there was an Uncertainty, the Law had annexed to his Office a Method of reducing them to a Certainty; namely, by a Jury, as in the Caſe of Partition by Parceners, *&c.* he was to impannel a Jury, to make an equal Partition.

He was of Opinion, the Tax was very fit to be be impoſed in a Time of Danger; but, that ſecond Power given to the Sheriff, to free himſelf and lay it on others, was not good.

He did not think the Incurſions of Pirates a ſufficient Cauſe for ſuch an Armament; but, as to thoſe Expreſſions in the Writ, *Quia datum eſt nobis intelligi: Ut informatur: Vulgaris eſt optimo opinio: Rumor eſt, &c.* they were well enough, according to the Precedents: The King need not declare, how he knew it, ſo he declared, the Kingdom was in danger; he was the ſole Judge of it, and his Certificate was not traverſable. And, he obſerved further, that the *prædones* mentioned, when *Danegelt* was given, were not ordinary Pirates, but ſuch Powers as endangered the whole Kingdom: That Tax therefore was juſtly impoſed to repel the *Danes*, who were common Enemies; but he held, it was taken away by the Statute of *Edw.* I. and the other Acts that had been cited. He was in doubt alſo, whether the *Certiorari* and *Mittimus* could revive the firſt Writ, which was not returnable, and never executed, according to the Tenor of it, within the Time prefixed. The Nature of a Writ not returnable was, to command a poſitive Thing to be done within a certain Time; and, if it was not done accordingly, there was an end of the Force of that Writ: So here, the Power given to the Sheriff, not being executed within the Time preſcribed, could not be renewed; the *Mittimus*, in which thoſe Words *Salus Regni periclitabatur* are inſerted, could not revive, or inforce the Commands of the firſt Writ; it was no more than a Suggeſtion, upon which a *Scire facias* could not iſſue.

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Again: This Money was appropriated to the preparing a Ship; but, it did not appear a Ship was built, a Collector appointed, or any Act done relating to it; therefore, how could they give Judgment? The *Scire facias* was for Mr. *Hampden* to ſhew Cauſe, why he ſhould not pay the Sum impoſed on him: But, to whom the Money ſhould be paid, it did not appear; and, therefore, he did not ſee how the Defendant could be charged with it.

As to the grand Queſtion, he ſtill held, That where the Kingdom was actually in Danger, or in Expectation of Danger, and the ſame was expreſſed in the King's Writ, his Majeſty might charge his Subjects without a Parliament, for the Defence of it; and he was the ſole Judge thereof: But, if the Danger was not ſo imminent, and a Parliamentary Advice might be had, then the Charge could not be legally impoſed without a Parliament: And, as to the Mandates in the Writ of the 4th of *Auguſt*, were not good, they could not give Judgment to charge the Defendant.

Judgment for the Defendant.

The Judgment of the Lord Chief Juſtice Finch

Sir *John Finch*, Lord Chief Juſtice of the *Common-Pleas*, proceeded to give his Judgment next: But, before he entered on the Merits of the Cauſe, he ſhewed by what Steps it was brought into the *Exchequer Chamber*. He ſaid, the firſt Writs were iſſued to the Maritime Places and Poſt-Towns, the 20th of *October*, in the 10th Year of the preſent King; and, that his Majeſty relied very much on the Opinion of the late Attorney-General, Mr. *Noy*, in it.

That the Precedents were brought to the Chief Juſtices, and the Chief Baron, who having diligently peruſed them, did give it under their Hands, that the Dominion of the Sea belonged to the King; he was the ſole Proprietor thereof, and the Defence of it belonged to his Majeſty: That the Cinque-Ports had been required, heretofore, to provide ſuch a Number of Ships, of ſuch Burthen as Occaſion required: As to the Time, Place, and continuance of their Attendance, it was at the King's Pleaſure.

That, afterwards, the Danger growing general, and his Majeſty conceiving it unreaſonable, that the Maritime Places ſhould bear all the Charge, where the whole Realm was intereſted, he required the Opinion of the Lord Chief Ba-

1637. 13 Car. I. ron, and himſelf, concerning it; and they delivered their Opinion, firſt verbally, That, where the whole Kingdom was in Danger, the Charge ought to be borne by all his Subjects: And Writs being ordered accordingly, that to the Sheriff of *Bucks* was iſſued among the reſt.

Afterwards, the Legality of theſe Writs being queſtioned, his Majeſty required the Opinion of every one of the Judges ſeparately; and every one, by himſelf, delivered his reſpective Opinion under his Hand: Particularly Judge *Crooke* ſubſcribed ſingly by himſelf; and, where Opinions were ſo delivered, he conceived, they ought to produce very good Grounds for varying from them: And he affirmed, thoſe Opinions were ſo delivered, that no one Judge knew the Opinion of the reſt. That the 2d of *February*, $163\frac{6}{7}$, his Majeſty ſent a Letter to all the Judges, to have their Opinions together; to which they returned their Anſwer the ſeventh: That the Judges, *Hutton* and *Crooke*, did then agree, the King was ſole Judge of the Danger: (Though *Crooke* had ſaid nothing of this in his Argument, and *Hutton* nothing againſt it:) But, they all declared, they did not deliver thoſe Opinions as binding; nor did his Majeſty require they ſhould: However, they were ſoon after publiſhed.

Then he proceeded to the principal Points, and ſaid, he was of Opinion, that the Danger to the whole Kingdom ought to be expreſſed clearly in the Writ of the 4th of *Auguſt*: But then he conceived the Words *datum eſt nobis intelligi*, certain enough; it was ſufficient that the King knew the Danger: And he obſerved, there were not only Dangers mentioned from Pirates, but from the neighbouring Powers engaged in War; for the Words in the Writ were, *Conſideratis periculis quæ undique his guerrinis temporibus imminent', ita quod nobis & ſubditis noſtris defenſionem maris & Regni noſtri omni feſtinatione qua poterimus convenit, &c.* And it might have been well enough without the Preamble: The King need not declare the particular Danger.

And, though it had been objected by the Juſtices, *Hutton* and *Crooke*, that the Writ was in effect, *to raiſe Money, and not to build a Ship*; he put the Caſe, if either of them was to find a light Horſe and Arms, if he had none, he muſt hire, or buy them with his Money; but yet, the Charge was not for Money, but for finding a light Horſe; and the requiring the County to build a Ship was a parallel Caſe; if they had not Materials, they muſt buy them: Here was no Money to come into the King's Purſe.

The Objection alſo, that *Bucks* was an Inland County, and knew not how to build Ships, was trifling; for they might, however, contribute to the building one in a proper Place: And, as the Defence of the whole Kingdom ought to be at the Charge of the whole Kingdom, ſo the Power of laying this Charge was, by the Policy and fundamental Laws of the Realm, ſolely veſted in the King: As the Law had given the King this Power, ſo it had given him the Means to put it in Execution.

And, although the Law gave every Man a Property in his Goods; yet every Man had a Property in another's Goods for the Publick Safety: Something muſt be ſpared, and employed, for the Security of the reſt; and the Intereſt the King had in his Subjects Eſtates, was for their Common Good. The Parliament, he confeſſed, was an excellent Means of charging the Subject; but not the only Means: The King held his Diadem from God, and all others held their Lands from him. He had a great Veneration for Parliaments, he ſaid, and ſhould ever gratefully remember the Honour the late Parliament had done him. in chuſing him their Speaker; but he wiſhed ſome had not ſown the Tares of Diſcontent in that Field of the Commonwealth.

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It was certain Kings were before Parliaments: Antiently the Kingdom was governed by the Regal Power, limited by no poſitive Laws: The King had originally the Sovereignty of the whole Kingdom, and the Power of charging it by Sea and Land: And, as the Law ſtill gave the King the Power of defending the Kingdom, ſo it gave him the Power of charging the Subject for that End: If the Sea and Land conſtituted but one entire Kingdom, and the King was Lord of both, then was the Subject bound to the Defence of the Sea, as well as the Land: All were bound to find Ships, and other Neceſſaries, for that Defence; and, as they were Iſlanders, the Defence of the Sea was moſt neceſſary.

Then he obſerved, that there had not been cited one Authority to prove, that, in the Time of Neceſſity and Danger, the King might not charge the Subjects for the Defence of the Kingdom: On the other Hand, all thoſe Authorities, which ſhewed the King was entruſted with the Defence of the Kingdom, and had Aids and Taxes given him in many ſuch Caſes, proved, that the Subjects, in Caſes of Neceſſity and Danger, was bound to pay them to the King for the Defence of the Realm. Thoſe Prerogatives alſo, of granting Pontage, Murage, and digging of Salt-petre, ſhewed, that for the Good of the Publick, the King was intereſted in the Eſtates of his Subjects, and might charge them for their Well-being, much more, when the very Being of the Commonwealth was at Stake, and in Danger.

Beſides, by all the antient Precedents that had been cited in the Reigns of *Alfred*, *Edgar*, and *Ethelred*, thoſe in the Reigns of K. *Edw.* III. *&c.* and thoſe in the late Reign of Q. *Elizabeth*, it appeared, that Writs and Commiſſions were iſſued for the Defence of the Kingdom: And, the Letters from the Lords of the Council in 88. had the Queen's Writs in them. Mr. Juſtice *Crooke* alſo had owned, that the Subjects were compellable to ſerve in their Perſons; and ſurely the *Bona Corporis* were ſuperior to *Bona Fortunæ*: There was more Reaſon that the Subjects Eſtates, than their Perſons, ſhould be in the King's Power, to enable him to defend the Realm.

It had been objected, indeed, that the Writ was againſt the Common Law; becauſe there was no Precedent of a Writ to an Inland County to find a Ship: But there were Precedents of the King's charging the Subject of the Inland Counties towards the Defence of the Kingdom, though not in that Manner, by finding Ships.

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That as to the Charters and Statutes which had been cited, to ſhew that the Subjects Goods could not be taken from them, but by Conſent of Parliament; all that could be gathered from them, was, that they ſhould be freed from all *unjuſt Taxations*: They could not intend a Charge for the neceſſary Defence of the Realm. Mr. Juſtice *Crooke*, in reciting the Conqueror's Laws, he obſerved, left out this material Clauſe, *(viz.) Statuimus & firmiter præcipimus ut omnes liberi homines totius Regni præd' ſint fratres conjurati ad monarchiam noſtram pro viribus ſuis & facultatibus contra inimicos pro poſſe ſuo defendend' & viriliter ſervand', &c.* Where it was apparent they were to defend the Kingdom *pro facultatibus*, as well as *viribus*; and that the Conqueror did not intend to diſcharge any Body from defending the Kingdom in Caſe of Neceſſity: And thoſe Words in *Forteſcue*, importing that the Subject had an abſolute Property in his Goods, intended no more, than that the King could not take them *to his own Uſe*; and that he could not, *for his own Uſe*, lay any Burthen upon the Subject without Conſent of Parliament; but all private Property muſt give way to the publick: Though a Man has a Property in his own Goods, he cannot uſe them to the Detriment of the Commonwealth; he ſhall not ſet Fire to his own Houſe or Goods, that may endanger his Neighbours; nor ſhall he carry his Goods to a foreign Market, to the Prejudice of the Nation: And to remove that ſcandalous Suggeſtion, that the King intended to make a private Advantage of the Money, he ſaid, both he and the Lord Chief Juſtice *Brampſton*, had heard his his Majeſty ſolemnly declare, he thought himſelf bound in Conſcience to convert all this to the Uſe it was given for; and, in Fact, the King had every Year expended much more in his Sea Armaments than ever he received by this Contribution. And whereas it had been ſuggeſted, that though his Majeſty would not charge them but in Caſes of Neceſſity, yet this might be a Precedent for his Succeſſors to charge them at Pleaſure; he anſwered, If future Kings ſhould charge them unreaſonably, this would be no Precedent for it; and the right Uſe of a Thing ought not to be condemned becauſe it might be abuſed.

The Law alſo repoſed as great a Confidence in the King in other Caſes: He might pardon all Offences, but if he ſhould, no Man would be ſafe; he might make Peace and War, by either of which he might undo the Kingdom, and every Man's Liberties and Properties might be loſt in the general Deſtruction he might bring upon them by theſe means; but it was not to be preſumed, the King would do any thing againſt the publick Good of the Kingdom, and therefore the Law had declared, *The King could do no wrong*.

It had been acknowledged alſo, he obſerved, that in Time of War, when the Courts of Juſtice were ſhut, the King might charge the Subject; but there might be Wars in ſome Parts of the Kingdom when the Courts were open at *Weſtminſter*; and whether the Danger extended to All, or Part, All ought to be charged, as well to the Sea as Land Service, they both made but one Kingdom; and a Danger in Expectancy, he held, was ſufficient to charge the Subject: In 88 the Enemy had been upon them, if the Danger had not been foreſeen by the Queen, and provided againſt.

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But farther, If the Subject could be charged only in Parliament, then they made the Parliament, and not the King, Judge of the the Neceſſity of a Defence: It would be ridiculous to acknowledge the Power of making a Defence to be in the King, and not allow him the Means to perform it. Acts of Parliament might take away the Flowers and Ornaments of the Crown, but not the Crown itſelf. He held, an Act to bar the Succeſſion would be void, and ſo would an Act, that no Lands ſhould hold of the Crown, or to abſolve the Subjects from their Allegiance, or take away the King's Power of defending his People; in like Manner, an Act, that he ſhould not command his Subjects Perſons and Purſes in order to defend them, would be void: Nor was this properly an Aid impoſed, but a Contribution of King and People; the King was taxed as well as they.

That ſuch Aſſeſſments as theſe had ever been made by Sheriffs, or ſuch as the King thought fit to truſt, and not by Juries: Beſides, the Command was to provide a Ship, and if that had been done there had been no need of an Aſſeſſment; and Mr. *Hampden* had the leaſt Occaſion of any Man in *England* to complain of the Inequality of it. As to the Objection that the Sheriff taxed himſelf in this Caſe, the Juſtices of Peace, in levying Subſidies, aſſeſſed themſelves, and Commiſſioners of Sewers taxed their own Lands; and the Writs for levying the Expences of Knights of the Shire were directed to the Sheriff, who aſſeſſed himſelf; and if a Fine was laid upon a County he aſſeſſed it, and yet was chargeable towards it. As to the commanding ſix and twenty Weeks Pay to be provided, there were Precedents where the Counties had been obliged to pay their Soldiers after they marched out of their Counties. Where the King paid them, it was uſually for foreign Wars, not in Caſes of Neceſſity, when they marched in Defence of the Kingdom; and there was no going out of the Realm here: The Sea and Land made but one Kingdom, as had been reſolved in the *Exchequer*.

And though it had been objected, that by *Magna Charta* no Freeman could be impriſoned, here was no Impriſonment in Queſtion; nothing but the Aſſeſſment, *(viz.)* Why the Defendant ſhould not pay the Money aſſeſſed, or ſhew Cauſe to the contrary?

Nor was the Objection, that the *Certiorari* was directed to two Sheriffs, the late and the preſent Sheriff, more to the Purpoſe: Nothing was more common; nor was the firſt Writ determined, becauſe the Time mentioned in it for preparing the Ship was not expired; for the Writ was irreturnable, and ſo needed no reviving: And though it was ſaid, it did not appear any Ship was prepared, he anſwered, it was prepared; but if it was not, the Fault was in them who had not paid their Quota's. And the King might well bring this *Scire facias*, as he was intereſted in all Actions for the publick Good, and might recover as in the Caſes of Pontage and Murage; much more, when it was for the Defence of the Realm, though it was not fit it ſhould be expreſſed to be for the King, becauſe

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Judgment for the King.

The Judgment of Sir John Brampſton.

becauſe it was for the publick Good only. He concluded, that he was of Opinion the Proceedings were according to Law, and that the Defendant ought to be charged with the twenty Shillings aſſeſſed on him.

Sir *John Brampſton*, Lord Chief Juſtice of the *King's-Bench*, in delivering his Opinion, ſaid, He conceived, whenever the whole Kingdom was in Danger, his Majeſty might command all his Subjects to join with him in Defence of it: That the Acts of Parliament which had been cited were but declaratory of the Common Law. By the 1 *Edw.* III. *cap.* 5. indeed, it was ſaid, That none ſhould be compelled to go out of their Counties, except in Caſes of Invaſion and Neceſſity, and then it ſhould be done as in Times paſſed; therefore what the Uſage was in Times paſſed, was the Queſtion; and it appeared by the Precedents, where they marched at the King's Charge, it was to a foreign War, or to the ordinary Defence; and there was no doubt but in ſuch Caſes the King had paid the Charge: But he was ſtill of Opinion, that in Caſes of Neceſſity, the Subject might be compelled to ſerve out of the County at his own Charges. That it appeared from *Fitz. Nat. Br.* 28, and in *Calvin's* Caſe, that the King might command his Subjects, on their Allegiance, to go with him, or in his Service, to the Wars, as well without the Realm as within. The 7th of *Hen.* IV. ſays, that none ſhall attend the King in his Wars out of the Realm without Wages: But in the Realm they were at his Command, in Times of common Danger, without Wages, as appeared by a Multitude of Precedents, which explained the Statutes of *Edw.* III. particularly the Abbot of *Robertsbridge's* Caſe was concluſive: And 10 *Edw.* III. *M.* 2. *Fol.* 18. the King commanded by his Writ an hundred Men to be ſent to *Portſmouth*; and they refuſing to march without Pay, the King anſwered, *No Wages were due; it was a publick Danger.*

As to that Objection, that there were no Precedents of the Subjects ſerving out of the Realm; He anſwered, The Sea and Land were but one Kingdom; and if formerly the Seamen were content to defend the Coaſts by Sea, in Conſideration the Inland Counties took upon them the Charge of the Land Service; he knew no Reaſon, why they might not be obliged to bear the publick Charge together, in Caſes of Neceſſity. Mr. *Selden* had obſerved in his *Mare clauſum*, That it was the antient Uſage, to charge both the Inland and Maritime Counties on any great Emergency: And Sir *Edward Coke* admitted, That it could never be the Meaning of the Great Charter, to take away the King's Prerogative and exempt the Subject from the Charge of Defence: And as to that Objection, that a Parliament might have been called, it had been well anſwered, That a timely Preparation muſt be made, when Danger threatned: It might be too late, when the Enemy was at our Doors: The King was Judge of the Danger, and the Subject was bound on his Allegiance, to aſſiſt him in any publick Danger.

The Danger, he acknowledged, muſt be expreſſed in the Writ, and he conceived it was ſufficiently expreſſed; the Words being *pro defenſione Regni, & tuitione maris &c.* Had it been only a Danger from Pirates, an ordinary Danger; then indeed the Defence ought to have been at the King's Charge. As to the Writs, the only Exception he had to them was, that it did not appear, neither in the one, or the other, to whom the Money was to be paid: There was no Precedent where Judgment had been given, and not ſaid to whom: He inclined therefore to believe, this was a good Exception; but in all other Points he agreed with the Majority of the Bench.

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Doubtful in his Judgment.

In *June* following, *viz.* In *Trinity* Term 14 *Car.* the following Judgment againſt Mr. *Hampden*, was given in the *Exchequer* on the Motion of the Attorney General, *Viz.*

The Entry of the Judgment.

Quod ſeperal' brevia prædict' & retorna eorundem ac ſchedul' prædict' eiſdem annexat' ac materia in eiſdem content' ſufficient' in lege exiſtant' ad præfat' Johannem Hampden de predict. vigint' ſolid' ſuper ipſum in forma & ex cauſa predict' aſſeſſat' onerand' Ideo conſideratum eſt per eoſdem Barones, quod prædict' Johannes Hampden de eiſdem viginti ſolid' oneretur, & inde ſatisfaciet, &c.

Motion in Parliament to reverſe the Judgment againſt Hampden, *and puniſh the Judges.*

In the Parliament, that was aſſembled the the 13*th.* of *April* 1640 Mr. *Waller* moved in the Houſe of Commons, to have this Judgment reverſed, and the Judges puniſhed, for pronouncing it. He was not for entring on the Supply, till this, and their other Grievancies were redreſſed: He ſaid it was neceſſary they ſhould be reſtored to the Property of their Goods (which he apprehended was taken from them by this Judgment) before they could have any thing to give. If the King could tax them at Pleaſure, all they had was the King's already: Adding, that their Liberties were no leſs affected than their Fortunes, by this Judgment; ſince the King was thereby empowered to impriſon their Perſons, for Non-payment of this Tax: Concluding with a Motion, That the Houſe might firſt conſider the reſtoring the Nation to its fundamental and vital Liberties, the Property of their Goods, and Freedom of their Perſons, and then enter upon the Supply: But, this Parliament ſitting but a few Days, nothing was done in it.

The like Motion in the next Parliament.

The Lord *Falkland*, in the Parliament that began *November* 1640. moved the calling the Judges to Account again; obſerving, That as they had allowed the King *the ſole Power in Neceſſity*, and *the ſole Judgment of Neceſſity*, they had enabled him to take from them what he would, when he would, and how he would, and conſequently left them neither Liberties nor Properties; and thus, by the Transformation of them from the State of free Subjects to that of Villains, diſabled them by legal and voluntary Supplies to expreſs their Affections to his Majeſty: They muſt therefore think of taking away this Judgment, and theſe Judges together, and of regulating their Succeſſors, by their exemplary Puniſhment.

Reſolution againſt Ship-Money.

After many Debates and Invectives againſt the Judges, for giving this Judgment in the Caſe of Mr. *Hampden*, the Houſe of Commons reſolved, on the 7th of *December*, that the Charge impoſed on the Subjects, for providing and

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and furniſhing Ships, and the Aſſeſſments for raiſing Money for that Purpoſe, commonly called Ship-money, were againſt the Laws of the Realm, the Subjects Right of Property, and contrary to former Reſolutions in Parliament, and to the Petition of Right. 2. That the extrajudical Opinions of the Judges, in the Caſe of Ship-money, were againſt Law; the Liberty and Property of the Subject; contrary to former Reſolutions in Parliament; and to the Petition of Right. 3. That the Writs, called Ship-writs, were againſt Law, Liberty, and Property, *&c.* and 4. That the Judgment againſt Mr. *Hampden*, in the Matter and Subſtance thereof, and the making Mr. *Hampden* chargeable, was againſt Law, Liberty, and Property, *&c.*

Which Reſolutions the Commons communicated to the Lords, at a Conference, by Mr. *St. John*, who made a very long Speech upon the Occaſion: But, as it contained nothing more than is to be found in the Arguments abovementioned, I ſhall not trouble the Reader with it.

Mr. Hyde's Speech, upon impeaching Judge Berkley.

Mr. *Hyde* (afterwards Lord Chancellor) made a Speech againſt Ship-money, and Ship-writs, on the carrying up Articles of Impeachment againſt Sir *Robert Berkley*, one of the Juſtices of the *King's Bench*. Wherein he tells their Lordſhips, That the Judges firſt begun with countenancing Impoſitions and Taxes on the Merchants in Trade, and, by Burthens and Preſſures on the Gentry, in caſe of Knighthood, before they arrived at that univerſal Deſtruction of the Kingdom by Ship-money, which promiſed them Rewards and Security for all their former Services: By doing the Work of a Parliament, in granting his Majeſty Supplies: (They thought they ſhould never more be called to Account by Parliaments, which they had thus rendered uſeleſs, and might now ſhare the Spoils of their Fellow-Subjects with Impunity). The Commons, therefore, hoped their Lordſhips would ſpeedily call theſe Judges before them, to anſwer the Articles laid to their Charge, and do Juſtice on them, according to their Demerits.

Theſe Judges were impeached for High Treaſon, and other Miſdemeanors: The Subſtance of the Articles preferred againſt Sir *Robert Berkley* being of the following Tenor.

The Articles againſt Sir Robert Berkley.

1. That the ſaid Sir *Robert Berkley*, being one of the Juſtices of the *King's Bench*, had traiterouſly endeavoured to ſubvert the fundamental Laws, and eſtabliſhed Government, and to eſtabliſh an arbitrary tyrannical Government, as he had manifeſted by wicked Words, Opinions, Judgments, Practices, and Actions, mentioned in the following Articles.

2. That, whereas by the Statute of 25 *Hen.* VIII. Victuals were appointed to be rated, he had delivered his Opinion, that Corn was ſuch Victual as was intended to have a Price ſet upon it, contrary to the plain Meaning of the ſaid Statute, with an Intent to lay an unlawful Charge on the Subject.

3. That an Information being preferred in the *Star-Chamber* againſt *John Overman*, and fifteen other Soap-makers, for exerciſing their Trade contrary to a Patent, granted for the ſole making of Soap; and their Anſwer being referred to him, and others, he certified to the *Star-Chamber*, that the whole Anſwer, except four Words, and the ten laſt Lines, ought to be expunged: And the Interrogatories and Depoſitions, on the Behalf of the Defendants, being alſo referred to him and others, he certified, that thirty-nine of them ought to be ſuppreſſed: Which Certificates were contrary to Law: And, by Reaſon thereof, the ſaid *John Overman*, and the fifteen other Defendants, were ſentenced by the *Star-Chamber* to be committed to the *Fleet*; diſabled from uſing their Trade; one of them fined 1500 *l.* two of them 1000 *l.* a-piece, and four of them 1000 Marks a-piece; to the utter Ruin of the Defendants, and to the Overthrow of the free Trade and Liberty of the Subject.

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4, and 5. That, being one of the Juſtices of the *King's Bench*, and ſworn to adminiſter Juſtice according to Law, he had ſubſcribed the ſaid Opinion, declaring the Lawfulneſs of levying Ship-money.

6. That he had delivered his Opinion againſt *John Hampden* Eſq; in the Caſe of Ship-money, in the *Exchequer* Chamber.

7. That he declared at the Aſſizes held at *York*, in *Lent* 1636. that it was lawful, and an inſeparable Flower of the Crown, for the King to command, not only the Maritime Counties, but alſo thoſe that were Inland, to find Ships for the Defence of the Kingdom; and, that this was the Opinion of all the Judges: And, whereas there was a Rumour, that ſome of them ſubſcribed againſt their Judgment, he ſaid, It was a baſe and unworthy Thing, for any Man to give his Hand contrary to his Heart; wiſhing, for his own Part, that his Hand might rot from his Arm, that was guilty of ſuch a Crime: Notwithſtanding, he knew, that Mr. Juſtice *Hutton*, and Mr. Juſtice *Crooke*, who had ſubſcribed, were of a contrary Opinion, and ſubſcribed but in Conformity to the Majority. And, he, the ſaid Sir *Robert Berkley*, then alſo ſaid, that in ſome Caſes the Judges were above an Act of Parliament, with an Intent to countenance the ſaid unjuſt Opinions, and terrify thoſe who ſhould refuſe to pay Ship-money, or ſeek any Remedy at Law againſt the ſaid unjuſt and illegal Taxation.

8. That *Richard Chambers*, Merchant, bringing an Action againſt Sir *Edward Bromfield*, Lord Mayor of *London*, for impriſoning the ſaid *Chambers*, on his Refuſal to pay Ship-money: Upon a Debate of the ſaid Caſe, in the Court of *King's-Bench*, the ſaid Sir *Robert Berkley* ſaid, that there was a Rule of Law, and a Rule of Government; and, that many Things which might not be done by the Rule of Law, might be done by the Rule of Government; and would not ſuffer the Legality of Ship-money to be argued: All which Opinions, Declarations, and Speeches, were deſtructive of the fundamental Laws; the Subjects Right of Property; and contrary to former Reſolutions of Parliament; and the Petition of Right.

9. That the ſaid Sir *John Berkley*, being Juſtice of Peace for the County of *Hertford*, did, at the Quarter-Seſſions there, revile and threaten the Grand Jury, for preſenting the Removal of the Communion Table in *All-Saints* Church in *Hertford* out of the Place where it antiently

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ſtood, and ſetting it Altar-wiſe, as an Innovation: And, that he committed *Browne*, one of the moſt active of the ſaid Grand Jury, to Priſon for one Night, declaring, that they had nothing to do to meddle with Church Matters; and compelled the Grand Jury to ſay, they were ſorry for what they had done; cauſing them to tear the ſaid Preſentment in Pieces, and trample it under their Feet: And, by his threatening, reviling Speeches, and unjuſt Actions, he ſo terrified the Jurors in thoſe Parts, that they durſt not preſent any Innovations in Church Matters; And whereas, *Ingram* and *Carter* indicted *Matthew Brook*, Parſon of *Yarmouth*, for refuſing to adminiſter the Sacrament to them, becauſe they would not receive Tickets with their Names in them, the ſaid Sir *Robert Berkley* diſcouraged the Proſecutor's Counſel at the Aſſizes, and over-ruled the Matter of Law, ſo that the Jury found for the ſaid *Brook*; bound the ſaid *Ingram* to his Good-Behaviour, for proſecuting the ſaid Indictments, and ordered him to pay Coſts; and *Carter* being abſent, he cauſed a *Vacat'* to be entered, and an Attachment againſt the ſaid *Carter*: Which ſaid Proceedings were contrary to Law.

10. That, he refuſed to bail *Alexander Jennings*, and ſeveral others, who were committed for not paying Ship-money; and alſo, refuſed to bail *William Pargiter*, who was committed, for refuſing to pay five Shillings, aſſeſſed on him by a Commiſſion of Array, iſſued when the *Scots* entered *England*: That he had denied Writs of *Habeas Corpus* to ſome; and delayed them, when they were demanded by others; and refuſed to bail ſeveral, though no Cauſe appeared on the Return to hinder it: Which Things were deſtructive to the Laws of this Realm, contrary to former Reſolutions of Parliament, and to the Petition of Right.

11. That he had refuſed to grant Prohibitions to the Eccleſiaſtical Courts, where he ought to have granted them by Law.

All which Words, Opinions, and Actions, were ſo ſpoken and done by him traiterouſly and wickedly, to alienate the Hearts of his Majeſty's Liege People from his Majeſty; to create Diviſions between them, and to ſubvert the fundamental Laws, and eſtabliſhed Government: For which they did impeach the ſaid Sir *Robert Berkley* of High Treaſon againſt his Majeſty, and of the Miſdemeanors aboveſaid; praying, that he might be put to anſwer the Premiſſes, and Juſtice done upon him, &c.

The Lords, on the 20th of *January*, 164$\frac{0}{1}$, reſolved, that the Ship-writs, and the Judges Opinions on them, were contrary to the Laws and Statutes of the Realm; and to the Rights and Properties of the Subject; and to former Judgments of Parliament: And, on the 26th of *February*, they agreed, the ſaid Judgment given in the *Exchequer-Chamber* againſt Mr. *Hampden*, ſhould be vacated.

An Act againſt Ship-money, &c.

An Act alſo paſſed the ſame Seſſion, declaring, That the Charge impoſed on the Subject, for providing and furniſhing of Ships, commonly called Ship-money, and the extrajudicial Opinions of the Juſtices and Barons, and the Writs, and every of them and, the Agreement, or Opinions, of the greater Part of the Juſtices and Barons, and the Judgment given againſt *John Hampden* Eſq; for the Payment of Ship-money, were contrary to, and againſt the Laws and Statutes of the Realm; the Right of Property; the Liberty of the Subjects; former Reſolutions of Parliament, and the Petition of Right made in the third Year of the King.

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The Judgment againſt Hampden, declared void.

And that, all and every the Records and Remembrances of the ſaid Judgment, againſt the ſaid *John Hampden*, and all and every the Proceedings whatſoever, upon, or by Colour of, any of the ſaid Ship-writs, ſhould be adjudged utterly void; and that all and every the ſaid Judgment, Enrolment, Entries, Proceedings, and Dependants, of what kind ſoever, ſhould be vacated and cancelled, in ſuch Manner and Form as Records uſed to be vacated.

Articles preferred againſt ſix more of the Judges.

Articles of Impeachment were carried up alſo againſt ſix more of the Judges. Thoſe againſt Judge *Crawley* particularly, by Mr. *Waller*, on the 6th of *July*, 1641. in which he was charged with the extrajudicial Opinions above ſpecified, and, declaring in his Circuit, That Ship-money was ſo inherent a Right in the Crown, that it was not in the Power of the Parliament to take it away. But the Editor of theſe Proceedings does not give us the particular Articles againſt Judge *Crawley*, or againſt any of the reſt of the Judges; except thoſe againſt Lord *Finch*, which will be found in the Proceedings againſt him in the following Sheets.

A Review of the Proceedings, in the Caſe of Ship-money.

I ſhall in the next Place take a Review of theſe long and intricate Proceedings, and endeavour, in a ſummary way, to ſtate the Arguments on either Side: After which, I ſhall proceed to make ſome Remarks on the Whole, as well Hiſtorical as Critical.

Conceſſions of Mr. Hampden's Counſel.

It appears, that the Counſel for Mr. *Hampden*, as well as the Judges who argued on that Side, admitted, that his Majeſty had the ſole Power of the Militia; and, in Caſes of any ſudden Invaſion or Rebellion, might command them, and the reſt of his Subjects, to arm, and march in Defence of the Kingdom; and that his Majeſty was alſo ſole Judge of the Danger: But they denied, that the King could raiſe Money by way of Writ, or otherwiſe, to pay his Forces by Sea or Land, unleſs in a Parliamentary Way.

They inſiſted, that the Tenures by Knights Service, the Service of the Ports, Tonnage and Poundge, were intended to enable the King to defend the Nation: And if an Invaſion, or Inſurrection, was ſo ſudden and formidable, that the King could not reſiſt them with the Aſſiſtance of theſe; and that there was not Time to aſſemble a Parliament; then they did admit, that the King might command the Aſſiſtance, both of the Perſons and Eſtates of his Subjects, to ſave the Kingdom from ſuch apparent and imminent Danger: Adding that, in caſe of ſuch ſudden Danger, every Subject, as well as the King, might and would make uſe of the Goods and Property of one another, as well as his own, towards the Common Defence: And even By-Laws for the Common Defence, were good in ſuch Caſes, which were not warranted by Royal Authority.

The Arguments for Mr Hampden ſummed up.

But that if the King was empowered to tax his Subjects at Pleaſure, whenever he pleaſed to declare the Kingdom was in Danger, the Con-

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Conſequence would be as miſchievous as an Inſurrection or Invaſion could be; for, this way, they might loſe the Property of their Lands and Goods, as well as by the other; the King, by the ſame Rule he took Part, might take the Whole, under a Pretence of Danger or Neceſſity.

They endeavoured to ſhew alſo, That whenever the Militia, or any of the King's Subjects were commanded to march out of their reſpective Counties, it was always at the King's Charge; and there was no Precedent of an Inland County's being commanded to provide a Ship for the Defence of the Sea: That Parliaments were held antiently twice a Year, or once at leaſt; and theſe great Councils would never fail to grant Supplies, where there was a real Neceſſity for it; and that there was Time enough for aſſembling a Parliament in this Caſe, the Rendezous of the Fleet being appointed ſeven Months after the Teſte of the Writs.

It was urged alſo, that the firſt Writ of the 4th of *Auguſt* did not declare any other Danger than what was to be apprehended from Pirates, and that the ordinary Guard of the Sea was ſufficient to ſuppreſs theſe: There could be no Occaſion to tax the Inland Counties towards it, and the Writ of *Mittimus*, that was iſſued a Year and an half after, declaring the Kingdom was in Danger, was not to be conſidered in this Caſe; for if there was no Danger expreſſed in the firſt Writ, there was no Reaſon *then* for levying ſuch an extraordinary Tax; the Subject could not foreſee what would be declared a Year and a half afterwards, and the Danger conſequently was not confeſſed by the Demurrer. The Command to the Sheriff to aſſeſs the County was alſo held to be illegal: It ought to have been done by a Jury; and it was ſtill more improper to levy the Money by *Scire facias*, when the Writ directed it to be levied by Diſtreſs or Impriſonment: Though the giving the Sheriff a Power to impriſon the Subject, and ſell his Goods for Non-payment, were alſo contrary to the Statutes, which confirmed the Property of the Subject in his Goods. That the directing the *Scire facias* to the late Sheriff, as well as the preſent Sheriff, alſo was irregular; and the not ſaying to whom the Money was to be paid, was ſuch an Error as could not be got over. And, laſtly, they obſerved, that it was agreed on all Hands, that if the Money had been made payable to the King's Uſe, and not for the common Defence, it was unwarrantable.

The Arguments for the King ſummed up.

On the other Hand, thoſe who argued for the King anſwered, That the Tenures by Knights Service, the Service of the Ports, Tonnage and Poundage, *&c.* were reſerved only for the Support of the Government, and the ordinary Defence of the Kingdom. Every one knew that theſe were not ſufficient for the Defence of the Kingdom, in Time of War and imminent Danger; and if they were not, the Subject was obliged to contribute further, rather than the Kingdom ſhould be loſt: That the Defendant's Council had confeſſed the Danger by their Demurrer, and had acknowledged alſo, that, in Time of common Danger, private Property muſt ceaſe: That ſince *Magna Charta*, and the other Acts made for the Security of the Subject's Property, Writs and Commiſſions had frequently been iſſued, requiring the Subject to provide for the Defence of the Kingdom by Sea and Land, at their own Charge; and even ſo lately as the Reigns of Queen *Mary* and Queen *Elizabeth*, on the Siege of *Calais*, and at the *Spaniſh* Invaſion in 1588, to which the Subject cheerfully contributed without murmuring; and conſequently the Statutes, which ſecured the Subject's Property, could never intend that he ſhould not be obliged to contribute to the Defence of the Kingdom in Caſe of imminent Danger: That ſuch Writs had been iſſued even during a Seſſions of Parliament, where Subſidies were given; and that it was in the King's Option, whether he would call a Parliament or not: It was a good way of raiſing Supplies by Parliament, but this was not the only way: Queen *Elizabeth*, though ſhe had a Year's Notice of the *Spaniards* Intentions againſt the Kingdom, called no Parliament, but raiſed Men and Money by an an Order of Council only; which was ſo far from being diſapproved of in the next Parliament, that ſhe received their Thanks for her provident Care and Circumſpection. That it was true a Parliament might have been called by his Majeſty; but he was too well acquainted with the Delays in their Proceedings, and the Temper they had ſhewn, to rely on their giving him Supplies; and therefore, rather than hazard the Security of the Kingdom, and the Loſs of the Dominion of the Sea, he had followed the Steps of his Predeceſſors, in providing againſt the Danger, without having recourſe to a Parliament.

The King was ſtill truſted with the walling of Towns for their Defence, and could impoſe a Tax for it, as was acknowledged by the other Side; and it was much more reaſonable he ſhould be entruſted with a Power of compelling the Subject to contribute towards the fitting out Ships, which were, in reality the Walls of the Kingdom.

That if the Danger was not confeſſed by the Defendant's Demurrer, there appeared ſufficient Danger in the firſt Writ, of the 4th of *Auguſt*, to warrant ſuch Preparations; for the Writ took notice of the Dangers ariſing from the neighbouring Powers, who had aſſembled great Fleets and Armies, and expreſſed the Danger there was of loſing the Dominion of the Sea, which, as we were an Iſland, and depended very much on our Trade, muſt be fatal to us. That former Kings, eſpecially during the Time of the *Saxons*, had always endeavoured to keep ſuch Fleets as might render them Maſters at Sea: King *Edgar* had a Navy of 3600 Ships, and commanded 3000 Ships to rendezvous every Year at *Eaſter*, and ſurround the Iſland. And *Ethelred* commanded every 310 Hides of Land throughout *England* to provide a Ship; which, it was computed, muſt raiſe upwards of eleven thouſand Ships. Of ſuch Conſequence the Dominion of the Sea was thought in thoſe Days; and it was not leſs at preſent, when our our foreign Trade was ſo much encreaſed, and other Nations attempted to rival us in it.

That it was not to be preſumed, the King would declare a Danger, where there was none: He was to get nothing by the Aſſeſſment: It was all to go towards the Charge of fitting out Ships

1637. 13 Car. I. Ships, and he was at a great Charge himſelf in fitting out a Royal Fleet beſides: That it was acknowledged he was entruſted with greater Matters than theſe; that he could command the Perſons of his Subjects in the Wars; that he could lay an Embargo upon all Ships, and command them into his Service; and had the Prerogatives of War and Peace, whereby he might bring Deſtruction on the whole Kingdom: But it was not to be preſumed he would, any more than that he would ſeize on all his Subjects Eſtates, becauſe he laid a trifling Charge on them, towards their common Defence; and if his Succeſſors ſhould hereafter lay unreaſonable Charges on their Subjects when there was no Neceſſity, this would not be a Precedent for it: Such unneceſſary Charges were acknowledged to be illegal.

And as to the taxing Inland Counties, they all conſtituted but one Kingdom; and it appeared every Hide of Land in the Kingdom had been taxed towards fitting out a Royal Fleet; and if the whole might be charged together, every County in particular might be charged towards it. Formerly the Maritime Counties undertook the Sea Service uſually, and the Militia of the Inland Counties marched to defend the Sea Coaſts; and if both the Inland and Maritime Counties were now charged together, towards the Defence of the whole Kingdom; this was as reaſonable as the charging the one with the Guard of the Sea, and the other with the Defence of their Country by Land.

That the Statutes made againſt taxing the Subject, muſt be underſtood of the ordinary Defence, or for foreign Wars: If an Act was made that the King ſhould not defend the Kingdom, in expreſs Words, or that the Subjects ſhould not contribute to their own Defence in Times of Danger, it would be a void Act. It was not to be ſuppoſed that any Laws could intend the Ruin of the Nation they were made to preſerve, and make the Subject acceſſary to his own Deſtruction; as ſuch Laws would be.

That it was abſurd to ſay, that the King alone was entruſted with the Militia, and the Defence of the Kingdom, and yet was deprived of the Means of raiſing Forces by Sea and Land; and if no Supplies could be raiſed but in Parliament, then the Parliament only was Judge of the Danger, and of the Neceſſity of the Defence: The King had nothing to do with it; ſince, if his Judgment was never ſo much relied on, or his Right to command the Militia never ſo often acknowledged, it would be impoſſible for him to raiſe or maintain Forces without Money. And, laſtly, they held, that the Writs were not defective, either as to Matter or Form; but ſuch as had been uſually iſſued in the like Caſes.

Remarks on the whole.

In moſt Diſputes both Parties are frequently in the wrong, in ſome inſtance or other, and both of them have often other Views than what they think fit to communicate to the World, or to one another. I look upon this, in Reality, to be a Trial of Skill between the Crown and a Faction. The King deſired no more than to preſerve thoſe Prerogatives that deſcended to him from his Anceſtors, though, it is very poſſible, he might think them more extenſive than they really were. The Faction, on the other hand, were aiming (it is evident from the Rebellion that ſucceeded) to make the King dependant on them, and, indeed, to uſurp Sovereign Power, and ſubvert the Government in Church and State; but induſtriouſly concealed their Views from the honeſt and diſintereſted Part of the Nation, pretending to be the great Patriots and Defenders of the People, againſt Popery and Arbitrary Power; which they had the Addreſs to inſinuate was breaking in upon them like a Flood. The King's Inclinations to Popery, they pleaded, were manifeſt from his marrying a Papiſt, ſuffering her Preiſt's and Officers about the Court, and encouraging and preferring thoſe who maintained, that Man was a free Agent, which they ſtiled *Arminianiſm*, and perſuaded the People, it was a Popiſh Tenet: And indeed Epiſcopacy itſelf, was looked upon by many of the Puritan Strain, as a Remnant of Popery; and his Majeſty's encouraging the Eſtabliſhed Church, an Evidence of his Intentions to bring in Popery. 1637. 13 Car. I.

And as to arbitrary Power, they inſtanced in the many extraordinary Ways the King had taken to raiſe Money, ſince his Acceſſion to the Crown; which were ſuch, indeed, as nothing but an abſolute Neceſſity could juſtify: But what Choice has a Prince left, after repeated Trials of his People's Duty in Parliament, and they peremptorily refuſe him Supplies, either for the neceſſary Support of his Houſhold, or the Defence of his Kingdom? Is he to throw up the Government, and abdicate his Throne, or endeavour to ſupport that, and his own Rights, by having Recourſe to extraordinary Means, till the People's Eyes are opened, and they are brought to a better Temper?

The King, it is evident, by calling three Parliaments, in the firſt four Years of his Reign, had much rather have received Supplies in a Parlimentary Way, than any other: Nay, he would never have taken *any* other; if he had not been aſſured the Parliament would grant him none: Till he ſaw them ſo infatuated and influenced by the Artifices of the Faction, that nothing leſs would content them, than the deſpoiling him of all his Prerogatives, and ſacrificing the Conſtitution, both Civil and Eccleſiaſtical, to their Fury. The Faction were ſo ſucceſsful, indeed, as to make the People believe, that the King choſe thoſe extraordinary Ways of raiſing Money, and that they proceeded from an innate Diſpoſition to render himſelf Arbitrary: Whereas it was, in Reality, the repeated Provocations he met with, at the beginning of his Reign, before they could ſee what his Adminiſtration would be, that reduced him to the Neceſſity of entring upon thoſe Meaſures: They were ſo far from giving him Supplies for the Support of the War they had drawn the Crown into, that they would not grant him the Cuſtoms his Anceſtors had enjoyed for many Generations for the ordinary Support of the Government. And it is but too manifeſt, that Abundance of Gentlemen, who were Friends both to the Monarchy and the eſtabliſhed Religion, did not in Time reflect, that it was the Undutifulneſs of the Commons that forced the King into thoſe Meaſures in his own Defence. They fixed their Eyes upon every Stretch of the Prerogative, and dwelt upon the Methods that were revived for raiſing Money; not diſcerning the

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Faction, to throw all into Confuſion, in order to accompliſh their own ambitious Projects, to gratify their Revenge, or ſubvert the eſtabliſh'd Church: Whereas, had the Parliament made the King once eaſy in his Circumſtances, there is no doubt (as he is acknowledged by moſt Men to have been a wiſe, juſt, and virtuous Prince,) he would, at firſt, have given them any Security for their Liberties and Properties they could have demanded. There were ſome falſe Friends alſo, and thoſe in the greateſt Poſts at Court, it appears, that miſrepreſented his Majeſty to the People, and the People to him, or the Breach had ſoon been made up: It is evident, many Gentlemen, abuſed by the ſpecious Pretences of the Faction, endeavoured, for ſome Time, to depreſs the Crown, and bore a Part in the general Cry of Grievances, that repented of their Conduct, when it was too late; went over to the King, and laid down their Lives to reſcue the Crown, and the Conſtitution out of the Hands of its Enemies, who, if they had ſeen their Miſtake ſooner, might have prevented the Confuſion that followed.

Give me leave to obſerve further, That if Neceſſity would have rendered Ship-money legal, there was certainly, at that Time, too much Neceſſity for that, or ſome other, Supply, to aſſert our Dominion of the Sea: The *Dutch* had a little before barbarouſly diſpoſſeſſed the *Engliſh* of the *Spice Iſlands*; tortured and murdered our Factors at *Amboyna*, in the *Eaſt Indies*; ſeized their Effects, and taken the Company's Ships, though we were then in full Peace with that State: Our Merchants murmured that the *Dutch* were not yet called to Account, and made to reſtore the only valuable Branch of the *India* Trade, which they had thus robbed us of; and the *Hollanders* very well knew the King did not want Inclination to do the Nation Juſtice in this particular: They increaſed and ſtrengthened their Navy therefore, and entered into a Confederacy with *France* to deprive us of the Dominion of the Sea; and thus ſtrengthened and ſupported, they ventured to inſult the Coaſt of *England*, claiming a Right of fiſhing here, without our Leave; which was the true Reaſon of the King's fitting out the Grand Fleet at this Time, which had ſo good an Effect, that the *Dutch* were compelled to acknowledge our Sovereignty of the Seas, and yield to pay his Majeſty 30000 *l.* a Year by way of Tribute, or as a Conſideration for their fiſhing on our Coaſts; and he might have obliged them to reſtore the Spice Iſlands, if that crafty People had not joined the diſaffected here, and found him other Employment at home. From whence it appears that Ship-money was exceedingly well employed, how illegally ſoever it was raiſed; and it coſt the King twice the Money he received by it, to fit out thoſe Fleets that did this Service: So that the Nation was very far from being injured by that trifling Tax, which did not bring in much more than two hundred thouſand Pounds *per Annum*, and which would have been eſteemed as inconſiderable, as in Truth it was, if the Faction had not diſtracted the People with imaginary Fears, and inſinuated that the King had further Views, intending to render all their Properties precarious, and govern by Will and Pleaſure.

Nor was the King only diſtreſſed by the Faction at home and the *Dutch*; but the *Scots* were now upon the Point of throwing off their Allegiance, and breaking out into Rebellion, confederating themſelves with the *Engliſh* Malcontents, the *Dutch*, and *French*, againſt their Native Sovereign. His Majeſty, however, might have ſupported himſelf againſt all theſe, if he had not been ſurrounded by the moſt exquiſite Set of Hypocrites that ever appeared upon the Face of the Earth, who betrayed his Conncils while he was heaping Favours upon them.

As to the Judges who gave their Opinions in this great Cauſe of Ship-money; the Lord Chief Juſtice *Finch* fled from the Fury of the Faction into *Holland*, in the Year 1640. when he found there was no Safety for thoſe that durſt be loyal; and was impeached, as will be ſeen hereafter. Six more of the Judges were impeached alſo; but, notwithſtanding the Faction repreſented them as Men not worthy to live, they contented themſelves with extorting fifty or threeſcore thouſand Pounds from them, towards carrying on the Rebellion they had been ſo long plotting againſt their Sovereign; while others were permitted to hold their Places on Condition of doing their dirty Work, and aſſiſting in the Oppreſſion of their Fellow-Subjects: It was one of the Maſter-pieces of the Malcontents, to keep Men under the Terror of being declared Delinquents, to ſerve the Ends of them: This they frequently found of greater Advantage to their Cauſe than turning them out of their Offices, or expelling them the Houſe, as the noble Hiſtorian informs us: And, if the King had raiſed ſome trifling Sums, by extraordinary Means, the Faction raiſed a hundred Times more, by Ways and Means that were ſtill more extraordinary, invading the Subjects Liberties and Properties by wholeſale, and exerciſing every Artifice they could invent, to extort Money from the unhappy People they had deluded. It has been ſhewn already, that there was not one of thoſe extraordinary Ways King *Charles* made uſe of to raiſe Money, which had not been practiſed by his Predeceſſors, and for the Legality whereof he had not the Opinions of the Judges: And that Queen *Elizabeth*, in many other Inſtances, carried the Prerogative much higher than this King did, notwithſtanding what *Rapin* and his Fanatick Brethren, in their abundant Wiſdom, have aſſerted to the contrary. Thoſe, who are converſant in the Hiſtory of that Reign, know that ſhe would not ſuffer the Commons to enter into any Debates without her Direction concerning Religion, the Prerogative, or the Succeſſion of the Crown, and, if they were ſo hardy as to attempt it, ſhe committed the Members; that when Sir *Edward Coke*, the Speaker of the Commons, was directed to read a Bill that touched upon one theſe Articles, he anſwered he durſt not; the Queen had commanded the Contrary; and he accordingly refuſed to read it.

It appears alſo, that Queen *Elizabeth* granted above forty Patents for Monopolies, which were all in force at one Time; and ſome of them of thirty Years Continuance: That ſhe raiſed Money by Loans, Privy-Seals, and moſt

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of the other Ways ſo much clamoured againſt in the Reign of King *Charles*: That ſhe preſſed what Soldiers ſhe pleaſed into her Service; compelled the Country to raiſe great Bodies of Horſe and Foot, and to pay and clothe them at their own Expence, without aſking the Advice of her Parliament; and was, notwithſtanding, acknowledged to be one of the beſt and greateſt of our Princes: And yet King *Charles*, who did not half this, is charged by the Faction with aſſuming arbitrary Power, and deemed to have forfeited his Crown, though he redreſſed all their real and pretended Grievances; parted with many of his undoubted Prerogatives, and paſſed more Acts for ſecuring the Liberties and Properties of his Subjects, than had been paſſed in any Reign ſince the Conqueſt; inſomuch, that the very Parliament, that raiſed the Rebellion againſt him, once confeſſed, they had nothing more to demand for their Security.

It appears that the reſpective Parties in thoſe Days, as in ours, acted upon very different Principles, and were far from being agreed in Facts: The one looked upon the People, and the other on the Prince, as the Original of all lawful Power. The firſt held that every legal Government was conſtituted in the Univerſal Conſent of the People; that no one had a Right to aſſume any Dominion over another without his Leave; and that Monarchs and Magiſtrates were, or at leaſt ought to be, no more than the People's Officers and Subſtitutes, elected by them, to adminiſter Juſtice at home, or command the Armies in the Field, and were liable to be called to an Account and depoſed, whenever their Adminiſtration did not pleaſe their Maſters.

The other Party held, that in the Beginning the Patriarchal Form of Government obtained in every Part of the World; that Fathers were Monarchs in their reſpective Families, and by Nature were entitled to the Command of all their Deſcendants: That there never was a Time when Men were born under no Form of Government, and left at Liberty to chuſe their own Governors: That the greater Monarchies conſiſted of Families that united for their common Defence; or were founded in Conqueſt, ſome powerful Chief reducing his weaker Neighbours under his Power. 1637. 13 Car. I.

And from theſe ſeveral Principles and Notions of Government, the one were for reducing their King to the Condition of a Subject, and the other for maintaining his Prerogative; though the latter held alſo, that the King ought to govern according to ſuch Laws and Statutes as had been granted, or enacted by his Predeceſſors.

The one looked upon the King's Prerogatives only as Conceſſions of the People, and conferred on him for the publick Good; while the other held, our Princes were originally abſolute, limited by no Laws whatever; and that the Laws and Statutes of the Realm were only Grants that our Kings conſented to, at the Inſtance of their People; Or, in few Words, the one were for eſtabliſhing a Republican Form of Government, and the other for ſupporting the Monarchy. The latter were much the moſt numerous, and would have carried their Point, if the Republicans had not been ſupported by their Brethren of *Scotland* and *Holland*, who agreed exactly, both in Principles of Religion and Government, with our Malcontents at home. The *Dutch* and the *French* had alſo their Ends to ſerve, in fomenting our Diviſions; and all together found Means to ſubvert our antient Form of Government, though there were not One in Ten, of the *Engliſh* Nation, Enemies to Monarchy in thoſe Days, any more than they are at preſent.

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Lilburn's *Proſecution.*

The Trial of JOHN LILBURN and JOHN WHARTON, for *printing and publiſhing ſeditious Books*, before the Court of *Star-Chamber*, 9 *Feb.* 1637. 13 *Car.* I.

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Scarce any Appearance of a Trial.

I Am aſhamed to find between twenty and thirty Pages in Folio of ſuch wretched Stuff bound up with the State Trials. This ſeems to have been done purely to encreaſe the Bulk, and inhance the Price, of a Work too voluminous already; therefore I ſhall reduce theſe Proceedings into a very narrow Compaſs. The Editor indeed, is ſo good to tell us this Piece was written by Enthuſiaſtick John *himſelf*; *but, if he had not, it is impoſſible any one could have thought otherwiſe.*

Lilburn's *own Account of his Proſecution.*

John relates, that he was betrayed into a Meſſenger's Hands by a pretended Friend of his: That he was committed to the *Gatehouſe*, and then removed to the *Fleet*: That being brought before the Attorney-General, he was examined concerning his importing ſome of Doctor *Baſtwick*'s ſeditious Books from *Holland*, of which one *Chillington* had accuſed him; and that he had a great deal of idle Diſcourſe afterwards with the Attorney's Clerk, who would have examined him about other Matters, foreign to the Purpoſe, but he refuſed to anſwer any further, or to ſet his Hand to what he had ſaid, and thereupon was remanded to the *Fleet*.

About ten Days after he was brought to the *Star-Chamber* Office, to enter his Appearance, and to be examined again; and required to take an Oath, *That he ſhould true Anſwer make to all Things that were demanded of him*; which he refuſed to take, or to pay the Fees for entering his Appearance; whereupon he was remanded to the *Fleet* again.

That he was afterwards had before the Court of *Star-Chamber*, and charged with refuſing to enter his Appearance, or take the *Star-Chamber* Oath: And the Affidavit of *Edmund Chillington* was read againſt him, and his Fellow-Priſoner, *John Wharton*; importing, that they had printed, at *Rotterdam* in *Holland*, Doctor *Baſtwick*'s Anſwer, his Litany, and divers other ſcandalous Books,

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Books, and conveyed them over to *England*. Then he was urged to take the Oath again; but he refuſed it, as an unlawful Oath. Old *Wharton*, his Fellow-Priſoner, alſo refuſed the Oath, exclaiming againſt the Cruelty of the Biſhops, and telling the Court they had five Times ſent him to Priſon, within two Years, for refuſing the like Oath: Then they were both committed to the *Fleet* again for their Contempt.

Both of them being brought before the *Star-Chamber* three or four Days after, they refuſed ſtill to take the Oath; and another Affidavit was read againſt them, importing, That they had ſent over ſeveral more ſeditious and libellous Books from *Holland*; which the Priſoners denyed, but would not ſwear it; and *Wharton* began to revile and rail at the Biſhops, both of them aſcribing this Proſecution to Epiſcopal Influence. Whereupon the Court proceeded to cenſure the Priſoners, and adjudged, That they ſhould be remanded to the Fleet, there to remain till they conformed themſelves to the Orders of the Court; that they ſhould, each of them, pay a Fine of 500*l.* and give Security for their good Behaviour before they were enlarged; that *Lilburn* ſhould be whipped from the *Fleet* to the Pillory; and that both of them ſhould be ſet in the Pillory, in ſuch Place as the Court ſhould direct, (which was afterwards ordered to be in *New-Palace-Yard*, *Weſtminſter*.)

Sentence againſt the Priſoners for their Contempt, in not anſwering the Court, &c.

Lilburn (according to his Sentence) ſays, he was whipped on the 18th of *April*, (being faſtned to a Cart) from the *Fleet* to *Palace-Yard*; and the Lords of the *Star-Chamber*, being then ſitting, ſent their Tipſtaff to him, to know if he would yet ſubmit; but he refuſed and gloried in his Suffering: Whereupon he was ſet in the Pillory for two Hours; where he gave the People an Account of his Sufferings, and the Hardſhip of his Caſe, applauding thoſe three living Martyrs, as he called them, *Burton*, *Prynne*, and *Baſtwick*, reviling the Biſhops, and telling the People they received their Power from the Devil, inſtead of having it from God, as they pretended; and that there was little or no Difference between Popery and the Church of *England*; and exhorted the People to withdraw their Necks from under that ſpiritual and antichriſtian Bondage; that they ſhould put on couragious Reſolutions, like valiant Soldiers of *Jeſus Chriſt*, and fight manfully his ſpiritual Battles. For his own Part, he ſaid, his Soul was filled ſo full of ſpiritual and heavenly Joy, while he ſtood in the Pillory, that he could not expreſs it with his Tongue. Then he took ſome of *Baſtwick*'s Libels out of his Pocket, and threw them among the People; which the Court of *Star-Chamber*, that was ſitting in View of the Pillory, being acquainted with, ſent their Officers to order him to behave himſelf with more Decency, and ceaſe his Railing; but he anſwered, he would declare his Mind, if they hanged him up at the Hall Gate: Whereupon they ordered him to be gagged, which put an End to his ſeditious Harangue for the preſent; but being taken down from the Pillory and ungagged, he began again, and told the People, he was *more than Conqueror through him that loved him.* And ſuch was his Behaviour during the whole Time he was in the Hands of the Executioner, that the Court of *Star-Chamber* ordered him to be laid in Irons, and kept on the Common Side in the *Fleet* Priſon; where, he tells us, he ſhould have been ſtarved, if he had not been relieved by his Fellow-Priſoners, for his Friends were not ſuffered to come at him; and that the Hardſhips he underwent in Priſon twice threw him into a Fever, and endangered his Life.

Lilburn *whipped and pilloried.*

He exclaims againſt the Biſhops and the Church of England. *Encourages Diviſions.*

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Diſperſes ſeditious Libels, while he ſtood in the Pillory.

This Man having done as much towards ſpiriting up the People to rebel againſt the Government, as any one of his Station, Reparation was ordered to be made him, for his Sufferings and Services, by the Parliament in 1641, on his Petition; and he was afterwards ordered three thouſand Pounds out of the Royaliſts Eſtates, that were confiſcated by the *Rump:* But he complains he never received but little of it, though he liſted himſelf in the Rebels Army, and behaved ſo well, that he was advanced to the Poſt of Lieutenant-Colonel of Dragoons. The Truth is, he grew as unquiet and mutinous under the Uſurpation, as he ever had been under his lawful Prince, and was proſecuted by the Saints, his Brethren, with more Violence than ever he was by the *Star-Chamber* or the Biſhops, as is evident from ſome of the ſucceeding Trials.

Remarks on Lilburn's *Proſecution.*

It ſeems the Saints of thoſe Days thought it their Duty to oppoſe and revile their Governors in Church and State; and, in any other Country but this, *Lilburn* would have been hanged, for flying in the Face of Authority, and inciting the People to Rebellion, even while he was under the Hand of the Executioner.

The

1638. 14 Car. I. Harriſon's *Trial.*

The Trial of THOMAS HARRISON, of *Creek*, in the County of *Northampton*, Clerk, for a *Contempt in inſulting and ſlandering Mr. Juſtice* HUTTON, *one of the Judges of the* Common-Pleas, *as he ſat upon the Bench in* Weſtminſter-Hall. Before the Court of *King's-Bench*, in *Trinity* Term. 1638. 14 *Car.* I.

1638. 14 Car. I.

The Indictment. THE Indictment was found by a grand Jury of *Middleſex*, and ſet forth that the Court of *Common-Pleas* was an ancient Court, and Mr. Juſtice *Hutton* one of the Judges thereof; and that the Defendant, *Thomas Harriſon*, being moved by Malice, and intending to bring the ſaid Mr. Juſtice *Hutton* under His Majeſty's high Diſpleaſure, to the Hazard of his Life and Eſtate, and intending to diſturb the Peace of the Kingdom, and the Courts of Juſtice then ſetting; did, on the 4th of *May*, then laſt paſt, audaciouſly and maliciouſly ruſh to the Bar of the ſaid Court of *Common-Pleas*, the ſaid Mr. Juſtice *Hatton*, and Mr. Juſtice *Crawley*, then ſetting on the Bench; and, with a loud Voice, ſaid, *I do accuſe Mr. Juſtice* Hutton *of High-Treaſon*, in contempt of His Majeſty, his Crown, and Dignity, and of the Courts of Juſtice then ſetting in *Weſtminſter-Hall*, *&c.*

His Confeſſion. The Evidence produced againſt the Defendant, was his own Examination and Confeſſion under his Hand, which he acknowledged to be true in open Court: In which Examination he confeſſed, That he came to the Bar of the Court of *Common-Pleas*, and there publickly charged Mr. Juſtice *Hutton* with High-Treaſon, with denying the King's Supremacy, and with moving the People to Sedition; and being asked the Reaſon of this Charge, he anſwered, That according to common Fame, the ſaid Judge on the *Saturday* preceding, had delivered his Opinion in the Exchequer-Chamber, *That the King had no lawful Power to levy Ship-Money*, and that the People thereupon grew more ſtubborn and averſe to the Payment of Ship-Money, and that this Judge's Opinion was contrary to the Opinion of all the Orthodox Divines in the Kingdom: That the ſaid Mr. Juſtice *Hutton* had in his Circuit encouraged the People in their Diſobedience; and being ask'd why he made choice of this publick Way of charging the Judge, he anſwer'd, becauſe he delivered his Opinion publickly.

The Offence contained in the Indictment being thus confeſs'd, in the Examination, which the Defendant acknowledged in Court to be true, and there needing no farther Evidence; the Attorney General, after he had enlarged on the Heniouſneſs of the Crime, demanded Judgment againſt him, and the following Sentence was pronounced, *viz.*

Sentence againſt him. The Fine ſhould be only 5000 l.

That the Defendant ſhould pay a Fine of 50000 *l. be impriſon'd during the King's Pleaſure; and, with a Paper on his Forehead expreſſing his Offence, ſhould go to all the Courts in* Weſtminſter-Hall, *and make his Submiſſion in every Court.*

Remarks on Harriſon's *Trial.* From this Proceeding we may gather how violently the two great Parties in the Nation were ſet againſt each other at this time, and that the Clergy were generally on the Side of the Court. It was certainly a very great Offence to charge a Judge upon the Bench with High-Treaſon, eſpecially when there was no other Foundation for it, but his differing in Opinion from his Brethren in the Caſe of Ship-money: But, on the other hand, conſidering the Defendant was but a private Clergyman, and acknowledged his Offence, the Fine ſeems very exorbitant. The Editor of this Collection of Trials, has made it fifty thouſand Pounds; but looking into *Croke's* Reports, I find he has ſet down forty five thouſand Pounds too much. However, five thouſand Pounds was much more than the Defendant would ever be ſuppoſed able to pay, and conſequently was contrary to *Magna Charta*, as the Party that proſecuted him uſed to urge, when it was the Fortune of any of their Brethren to be charged with ſuch heavy Fines.

1640. 16Car. I. *Lord* Finch's *Proſecution.*

1640. 16 Car. I.

The Proſecution of JOHN Lord FINCH, Baron of *Fordwich*, and Lord Keeper of the Great Seal, for *High-Treaſon*, 1640 16 *Car.* I.

He deſires to be heard by the Houſe of Commons. A Committee of the Houſe of Commons being appointed to prepare a Charge againſt the Lord Keeper *Finch*, on the 14th of *December*, he deſired to be heard by that Houſe, before they came to any Reſolution againſt him, which was granted; and on the 21ſt of the ſame Month, the L. Keeper came to the Houſe, where a Chair was ſet for him, and a Stool to lay the Purſe on, within the Bar. However, he would not ſit down, or put on his Hat, as the Speaker deſired him; but laying the Purſe on the Chair, he made a Speech ſtanding, bareheaded all the time, the Serjeant at Arms of the Houſe ſtanding on one Side of him, with his Mace upon his Shoulder.

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His Speech to the House.

The Lord Keeper first thanked the House for the Favour of hearing him; which he did not desire, he said, to preserve himself or his Fortune, but to preserve the good Opinion of that Assembly, which he valued more than all the Honours and Fortunes he was capable of: Neither did he come thither to justify his Actions or Opinions, but to give a plain Narrative of his Case, and submit it to the Wisdom and Justice of the House.

His Affection for Religion he hoped no Man doubted of, having lived near thirty Years in the Society of *Gray's-Inn*, and his Education and Conversation so very well known to many of them: And tho' he had been fifteen Years of the King's Council, no Man could charge him with being the Author or Adviser, or even of consenting to any one Project. That his Majesty had, indeed undeservedly, preferred him to two great Posts, that of Lord Chief Justice of the *Common-Pleas*, and that of Keeper of his great Seal; but without his seeking, and how he had incurred the Displeasure of that House, he could not conceive; but hoped he should manifest his Innocence to their Satisfaction.

He had once the Honour, (he observed) of sitting in that Place where Mr. Speaker did; and appealed to all that knew him, if he had not served the House with Candour, and received Testimonies of their Affection for him: and the last unhappy Day he sat there, he had a great Share, he said, in the Unhappiness of it. Many of the Members could witness that no Man within those Walls, expressed more Symptoms of Sorrow, Grief, and Distraction, than he did.

That His Majesty commanded him to deliver his Pleasure to the House, that they should adjourn; and, that upon his Allegiance, he should not put any Questions that should be proposed; but, upon the Delivery of the Message, return to him again: and he humbly besought them to consider, if it had been any other Man's Case, what he could have done between the Displeasure of a gracious King, and the ill Opinion of that honourable Assembly. As for his Part, he only acted according to the Commission he received from His Majesty. He was not the Author of that Council: on the contrary, he reasoned with His Majesty, and would gladly have been excus'd from executing that ungrateful Office, desiring they would lay all his Actions together from first to last, and he should submit them to their favourable Construction. That as to the Writs for Ship-money, he was as ignorant of the issuing them, as any Member of that House. He was neither the Authorn or Adviser of them, and they were even issued without his Privity.

That the Precedents for issuing them were, indeed, brought to the Lord Chief Justice of the *King's-Bench*, to the chief Baron and himself, to peruse; which they did, and returned them. That after this, His Majesty demanded of them, *Whether, when the whole Kingdom was in Danger, and the Kingdom in general concerned, it were not according to Law and Reason, that the whole Kingdom should join in Defence thereof?*

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That in *Michaelmas* Term, 1634, His Majesty required him to demand the Opinion of every Judge in particular, and charge them upon their Allegiance, to keep it secret; assuring them, that these Opinions should not be binding, either to themselves or the rest of his Subjects; and that they might alter them upon better Information.

That the Judges being bound by their Oaths, to counsel the King, he thought they could not refuse giving him their Advice, when he required it. They did, therefore, obey his Commands. That they were neither promised nor threatned, but left to do as their Consciences directed them; and none of them made any Doubt when they submitted their several Opinions, unless *Hutton* and *Crooke*, and even *Crooke* declared it to be his Opinion, *That, when the whole Kingdom was in Danger, the Defence ought to be borne by all.* As to Justice *Hutton*, he did not at all subscribe to that private Opinion, neither was he pressed to do it. This Opinion was subscribed about *December*, 1635, and they heard no more on this Head, till *February*, 1636, when His Majesty sent one of the Secretaries of State, to all the Judges assembled at *Gray's-Inn*, and there were great Debates amongst them concerning it. After which they subscribed their general Opinion, and returned it to His Majesty. That he gave his Opinion according to his Conscience, and used the best Arguments he could for the support of it; and then it was, that the Justices *Hutton* and *Crooke*, doubted, *If the King was sole Judge of the Danger*, and they only subscribed in Compliance with the Majority. That this Opinion was soon after published by the then Lord Keeper in the *Star-Chamber*.

That when the Matter came to be argued in the *Exchequer-Chamber*, there was not one Judge who did not deliver his Opinion, that it must be in a Case of apparent Danger, when the King laid such a Charge on his Subjects: But the Danger was confessed by the Demurrer.

He then declared, he said, that the King ought to govern his People by Law, and that he could not alter the Laws, but by consent of Parliament. He further declared, that if this Contribution was intended to encrease the Revenue, or bring any particular Benefit to the King, or was designed for any Thing but the Defence of the Kingdom, in a Case of Necessity, their Judgment would not warrant the Charge; entreating them to believe that he had not the least Intention to subvert, or alter the common Law of the Kingdom, or to introduce any new Way of Government.

He had heard too, he said, that there had been some ill Opinions conceived of him, concerning his Opinion for settling the Bounds of the Forests: but he professed he had no Intention to enlarge them: he had, indeed, conferred with the Gentlemen of the County of *Essex*, concerning the Bounds of their Forests; and produced such Records, as he thought for His Majesty's Service, leaving them to discharge themselves as they might by Law, but he never went about to overthrow the Charter of the Forest, and submitted this, and what-

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ever elſe he had done, to the Goodneſs and Juſtice of the Houſe.

The Houſe vote him a Traitor.

The Lord-Keeper was no ſooner withdrawn, but very bitter Speeches were made againſt him: It was ſaid, that the Nation had ſeen, and felt, and ſmarted under his Cruelty: That he had recorded that pernicious Judgment in the Caſe of Ship-Money in all the Courts of the Kingdom; and was not contented with enſlaving the preſent Generation, but would have entailed Slavery on their Poſterity: And ſhould they be ſo weak, when they had been thus injured and abuſed, to be cajoled with fair Words and Compliments? Some had ſaid, they ought to remember Mercy; but there was ſuch a Thing as fooliſh Pity, and there might be a a cruel Mercy: They ought to caſt their Eyes upon that deplorable State he had brought *Great Britain* into, and how his Majeſty and his Subjects had been abuſed and injured by ſuch wicked Inſtruments; and not prove mercileſs to the whole Kingdom, by ſparing this great Offender.

Then the Houſe proceeded to vote the Lord Keeper *Finch* a Traitor: 1. For refuſing to read the Remonſtrance againſt the Lord Treaſurer *Weſton*, when he was Speaker, and commanded by the Houſe to read it. 2. For perſuading the Judges to give their Opinion for levying Ship-money. 3. For his Opinions and Actions relating to the Bounds of the Foreſts; and 4. For the ill Offices he had done, in perſuading his Majeſty to diſſolve the laſt Parliament, and publiſhing the Declaration, with the Reaſons for doing it.

He is impeached.

And it was reſolved to ſend the Lord *Falkland* with a Meſſage to the Houſe of Lords, to impeach the ſaid *John* Lord *Finch*, Baron of *Fordwich*, and Lord-Keeper of the Great Seal of *England*, of High-Treaſon.

Goes to Holland.

Of which Reſolutions the Lord-Keeper having Notice, withdrew the next Morning, being the 22d of *December*, and went over to *Holland* in Diſguiſe.

However, the Commons proceeded in their Impeachment; and having drawn up Articles of Impeachment againſt him, ſent them up to the Lords about the Middle of *January*, 1640. being of the following Tenor:

The Articles of Impeachment.

1. That the ſaid *John* Lord *Finch*, Baron of *Fordwich*, Lord-Keeper, *&c.* had traiterouſly endeavoured to ſubvert the fundamental Laws, and introduce an arbitrary, tyrannical Government.

2. That, in purſuance of his traiterous Purpoſes, he did in the third or fourth Years of his Majeſty's Reign, being then Speaker of the Commons, and contrary to the Commands of that Houſe, deny, and hinder the reading of ſome Things relating to the Safety of the King and Kingdom, and the Preſervation of Religion, and did forbid all Members to ſpeak; and ſaid, if any of them offered to ſpeak, he would riſe and go away; and did offer to riſe and go away, endeavouring, as much in him lay, to ſubvert the antient and undoubted Rights and Courſe of Parliaments.

3. That, being one of his Majeſty's Council, he endeavoured to enlarge the Foreſts, particularly in *Eſſex*, beyond their due Bounds, *&c.*

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4. That, being Chief Juſtice of the *Common-Pleas* in the Year 1635. he drew up the Queſtions and Opinions, concerning Ship-money, and ſolicited and procured the Judges to ſign them.

5. That he ſubſcribed an extrajudicial Opinion relating to Ship-money himſelf; and preſſed the Juſtices, *Crooke* and *Hutton*, to ſign them againſt their Conſciences.

6. That he delivered his Opinion againſt Mr. *Hampden* in the *Exchequer* Chamber, in the Caſe of Ship-money; and threatened the ſaid Judges, to induce them to deliver the like Opinion; and urged Baron *Denham* to retract the Opinion he had given for Mr. *Hampden*.

7. That he publiſhed in his Circuit, that his Majeſty's Right to Ship-money was ſo inherent in the Crown, that an Act of Parliament could not take it away; and threatened all ſuch as refuſed to pay it.

8. That he did moſt of the Buſineſs of the *Common Pleas* in his private Chamber, and ſent Warrants into ſeveral Counties to releaſe all Perſons arreſted on Outlawries, on paying forty Shillings Fees; whereas no ſuch Perſons ought to be bailed or releaſed without a *Superſedeas* under Seal, or Reverſal.

9. The ninth Article charges him with perverting Juſtice, while he was Lord Chief Juſtice of the *Common Pleas*.

10. That he endeavoured to incenſe his Majeſty againſt Parliaments; and framed and adviſed the publiſhing the Declaration, after the Diſſolution of the Parliament.

All which Treaſons and Miſdemeanors were ſaid to be committed contrary to his Allegiance; to ſcandalize his Majeſty's Government, and alienate the Hearts of his Subjects from him; to create Diviſions between them, and to ruin and deſtroy the Realm; for which they impeached him of High-Treaſon, and of the Miſdemeanors aforeſaid.

Theſe Articles were communicated to the Lords at a Conference between the two Houſes, when Mr. *St. John*, Mr. *Whitlock*, the Lord *Falkland*, and Mr. *Hyde*, made very warm Speeches on the Occaſion; for which they received Thanks of the Commons.

Lord Falkland's Speech, on carrying up the Articles.

My Lord *Falkland* had the following Expreſſions in his Speech: *viz.* Here are many and mighty Crimes: Crimes of Supererogation, High-Treaſon being but a Part of his Charge: He was a ſilent Speaker, an unjuſt Judge, and an unconſcionable Keeper: His Offence againſt the Parliament was aggravated by his inveighing againſt the Members, by ſcandalizing their Proceedings; by trampling on their Acts and Declarations; by uſurping and devolving the Right; by diminiſhing and abrogating the Power of that and other Parliaments, and making them, as much as in him lay, both uſeleſs and odious to his Majeſty: He purſued his hatred to that Fountain of Juſtice, by corrupting the Streams of it, the Laws; and perverting and corrupting the Judges who adminiſtred it: He endeavoured to annihilate the antient and notorious Perambulations of particular Foreſts, the better to prepare himſelf for annihilating the antient and notorious Perambulation of the whole Kingdom; the Metes and Boun-

daries

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daries between the Liberties of the Subject and Sovereign Power, to bring all Laws from his Majesty's Courts into his Majesty's Breast: He gave our Goods to the King, our Lands to the Deer, and our Liberties to the Sheriffs; so that there was no way, by which we had not been oppressed and destroyed, if his Power had been equal to his Will; or his Majesty's Will had been equal to his Power. This was the highest kind of Parliamentary Treason: A Treason that needed not an Accumulation of many several Actions, which alone were not Treason (as the Earl of *Strafford* was charged by Articles carried up against him about six Weeks before): But this was a Treason, of itself, as well against the King as the Kingdom: Which took from his Majesty the Ground of Rule, the Laws, and his greatest Honour of ruling over Freemen; a Power, much nobler than that of governing Slaves and Villains; depriving his Majesty thereby of the principal Support of his Government, the Hearts and Affections of his People; a better and stronger Wall about the King than the Sea was about the Kingdom: And, by begetting a mutual Distrust, and by that a mutual Disaffection between them, hazarded the Destruction of both.

And, as it was unreasonable to suspect their Lordships Justice in any Case, so more especially here, where their Interest was so nearly concerned: Their great Share of Possessions giving them at least an equal Concern for their Properties: The noble Care of their Ancestors, in Founding and Asserting their Common Liberties, rendering their just Defence of them their proper and peculiar Inheritance, and exciting them to oppose and extirpate all such Designs as would introduce and settle an arbitrary and intolerable Form of Government, that would have made their Lordships, and their Posterity, but RIGHT HONOURABLE SLAVES.

The Judges ordered to be examined against him.

On the 30th of *January* the Lords ordered that such of the Judges should be examined, against the Lord *Finch*, as the Commons should desire, and by the same Lords that were appointed to take the Examinations against the Earl of *Strafford:* And on the 15th of *February*, a Proclamation was published, at the Instance of the Lords, to summon the Lord *Finch*, late Lord Keeper, to appear personally before the Lords in Parliament, to answer the Impeachment of High-Treason preferred against him by the Commons: But his Lordship remaining on the other Side of the Water till their Fury was much abated, and the Parliament having some greater Sacrifices to make, I do not perceive there were any farther Proceedings against the Lord *Finch*. He lived in Exile about eight Years; after which it cost him about seven thousand Pounds, by way of Composition for his Estate with the Usurpers; and he lived, not only to see the detested Murder of his Royal Master, by the same pretended Patriots, but the joyful Restoration of his Son King *Charles the Second*.

He lived to see the Restoration.

Remarks on the Prosecution of Lord Finch, and the rest of the Judges.

An Impeachment is said, in some Particulars, to resemble a Bill in *Chancery*; where the Plaintiff charges the Defendant with every Thing he can suggest, true or false, in order to discover some Thing to his own Advantage: And there may be a further View, namely, to blacken and asperse the Person accused, and his Adherents, in order to render them as odious to the World, as they are in the Eyes of them who are at the Bottom of the Prosecution; by which they hope, perhaps, to serve the Interest of their own Party in general; to gratify their private Revenge, or promote their own ambitious Projects. 1640. 16 Car. I.

If the Person impeached is guilty of half the Crimes he is usually charged with, he ought not to be suffered to live: But we are sensible Prosecutors allow themselves a great Latitude in framing Charges of this Nature. They hold it sufficient to accuse any Man upon common Fame, or on the Suggestions of an Enemy, without examining the Credibility of the Facts; in which they apprehended they do the Party no Injustice, because the Proofs are afterwards to be weighed and considered by his proper Judges: But, surely, a Man may receive great Injustice from such a Charge, though there should not be a Tittle of it true; for he may not have his Proofs always at Hand to clear his Innocence: And, if he should be acquitted, and escape with his Life, it is ten to one but his Reputation suffers; for nothing is so sure as that, where a great deal of Dirt is thrown, some will stick; and all that hear the Calumny may not be acquainted with the Force of the Defence. A Person once charged with horrid Crimes at the Bar of Justice, will suffer in his Reputation, among some People at least, how innocent soever he may be in Reality; and therefore, these general Accusations, upon little or no Evidence, surely cannot be perfectly agreeable to the Rules of Justice.

We find also in this Case, that, notwithstanding the violent Prosecution of the Lord-Keeper, and the rest of the Judges, during their first Fury, the Party contented themselves with draining their Purses: Though none of the Judges withdrew, but the Lord *Finch*, they proceeded against none of them capitally, but compounded the matter even with Lord *Finch* himself, when he returned to *England* again; which, surely, they would not have done, if they had really thought them those execrable Traitors, and Enemies to their Country, they had represented them in the several Articles exhibited against them.

But what is most amazing is, That Gentlemen of sound Principles, and of such Penetration as the Lord *Falkland* and Mr. *Hyde* (afterwards Lord *Clarendon*) appear to have been, should be so long deluded by the specious Pretences of the Faction, as to join in the Common Cry, and assist in running down the Judges and Officers of the State, and even of the Administration itself; and thereby contribute in so high a Degree to the Subversion of that Government they afterwards so bravely and zealously endeavoured to defend and support against the Faction they had thus countenanced: The Lord *Falkland*, we know, died fighting in the Field for his Majesty and the Constitution; and no one served the Crown with greater Fidelity than Mr. *Hyde* did afterwards; though it must be acknowledged, they were both, for some time, engaged very deeply with the Malcontents. 1640. 16 Car. I.

It

1637. 13 Car. I.

It has been obſerved, That the diſaffected Party uſually have the Cunning to engage ſome of the moſt deſerving and popular Men among ourſelves, in carrying on their Deſigns: They are ſuch exquiſite Hypocrites, and know how to diſguiſe their Views ſo well, that they frequently deceive even the moſt Penetrating, and draw them in to ſerve their Purpoſes, till they have ſecured their Game: Without the Aſſiſtance of thoſe, who were looked upon to be ſincerely in the Intereſt of the Church and State, they could never hurt either. The Ruin of the Kingdom in 1641. may, in a great meaſure, be aſcribed to the Friends of the Conſtitution, who were over-reached by their Enemies, and ſaw their Error too late; and if ever it be deſtroy'd again, it will probably be effected in much the ſame manner. 1637. 13 Car. I.

As to the Judges in general, who fell thus under the Cenſure of that Rebel Parliament, they ſeem, moſt of them, to be Men of as great Probity and Learning as ever ſat upon the Bench. They were proſecuted, as the Lord *Strafford*, Archbiſhop *Laud*, and the reſt of the King's Miniſters and Officers were, in order to expoſe his Majeſty's Adminiſtration, and to ſubvert the Government at leaſt. Theſe were the Views of thoſe who were at the Bottom of theſe Proſecutions; the reſt were carried away with the Stream, not reflecting on the Conſequences of their Conduct.

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Earl of Strafford's *Trial.*

The Trial of THOMAS Earl of STRAFFORD, Lord Lieutenant of *Ireland*, and Lieutenant-General of his Majeſty's Armies, on an *Impeachment of the Houſe of Commons for High-Treaſon*, which was carried up to the Lords, *Nov.* 11. 1640. 16 *Car.* 1640. 16 Car. I.

Pym moves the Impeachment.

THE Parliament, which began the Grand Rebellion againſt King *Charles* I. meeting on the 3d of *November*, 1640. Mr. *Pym*, one of the Chief of the Faction in the Houſe of Commons, moved on the eleventh of the ſame Month, That the Doors might immediately be locked up, for he had Matters of Importance, he told them, to communicate to the Houſe; which being agreed to, he made a moſt virulent Speech againſt the Earl of *Strafford*; declaring, he was the greateſt Enemy to their Liberties, and the greateſt Promoter of Tyranny and Arbitrary Power, that any Age had produced; and being ſeconded by ſome Gentlemen of the ſame Party, it was reſolved to impeach the Earl forthwith of High-Treaſon: And Mr. *Pym* was ordered to go himſelf to the Lords, and impeach him at their Bar; and to require he might be ſequeſtred from the Houſe, and committed to ſafe Cuſtody: Which Mr. *Pym* with great Alacrity executed, as ſoon as he received his Orders; and the Earl of *Strafford* being then in the Houſe of Peers, ſome Lords cry'd out with unuſual Clamour, that the Earl ſhould withdraw; inſomuch that it was with Difficulty he obtained leave to be heard firſt in his Place.

And carries it up.

In his Speech on this Occaſion, he declared his Innocence; and deſired he might not be reſtrained of his Liberty upon a general Charge, before any one Article was exhibited againſt him: However, they reſolved, after a very ſhort Debate, that he ſhould be committed to the Black-Rod: Then the Commons made an Order, that none of their Houſe ſhould viſit the Earl, in which they were imitated by the Peers: The Lords alſo, at the Deſire of the Commons, appointed a Committee, to take the Depoſitions of the Witneſſes againſt the Earl of *Strafford*, in the Preſence of another Committee of the Lower-Houſe; and it was agreed, that ſuch Peers as were Witneſſes ſhould be upon their Oaths: That Privy-Councillors might give Evidence againſt him; and, that the Examinations ſhould be kept private, till the Commons thought fit to make uſe of them; and on the 25th of *November*, Mr. *Pym* carried up nine Articles againſt the Earl, of the following Tenor, (*viz.*)

Nine General Articles againſt the Earl.

1. That he had traiterouſly endeavoured to deſtroy the Conſtitution, and introduce an arbitrary Government.

2. That he had aſſumed Regal Power, to the undoing of many.

3. That he had converted great Part of his Majeſty's Treaſure and Revenues to his own uſe.

4. That he had abuſed his Authority, by encouraging Papiſts.

5. That he had endeavoured to create a War between *England* and *Holland*.

6. That, being Lieutenant-General of his Majeſty's Armies, he had betrayed his Majeſty's Subjects to Death, and his Army to a ſhameful Defeat at *Newborne* by the *Scots*, and ſuffered *New-Caſtle* to fall into their Hands, to the End *England* might be engaged in an irreconcileable Quarrel with the *Scots*.

7. That he endeavoured to incenſe his Majeſty againſt Parliaments, thereby to create Diviſions between him and his People, and deſtroy theſe Kingdoms; for which they impeached him of High-Treaſon.

8. That he committed theſe Acts while he was Lord Deputy of *Ireland*, Lieutenant-General of the Armies of *England* and *Ireland*, Lord Preſident, and Lieutenant-General of the North.

9. The Commons, ſaving to themſelves the Liberty of exhibiting any other Accuſation, prayed, that the Earl might be brought to Juſtice, &c.

Theſe

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These general Articles seem to be sent up with no other View, than that they might have a Pretence for his being committed to the *Tower*, while they should hammer out more particular Articles, and fish for Witnesses to support their Charge; for on the 30th of *January* 1640, they sent up twenty-eight special Articles against him, in which the former seem to be comprehended.

Twenty-eight special Articles against him.

1. They charge, That the Earl, being President of the North, did on the 21st of *March*, 8 *Car.* procure a Commission, with Instructions, directed to himself and others, empowering them to determine all Misdemeanors and Offences in the North; and particularly, they were appointed to proceed according to the Course of the *Star-Chamber* against divers Offences; and to proceed according to the Course of the Court of *Chancery* concerning Lands, and grant Injunctions to the *Common Law* Courts: And that he exercised those Powers over the Persons and Estates of several, deprived them of their Estates and Possessions, and fined and imprisoned them, to their utter Ruin; and particularly Sir *Conyers Darcy* and Sir *John Bourchier:* That he procured Directions, that no Prohibition should be granted; and that none should be discharged on a *Habeas Corpus*, till they had performed their Decrees: and that in the 13th of the King he caused the Commission to be renewed, with additional Instructions.

2. That, soon after his procuring the first Commission, he declared at the Assizes at *York*, that since some of the Justices of Peace were all for Law, they should find the King's little Finger heavier than the Loins of the Law, in order to terrify the said Justices, that they should not execute the Laws.

3. That, in a Speech to the Nobility of *Ireland*, and the Corporation of *Dublin*, the Earl declared *Ireland* was a conquered Kingdom; that the King might do what he pleased with them; their Charters were worth nothing, and bound the King no farther than he pleased.

4. That *Richard* Earl of *Cork* having commenced a Suit for the Recovery of his Possessions, of which he was dispossessed by an Order of Council, the Earl threatened to imprison him, if he did not surcease his Suit; and said he would have neither the Law nor Lawyers dispute his Orders; adding, That he would make the Earl of *Cork* and all *Ireland* know, that as long as he had the Government, an Act of State should be as binding to that Kingdom as an Act of Parliament.

5. And that he did accordingly exercise his Power on the Goods, Inheritances, Liberties, and Lives of the Subjects there, to the Subversion of the Laws of that Kingdom: Particularly, that he did, in Time of full Peace, cause the Lord *Mountnorris* to be condemned to Death by a Council of War; and caused Sentence of Death to be pronounced against another Person (whose Name was unknown) at *Dublin*, and he was executed in Pursuance of it.

6. That, on a Paper Petition, he caused the said Lord *Mountnorris* to be disseized of his Manor of *Tymore*.

7. That he caused *The Case of Tenures on defective Titles* to be drawn up; procuring the Resolutions of the Judges thereupon; by Colour of which he caused the Lord *Thomas Dillon* and divers others, to be dispossessed of their Freeholds, to the Ruin of many hundred Families.

8. That on the Petition of Sir *John Gifford*, he made an Order against *Adam* Viscount *Loftus*, Lord Chancellor of *Ireland*, and, under Pretence of Disobedience to the said Order, caused him to be imprisoned, and to surrender the Great-Seal: That he imprisoned the Earl of *Kildare*, in order to make him submit his Title to the Manor of *Castle-Leigh* to his Pleasure, and kept him in Prison a Year, refusing to enlarge him, though directed to do it by his Majesty's Letters: That he caused an Order of Council to be entered against Dame *Mary Hibbots*, although a major Part of the Council were for the Lady; and forced her to relinquish her Estate, which was soon after conveyed to Sir *Robert Meredith*, to the Use of the Earl of *Strafford:* And that he imprisoned several others, on Pretence of Disobedience to his Orders, for pretended Debts, Titles to Lands, *&c.* in an arbitrary extrajudicial Course, upon Paper Petitions.

9. That he granted a Commission to several Bishops, their respective Chancellors and Officers, to commit the meaner Sort of People to Prison, who should not obey their Decrees.

10. That he farmed the Customs of *Ireland*, and, to advance his Gain, caused the Native Commodities to be over-rated; and the Customs, which formerly were but a twentieth Part of the Value of the Goods, were now a fourth, a fifth, and some of them a third Part of the Value.

11. That he extorted great Sums from the Subject, for Licences to export divers Sorts of Goods.

12. That he issued a Proclamation against the Importation of Tobacco, and then caused great Quantities to be imported to his own Use; and would not permit the Merchants to vend their Tobacco, unless they would let him have it at his own Price: That he issued another Proclamation, commanding all Tobacco to be seized that was not sealed by his Agents; and those on whom unsealed Tobacco was found, were fined, whipped, imprisoned, or pilloried; by which Means he gained an hundred thousand Pounds; and though he raised the Customs in other Articles, he lessened them in this, from Six-pence to Three-pence a Pound, for his own Profit; and that, by the like undue Means, he constituted divers other Monopolies.

13. That he commanded the *Irish*, by Proclamation, to work their Flax and Yarn into Thread, in a Manner they were unskilled in; and seized the Flax that was otherwise wrought; whereby he gained the sole Sale of that Native Commodity.

14. That he imposed an unlawful Oath on the Owners and Masters of Ships, by Proclamation, requiring them to give an Account of their Lading, their Owners, from whence they came, and whither bound.

15. That, contriving to bring the Realm of *Ireland* under his Tyranny, he imposed great

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Sums on the Town of *Baltimore*, and divers other Places, which he levied by Troops of Soldiers: That particularly he impowered *Robert Savile*, Serjeant at Arms, and ſeveral Captains, to quarter Soldiers on ſuch of the Inhabitants as would not be conformable to his Orders: That he diſpoſſeſſed *Richard Butler*, and above an hundred Families, of their Eſtates by a Military Force, impriſoning the Proprietors, till he compelled them to relinquiſh their reſpective Intereſts, levying War againſt his Majeſty, and his liege People of that Kingdom.

16. That, to continue his Oppreſſions of the Subjects of *Ireland*, he prevailed on his Majeſty, not to ſuffer any Complaints to be received in *England*; and iſſued a Proclamation, prohibiting all, who had any Eſtates or Offices in *Ireland*, to depart the Kingdom without Licence; and impriſoned ſeveral that came over to *England* to complain againſt him.

17. That he affirmed, his Majeſty was ſo well pleaſed with his Army in *Ireland*, and the Conſequences it produced, that he would make it a Pattern for all his three Kingdoms.

18. That, in order to make the Papiſts of *England* and *Ireland* to depend on him, he reſtored ſeveral Religious Houſes to their pretended Owners; particularly two in *Dublin*, which had been aſſigned to the Univerſity there, which were now employed in the Exerciſe of the Popiſh Religion. That he raiſed an Army, of which ſeven thouſand were Papiſts; and that, to engage this new Army to him, he paid them duely, and permitted them to exerciſe their Religion; whereas the old Army were kept without their Pay for a whole Year: And that being a Commiſſioner for compounding Forfeitures for Recuſancy, in the Northern Counties of *England*, he compounded with the Recuſants there at very low Rates, and diſcharged them from all Proceſs, in order to engage them to him.

19. That he impoſed an Oath on the Subjects of *Ireland*, requiring them to ſwear, that they would not proteſt againſt any of his Majeſty's Commands, but ſubmit obediently to them, fining, impriſoning, and baniſhing the Refuſers; and particularly that he fined *Henry Steward* and his Wife 5000*l.* a-piece, and impriſoned them for Nonpayment: That he declared the ſaid Oath did not only oblige them in Point of Allegiance, but to the Ceremonies and Government of the Church eſtabliſhed, or to be eſtabliſhed by his Majeſty; and gave out that thoſe who refuſed to take it, he would proſecute to Blood.

20. That he endeavoured to create in his Majeſty an ill Opinion of the *Scots*, and excited him to an offenſive War againſt them, ſince the Pacification: That he was the chief Incendiary, declaring that the *Scots* Demands in Parliament were a ſufficient Cauſe to make War upon them: That they were Rebels and Traitors; and, if his Majeſty pleaſed, he would root them out of *Ireland*, except they took the Oath in the preceding Article; and that he cauſed ſeveral *Scotiſh* Ships to be ſeized, to engage the Kingdoms in War.

21. That, having incited his Majeſty to carry on an offenſive War againſt *Scotland*, he adviſed him to call a Parliament; but that if they did not concur in the Earl's miſchievous Projects, they ſhould be diſſolved, and Money raiſed on the Subjects by Force; declaring in Council, *That he would ſerve his Majeſty any other way*, in Caſe the Parliament did not ſupply him.

22. That he procured the Parliament of *Ireland* to declare they would aſſiſt the King againſt the *Scots*; and conſpired with Sir *George Ratcliffe* to employ the Army of *Iriſh* Papiſts he had raiſed, to the Subverſion of the Government of *England*; declaring that, *if the Parliament would not ſupply his Majeſty, he was at Liberty to uſe his Prerogative for what he needed; and that he would be acquitted both by God and Man for ſo doing.*

23. That, the laſt Parliament taking the Grievances of the Kingdom into Conſideration, the Earl and Archbiſhop *Laud* adviſed his Majeſty, by ſeveral Speeches and Meſſages, to urge the Commons to grant a Supply for the War againſt *Scotland*, before they entered on their Grievances: And that a Demand being made by his Majeſty, of twelve Subſidies, in Lieu of Ship-money; while the Commons were debating on the Supply, the ſaid Earl and the Archbiſhop moved his Majeſty to diſſolve that Parliament, and the Earl then incenſed his Majeſty againſt the Members, telling him, *they had denied to ſupply him; and that his Majeſty having tried the Affections of his People, and been refuſed, he was abſolved from all Rules of Government; and that he had an Army in* Ireland, *which he might employ to reduce this Kingdom.*

24. That he falſly declared to others of the Privy-Council, that the Parliament having forſaken the King, and denied him a Supply, they had given him an Advantage to ſupply himſelf by ſuch other Ways as he ſaw fit; and that he was not to ſuffer himſelf to be maſtered by the Frowardneſs of his People. And that the Earl, the Archbiſhop, and the Lord-Keeper *Finch*, publiſhed a ſcandalous Book in his Majeſty's Name, entitled, *The Cauſes that moved his Majeſty to diſſolve the laſt Parliament*, full of bitter Invectives againſt the Commons.

25. That he adviſed the levying of Ship-money, and procured the Sheriffs to be proſecuted for not levying it, and ſeveral to be impriſoned for not paying it; and adviſed, that the Lord-Mayor of *London*, the Aldermen, *&c.* ſhould be ſummoned before the Council, to give an Account of their Proceedings in levying Ship-money, and concerning the Loan of an hundred thouſand Pounds demanded of them by the King; and on their refuſing to certify who were fit to lend, the Earl ſaid, they deſerved to be fined; there was no good to be done with them till they were laid by the Heels, and ſome of the Aldermen hanged up.

26. That he cauſed 130000*l.* belonging to his Majeſty's Subjects and Foreigners, to be ſeized in the *Mint*; and when it was repreſented what a Prejudice this would be to the Kingdom, ſaid, that the City had dealt undutifully, and were readier to help the Rebels than his Majeſty; and that it was the Practice of other Princes to uſe ſuch Money to ſerve their Occaſions: That the *French* King uſed to ſend Commiſſaries of Horſe to take Account of Men's Eſtates, and levy Money on them by Force; and,

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and, directing his Diſcourſe to the Lord *Cottington*, ſaid, this was a Courſe worthy to be conſidered by his Lordſhip.

27. That, being Lieutenant-General in the North, he impoſed a Tax of Eight-pence a Day for every Soldier of the Militia in that County, and levied it by Force, declaring, that thoſe who refuſed it, were guilty of little leſs than High-Treaſon.

28. That, receiving Advice of the *Scotiſh* Army's bending its March towards *England*, he did not provide for the Defence of *Newcaſtle*, but ſuffered it to fall into their Hands, to inceniſe the *Engliſh* againſt the *Scots*; and in order to engage the two Nations in a bloody War, he ordered the Lord *Conway* to fight the *Scots* at the Paſſage of the *Tine*; though he had repreſented, he had not Force ſufficient to encounter them; whereby he betrayed his Majeſty's Army to apparent Danger and Loſs: All which the Earl had done, with an Intent to create a Diviſion between his Majeſty and his People, and to deſtroy him and his Kingdoms; and for which they impeached him of High-Treaſon.

The Earl's Anſwer to the ſaid twenty-eight Articles was in Subſtance as follows:

The Earl's Anſwer.

1. TO the Firſt, the Earl anſwered, That the Commiſſion directed to him and others, to hear and determine Offences in the North, did not differ from former Commiſſions: That he believed Sir *Conyers Darcy* and Sir *John Bouchier* were legally fined; but he was then in *Ireland*; and denies that he did any Thing, but what he might legally do, by Virtue of that Commiſſion.

2. He denies he ſpoke the Words charged in the ſecond Articles, but had ſaid, *The little Finger of the Law was heavier than the King's Loins.*

3. He denies the Words charged in this Article, but might ſay, *The Charters of* Dublin *did not bind his Majeſty.*

4. That the Proceedings at the Council-Table of *Ireland* have ever been by Petitions, Anſwers, *&c.* and they have always puniſhed Contempts to their Orders by Fine and Impriſonment; and believes he might tell the Earl of *Cork* he would impriſon him, if he diſobeyed the Orders of the Council-Table.

5. That the Deputies and Generals of the Army have always executed Martial Law in *Ireland*; and the Army there was governed by printed Orders: And the Lord *Mountnorris* being a Captain in the Army, was ſentenced to Death by a Council of War, conſiſting of twenty Officers, for mutinous Words, and Breach of Orders; in which the Earl was no Judge, but afterwards procured his Pardon; and Lord *Mountnorris* ſuffered no perſonal Dammage, unleſs two Days Impriſonment.

6. To the ſixth he ſaith, That calling the Lord Chancellor and the Maſter of the Rolls to his Aſſiſtance, upon hearing the Cauſe mentioned in this Article, a Decree was made for the Plaintiff; and the Lord *Mountnorris* might thereupon be put out of Poſſeſſion.

7. To the ſeventh, That the Lord *Dillon* conſented to the ſtating of the Caſe mentioned in this Article, and the Judges delivered their Opinions thereupon; but that neither he, nor any one, were bound thereby, or put out of Poſſeſſion.

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8. He ſays that a Decree was made by the Privy-Council of *Ireland* againſt the Lord *Loftus*; and, on an Appeal to the King and Privy-Council of *England*, that Decree was confirmed; and for Diſobedience to that Decree, and Continuance of his Contempt, he was committed cloſe Priſoner, and the Great-Seal delivered up by his Majeſty's Command. And that an Information being exhibited againſt the Lord *Loftus*, in the *Star-Chamber*, for his Oppreſſions, as Chancellor, he ſubmitted, deſiring he might be an Object of his Majeſty's Mercy. That the Earl of *Kildare* was committed for not performing an Award, made by King *James*, and an Award in Purſuance thereof by the Earl of *Strafford*; and a Letter being unduely obtained, he was not diſcharged thereupon; but upon another Letter, and making a Submiſſion, he was enlarged. That the Lady *Hibbots*, and *Hoy* her Son, having made a fraudulent Bargain with the Petitioner *Hibbots*, for Lands of great Value, was ordered by the Council to deliver up the Writings, no Aſſurances being made, or Money paid; and believes ſhe might be threatened to be committed, if ſhe diſobeyed that Order; but denies the Lands were conveyed to Sir *Robert Meredith* for his Uſe; or that any one had been impriſoned by an Order made by himſelf, in a Caſe of Freehold; though he admits they may have been for Debts and perſonal Things, as had been practiſed by his Predeceſſors.

9. That ſuch Warrants, or Commiſſions, as are mentioned in this Article, have been granted to Biſhops by his Predeceſſors; but that he never granted more than one, and finding it complained of, had recalled it.

10. To the Tenth he ſaith, That the Lord Treaſurer *Portland* offered the Farm of the Cuſtoms for 13000*l.* *per Ann.* and to the Earl had advanced them to 15500*l.* *per Ann.* beſides 8000*l.* Fine: That, by his Majeſty's Command, he became a Farmer at thoſe Rates, without Addition; that he diſſuaded the Advancement of the Rates, and it was declined: That the Rates of Hides and Wool were moderate, and the Trade of Shipping mightily encreaſed in his Time.

11. To the Eleventh, That his Majeſty, to reſtrain the Deſtruction of Timber, had laid a Duty of thirty Shillings, and afterwards of three Pounds, *per* Thouſand upon Pipe-Staves exported; which was paid to the King's Uſe, but the Earl had loſt 4 or 500*l.* *per Ann.* by it, which was paid to his Predeceſſors, for Licence to export them.

12. To the Twelfth he ſaith, That the Revenue of *Ireland* falling ſhort of the Expences of the Government, 24000*l.* *per Ann.* the Commons petitioned the Duties on Tobacco might be applied to the Encreaſe of the Revenue, which was conſented to: That the Earl had lent Money to forward the Buſineſs, and, by his Majeſty's Allowance, was a Partner, but had yet made no Advantage thereby; and knew no whipping, or other Puniſhment, for Non-payment of the Duties. That the Farms of the Cuſtoms were advanced 2000*l.* *per Ann.* and five Eights. That the Price of Tobacco

was

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13. To this Article, he ſaith, That he choſe to advance the Linnen Manufacture there, rather than the Woollen, becauſe the latter might prejudice *England*: That he imported great Quantities of Flax, and ſold it without any Profit, to encourage the Natives, the Soil being very proper for it: That he had ſet up abundance of Looms, and ſold a great deal of Cloth to Loſs; but, when they would not be brought to change the old Way of working their Flax for a better, that Manufacture declined.

14. That the Proclamation mentioned in this Article, was ſet forth by the Council of State, to prevent Frauds in the King's Duties; and the Oath enjoined, was approved by the Judges.

15. That the *Iriſh* Agents in the Time of his Predeceſſors, had agreed to pay 120,000 *l.* towards the Maintenance of the Army, and that the Money ſhould be levied by Captains, by Paper Aſſignments, upon Warrants from the ſaid Deputy; but this was continued only part of a Year in his Time, and he was confident no Force was uſed in levying it; and that neither *Richard Butler*, or any other Family, were evicted from their Eſtates.

16. To the Sixteenth, he ſays, That, by the Laws of *Ireland*, none can depart that Kingdom without Licence: However, he had denied his Licence but to three, and that upon very good Reaſons.

17. To the Seventeenth, That he might ſay to the Soldiers of the old *Iriſh* Army, that the King was ſo well pleaſed with the Exerciſe of their Arms, that he would make them a Pattern for others to imitate.

18. To the Eighteenth, That when the Earl of *Cork* was one of the Lords Juſtices, he ſeized ſome Houſes in *Dublin*, on pretence of their belonging to Jeſuits and Friars, without legal Proceſs; and that Suits being commenced for them at the Council Board, they were reſtored to the Owners; but how they had been employed ſince, the Earl knew not: That he left the Care of raiſing the 8000 Men, mentioned in that Article, to the Earl of *Ormonde*, and believed they could not be raiſed without many Papiſts among them, though moſt of the Officers were Proteſtants; and in the old Army he never made one Officer that was not a Proteſtant; and gave Directions that the common Soldiers ſhould be all ſuch, and he believes they have been duely paid. And the new raiſed Men exerciſed their Religion in no other Manner than was practiſed in the Times of his Predeceſſors. That in his Compoſitions with the Recuſants in the North of *England*, he brought their Forfeitures from 2300 *l.* to 12000 *l.* *per Annum* within four Years; and that they had no other Privileges than what they had formerly.

19. To the Nineteenth, he ſaith, he admits that an Oath was tendered to the *Scots* in *Ulſter*, who were near an hundred thouſand Men; it being ſuſpected they would join their Brethren the Covenanters; and that it was taken by all of that Nation in *Ireland*, ſome few excepted, who were cenſured for their Refuſal; but that there was nothing in it relating to the Government of the Church. 1640. 16 Car. I.

20. To the Twentieth, he ſaith, he acknowledges he thought it convenient an Army ſhould be raiſed againſt the Covenanters, but adviſed the conſulting the Parliament in it: That the *Scots* Demands being conſidered by the Council, before the Parliament met, it was unanimouſly agreed, That they were ſuch as might not in Honour, or Safety be granted; and that, if they could not be reduced otherwiſe, His Majeſty might do it by Force; and His Majeſty was adviced to borrow 200,000 *l.* till the Parliament ſat; and he might ſay, that thoſe who raiſed Forces in that Kingdom, were no better than Traitors and Rebels; and that he ſeized ſeveral *Scots* Ships by Warrant from the Lord Admiral, in order to bring them to Terms of Accommodation.

21. To the Twenty-firſt, That the Pacification was broken before he came into *England*; and that he moved for the calling a Parliament, in order to procure a good Underſtanding between the King and his People, and not with the Intent this Article ſuggeſts; and he might ſay, If the Parliament refuſed a Supply, he would ſerve his Majeſty in any other lawful Way.

22. He denies the Words charged in this Article; but ſays, he did repreſent the State of his Majeſty's Affairs to the Parliament of *Ireland*, and they readily gave him four Subſidies: That he alſo raiſed eight thouſand Men, by his Majeſty's Orders, who were ſent to ſecure *Ulſter*, or land in *Scotland*, to divert the Earl of *Argyle*, in caſe he declared for the Covenanters.

23. To this Article he ſaith, He admits, that it being debated in Council, what might move the Parliament to grant a Supply, he did adviſe, that his Majeſty ſhould lay down Ship-money, and promiſe never to demand it again and to redreſs their other Grievances; and that he adviſed his Majeſty to accept eight Subſidies: That the Earl drew up a Meſſage of this Tenor in Writing, and it was given to Sir *Henry Vane*, to deliver to the Houſe of Commons, but he did no know whether Sir *Henry* delivered it or not: But that, the Houſe having debated the Supply two Days, and come to no Reſolution, his Majeſty called a Council the Fifth of *May*; to which the Earl coming in late, was informed the King had declared his Reſolution of diſſolving the Parliament; and Sir *Henry Vane* declaring there was no Hopes the Parliament would give the King a Penny; the Earl ſuppoſing the aboveſaid Meſſage had been delivered to the Commons, did, in his Turn, give his Vote for diſſolving the Parliament, as Sir *Henry Vane*, and the reſt of the Lords of the Council, had done, to the Number of Twenty, (two or three excepted.) That the Parliament being diſſolved, and the King demanding of the Council how Money might be raiſed, now the *Scots* were upon the Point of entring the Kingdom, the Earl declared, he was of Opinion, *That in a Caſe of abſolute Neceſſity, His Majeſty was abſolved from ordinary Rules,*

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and might uſe all moderate Ways and Means for the Defence of himſelf and the Kingdom; for he conceived, in ſuch Extremity, *Salus populi* was *Suprema Lex*: That he gave his Opinion, as he was bound to do by his Oath of a Privy-Councillor, and not officiouſly; neither did he ſpeak the Words mentioned in this Article, or any other to that Effect.

24. To the Twenty-fourth he ſaith, He gave his Opinion with the Reſtrictions mentioned in the laſt Article: That he had no ill Intentions towards the Parliament, or knew of the publiſhing the Book mentioned in this Article.

25. To the Twenty-fifth, That Ship-money was adjudged and levied before his coming to *England*; nor did he promote the Proſecuting the Refuſers in the *Star-Chamber*; that he had ſaid at the Council-Board, that the Sheriffs ought to be fined for not executing the King's Writs; which was done with an Intention to quicken them, and not with a Deſign they ſhould be proſecuted: And denies the reſt of the Words mentioned in this Article.

26. To the Twenty-ſixth he ſaith, He adviſed neither of the Projects mentioned in this Article. That the Merchants deſiring him to move his Majeſty to releaſe the Bullion, he refuſed to meddle with it; telling them, they might thank themſelves, if, by denying the King the Loan of a 100,000*l.* in that Time of Danger, they had compelled him to ſeize the Bullion; and that the Earl of *Leiceſter* obſerving, that Commiſſioners were appointed to inſpect the Merchants Shop-Books at *Paris*, and tax every Man according to his Ability, he did ſay, They might bleſs God they were not ſubject to ſuch a King in *England*: But denies ſpeaking the Words ſpecified in this Article, expreſſing his Concern, that his Words ſhould conſtantly be miſrepreſented.

27. To this Article he ſays, That the Gentry of *Yorkſhire* agreed to allow the Trained-Bands a Month's Pay; and it was ordered, by his Majeſty and the great Council of Peers, when any of thoſe Regiments were permitted to return home, they that ſent them out ſhould contribute to the Charge of the reſt; and this was levied by Warrants from the Earl and his Deputy-Lieutenants, and leſſened the Charge of the County: And denied the reſt of the Charge in this Article.

28. To the laſt Article he anſwered, That he was Lieutenant-General to the Earl of *Northumberland*, and that the Lord *Conway* having twelve thouſand Foot and two thouſand Horſe under his Command, near *Newcaſtle*, and his Majeſty having given Orders for oppoſing the Paſſage of the *Scots* over the *Tine*, the Earl ſent the Lord *Conway* a Letter from *York* the 27th of *Auguſt*, adviſing him to march with eight thouſand Foot, and all his Horſe and Artillery, and defend that Paſſage; but before the Lord *Conway* had received that Letter, he had placed himſelf there with only fifteen hundred Foot and Part of the Horſe: That the Earl had no Charge of the Army; till the 30th of *Auguſt*, when he brought it to *York*, and deſigned to have remained there with the Army, had he not received Advice from ſeveral Hands, that there was a Deſign to proſecute him in Parliament, which induced him to leave the Army under the Lord *Conway*, and come to *London*; adding, that *Newcaſtle* was not under his Care: And as to the reſt of the Matters contained in the ſaid Articles, he was not guilty; praying he might have Time to produce his Proofs and Vouchers in his Defence.

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This Anſwer being delivered in the 23d of *February*, and communicated to the Commons, they reſolved not to reply, but join Iſſue on the Anſwer: Whereupon it was reſolved by the Lords, that the Trial ſhould be on the 22d of *March*, in *Weſtminſter-Hall*; and the Commons appointed the following Members to be their Managers, (*viz.*) *George* Lord *Digby*, *John Hampden*, *John Pym*, *Oliver St. John*, *Jeoffry Palmer*, *John Maynard*, *John Glyn*, Eſquires, and Sir *Walter Earle*, Knight.

Iſſue joined.

Managers appointed.

The Lords coming down from their Houſe to the Court erected in *Weſtminſter-Hall*, on *Monday* 22. *March* 1640. the Earl of *Strafford* was brought to the Bar by Sir *William Balfour*, Lieutenant of the *Tower*: After which the Twenty-eight ſpecial Articles, and the Earl's Anſwer to them, were read.

The Trial begins.

Then Mr. *Pym* opened the Charge againſt the Earl, acquainting their Lordſhips, that he was appointed to take off thoſe Vizards and Appearances of Truth, which were contained in the Preamble of the Priſoner's Anſwer. (*But it is obſervable that Mr.* Ruſhworth, *that partial Collector, from whom this Trial is taken, has omitted that Preamble; and the Faction were ſo induſtrious to ſuppreſs it, that it never could be recovered, any more than the Speech the Earl made in his Defence, of which Mr.* Ruſhworth *gives no more than an Abſtract, though he omits nothing of the Charge; and the Speech alſo is now irrecoverably loſt. We muſt be content, therefore, with ſo much of his Defence as his Enemies have been pleaſed to communicate to us. But to proceed.*)

Mr. Pym *opens the Charge.*

Mr. *Pym* having endeavoured to anſwer the Preamble to the Earl's Anſwer, the Witneſſes were produced, to prove the Facts, the Earl aſſerted therein, were not true; and firſt Sir *Pierce Crosby* was ſworn, to whoſe Teſtimony the Earl objected that he had been cenſured in the *Star-Chamber*, for endeavouring to ſubborn Witneſſes againſt him (the Earl): That he broke out of the Fleet Priſon, to which he was committed, and never appeared publickly till now, when he was brought to give Evidence againſt him, or rather againſt the Court of *Star-Chamber* that cenſured him: Whereupon, ſome of the Lords moving to adjourn the Managers, agreed to wave his Teſtimony for the preſent; but ſaid, they would bring him again another Day; for they did not apprehend that he was charged with any thing that could invalidate his Teſtimony.

The Witneſſes produced.

Sir *John Clotworthy* was ſworn next, and depoſed, That, having voted againſt a Bill in the Houſe of Commons, in *Ireland*, Sir *George Ratcliffe*, a Relation of the Earl's, threatned to deprive him of a Leaſe he was poſſeſſed of; and that Sir *Pierce Crosby* alſo having ſpoken againſt a Bill, Sir *George Ratcliffe* ſaid to him, *That was not Privy-Councillor like.*

Lord *Ranelagh* depoſed, That Sir *Pierce Crosby* having voted againſt a Bill, tranſmitted by the Deputy and Council, was ſequeſtred

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from the Council, by the Advice of that Board, and did not know but this might proceed from the ſaid Deputy's Motion, it being moſt proper for him.

Lord *Mountnorris* depoſed, That Sir *Pierce* was ſequeſtred from the Council Table, on a Complaint made by Sir *George Ratcliffe*, touching his voting; and it was done by a Majority of the Council, of whom the Lord Deputy was one.

Sir *Nicholas Barnwell* depoſed, that he, (the Deponent,) voting for the old Boroughs, which had been ſequeſtred from the Houſe on Account of a Judgment againſt them in the *Exchequer-Chamber*, Sir *George Ratcliffe* threatned to quarter 5000 Men upon him; but the Lord Deputy was not then in the Kingdom.

Mr. *Egor* depoſed, That the City of *Dublin* was compelled to pay 55 *l.* a Month to be exempted from quartering of Horſe, which was thought a Grievance, and contrary to their Charter: But, being asked if the Lord Deputy's Horſe and Foot-Guards were not billeted there before his Time, he anſwered, That the Foot were, but the Horſe only for a Month at a Time, or ſo; and it was never drawn into a Matter of Money.

A Remonſtrance of the Houſe of Lords of *Ireland* was produced next, to prove that the Earl had endeavoured to ſubvert the Laws, and corrupt the Adminiſtration of Juſtice: To which the Earl objected, That this was a Matter fallen out ſince his Impeachment; and that it was procured by a Faction, as he ſhould ſhew hereafter. The Managers replied, he ought not to be allowed to charge the Commons with Faction and Conſpiracy, and demanded their Lordſhip's Juſtice. The Earl, thereupon, ſaid, he had no Intention to reflect on the Commons of *England*, or *Ireland*; but upon ſome that were not Members of either Houſe.

Upon reading the Remonſtrance, the Managers obſerved, That all the Earl's glorious Declarations of his own Merits, were confuted, and Sir *Edward Warder* was next produced, to prove that *Ireland* bore its own Charges, before the Earl's Adminiſtration; and the Lord *Mountnorris*, and Sir *Robert Pye*, gave Evidence in order, to the ſame Effect.

Whereupon the Earl demanded, if the conſtant Charge of the Government did not exceed the conſtant Revenue when he came thither? The Managers admitted it did; but ſaid, that Deficiency was ſupplied by a Loan of 120,000 *l.* from that County; ſo that nothing went from *England*: To which the Earl replied, That, notwithſtanding that Loan, the Crown was indebted near 100,000 *l.* when he went thither.

Sir *Adam Loftus*, the Vice-Treaſurer, was ſworn next, and depoſed, That the Earl made uſe of 24000 *l.* of the King's Money, notwithſtanding His Majeſty's Neceſſities, but that it was repaid about three Months ſince; which, the Managers obſerved, was ſince this Proſecution began: And they inſiſted, that if the Earl would anſwer any Thing that had been alledged againſt him, he ſhould do it preſently. To which the Earl ſaid, That the Remonſtrance, and ſome other Things, having been produced in Evidence againſt him, which he did not expect, he deſired he might have Time to recollect himſelf; but was told, the Commons did not preſs theſe Things as Matter of Crime, but to confute the Untruths in the Preamble to his Anſwer; and therefore, there needed no farther Time to anſwer theſe Particulars. 1640. 16 Car. I.

Whereupon, the Earl entered immediately on the Defence of the Preamble to his Anſwer: And firſt, as to that Part of it, which ſhewed that many good Laws had been made in *Ireland*, by his Means, he obſerved, that was not denied directly, only it had been retorted upon him, that good Laws were of no uſe where an arbitrary Government was ſet up againſt the Laws; but, as this was part of the enſuing Charge, he ſhould ſpeak to it hereafter. *The Earl defends the Preamble to his Anſwer.*

And though it was objected there had been but two Parliaments in his Time, it was evident there had not been ſo many in fifty Years before: And he ſtill inſiſted, he had never been concerned in any Monopolies, but always diſcouraged them: And it was ſufficiently evident now, that his Commiſſion was not more extenſive than his Predeceſſors.

It appeared alſo, that the Revenue of *Ireland* fell ſhort; and there was a Neceſſity of a Contribution, to ſupply the Deficiencies: That the Crown was 100,000 *l.* in Debt when he went thither; and he left 100,000 l. in the King's Coffers when he came away, having laid out conſiderable Sums beſides in Purchaſes for the Crown: (Indeed, the Commons acknowledged that the Revenue had been encreaſed; but ſuggeſted that it had been done by indirect Means.) And they ſaid it was not true, that *Ireland* did not ſupport itſelf when he came thither; for, what was deficient in the Revenue, it appeared, was raiſed by Contributions in that Kingdom: To which the Earl replied, That what he meant, was, that the *conſtant* Revenue was not ſufficient *then*; whereas it was *now*, though 600 Horſe were added to the Army.

And, as to his uſing 24000 *l.* of the King's Money, he had the King's Warrant to make uſe of 40000 *l.* for three Years at a Time, when there was a Surpluſage of 100,000 *l.* in the Treaſury; and that it appeared he had repaid it before the Time appointed: And that, while he had it, there was the Value of 40,000 *l.* left in the Comptroller's Hands, as a Security, purſuant to the Warrant. However, by an Order from the Commons of *Ireland*, (by what Law he knew not) his Magazines were ſeized, his Goods taken away, and given to others, to ſell at their own Price; and his Servants and People impriſoned, as if he had been already convicted of Treaſon.

That he had not only cauſed the Goods and Poſſeſſions of the Church to be reſtored, as he affirmed in the Preamble to his Anſwer; but procured an Act of Parliament to prevent their being waſted or embezzled for the Future: Nor was there any Proof of his cauſing theſe Reſtitutions to be made by illegal Methods, as had been ſuggeſted. He ſtill inſiſted, he had prefered many deſerving Men in the Church; and, that the Number of Proteſtants was greatly encreaſed in *Dublin*, ſince his Adminiſtration; which

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which the Managers did not now controvert.

He obſerved further, that it ſeemed to be admitted he had preferred none but Proteſtant Officers: And as to the quartering of Soldiers in *Dublin*, it appeared that former Deputies had their Guards quartered there.

It was manifeſt alſo, that the Shipping of *Ireland* was vaſtly encreaſed; there being now an hundred Tons to one there was when he arrived there; and the Cuſtoms were advanced from thirteen to forty thouſand Pounds *per Annum*.

He admitted Sentences had paſſed againſt ſome Jurors in the *Star-Chamber*, for going contrary to plain Evidence; however, he had but one Voice there, and thoſe Sentences appeared to be founded upon the greateſt Reaſon; for, unleſs a ſtrict Hand were kept over the Natives, their Prieſts would lead them as they pleaſed; it is plain they did not, or rather would not, underſtand the Evidence.

That as to what had been ſuggeſted of his wronging his Majeſty of 5 or 6000*l. per Ann.* in the Cuſtoms, he ſhould make it appear, when he came to anſwer that Article, that he had made a very advantageous Bargain for the Crown. And thus having gone through the Preamble to his Anſwer, he obſerved, that the Evidence of Sir *John Clotworthy* and the Lord *Ranelagh* did not concern him; that the Evidence of other Witneſſes, related to what had been ſpoken when he was out of the Kingdom; and, indeed, that Sir *George Ratcliffe*, and not he, was affected by their Teſtimony.

That he had Witneſſes to prove, that the Preamble to the Act for the four Subſidies, was the general Vote of the Houſe of Commons, and never excepted to till he was impeached; and the Reaſon of excluding Sir *Pierce Crosby* from the Board, was, his having voted for the Bill in Council, and ſet his Hand to the Tranſmiſſion, and afterwards voted againſt it in the Houſe.

The Managers, in their Reply to the Earl, ſeemed to admit a great deal of what he had affirmed, in the Defence of the Preamble to his Anſwer, to be true; but obſerved, That if the Charge ſtill remained in Force, as they conceived it did, the Services he had done could not mitigate his Crimes; that if it were true, that he himſelf had not encroached on the Privileges of Parliament; yet if, under his Government, thoſe Privileges had been invaded by others, he could lay no great Claim to Merit: And as to the Earl's Obſervation, that many Things were not proved, they only deferred producing that Part of their Evidence till they came to the Articles: That if he had oppoſed Monopolies, he might do it for ſiniſter Ends; and doing his Duty in one Inſtance would not compenſate for his Neglect of it in another. They concluded, that what they had forborne to reply to in the Preamble, would be made good in the Charge; *and then the Court adjourned.*

Art. 1. The Peers being aſſembled again in *Weſtminſter-Hall*, the 24th of *March*, and the Earl brought to the Bar, Mr. Serjeant *Maynard* opened the firſt Article of the Impeachment, relating to the Alteration of his Commiſſion, as Lord-Preſident of the North; to prove which ſeveral Parts of the Commiſſion was read: And afterwards *John Gore* was ſworn, who depoſed, that in *November* 1632, his Father, Sir *Thomas Gore*, was arreſted at *London*, by a Serjeant at Arms, for a Contempt to the Court of the Preſident and Council of *York*; and he appealing to the Privy-Council, the Earl of *Strafford* fell on his Knees, and beſought the King, that if he had not Power to bring in a Delinquent, who affronted the Court, upon his ſtepping out of the Precincts of its Juriſdiction, he might leave that Service, and lay his Bones in his own Cottage; and that his Father was afterwards detained eighteen Weeks in Cuſtody.

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Other Witneſſes depoſed, that the Earl would not ſuffer Prohibitions in the North; and cauſed ſuch Perſons as brought them to be ſummoned before the Preſident and Council there, and committed to Priſon.

The Managers having finiſhed their Evidence on this Article, and the Earl being ordered to proceed in his Defence, he deſired he might retire and peruſe his Notes; but they would only give him leave to look over them at the Bar; which the Managers told him was a Favour. The Earl anſwered, the Caſe was different where a Man was impeached for a known Treaſon, and where he was to anſwer ſuch a mixed Charge; and he thought it very ſtrange that when a Thouſand Miſdemeanors would not make one Felony, twenty-eight Miſdemeanors ſhould amount to High-Treaſon. As they were acknowledged ſeparately to be but Miſdemeanors, he ought to have had the Benefit of Counſel, and his Witneſſes examined upon Oath: But he, under Pretence that theſe Miſdemeanors amounted to Treaſon together, was debarred of thoſe Privileges, and had not been ſuffered to ſummon his Witneſſes till the *Friday* before; though the Facts he was charged with were, great Part of them, ſaid to be done in *Ireland*.

And, in Anſwer to this Article, he ſhewed he did not procure the Clauſes they found fault with in the Commiſſion; but that the King's Council, on receiving the Commiſſion, uſually inſerted what they conceived might conduce to his Majeſty's Service; and it was approved by the Lord-Chancellor before it was ſealed. And as to the Execution of it, he had never done one Act in Purſuance of it, ſince it was made, being moſt of the Time abſent in *Ireland*; however, the Preſident and Council of *York*, from the firſt Inſtitution of that Court, had both a *Star-Chamber* and *Chancery* Power.

As to the Evidence of *Gore*, it related to a Tranſaction before the Date of the Commiſſion, with which he was not charged, and conſequently he was not obliged to give any Anſwer to it; and neither he, nor any other, he obſerved, pretended to prove that the Earl procured the Clauſes in the ſaid Commiſſion; and that the reſt of the Evidence in this Article conſiſted of Hearſays. Then he produced his Witneſſes, to ſhew he was abſent in *Ireland* moſt Part of the Time, between *July* 1633 and 1639; and that he never acted as Preſident of *York*, ſince that Commiſſion was renewed in the eighth Year of the King: Concluding, that, as he was charged only with procuring and executing this Commiſion, he conceived he had given a full Anſwer to both.

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The Managers repiied, That what *Gore* had depoſed ſhewed the Reaſon of the enlarging the Commiſſion, (*viz.*) the Earl's falling upon his Knees before his Majeſty, when his Father was arreſted; and that, from what the other Witneſſes depoſed, it was probable he was privy to the Alteration of the Commiſſion; and though this alone was not Treaſon, yet the whole Charge together, amounting to the Subverſion of the Laws, was Treaſon, and this was one Evidence of it.

Then the Managers proceeded to the ſecond Article, which charged the Earl with ſaying, at *York* Aſſizes, *That ſome of the Judges were all for Law, but they ſhould find, that the King's Little Finger ſhould be heavier than the Loins of the Law.*

Theſe Words were atteſted by Sir *Thomas Leyton*, Sheriff of *Yorkſhire*, and ſeveral other Gentlemen, who depoſed, That they were ſpoken at the Summer Aſſizes, at *York*, in the Year 1632, or 1633.

To this the Earl anſwered, That it appeared he was in *Ireland* at thoſe Times, and conſequently the Witneſſes were miſtaken. He acknowledged indeed, he had ſaid at another Aſſizes, *That the Little Finger of the Law, was heavier than the Loins of the King*; and produced Dr. *Duncombe*, and Sir *William Pennyman*, as Witneſſes of his ſaying them; but abſolutely denied his ſaying the Words he was charged with in this Article.

The Managers replied, Though their Witneſſes were miſtaken in the Time, yet their Evidence, in the main, might be true: Whereupon, the Earl obſerved, If it were true, the Facts did not amount to High-Treaſon; and deſired his Counſel might be heard to that Point, at a proper Time.

On the Fourth Day of the hearing, *viz.* the 25th of *March*, 1641, the Managers proceeded to prove the third Article, which charged the Earl with ſaying, *That* Ireland *was a conquered Nation, and the King might do what he pleaſed with them.* And *Robert Kennyday* being produced as a Witneſs of theſe Words, the Earl objected to his Teſtimony, that he had been convicted of Extortion, and other Miſdemeanors, and bore a particular Grudge againſt him; obſerving that it was a great Hardſhip that ſuch Men were produced to give Evidence againſt him, as had been convicted of notorious Crimes during his Adminiſtration, and could not be ſuppoſed backward in aſperſing him: But all his Exceptions of this Kind were overruled, and *Kennyday* permitted to teſtify the Earl's ſpeaking the Words charged in this Article. *Richard* Earl of *Cork* alſo atteſted the Earl ſpoke the Words, to whoſe Teſtimony the Priſoner objected that he was a prejudiced Perſon, having been compelled by the Government of *Ireland*, to pay 15000 *l.* as a Compoſition for his Miſdemeanors.

The Lords *Gormanſton* and *Killmalloch*, depoſed, That the Earl, in the Preſence of both Houſes of Parliament in *Ireland*, declared, *That* Ireland *was a conquered Nation; and, therefore, muſt expect Laws as from a Conqueror*: And Sir *Pierce Crosby* atteſted the ſame Words.

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To this, the Earl anſwered, that the Natives of *Ireland* had ever appeared prejudiced againſt their *Engliſh* Governours; that they had occaſioned Proſecutions againſt many of them, who had manifeſted their Innocence, and ſhewn that they deſerved rather to be applauded than cenſured, when the firſt Heat was over, and Matters came to be calmly conſidered; that in the Adminiſtration of Juſtice, many Perſons muſt neceſſarily be offended. However, there was nothing in this Article that amounted to High Treaſon; and, as it could be no more than a Miſdemeanor, he ought to have been allowed Counſel, and his Witneſſes examined upon Oath; which Advantages he was deprived of, by their involving all under the general Charge of Treaſon.

He deſired their Lordſhips alſo, to reflect on the Hardſhips of his Caſe again; That he had no Opportunity given him, of preparing for his Defence, till the *Friday* before; and it was impoſſible in ſo ſhort a Time to fetch his Witneſſes from *Ireland*, and produce his other Proofs: That in all other Courts, where the Defendant puts in his Anſwer, and it is not replied to; nor the Party allowed to prove his Anſwer; it is admitted to be true; and ſo it ought to be in this Caſe: That according to the Statute of *Ed.* VI. he ought not to be proſecuted for Words above thirty Days after they were ſpoken, and popular Actions were to be preſented within a Year or two at fartheſt; but here he was proſecuted for Words, ſuppoſed to have been ſpoken ſix or ſeven Years before. He deſired alſo, it might be conſidered, that the Laws and Cuſtoms of *Ireland*, were different from thoſe of *England*; and hoped their Lordſhip's would diſtinguiſh therefore, and not judge him by thoſe of this Kingdom, where the Matter related to *Ireland*.

And, as to what had been teſtified to ſupport this Article, he acknowledged he was ſtill of Opinion, that *Ireland* was a conquered Kingdom, as it was recited to be ſo ſeveral Times, in a Statute of XI. *Elizabeth*, relating to the Attainder of that Famous Rebel, *Shan O Neal*; and as the Words atteſted were not intended to upbraid that Nation, but to ſhew how much they were obliged to the Kings of *England*, for ſuffering them to be governed by the Laws of *England*, and not treating them as a conquered Nation; he did not ſee how they could be taken amiſs; and, in Fact, no Man appeared offended with them, when they were ſpoken; and it muſt be admitted, that the Conqueror might have impoſed on them *what Laws he pleaſed.*

Then he called Sir *Henry Slingsby* as a Witneſs for him, who depoſed, That the Earl's deſign in that Speech appeared to be, to reconcile that People to His Majeſty's Government: That he knew they were very well taken by ſeveral, and particularly by the Mayor of *Dublin*, who invited him to Dinner that Day; when both he and the principal Citizens expreſſed themſelves extremely well ſatisfied with what the Earl had ſaid.

As to what the Witneſſes teſtified, relating to their Charters, *viz.* That he ſaid, they were nothing worth, and the King might do as he

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pleaſed with them: He did not controvert his ſaying them, for that the Charters of *Dublin* were forfeited, by their making ſeveral By-Laws, contrary to the Common-Law; and their neglecting ſeveral Duties they were obliged to perform by thoſe Charters, which had been complained of, both in the Council-Chamber, and the Parliament: He obſerved alſo, that the greateſt Part of the Aldermen were Recuſants, and ſtood upon their Charters, refuſing to obey the Order of the Council-board.

Then the Lord *Dillon* was called as a Witneſs for the Earl, who depoſed, That, five or ſix Years before the Charters of *Dublin* being brought to the Council-board, the King's Counſel ſhewed, that the City exerciſed By-Laws, contrary to the Common-Law; and that the like Complaints were made by ſeveral Members of the Houſe of Commons; particularly, that they hindered *Engliſh* Tradeſmen, from ſetting up Manufactures there.

This was one of the Reaſons, the Earl obſerved, of his Queſtioning their Charters; and averred that, at his going over thither, the Natives, being Papiſts, engroſſed the Manufactures to themſelves, and depreſſed the *Engliſh*; but that now, there were three Proteſtants in *Dublin* for one, that was there when he went over; and he preſumed that what had chiefly incenſed that People ſo much againſt him was, his interpoſing ſo effectually in theſe Matters: However he had never gone about in a Judicial Way to deprive them of their Charters, but they ſtill enjoyed them in their full Latitude. All that he deſigned by theſe Repreſentations, was, to keep them within ſome Bounds: That as to his ſaying, *they muſt expect Laws from the King, as a Conqueror*, they were no Part of the Charge, and conſequently, he was not obliged to anſwer them: However, he never ſpoke them, which Sir *George Wentworth* atteſted from a Copy of that Speech he had by him.

To this the Managers ſaid, that they had averred their Charge to be true, though they had not replied to the Earl's Anſwer; and therefore the Anſwer was not to be taken *pro confeſſo*; nor would it avail him, that *Ireland* was governed by other Laws; for the Words he had ſpoken, tended to the Subverſion of all Laws; and they could ſhew they were deeply reſented, though the Mayor durſt not tell the Earl ſo then: Then they produced ſeveral Witneſſes, who depoſed, That they believed the Words charged, were in another Speech, and not in that taken by Sir *George Wentworth*; and that they were highly reſented when they were ſpoken.

They inſiſted alſo, that the Common-Law was the ſame in *England* as in *Ireland*; and, by a Statute there, Cauſes were reſtrained to their proper Courts; and the Lord Deputy and Council could not meddle in Cauſes between Party and Party; and if the Earl could not produce a Statute that authorized him, as Governor, to take Cognizance of private Cauſes, it muſt be admitted, he had erected an arbitrary Power, as would appear farther in the following Article.

Then the Managers proceeded to the fourth Article, which charges that he ſaid, in a Cauſe of the Earl of *Cork*'s, *He would have neither Law, nor Lawyers, diſpute his Orders*; *and that he would make the Earl of* Cork, *and all* Ireland *know, that an Act of State, was as binding in* Ireland, *as an Act of Parliament.* To prove the Charge in this Article, the Earl of *Cork* was produced, and depoſed, That he was deſſeized of an Impropriate Rectory, on a Paper Petition to the Council; and that no Decrees were ever made there, concerning Lands, before the Earl of *Strafford*'s Time: But it being demanded, if he himſelf, as Preſident of *Connaught*, had not, on Paper Petitions, done the ſame Thing, the Commons inſiſted that the Witneſs need not anſwer the Queſtion, becauſe it tended to make him accuſe himſelf; and of this Opinion were the Lords. Then the Lord *Cork* depoſed farther, That having brought his Action, and repreſented to the Earl of *Strafford* the Hardſhip of being deprived of his Poſſeſſion, on a Paper Petition, without a Trial at Law, he anſwered, *Call in your Witneſſes, or, if you will not, I will clap you up in the Caſtle; for I tell you, I will not have my Orders diſputed by Law, nor Lawyers:* That the Deponent being proſecuted in the *Star-Chamber*, for making a long Leaſe of a Parſonage, contrary to an Act of State; and repreſenting that he was not apprized of that Act, and therefore it was hard he ſhould be proſecuted for it; the Earl of *Strafford* ſaid, *I tell you, my Lords, as great as you are, I will make you, and all the Subjects of* Ireland *know, that any Act of State, made, or to be made, ſhall be as binding to you, and the Subjects of* Ireland, *during my Government, as an Act of Parliament.*

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The Lord *Ranelagh* depoſed, That no Decrees concerning Lands, were ever made by the Council, before the Earl of *Strafford*'s Time. *John Waldron* depoſed, That, in a Cauſe between the Merchants of Galloway, and others, concerning a Leaſe at the Council Table, Mr. *Martin*, the Merchant's Counſel, inſiſting on an Act of Parliament in behalf of his Clients, the Earl of *Strafford* ſaid, He would make him know, *that an Act of that Board ſhould be as good as a Statute*, or to that Effect. Some other Witneſſes alſo depoſed, That they heard the Earl ſay the ſame Words, at the Council-Table, four or five Years before.

Sir *Pierce Crosby*, depoſed, That the Earl of *Strafford* being at Dinner at the Deponent's Houſe, ſoon after his coming to *Ireland*, the Earl ſaid, *If he lived, he would make an Act of State, equal to an Act of Parliament*; *adding, that* Ireland *was a Conquered Nation, and the Conqueror ſhould give the Law.*

To the Charge in this Article, the Earl anſwered, that the Council-board in *Ireland*, was a Court of Record, where they proceeded by Bill and Anſwer, *&c.* that his Care to preſerve the Authority of that Court, could not be conſtrued a Subverſion of the Laws, the Law being only adminiſtred in another Channel, according to the Conſtitution of that Kingdom; and that this was the proper Court for the Protection of the Engliſh Planters, and the proteſtant Clergy.

The Lord *Dillon*, being called as a Witneſs for the Earl, depoſed, That, as long as he remembred, in all Cauſes of Plantation and the Church, the Lord Deputy and Council proceeded as in other Courts of Equity; and that upon Contempts of Acts of State, or Proclamations, the Parties were attached and brought

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before that Board, and ſometimes fined and Impriſoned, and he had heard their Judges ſay, that Acts of State in *Ireland*, were a kind of Temporary Laws: Sir *Adam Loftus* depoſed to the ſame Effect; but both of them declared, that none ever were fined for contempt, in Caſe of particular or private Rights; and it ſeems, the Managers admitted, that the Council-Table there had Cognizance of Cauſes relating to Plantations and the Church, and of ſuch Cauſes as were recommended by the King to the Council; but would not admit the Council to be a Court of Record.

Upon this Evidence, the Earl of *Strafford* obſerved, that the Council-board in *Ireland* had another Conſtitution than it had here: That the Lord *Cork*'s Caſe related to the Church, of which they had Cognizance, and deſired their Lordſhips would hear his Counſel upon the Statute of 28 *Hen.* 6. for remitting Cauſes to their proper Courts, by the laſt Clauſe whereof the King's Prerogative was ſaved: And as to the Words, he obſerved bare Words, of a higher Nature, would not have amounted to Treaſon, and ought to have been proſecuted within a ſhorter Time, according to the Statute of 1 *Ed.* VI. c. 12. And further, That in the Caſe of the Lord *Cork*, where the Sentence was juſt and honourable, he might, without Offence, ſay, That neither Law nor Lawyers ſhould diſpute his Orders; though it was very improbable he ſhould ſay thoſe Words, when that very Order referred the Matter to a Determination at Law. As to his ſaying that an Act of State was equal to an Act of Parliament, my Lord *Cork* muſt have a very good Memory, to make his Evidence agree ſo exactly with the Words of the Charge: However, as he had done no Act, in Purſuance of ſuch a Declaration, it could not amount to High Treaſon; and he did not ſee but, where an Act of State was made agreeable to, or in purſuance of, an Act of Parliament, and the fundamental Laws of the Realm, and to prevent ſome preſent Miſchief, till the Parliament might provide againſt it; ſuch an Act might be as binding, for the Time, as an Act of Parliament: And he accepted againſt Sir *Pierce Crosby* and ſome other Witneſſes, as prejudiced Perſons.

The Managers replied, That the Lord *Cork*'s Impropriation, was a Lay-fee, and no Church Matter; and therefore the Council had not Cognizance of it: That the Priſoner's Government appeared to have been arbitrary, by his threatning to lay the Lord *Cork* by the Heels, if he went to Law; and it was not material, whether the Order was juſt or not; and that, though Acts of State were a temporary Proviſion till Acts of Parliament could be made; yet, when Things were propounded and rejected in Parliament, they ought not to be ſupplied by Acts of State; and called one *Lotts* to prove, that the Commons having rejected ſome Bills; particularly one, which would have made it Felony for a private Perſon to have Gunpowder in his Houſe; the Lord *Strafford* told them, that notwithſtanding they had voted againſt theſe Bills, he could make them Acts of State, which would do as well: ——— The Earl objected to this Evidence as irregular, being produced after the Reply; but the Lords, however, admitted it: Whereupon the Lord *Strafford* ſaid, he had received particular Directions concerning the truſting Gunpowder in unſafe Hands, which he ſhould forbear to open, as it tended neither to his Acquittal or Condemnation.

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The Managers, on the 27th of *March*, 1641, went upon the fifth Article, which charges, that the Earl, in Purſuance of the aforeſaid Speeches, exerciſed an arbitrary Power over the Goods, Inheritances, Lives, and Liberties of the Subject; and, particularly, procured Sentence of Death to be paſſed on the Lord *Mountnorris*, and another Man, by a Council of War, in time of Peace. *Art.* 5

Then the Sentence againſt the Lord *Mountnorris* was read, whereby he was condemned by a Council of War, to be ſhot, or loſe his Head, for ſome Speeches, expreſſing a Deſign of being revenged on the Lord Deputy, for an Affront he had received from him: And the Lord *Mountnorris* himſelf, being produced as an Evidence of the Proceedings of the Council of War againſt him, depoſed, That, on the 11th of *December*, 1635, he was ſummoned to attend the Lord Deputy, at a Council of War the next Morning; and that the Deponent having taken his Place in the Council as Vice Treaſurer, the Lord Deputy charged him with ſome Words, ſpoken three or four Days after the riſing of the preceding Parliament, and read the Words out of a Paper he held in his Hand: And the Deponent deſiring he might be tried as a Peer, and an Officer of the Crown, and not by a Council of War, it was refuſed, and demanded of him, if he would confeſs or deny the Charge; and His Majeſty's Letter was read, directing him to be proceeded againſt in a Council of War, which put him into ſome Confuſion; and the Lord Deputy gave him ſuch Language as was not fit to be uſed to a meaner Man: And the Paper, containing the Words he was charged with, was atteſted by the Lord *Moore*, and Sir *Adam Loftus*; but the Deponent denied the Words, declaring they were ſpoken by another Perſon, as he could prove, if he was permitted to ſend for his Witneſſes; but this alſo was denied him. That the Lord *Moore*, who was one of the Witneſſes againſt him, was ordered to ſit as one of his Judges, and the Deponent, being withdrawn about an Hour, was called in again, and the Sentence pronounced againſt him; when the Lord Deputy made a ſevere Speech upon the Occaſion, and ſaid, There remained now no more (if he pleaſed) but to cauſe the Provoſt-Martial to do Execution: However, he ſhould ſupplicate his Majeſty as to his Life, and ſaid, he would ſooner loſe his Hand, than the Deponent ſhould loſe his Head, and the Deponent was then commanded to Priſon; but not having his Health, he was ſuffered to reſide for the moſt Part at his own Houſe.

The Lord *Dillon* depoſed, That he was at the ſaid Council of War; and that every Member, on giving his Vote, declared that he gave it, in confidence that Mercy ſhould be extended to the Lord *Mountnorris*; and that, when the Votes were given, the Lord *Strafford* ſaid, he had rather loſe his right Arm, than the Lord *Mountnorris* ſhould loſe a Hair of his Head; and he would write to His Majeſty to ſupplicate his Mercy:

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Mercy: That while the Lord *Mountnorris* was withdrawn, the Lord *Strafford* gave no Vote, or ſpoke one Word to incline them one Way or other; and the Lord *Ranelagh* gave much the ſame Evidence; only he added, That the Lord Deputy ſaid, as he had complained to the King, he expected that Honour from the Board, that his Cauſe ſhould be taken into Conſideration, and ſuch Redreſs given as was fit, demanding Juſtice on the Articles: And though he ſaid he would depend on their Judgment, yet he would hold them to the Point of the Articles, and not give them a Latitude of proceeding to make him Reparation according to the King's Letter: But, after the Council fell into the Debate of the Matter, the Lord *Strafford* ſaid not one Word, or gave them any Interruption; and had declared before, if there was not a Neceſſity of his Preſence, he would withdraw.

Other Witneſſes depoſed, That one *Thomas Denewit* was hanged by Martial Law, for Theft and Deſertion.

To the Charge contained in the fifth Article, the Earl anſwered, That there were twenty Officers preſent at the Sentence againſt the Lord *Mountnorris*, wherein he was no Judge, but became a Suitor to His Majeſty for him, ſo that he only ſuffered a few Days Impriſonment; and that, by his Commiſſion (which was read) it appeared he was impowered to exerciſe Martial Law.

Then he called the Lord *Wilmot*, who depoſed, that Martial Law had been exerciſed in *Ireland*, ever ſince he remembred, without being complained of, either by the Common Lawyers, or by the Parliament; but that, in time of Peace, it had only been exerciſed againſt Traitors and Outlaws. Sir *Adam Loftus*, and the Lord *Robert Dillon*, alſo depoſed, That they had known ſeveral Rebels, and Outlaws executed by Martial Law, but no others, in time of Peace.

Sir *Robert Farrer*, and Sir *George Wentworth* depoſed, That the Lord *Strafford* ſat as a Suitor, and not as a Judge, at the Trial of the Lord *Mountnorris*, and did not vote or intermeddle in it himſelf; nor would ſuffer the ſaid Sir *George Wentworth* to give his Vote, becauſe he was his Brother.

The Lord *Strafford* ſaid, he left the Matter wholly to the Council, and the Lord *Mountnorris* only ſuffered two Days Impriſonment; the proceeding being intended only for Diſcipline, to teach him to govern his Speech with more Modeſty: That he thought the Sentence againſt *Denewit*, was juſt, being condemned for ſtealing a quarter of Beef, and runniug away from his Colours, the latter being Death by Statute-Law; and that he had been burnt in the Hand before.

The Managers replied, that the Earl's Intention to ſubvert the Laws was evident; and it appeared that he procured the Sentence againſt the Lord *Mountnorris*, if he did not vote in the Caſe: That his Commiſſion only impowered him to exerciſe Martial Law when there was a Neceſſity for it, which muſt be underſtood of a Time of War; and none of the Witneſſes had proved that it was ever exerciſed in Time of Peace, unleſs upon Traitors and Outlaws, that fled from Juſtice: That the Statute that made Deſertion Felony, directed, the Priſoner ſhould be tried by the Common Law, and then he would have had his Clergy. And the Inſtructions given to the Lord *Falkland* were read, importing, *That ſuch as might be brought to a Trial at Law, ſhould not be tried by Martial-Law, unleſs in Time of War and Rebellion*: And one of the Managers obſerved, that the Earl of *Strafford* did not ſo much deſire the Blood of the Lord *Mountnorris*, as to have the Peers under his Girdle.

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On the twenty-ninth of *March* the Managers went upon the ſixth Article, which charges the Earl with diſſeizing the Lord *Mountnorris* of his Freehold, on a Paper Petition. *Art.* 6.

To prove which, a Decree was read, whereby the Lord Deputy, aſſiſted by the Chief-Juſtice of the *Common-Pleas*, decreed *Henry Rolſton* to be put into Poſſeſſion of the Lord *Mountnorris*'s Lands; and that Lord depoſed, that he was actually put out of Poſſeſſion of thoſe Lands accordingly, by a Warrant of the Earl of *Strafford*'s; and Mr. *Anſlow* depoſed to the ſame Effect.

The Earl anſwered, that the Decree was juſt; that his Commiſſion authorized him to determine ſuch Cauſes, and his Predeceſſors had exerciſed the like Authority upon Petitions made to them; and produced the Lord *Robert Dillon*, and ſeveral other Witneſſes, to prove that former Deputies had made the like Decrees; and that the Provincial Courts, which derived their Authority from him, did the ſame: That the Decree was for the Relief of a poor Man the Lord *Norris* had violently diſpoſſeſſed of Lands of 200*l. per Ann.* That it was neceſſary to relieve the poorer Sort of People this Way, who could not undergo the Expence of legal Proceedings; and that he received his Majeſty's Orders to relieve them as former Deputies had done: That he had obſerved the Rules that guided other Courts of Equity; and though the ſame Thing might be illegal here, it was according to the Laws and Cuſtoms of *Ireland*, by which he ought to be adjudged in this Caſe. Nor did he underſtand how the Enlargement of a Juriſdiction, (if it had been ſo) could be ſtrained up to Treaſon: This was of the Nature of a Court of Requeſts, and did not intrench on the Juriſdiction of the Courts of Law.

The Managers replied, that no Deputy had ever determined the Poſſeſſion of Lands before, unleſs in Plantation Caſes; nor did his Majeſty's Letter warrant his doing of it. And the Earl of *Cork*, Lord *Ranelagh*, and other Witneſſes depoſed, that no former Deputy ever determined Matters relating to Lands, in Equity, or otherwiſe.

A Petition of the Lord *Mountnorris*, for a Warrant for a Pardon under the Great-Seal, and the Lord *Strafford*'s Anſwer, alſo were read, importing, that when the Petitioner ſhould acknowledge the Juſtice of his Sentence his Requeſt ſhould be conſidered. The Lady *Mountnorris*'s Petition to his Majeſty, and the King's Reference of the Matter to the Lord Deputy, alſo were read; wherein his Majeſty directs, that, upon ſuch a Submiſſion as the Lord Deputy ſhould approve, the Lord *Mountnorris* ſhould have Liberty to come to *England*; and Mr.

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Anſlow depoſed, that when the Lady *Mountnorris* petitioned the Deputy, he refuſed to receive the Petition.

Evidence was produced alſo, where the Lord Deputy had decreed the Poſſeſſion of other Lands: But he ſhewed, that was done by the Conſent of the Parties, and that the Poſſeſſion was not altered; and ſaid, he would make it appear, if they would ſuffer him to give the Lord *Falkland*'s Book of Entries in Evidence, that there were Hearings between Party and Party, Injunctions to the Judges, and Warrants to the Sheriffs, to give Poſſeſſion of Lands, to be found in them: And that my Lord *Mountnorris* might thank himſelf for his Reſtraint, not making his Submiſſion as his Majeſty directed: That the Lady *Mountnorris* brought him only the Copy of a Petition to his Majeſty, and he told her he could do nothing on a Copy.

One of the Managers replied, that the Lord *Strafford*'s Cruelty exceeded that of other Tyrants, for he kept the Lord *Mountnorris* in Priſon, till he ſhould acknowledge the Juſtice of a Sentence which he knew to be unjuſt. Other Tyrants ſometimes found out falſe Witneſſes; but to make a Man a falſe Witneſs againſt himſelf was much more tyrannical: And they conceived the Charge ſtill remained, *That the Earl of* Strafford *had determined Cauſes, which his Commiſſion, or the Authority he had received from his Majeſty, did not warrant.*

Art. 8. The next Day, being the 30th of *March*, they opened the eighth Article; which charges the Deputy with impriſoning *Adam* Lord Viſcount *Loftus* Lord Chancellor of *Ireland*, *George* Earl of *Kildare*, and the Lady *Hibbots*, on Pretence of Diſobedience to his Orders: But the Managers inſiſted only on the Buſineſs of the Lady *Hibbots*, and dropped the reſt. They endeavoured to prove, that the Order was made contrary to the Opinion of a Majority of the Council; and that the Lord Deputy was guilty of Corruption, in procuring Part of the Eſtate in Queſtion to be ſold to his Agents, in Truſt for himſelf.

The Earl of *Strafford*, in his Defence, brought ſome of the Council to teſtify, that a Majority ſigned the Order, and that no Member at the Board took any Exception to the ſigning of it; and, as to the commanding the Lady to perform the Order, on Pain of being fined and impriſoned, he obſerved, that it would be to no purpoſe to make Orders, if they could not enforce Obedience to them: He denied that the Lands were conveyed to his Uſe, and obſerved there was only Hearſay Evidence of it.

The Managers replied, that the Council had nothing to do with Freehold, unleſs it concerned Plantations, or the Church, or was ſpecially recommended to them; and though that was not Treaſon of it ſelf, yet it conduced to prove their general Charge, that he ſubverted the Laws.

Art. 9. Then they proceeded to the 9th Article, which charges his giving Warrants to the Biſhop of *Downe* and *Connor*, and his Officers, to impriſon the poorer ſort of People, who refuſed to obey Eccleſiaſtical Decrees or Orders, and produced a Copy of the Warrant to prove it; and, when the Earl objected that the Copy was not proved, the Lords were ſatisfied with the Depoſition of Sir *James Montgomery*, who ſaid he *believed* it to be a true Copy: Sir *James* alſo depoſed, That he had ſeen ſeveral Warrants, under the Hand of the Biſhop of *Downe*'s Chancellor, directed ſometimes to Conſtables, ſometimes to Apparitors, for apprehending Perſons, (twenty or thirty in a Warrant), and known them executed with great Cruelty, wounding, beating, and impriſoning the Parties; and that he himſelf was charged to be aſſiſting in the Execution of ſuch Warrants: Whereupon the Managers obſerved that his Acts of State, exceeded Acts of Parliament, for none could be puniſhed on the Statute, till a Writ *de excommunicato capiendo* iſſued; but by Lord *Strafford*'s Warrant, People were impriſoned, that appeared not on a Citation; and that he did not only aſſume this Power himſelf, but conferred it upon others; and therefore it appeared high time to charge him with ſubverting the Laws of *Ireland*.

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But the Earl produced Witneſſes to prove that former Deputies had iſſued the like Warrants, and that this to the Biſhop of *Downe*, was the only Warrant he iſſued of this Kind; and ſaid, if he had not acted altogether agreeable to Law, he hoped every Miſtake of the Law did not amount to High Treaſon; for if it did, there would be more Proſecutions for Treaſon than Treſpaſs. The Managers replied, as before, that though this ſingle Act was not Treaſon, it was a ſtrong Evidence to prove his Subverting the Laws.

Art. 10. On *Wedneſday March* the 31*ſt*, the Managers proceeded to the 10th Article, which charges him with raiſing the Cuſtoms for his own Benefit, having firſt taken a Leaſe of them.

But he ſhewed that they were raiſed before his Time, and that he was in a manner obliged by his Majeſty, to take a Share of the Leaſe, and that a greater Rent and Fine was given by him and his Partners, than former Farmers paid; However, he obſerved that there could be no Treaſon in this Tranſaction: He acknowledged that the Cuſtoms were greatly encreaſed by a flouriſhing Trade, which ſhewed the Falſity of the Remonſtrance procured from *Ireland*, relating to the Decay of Trade.

Art. 12. Then they went upon the twelfth Article, which charged the Earl with monopolizing Tobacco: They urged, that the Farmers of it were only his Agents and Servants; that he had publiſhed Proclamations, prohibiting all Perſons importing it but his Patentees, or ſelling any that was not ſealed, and laying a Duty of two Shillings a Pound on all Tobacco imported by others; inſomuch that Tobacco, that was ſold formerly for ſix or ſeven Pence a Pound, was now ſold at two and three Shillings a Pound. To which the Earl anſwered, that the Parliament of *Ireland* had petitioned that the Duties on Tobacco might be applied to the encreaſing the Revenue, and they were ſo applied accordingly. That Eighteen-pence a Pound had been laid on Tobacco in King *James*'s Time; and that the Proclamations complained of were iſſued by his preſent Majeſty's Direction, and were of the ſame Nature with that publiſhed in *England* concerning Tobacco.

That

1641. 17 Car. I. That he was not privy to the ſelling Tobacco at unreaſonable Rates, and the Contractors ſtood upon their Juſtification, but had been ſhut up in Priſon by an arbitrary Order of the the Commons of *Ireland*; and their Tobacco ſeized and ſold, as he proved, by the very Orders of the *Iriſh* Houſe of Commons, which the Managers oppoſed the reading of a great while, but at length, they were permitted to be read: And the Earl obſerved that, the Perſons employed being thus impriſoned, and their Effects ſeized on, he was rendered incapable of giving a more particular Account of that matter; that whether they had a good Bargain or not, was not material; but at the Time of the Contract, thoſe that now complained of it, had ſo little Notion of the Advantage of it, that they refuſed to become Partners in it: However, were the Bargain never ſo good, it was not treaſonable.

The Managers replyed, His Majeſty's Letter and Orders had been obtained on the Miſinformations of the Lord *Strafford*; and that there being the like Monopoly in *England*, could not juſtify that in *Ireland*; that the Lord *Strafford* had the ſole Benefit of the Matter, and the Perſons named in the Contract were but his Servants; that a Proclamation could not make a temporary Law, and take away the Subject's Goods: That this was a great Breach on the Property of the Subjects; and if a Grant of the ſole Emption was ſuffered in this Inſtance, it might be extended to every thing elſe: That if the Commons were deſirous, the King's Revenue ſhould be encreaſed, they did not intend that others ſhould feed upon him, while he was in Want himſelf: That the Earl was guilty of a double Treaſon; *Firſt*, In arbitrarily laying a Tax upon the Subjects: *Secondly*, In depriving the King of his Revenue, under a Colour of advancing it: And that his daring to reflect upon the Parliament of *Ireland*, as Arbitrary and Tyrannical, ſhewed what he would do, and ſay of an *Engliſh* Parliament, in time of a Receſs.

Art 13. On the firſt of *April*, the Managers proceeded to the 13*th* Article, which charges his Ingroſſing all the Flax in the Kingdom, ordering it to be wrought in ſuch a Manner, as the Natives were unpractiſed in, and ſeizing what was wrought contrary to his Directions.

As Evidence of this, a Proclamation and Warrant were read, commanding the Juſtices of Peace to aſſiſt the Officers, in ſearching for, and Seizing the Yarn prohibited by the Proclamation; and Proof was made of the Seizing one Cart-load in *Connaught*.

Sir *John Clotworthy* depoſed, That the Officers ordered to ſearch and ſeize the Yarn, abuſed their Authority, of which he acquainted the Lord Deputy, and was threatened by his Secretary; for being too officious that upon ſending out thoſe Officers, the Markets were deſerted, and then the Officers by the Juſtices Warrants, broke open the Peoples Cheſts, and Multitudes of the People were ſtarved by this means; and Part of the *Iriſh* Remonſtrance was read, which ſaid the People died by thouſands, by reaſon of theſe Oppreſſions.

The Earl of *Strafford* anſwered, that the Intent of thoſe Proclamations was certainly good, being to reform an Abuſe, and promote the Trade and Welfare of the Kingdom. That they were ſigned by the Lord Chancellor *Loftus*, the Lord Primate, the Archbiſhop of *Dublin*, the Chief Juſtices, and other Privy-Counſellors, though they were aſcribed only to him: That other abuſes had been reformed by Proclamation before; ſuch as the drawing by Horſe Tails, burning the Straw to ſeparate the Grain from it, *&c.* and that this was to render this Manufacture valuable, which, as it was managed, was worth nothing: That he had a particular regard to the *Engliſh* Nation, in promoting this Manufacture; obſerving the Woollen and Cloathing Trade very much encreaſed there, which would in Time be very prejudicial to *England*, if they were not diverted from it by a good Linnen Manufacture; and that, in attempting this, he had loſt three thouſand Pounds. That if the Officers had been guilty of any Abuſe, they muſt anſwer for it, though the moſt obnoxious Officer had been produced as a Witneſs againſt him, and upon complaint of thoſe abuſes, the Warrants were recalled: That there was Proof only of the Seizure of one Cart-load of Yarn; and it was ſtrange that this ſhould ſtarve thouſands: And indeed this Fact had no other Proof to ſupport it but common Fame, and had been raiſed and propagated by his Enemies; and that the whole Value of the Linnen Cloth, made in his Looms, did not amount to fifteen hundred Pounds, which could not occaſion the Starving of thouſands: And, *Laſtly*, that Actions tending to Oppreſſion, if they had been proved could not amount to Treaſon.

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The Managers replied, that a good Intention would not juſtify ſuch Oppreſſions as the ſeizing of Men's Goods, and breaking open their Houſes by Proclamation: But this ſufficiently ſupported their Charge, *That he endeavoured to erect a Government that ſhould depend upon mere Will and Pleaſure*; and it was no Extenuation of his Crime, that he had drawn in others to be Partakers of his Crimes; and that he was anſwerable for the Actions of his Agents, who ſeized the Goods for his Uſe.

Then the Managers proceeded to the 15th Article, which charges him with levying Money on the People, by a Military Force; and this is ſtiled *a levying War againſt his Majeſty and his People*. *Art.* 15.

To ſupport this Charge, *Saviel*, the Serjeant at Arms was produced as a Witneſs, who depoſed, That he received a Warrant from the Lord Deputy's Secretary, under his Lordſhip's Hand, by which he laid Soldiers on Delinquents Lands: That the Method was this; when a Complaint was made to the Lord Deputy, he iſſued his Command to the Party, to appear and anſwer it: And on Oath made, that it was ſerved on the Party, and he refuſed to obey the Order, a Warrant was given to a Meſſenger to apprehend him; and if he could not be found, or was reſcued out of the Hands of the Meſſenger, a Warrant was given to the Serjeant at Arms, who went in Perſon, or ſent his Deputy, four or five times to the Party's Dwelling; and if he could not be had, the Serjeant applied himſelf to the chief Officer of the next Garriſon, and ſhewed him the Lord Deputy's Warrant, who thereupon ſent an Officer, and four or five Soldiers, with their Arms, to his Aſſiſtance; and

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they lived at free Quarter at the Party's Houſe till he complied, or Satisfaction was made: That the Deponent had laid Soldiers in this Manner on ſeveral Perſons; that the greateſt Number he had ever laid was five, and an Officer; and he generally laid but two or three, uſually Foot-Soldiers.

Other Witneſſes depoſed, that they had ſeen ſuch Warrants ſigned by the Lord Deputy, and that Soldiers had been laid, in Purſuance of them, for not giving Obedience to the Lord Deputy's Orders.

Edmund Berne depoſed, That an Officer, and ten of the Lord Deputy's Guards, were quartered in his Houſe, about twelve Miles from *Dublin*, in the Year 1639. That they threſhed out his Corn, and ſold it; ſpent all his Proviſions, and treated their Women with them; plundered his Tenants, and ſeveral of the Neighbours, and did him 500 *l.* Dammage; inſomuch that he was forced to break up Houſe, and ſerve as a Soldier in *Flanders:* That this was for a Debt he refuſed to pay, and might have compounded for five Pounds; and that the Soldiers were quartered upon him, after the Lord Deputy went to *England.*

The Lord *Strafford*'s Secretary, Mr. *Little*, being examined if ever he made out ſuch Warrant for laying Soldiers on *Berne*, by the Lord *Strafford*'s Orders, declared, he never knew or heard of any ſuch Warrant.

The Lord *Ranelagh* depoſed, That before the Lord *Strafford*'s Time, it was uſual to lay Soldiers on the Relievers of Rebels; and in caſe of Delinquency, and for levying Contribution-Money, and the King's Rents; but he did not remember any Soldiers had been laid to compel Obedience in Civil Caſes, between Party and Party before.

The Managers ſtill urged, That the Lord *Strafford*'s compelling the Subjects by Acts of Hoſtility to obey his Orders, was *levying War againſt the King*, and this was Treaſon by 25 *Ed.* III. And by an *Iriſh* Statute of 18 *Hen.* VI. this very Fact of ſeſſing Soldiers, by Lords or others, on the King's People, was Treaſon.

To this the Earl anſwered, That what had been opened to be ſo extraordinary, was very frequent and ordinary in the Kingdom of *Ireland:* That in all Times, the Officers and Soldiers of the Army had been the chief Inſtruments in executing all the Juſtice of the Kingdom; and indeed the King's Writs could not be executed there, but by their Power and Aſſiſtance. And the Earl calling Sir *Arthur Tyrringham*, and ſome other Witneſſes, they depoſed, that they had known Warrants in the Time of former Deputies, for laying Soldiers in Caſes of Debt, as well as on the Relievers of Rebels, for Contribution-money, and for the King's Rents. And the Lord *Strafford* obſerved, that by Traitors and Rebels in *Ireland*, were meant only idle pilfering Fellows, ſuch as in *England* would be apprehended by a Conſtable; and that it was the Practice of the Deputy and Council to quarter Soldiers, not only on the Party himſelf, but on the Septs (Clans or whole Kindred) of the Rebels. And the Managers admitted, that it was uſual to lay Soldiers on the Septs of ſuch Traitors and Rebels as abſconded, or refuſed to ſubmit to Juſtice; but added, that Uſage would not juſtify it, the Statute of 22 *Eliz.* providing, that if any ſtood out, as Traitors or Rebels, five of the Sept, that bore the Surname, ſhould be fined by the Council-Chamber.

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The Lord *Ranelagh* depoſed, that in the Time of former Deputies, when the King's Rents were ſlowly paid, Acquittances were given out of the *Exchequer*, uſually to the Officers of the Army, who quartered Soldiers on the Defaulters till the Money was paid. Whereupon the Earl obſerved, that though it was now proved, and even admitted, that Contribution-money was levied eight Years before his Government, they had made this, Part of the Charge, of his having traiterouſly and wickedly deviſed to ſubdue the Subjects of that Realm, by levying that Money upon them. And, having produced the Lord *Falkland*'s Inſtructions, authorizing him to quarter Soldiers on ſuch as did not pay the King's Rents, he obſerved further, that the aſſeſſing or quartering Soldiers had never been interpreted Treaſon in the Chief Governor of *Ireland*; that it was a uſual Thing, both for levying *Exchequer* Rents, in Caſes of Debt, for Contribution-money, and for Contempts and Diſobedience to the Courts of Juſtice; and he produced a Proclamation, from whence it appeared, that he did not introduce this Cuſtom, but found it in *Ireland.*

As to the Miſdemeanours of the Soldiers in *Berne*'s Caſe, he could not be anſwerable for it, ſince he was not in *Ireland*; neither did it appear the Serjeant had the Warrant from him: And, as to the Warrant given to *Savile*, it would be very hard to make this a Foundation for a Charge of High-Treaſon, without producing the original Warrant, or an atteſted Copy, which might have ſhewn the Limitations and Reſtrictions with which it was granted; and it was ſome Conſolation to him, he ſaid, to ſee this terrible War, which he was charged with levying againſt the King and his Subjects, dwindled to a ſingle Inſtance of quartering three or four Soldiers on one Man. It muſt be a very great Strain that could heighten this Act to High-Treaſon, and make it a levying War upon the King and his Subjects; eſpecially, when it had never been complained of till now.

That the Serjeant at Arms was a publick Officer, and his Warrant run in general Terms; not for laying Soldiers on one particular Man, but thereby to enforce the Decrees and Judgments of the King's Courts of Juſtice.

Then he called *Henry Dillon* as a Witneſs, who depoſed, that the Serjeant at Arms executed the laſt Proceſs of Contempt, both in the Courts of *Chancery* and the *Exchequer*; and that this was done, as well in Caſes between Party and Party, as where the King was concerned.

After which the Earl proceeded in his Defence, and ſaid, he hoped their Lordſhips would not adjudge him a Traitor for laying (or quartering) two or three Soldiers on ſome refractory Perſons, to bring them to Juſtice, it being the uſual Practice of that Country; and eſpecially, ſince it did not appear to have been done with a treaſonable or corrupt Intention: That, as his

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Majesty's Deputy, he was authorized, in a more than ordinary Manner, to make use of the King's Troops for pursuing Rebels, and securing the publick Peace, according to his Discretion; and had there been no Precedent for such a Warrant, it could not be charged on him as a Crime; for by his Commission, he was empowered to govern according to the Customs of that Realm: That the Power of making War and Peace was given to the Lieutenant, by the 10 *Hen.* VII. *cap* 17. which was after the Statute of 18 *Hen.* VI. they had cited: And further, that as the King was never concluded by any Statute where he was not named, so neither was the Deputy, who acted in his stead. That the Statute of 18 *Hen.* VI. said, *No Lord, or any other, should*, &c. But this could not affect the chief Governor, who was above the Condition of a Lord: That it expressed also the bringing of Rebels, *&c.* which could never be extended to the King's Forces, who came to attach refractory Persons; and, notwithstanding that Statute, the chief Governors had always assessed, or quartered Soldiers, in Cases of Disobedience and Contempt, without any Imputation of Treason; and constant Practice was ever held the best Interpreter of the Laws: And if the Fact had been Treason by the Statute-Laws of *Ireland*, it was not triable in *England*. It was very hard also, he conceived, that obsolete and antiquated Statutes should now be sought out and revived, only to destroy him and his Posterity, after so long and continued a Practice to the contrary.

He observed farther, that the Statute of 18 *Hen.* VI. was repealed by the 8th of *Edw.* IV. which enacts, that all the Statutes of *England* shall be in Force in *Ireland*; (among which is the 1 *Hen.* IV. which says, *That nothing shall be adjudged Treason, but what is specified in the* 25 Edw. III.) He cited also the 11th *Eliz.* c. 7. which impowers the Deputy to assess Soldiers; from whence he inferred, that it could not be Treason. There remained nothing more therefore, for him to clear, he said, but that the Fact was not within the Meaning of 25 *Edw.* III. which makes it *Treason to levy War against the King within his Realm*; and he appealed to their Lordships Justice, Whether the laying of two or three Soldiers in this Manner, in order to bring a refractory Person to Justice, could, by any Construction, be deemed a levying War against the King and his People; it being done for the Maintenance of the King's Authority, Honour, and Justice, and not as an Enemy to him.

The Managers replied, that no Usage could give a Man Authority to commit Treason; and besides, the Precedents he had cited did not come up to his Case: That though he might have a Power to resist Rebels, and make Peace and War, this did not give him Power to send Soldiers to make War on his Majesty's peaceable Subjects, whom he ought to protect: And his alledging, that the Statute of 18 *Edw.* VI. did not extend to him, because it did not extend to the King, was such a Reason as the Commons did not expect to hear: That this was to assume a Power above Law, and make himself equal to his Sovereign: And he was under a great Mistake in thinking, he could not be tried in *England* for the Breach of an *Irish* Statute. As to the Repeal of that Statute by the *English* Statute, which provided that nothing should be Treason, which was not contained in the 25th of *Edw.* III. they confessed they were not prepared to speak to that Point yet, but left it to those who should be appointed to give their Lordships Satisfaction in Point of Law. 1641. 17 Car. I.

And as to his Intent; though he had no Design against the King's Person, yet if it was against his People, such a levying War was High Treason: *Then the Earl desiring a Recess for one Day, it was granted, and the House adjourned to* Saturday *the 3d of* April.

The Peers being assembled on the 3d of *April*, and the Earl brought to the Bar, the Managers proceeded to the sixteenth Article; which charges him with restraining the Subjects from going out of the Kingdom, in order to prevent their petitioning against his Oppressions and tyrannical Administration. *Art.* 16.

For the Proof of which, they produced certain Propositions made by the Earl to the Council-Board in *England*; and particularly one dated 17 *Febr.* 1631. of the following Tenor, *viz. That no Complaint of Injustice or Oppression, be admitted here against any, unless it appeared the Party first made his Address to the Deputy*; and a Proclamation issued by the Deputy and Council, and dated 17 *Sept.* 11 *Car.* was read, which *required all Noblemen, Undertakers, and others, who held Estates and Offices in* Ireland, *to reside there, and not depart the Kingdom without Licence from the Deputy.*

Then *Richard Wade* deposed, that the Lord *Esmond* petitioned the Deputy to go to *England*, to defend a Cause wherein the Deputy was Plantiff; and he refused to grant the Petition, though he had obtained the King's Letter, signifying his Majesty's Consent to it.

The Lord *Roche* also deposed, that the Deputy refused him a Licence, to come over to defend himself against an Information in the *Star-Chamber*, which, he thought, was promoted by the Lord Deputy.

Henry Parry deposed, that in *April* 1638, his Master, the Lord Chancellor *Ely*, was committed to the Castle of *Dublin* by the Deputy and Council; and his Lord sending the Deponent over to *England* to solicit for his Enlargement, the Deponent was apprehended by a Warrant of Mr. Secretary *Cook*'s, and forced to give Bond to return to *Ireland*, which he did; and appearing before the Deputy and Council in *Ireland*, was fined 500*l.* and committed Prisoner to the Castle, where he remained till he was utterly ruined; but was never put to answer any Complaint in Writing, neither was there any Petition against him; but that his Fine was afterwards reduced to 250*l.* of which he had actually paid 184.

Mr. *Fitzgerald* deposed, That the Commons of *Ireland*, in the Beginning of *November* then last passed, drew up a Remonstrance of their Grievances, and presented to the Lord Deputy *Wain;ford*; and seeing they should be dissolved thereupon, constituted a Committee to repair to *England*, with a Particular of their Grievances; and, on the 12th of the same Month, they were prorogued, without any Redress of the Things complained of: That the next Day the Committee was summoned before the Council-Board,

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Board, and avowing their Deſign of repairing to *England*, the Lord Deputy *Wainsford* bid them take Notice, that there was a Proclamation iſſued, to reſtrain the Subjects of *Ireland* from repairing to *England*, and charged them on their Allegiance, not to depart, till his Majeſty's Pleaſure was known. A Clauſe of the *Iriſh* Remonſtrance alſo was read in Evidence againſt the Earl, complaining of the Proclamation reſtraining the Subjects of *Ireland* from coming to *England*, and having Acceſs to his Majeſty, in order to procure a Redreſs of their Grievances, as their Anceſtors uſed to do.

To the Charge in this Article, the Earl anſwered, That, notwithſtanding he was accuſed of ſubverting the Laws of *Ireland*, the Law never had ſo free a Paſſage as in his Time: And as to that Part of the Charge, concerning the Inſtructions he procured to prevent all Complaints of Injuſtice and Oppreſſion, he thought it reaſonable the Deputy ſhould be apprized of the Complaint before it was brought over: It muſt be very diſcouraging to the Miniſtry, and very inconvenient for the Subject, to be drawn over hither on every little Complaint, for which they might have Redreſs at Home; and it appeared from the Inſtructions themſelves, that theſe were the Motives, on which they were founded, and not any Deſign in him, to aſſume a greater Authority than became him: That the Proclamation, reſtraining the Subjects of *Ireland* to go abroad without Licence, was warranted by the Statutes of that Kingdom.

Then he produced a Petition to his Majeſty, from *Ireland*, in the Year 1628, ſhewing that, in Reſpect of the Non-reſidence of many of the great Men of that Kingdom, who ſpent their Eſtates abroad, the Nation was impoveriſhed; and therefore they pray, that ſome Order might be taken, that both they, and all Undertakers, who had Eſtates beſtowed on them, for the Improvement and Support of the Kingdom, might make their Reſidence in *Ireland*, one half of the Year at leaſt, and not depart without Licenſe.

Then he produced his Majeſty's Anſwer and Orders on the ſaid Petition; the Inſtructions to the Lord *Falkland* of the like Tenor, and his Majeſty's Letter for iſſuing the Proclamation complained of (*That none ſhould depart the Kingdom without Licence.*)

Upon this Evidence, the Earl obſerved, That the Proclamation was iſſued by the whole Council, the two Chief Juſtices being preſent, to whom Matters of Law were always referred; and that indeed, he was reſtrained by his Commiſſion from publiſhing this, or any Proclamation, without the Concurrence of the Council. He obſerved alſo, that it was upwards of a Year; after his Majeſty's Letter, that this Proclamation was iſſued, and then it appeared abſolutely neceſſary to reſtrain *O Neal* and *Tirconnel*, who had great Influence over the *Iriſh* Septs, and had Regiments in the *Spaniſh* Service, from going over, and carrying his Majeſty's Subjects into foreign Countries; as alſo to reſtrain the *Popiſh* Noblemen, from going or ſending over their Children and Dependants to *Duoay*, *St. Omers*, and other *Popiſh* Seminaries; and without ſuch an Authority, it was impoſſible for the Deputy to take Meaſures for the Security of the Kingdom.

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He obſerved alſo, that many Things were now now alledged againſt him, which were no Part of the Charge, and which he could not be ſuppoſed prepared to anſwer, not being apprized of them before.

That the fouleſt Thing he was accuſed of, ſeemed to be, his defaming the Lord *Eſmond*, to the Prejudice of his Cauſe; but, though that Lord was reſtrained from coming over for ſome Time, for very juſtifiable Reaſons, he proved, that he was ſuffered to come over Time enough to defend his Cauſe, to join in the Commiſſion, and examine his Witneſſes; and that the Lord *Eſmond* actually deferred his coming over, half a Year, after he had obtained a Licence, which ſhewed he was in no great Haſte.

That he was unwilling to remember what the Lord *Roche* was charged with in the *Star-Chamber*; but the detaining this Lord was no Part of the Charge, and therefore he was not obliged to anſwer it; and as for others, they were only reſtrained from going to *Douay*, *St. Omers*, and other *Popiſh* Seminaries; and ſome had been cenſured by the Council-Board for other Contempts, and not for departing the Realm without Licence, as had been charged: And as many of theſe Things were done by the Authority of the whole Council, he conceived, they ought not to be charged ſingly upon him: He obſerved alſo, that the Criminals themſelves, who had been cenſured, were produced as Witneſſes againſt him; but if the Judge was to be condemned on the Teſtimony of the Party puniſhed, no Man would venture on the Office of a Judge.

The Earl then called the Lord *Robert Dillon*, as a Witneſs, who depoſed, That it being ſuſpected the Lord *Eſmond*, had employed ſome Aſſaſſins to cut off Sir *Walſingham Coke*, the Council reſtrained him from going over, till the Judges had determined whether the Fact was Treaſon or not; and the Earl demanding, if the Lord *Dillon* remembred the Sentence againſt *Parry*, the Managers inſiſted, his Lordſhip might not be examined as to that, becauſe he was one of the Council, and it was asking the Judge whether the Sentence was juſt. To which the Earl anſwered, that it was as equitable to examine the Judge as the Delinquent; but he was not ſuffered to be examined, however, as to this.

Sir *Adam Loftus* alſo depoſed, that the Lord *Eſmond* was detained on the Evidence of a Rebel in *Dublin* Caſtle, who charged that Lord with employing certain Rebels and Out-laws, to lie in Ambuſh for Sir *Walgnſiham Coke*, near his Houſe; but the other Witneſſes not ſupporting his Teſtimony, the Lord *Eſmond* was diſmiſſed as ſoon as the Examination was finiſhed, which laſted about three Weeks or a Month.

The Earl concluded his Defence to the Charge in this Article with obſerving, as on the reſt, that there was no Treaſon in it: And as to the Matter of Miſdemeanor, he ſaid, he hoped their Lordſhips would give him Time to examine his Witneſſes, and that his Counſel might be heard, and then he did not doubt but he ſhould acquit himſelf, as became him.

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The Managers replied, It appeared the Earl had taken Cauſes from the ordinary Juriſdiction, and brought them before him: And that he had procured Inſtructions to debar the Subject of all Acceſs to his Majeſty with Complaints of his Injuſtice and Oppreſſion, and not to prevent their reſorting to Popiſh Seminaries: That what was applicable to Reſidence for the Defence of the Kingdom, he had made a Reaſon for reſtraining all Reſort to *England*. And as to the Earl's Obſervation, that there was no Treaſon in the Matter, they gave the ſame Anſwer as before; that the Multiplication of Acts, all tending to an Arbitrary Power, made the Treaſon.

Art. 19. Then the Managers proceeded to the nineteenth Article; which charges the Earl with framing a new and unlawful Oath, and impoſing it on the *Scots* in *Ireland*: To prove which Sir *James Montgomery* depoſed, that the Earl ſent for the *Scots* Nobility and Gentry in *Ireland*, and propoſed to them their petitioning that an Oath might be adminiſtered to them, as a Teſt of their Loyalty; and that, thereupon, the Biſhop of *Rapho* was appointed to draw up a Petition, and it was drawn up accordingly; in which the *Scots* were made to expreſs their Deteſtation of the Rebellion in *Scotland*, and of their entering into an unlawful Covenant, and to deſire the Deputy to adminiſter an Oath to them, whereby they might have an Opportunity of vindicating themſelves; and the Petition being preſented to the Deputy and Council, an Act of State was made for framing an Oath, and tendring it to all thoſe of the *Scotiſh* Nation in *Ireland*. By this Oath they ſwear to obey the King, and defend his Regal Power; that they will not bear Arms againſt him, or proteſt againſt his lawful Commands; and that they will not enter into any Covenant, Oath, or Bond of mutual Defence, without his Majeſty's legal Authority.

That the Lord Deputy himſelf adminiſtered the Oath to all the Nobility and Gentry that were preſent; and, in *May* following, Commiſſions were ſent into the Country, to adminiſter the Oath to all of that Nation, above ſixteen Years of Age, Men, Women, and Children, and to certify the Names of the Refuſers: That Meſſengers were diſpatched to apprehend thoſe who refuſed the Oath; that many fled into *Scotland* thereupon, and others abſconded, leaving their Goods, their Houſes, and the Corn growing on their Lands: And Sir *John Clotworthy* depoſed to the ſame Effect.

Richard Salmon, School-Maſter, depoſed, that Mr. *Stuart* being proſecuted in the Court of *Star-Chamber*, in *Octob.* 1639. for not taking the ſaid Oath, ſaid, he ſcrupled taking the Oath, becauſe it ſeemed to bind him not only in Point of Allegiance, but in Point of Eccleſiaſtical Duties; and the Earl replied, he made a right Judgment, for the Oath was deſigned to bind him to be obedient to the Eccleſiaſtical Ceremonies of the Church eſtabliſhed by his Majeſty; and that, whoever would not be obedient to them, he would proſecute them to Blood.

That the Earl ſaid at the ſame Time, *Theſe People almoſt made him mad, and cauſed him to forget himſelf; that they were Traitors and Rebels; and if his Majeſty would ſend him back to that Government, he would eradicate, Root and Branch, even all that Nation out of the Kingdom of* Ireland, *ſaving ſuch Lords and others that had taken the Oath.* That a Fine of 5000*l.* was impoſed on Mr. *Stuart* and his Wife, 3000*l.* on each of his Daughters, and 3000*l.* on Mr. *James Gray*, who was not worth an hundred Pounds; *John Loftus* gave the ſame Evidence of the Sentence in the *Star-Chamber*, and that the Deputy ſaid, he wanted Words to expreſs the Heinouſneſs of the Cauſe: That he was to leave his Sword, but if it pleaſed his Majeſty to return him thither again, he hoped to root up, Stock and Branch, ſuch as would not conform themſelves to the Diſcipline of the Church.

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To the Charge in this Article, the Earl anſwered, Their Lordſhips would obſerve in what a dangerous Poſture the King's Affairs were, when the Proclamation iſſued for taking this Oath, in *May* 1639. that the Council of State in *Ireland* were apprehenſive the *Scots* in that Kingdom, who were not fewer than an hundred thouſand Men, might join with the Covenanters; for one of them was found to be in a Plot to deliver up the Caſtle of *Knock-fergus* to them, of which he was convicted and executed: And the Lord *Robert Dillon*, being called as a Witneſs, depoſed, that about the Time above-mentioned, Intelligence was brought from the North of a Conſpiracy among the *Scots*; whereupon it was concluded at the Board, to adminiſter an Oath to that Nation, to prevent their treating with the Covenanters; and the *Scots* Gentlemen being ſent for, they did not expreſs any Reluctance at taking the Oath when it was tendered them, which Sir *Adam Loftus* atteſted.

The Earl added, that none but Sir *James Montgomery*, who was produced as a Witneſs againſt him, made any Scruple about taking it when it was propoſed; and that the like Oath was tendered in *England* about the ſame Time: And he ſubmitted it to their Lordſhips Wiſdom, what Offence this could be in a Deputy of *Ireland*, in ſuch an Exigency, to tender this Oath, in order to ſecure the Subject's Allegiance, and the publick Peace of the Kingdom, and eſpecially when he had a Letter from his Majeſty, authorizing him to make a Trial of the Fidelity of the *Scots* in *Ireland*, by adminiſtering to them an Oath of the aforeſaid Tenor: That he never diſcovered this Letter before; but he apprehended it to be a full Vindication for him; nor did he know that none might adminiſter an Oath but by Authority of Parliament; and if he had offended ignorantly, as it was in Obedience to his Majeſty, he hoped he ſhould not be puniſhed for it; however, were it to do again, being informed as he then was, he muſt obey, and had rather ſuffer by obeying his Majeſty, than diſpute his Commands of that Kind. As to the Sentence againſt Mr. *Stuart*'s Family, the whole Court of *Star-Chamber* were unanimous in it, and the Fines were ſet before he came to vote, though he concurred with the reſt; that though the Fines were but ſuitable to the Offence, very little was paid or required of them, and they might have been pardoned next Day on ſubmitting to take the Oathh: That the Refuſers of the Oath of Allegiance, which differed but little

1641. 17 Car. I. from this, incurred a *Præmunire*, being the Loſs of Liberty and all they had in the World; ſo that the Fines could not be deemed exceſſive, and the Oath had no View to Eccleſiaſtical Affairs, as ſome of the Witneſſes had erroneouſly ſworn.

Nor did he ever ſay, that the *Scotiſh* Nation were Rebels, and he would extirpate them, *&c.* he had too great a Regard for that Kingdom, his Majeſty's native Country, and it was an Expreſſion only fit for a Man that was out of his Wits: He never received a perſonal Wrong from any of that Nation, or had any Animoſity againſt them; and would produce ſome Witneſſes to ſhew that he did not uſe any ſuch Expreſſions, but ſpoke, even of the Faction in *Scotland*, in milder Terms.

Then Sir *Philip Manwaring* depoſed, That he ſat in the *Star-Chamber*, the Day the Sentence paſſed on *Stuart*, *&c.* and that the Earl told him, ſince he carried that Name, he was ſorry he ſhould be almoſt the only Man that ſhewed himſelf diſobedient to His Majeſty; adding that he knew there were, among the *Scotiſh* Nation, many gallant and worthy Perſons, and had great Experience of their Loyalty; but there was a Faction amongſt them, that he ſhould endeavour to reduce to the Obedience they owed their Sovereign: And that he heard none of thoſe Words, *Root and Branch*, or *Stock and Branch*. Sir *Adam Loftus* alſo depoſed, That he was preſent at the Cenſure of *Stuart*, and heard none of thoſe Words, though Lord *Strafford* was charged with reflecting on the *Scotiſh* Nation. And that, being at Dinner with the Lord Deputy, and ſeveral Perſons of Honour that Day, he heard Mr. *Wainsford*, Maſter of the Rolls, expreſs his Satisfaction to the Lord Deputy, in that he had uſed ſo much Caution in his Speech on that Occaſion; and had avoided all ſuch Words as might caſt any Reflection on the *Scotiſh* Nation in general, and only cenſured the Faction in that Kingdom. And the Earl concluding his Defence to this Article, ſaid, He hoped his Intentions to ſerve His Majeſty in this Inſtance, would procure an eaſier Judgment from their Lordſhips, than that of High-Treaſon.

The Managers replied, that the Earl, in juſtifying his Offence, and ſaying he would do it again, if he had the ſame Command, though he had been told in that great Preſence that it was contrary to Law, was a high Aggravation of his Crimes: That a new Oath could not be impoſed, but by Parliament, and the Oath of Allegiance would have been a ſufficient Security in this Caſe; though nothing would content this Lord, but framing new Oaths, and maintaining his Authority was equal to an Act of Parliament; and although his Majeſty would not command any thing contrary to Law, it appeared that the Lord *Strafford* his Miniſter, had publiſhed ſuch Commands, in the King's Name, as were not juſtifiable by Law; which gave the *Scots* ſufficient Reaſon to be cautious in ſwearing they would ſubmit to all the King's Royal Commands; and the Lord *Strafford*'s miſinforming his Majeſty, and thereby procuring that Letter to authorize him to adminiſter the Oath, was but an Aggravation of the Offence: That he had alſo exceeded the Power given him by his Majeſty's Letter, by ſetting Fines on the Refuſers. 1641. 17 Car. I.

Then the Managers demanded of Sir *John Clotworthy*, if he could give any Inſtances of Perſons flying from their Habitations to avoid the Oath; and Sir *John* mentioned about half a Dozen, and ſuggeſted there was no real Plot to betray *Knockfergus* Caſtle; it was a State Trick: The Miniſtry wheedled the Fellow to write that Letter concerning it, for which he was hanged.

Then the Managers concluded their Reply to this Article, with their former Obſervation; That as the Earl had threatned to make an Act of State equal to an Act of Parliament, he was now as good as his Word; for no Authority could impoſe an Oath, without the Concurrence of the three Eſtates. This Day's Hearing being over, the Earl repreſented to their Lordſhips, that all he had in the World was ſeized on; he had no Money to ſubſiſt on, but what he borrowed; and how his Wife and Family found Bread in *Ireland*, he could not tell: He moved their Lordſhips therefore, to take this Caſe into their Conſideration, that the reſt of the Peerage might not ſuffer by this Uſage of him; for he thought it ſtrange that a Peer ſhould be in a worſe Condition than the meaneſt Man would have been in, in ſuch a Caſe; under pretence of charging him with Treaſon, which it ſeemed to be admitted could not be made out but by ſtrained Conſtructions.

To which Sir *John Clotworthy* replied, That the Earl had ſtill a fair Eſtate in *Ireland* of a thouſand Pounds *per Annum*, which the Commons had not ſeized. The Earl anſwered, he had but a thouſand Pounds a Year there in all; and he had a Family of two hundred and ſixty People, who could not eaſily be maintained out of it: Whereupon their Lordſhips directed the Earl to petition them.

Thus far the Commons went upon one Article at a Time; but ſaid, for the future they ſhould take the Liberty to conſider them together, as they related to one another, and not in the Order they lay; which the Earl oppoſed ſtrenuouſly; but was over-ruled by the Lords, who told him, the Commons were at Liberty to proceed on them promiſcuouſly, or in what Method they pleaſed.

On *Monday*, the fifth of *April*, the Commons proceeded to maintain the 20th, 21ſt, 22d, 23d, and 24th Articles. *Art.* 20, 21, 22, 23, 24.

In theſe five Articles the Earl is charged with inciting his Majeſty to make War on the *Scots*; with perſuading his Majeſty to call a Parliament, in order to break with them, and raiſe Supplies by Force on his Subjects, for the Maintenance of the *Scotiſh* War; with procuring the Parliament of *Ireland* to declare they would aſſiſt in the War againſt the *Scots*; and with raiſing a Popiſh Army there for the Deſtruction of *England*. He is charged alſo with falſly telling his Majeſty the Parliament refuſed to ſupply him, and thereby procuring a Diſſolution; and with ſaying to his Majeſty, that, having tried the Affections of his People, he was abſolved from all Rules of Government, and might do every thing that Power would admit; and with declaring, that the Parliament had forſaken the King, and given him Advantage to ſupply himſelf

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himſelf another Way; and that he was not to ſuffer himſelf to be maſtered by the Frowardneſs of the People.

Mr. *Whitlock*, the Manager, opened theſe five Articles, and obſerved, that they were now about to prove the Earl's Deſign of ſubverting the Government both of *England* and *Scotland*, and of bringing in an Army upon them to force them to ſubmit to arbitrary Power; and that they ſhould begin firſt with *Scotland*.

Then the Earl of *Traquair* was ſworn, and depoſed, that the Lord *Strafford* ſaid before his Majeſty, *That the unreaſonable Demands of Subjects in Parliament was a Ground for the King to put himſelf in a Poſture of War, or to that Effect.* And the Managers demanding, that this Lord's Examination before the Committee, might be read, the Lord *Strafford* oppoſed it; for that an Examination was never known to be read where the Witneſs was preſent. Then the Managers produced the Examination of the Earl of *Morton*, who was ſuch; and the Lord *Strafford* objected to the reading it, becauſe he ought to be examined *viva voce*, and he had no Way of croſs-examining him this Way: But the Lord High Steward determined, that where the Witneſſes could be produced, they ſhould give their Evidence *viva voce*; but where they could not, their Examinations ſhould be read.

Then Earl *Morton*'s Examination before the Committee was read; wherein he depoſed, that the Earl of *Strafford* ſaid, the Night before the great Meeting of the Peers at *York*, that the unreaſonable and exorbitant Demands made by the *Scots* in their Parliament, was a ſufficient Ground to make War upon them; and that the King need not ſeek for any other Grounds for it; and that on the Earl of *Traquair*'s firſt relating the *Scots* Demands to the King, the Lord *Strafford* ſaid, thoſe Demands were not Matter of Religion, but ſuch as did ſtrike at the Root of Government, and ſuch as he thought were fit for his Majeſty to puniſh by Force, or to that Effect.

Sir *Henry Vane* depoſed, That ſoon after the laſt Parliament, the Lord *Strafford* delivered his Opinion for an offenſive War. Then the Earl of *Northumberland*'s Examination was read, importing, that the Lord *Strafford* adviſed the King to go on vigorouſly with an offenſive War againſt the *Scots*.

The Biſhop of *London* depoſed, That his Majeſty obſerving that ſome of the *Scots* Demands were prejudicial to that Crown, the Lord *Strafford*, and the other Lords of the Council, adviſed, that if the *Scots* inſiſted on thoſe Demands, and would not recede from them, his Majeſty ſhould prepare to reduce them by Force; and that the whole Council giving their Opinion for an offenſive War, the Lord *Strafford* was for carrying the War into *Scotland:* And though there was ſome Difference of Opinion, as to the Method of carrying it on, they all agreed in the main.

Sir *Nicholas Barnwell*, depoſed, That Sir *Robert Loftus* ſeized ſome *Scotiſh* Ships in *Ireland*, and the Deponent heard him ſay, he had a Warrant for it, but he could not ſwear the Warrant was from the Lord *Strafford*.

Thus the Managers concluded their Evidence of the Earl's Deſign of ſubverting the Government of *Scotland*, and then produced Witneſſes, to ſhew he had the ſame Deſign as to *England*.

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Then the Examination of the Lord Primate of *Ireland*, was read, who depoſed, That diſcourſing with, the Lord *Strafford*, concerning the levying Money on the Subject, his Lordſhip ſaid, he agreed with thoſe in *England*, who thought that in Caſes of imminent Neceſſity, the King might make Uſe of his Prerogative, to levy what Money he needed; but his Majeſty was firſt to try his Parliament, and if they ſupplied him not, then he might uſe his Prerogative, or to that Effect.

The Lord *Conway* depoſed, that diſcourſing with Lord *Strafford*, how the Forces ſhould be paid, he ſaid, he made no doubt but the Parliament would ſupply the King, and give him twelve Subſidies; but if they ſhould not, the Cauſe was very juſt; and if the Parliament would not ſupply the King, he was juſtified before God and Man, if he fought means to help himſelf, though it were againſt their Wills, or to that Effect.

Sir *Henry Vane* depoſed, That he heard Lord *Strafford* ſay, that if the Parliament ſhould not ſucceed, he would be ready to aſſiſt his Majeſty any other Way, or to that Effect.

Then they proceeded to give Evidence of what the Lord *Strafford*'s Friends had been heard to ſay.

Sir *Robert King* depoſed, That diſcourſing of the *Scotiſh* War, with Sir *George Ratcliffe*, Sir *George* ſaid, the King could not want Money, for he had an Army of 30000 Men, and 400,000*l.* in his Purſe, and a Sword by his Side; and if he would want Money, who could pity him? The Lord *Ranelagh* depoſed, That he heard Sir *George Ratcliffe* ſay the ſame Words; and the Deponent objecting the Difficulty of raiſing Money, while the *Scotiſh* Army was on Foot, Sir *George* anſwered, We can make Peace with the *Scots* when we liſt; but that is the worſt of Evils.

Sir *Thomas Barrington* depoſed, That he heard Sir *George Wentworth* ſay, this Common-Wealth is ſick of Peace, and will not be well, till it is conquered again.

The Earl of *Briſtol* depoſed, That Diſcourſing with the Lord *Strafford*, of the Diſtractions of the Times, and propoſing the Summoning a Parliament, his Lordſhip ſaid, he did not diſlike the Propoſal; but it was not adviſable at that Time, for the preſent Dangers of the Kingdom were ſo preſſing, they would not admit of ſo ſlow and uncertain a Remedy as a Parliament was. That the Parliament had in the great Diſtreſs of the King and Kingdom, refuſed a Supply; and therefore the King muſt provide for the Safety of the Kingdom, by ſuch Ways as he in his Wiſdom ſhould think fit, repeating that Maxim, *Salus Reipublicæ ſuprema lex*; adding, that the King was not to ſuffer himſelf to be maſtered by the Diſaffection and Stubbornneſs of ſome particular Men, and he conceived he meant Members of Parliament.

Another Part of the Earl of *Northumberland*'s Examination was read, wherein he confirms what ſome of the former Witneſſes had ſaid, and adds, that the Forces, which were to come out of *Ireland*, were to land in the Weſt of *Scotland*, as the Lord *Strafford* declared in the King's

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King's Preſence; but he never heard that thoſe Forces, or any other, were to be employed in this Kingdom, to compell or awe the Subjects of this Realm, to yield to ſuch Taxes or Charges as ſhould be impoſed on them by his Majeſty; but he believed, by ſome Diſcourſes of the Lord *Strafford*'s to the King, that it was intended to raiſe Money by extraordinary Ways.

Sir *Henry Vane* depoſed, That when the *Scotiſh* War was under Debate before his Majeſty, the Lord *Strafford* ſaid, *Your Majeſty having tried all Ways and been refuſed; in a Caſe of this extreme neceſſity, and for the Safety of the Kingdom, you are acquitted before God and Man: You have an Army in* Ireland; *you may employ it to reduce this Kingdom:* Which Words were ſpoken at a Committee for *Scotiſh* Affairs; but whether they were meant of *England* or *Scotland*, he would not pretend to ſay.

Upon this Evidence, the Managers obſerved, that no other Kingdom could be intended but *England*; the Words being ſpoken here, and he having juſt before ſpoken of the King's trying his Subjects here, and their having refuſed him; concluding that they conceived the Charge in theſe *Articles* fully made out.

The Earl anſwered, that it appeared from their own Evidence, that he delivered the ſame Opinion, in relation to the *Scotiſh* War, as the reſt of the Council did; and, if it was neceſſary, he could ſhew that he gave no Vote at all, but only delivered the Senſe of the Board: And as to thoſe Words that the unreaſonable Demands of Subjects in Parliament, was a Ground for the King to put himſelf in a poſture of War; this could be no great Crime, after it had been reſolved in the Council of *England*; and for that other Expreſſion, that it was not matter of Religion that was the Buſineſs, but they ſtruck at the Root of Government, and were to be reduced by Force, he believed every Man was of Opinion, that if they ſtruck at the Root of Government, they ought to be reduced by Force; nor did he think it any Crime, to ſay the King might uſe that Prerogative the Law had conferred on him, any more than his ſaying, If the King was denied in juſt and lawful Things, he might juſtify his ſeeking Means to help himſelf, though it were againſt their Will; nor did he think himſelf, or Mr. Treaſurer, who appeared as Evidence againſt him, to blame, for ſaying, that if the Parliament ſhould not ſucceed, they would be ready to aſſiſt his Majeſty any other Way, becauſe it muſt be preſumed *a Lawful Way*, or his Majeſty would not require it.

That the Parliament of *Ireland* went very readily into the Supply for the *Scotiſh* War, and needed not his Influence to bring them into it: And as to his conſpiring to employ the *Iriſh* Army, for the Deſtruction of *England*, he had as little Inclination to enſlave himſelf, and his Poſterity, as another Man; and the Proof they brought of it, was the weakeſt that ever was offered, namely, the Sayings of other Men, that had no Relation to any thing he had ſaid, or done.

Then he deſired that Part of the Lord *Northumberland*'s Examination, might be read again; where he ſays, The *Iriſh* Army was deſigned for *Scotland*, and not for *England*.

The Marquiſs of *Hamilton* alſo depoſed, That the *Iriſh* Army was to land near *Ayre*, in *Scotland*; and that he never heard there was any Deſign of bringing them to *England* at all. And ſeveral other general Officers depoſed to the ſame Effect; and, that the Magazines were intended to be made on the Borders of *Scotland*. 1641. 17 Car. I.

The Earl obſerved, on the Evidence that had been produced, That they had examined and ſifted his neareſt Relations and Domeſticks. His Houſe, his Table, and every Place, had been ſearched for Evidence againſt him: And he was charged with the Speeches of his Brother, and others, for which he could not be anſwerable. But he belived, if they would ſuffer his Brother to be examined, he could clear himſelf of what they charged him with: But Sir *George Wentworth* offering to ſpeak, and the Managers objecting againſt it, the Lords ruled that he ſhould not.

The Earl ſaid, he was ſtill of Opinion that, in Caſes of extreme Neceſſity, and, where there was not Time to call a Parliament, the King, as the common Parent of the Country, might uſe what Power God had given him to preſerve himſelf and his People; but that this was very different from ordinary Caſes, to which the Managers applied the Words.

As to thoſe Words, that the Parliament, having denied the King, had given him an Advantage to ſupply himſelf other Ways; he did not apprehend any Thing amiſs in them, if by Ways were meant juſt and lawful Ways, as it was to be preſumed he intended.

And, for his ſaying His Majeſty had an Army in *Ireland*, which he might employ to reduce this Kingdom, he deſired the Lord Treaſurer might be examined again, if ever he heard him ſay this to the King? To which he anſwered, he never heard him ſay any Thing like it. And, being asked by the Managers, if he never heard the Lord *Strafford* ſay, the King was looſe, and abſolved from all Rules of Government, he anſwered, he did not remember any Thing of it.

The ſame Queſtions being put to the Lord *Cottington*, he anſwered, he never heard the Earl uſe either of thoſe Expreſſions; but he had heard him ſay, The King ought to ſeek out all due and legal Ways, and employ his Power and Prerogative, *caſte & candide*.

Then the Earl obſerved, that only Sir *Henry Vane* atteſted theſe Words, *That His Majeſty had an Army in* Ireland, *which he might employ to reduce this Kingdom*; and, that it was highly probable he was miſtaken, becauſe all the reſt of the Committee for *Scotch* Affairs, had been examined, and they remembred nothing like them, and he proteſted he never ſpoke them: And, Sir *Harry* being a ſingle Witneſs, could not convict him of Treaſon, if he had ſpoken them: He deſired alſo, the Earl of *Northumberland*'s Examination might be read again, where he ſays, The Lord *Strafford* declared, that his Majeſty might uſe his Power when the Kingdom was in Danger, or on unavoidable Neceſſity; and that he often ſaid, Power was to be uſed *caſte & candide*; and an Account thereof ſhould be given to the Parliament, that they might ſee it was only employed to that Uſe, and that this Kingdom could not be happy, but by a good Agreement

17 Car. I. 1641. between the King and his People in Parliament.

The Earl then obſerved, that theſe Words were not ſpoken wantonly, or unneceſſarily, but in full Council; where he was by the Duty of his Oath obliged to ſpeak according to his Conſcience: And, if he had forborne to ſpeak what he apprehended to be for the Advantage of the King and his People, as he conceived this to be, he had been perjured; though he was charged now as a Traitor, for ſpeaking them. In theſe Circumſtances he was not afraid of them that could kill the Body, he thanked God; and, if he muſt offend God or Man, he ſhould ſoon determine his Choice: And, whatever ſhould befall him from popular Rage, or his own Weakneſs, he ſhould ſubmit to the Will of the Almighty; and, to their Lordſhips Honour and Juſtice. —— Then he obſerved further, that he was charged only with delivering an Opinion; and, though Opinion might make an Heretick, he ſaid, he never heard before that it would make a Traitor: That if it were once admitted, that a Privy-Councillor, delivering his Opinion under an Oath of Secrecy, and Faithfulneſs at the Council-Table, ſhould, upon a Miſtake of the Law, be tried for Treaſon, and himſelf, and his Poſterity, attainted and ruined; no Perſon of any Quality or Fortune would venture to be a Privy-Councillor, on ſuch unſafe Terms; and entreated their Lordſhips ſo to judge of his Caſe, as not to bring any Inconveniences on themſelves: That, if they would weigh the Words with which he was charged, there was nothing but what was loyal, juſt, and honeſt in them; if they were not ſo diſcreet as they ought to have been.

The Managers replied, That the *Scots* Demands did not ſtrike at the Root of Government; for, they had ſince been enacted by the Parliament of *Scotland*, and His Majeſty: That his repreſenting they ſtruck at the Root of Government, when they did not, was what he was charged with: And that Words, adviſing and counſelling the Deſtruction of the King and Kingdom, were Treaſon, though nothing was done in Purſuance of them.

Then the Earl deſiring he might have a Day's Reſpite to recover himſelf, being much fatigued with continuing his Defence this Day, from Eight in the Morning to Five in the Evening, their Lordſhips adjourned to *Wedneſday*, the 7th of *April*.

The Court ſitting again the 7th of *April*, and the Earl brought to the Bar, the Managers went upon the 25th Article, which charges him with
Art. 25. adviſing His Majeſty to levy Ship-Money vigorouſly, with threatning the Sheriffs, and the Lord Mayor and Aldermen of *London*, for not levying it; and with threatning the Lord Mayor and Aldermen to lay them by the Heels, and hang ſome of them for refuſing to lend the King Money.

The Lord Treaſurer depoſed, That the Earl adviſed the going on vigorouſly to levy Ship-Money, after the laſt Parliament broke up; and Mr. *Wiſeman* depoſed, That he ſaid to the Lord Mayor and Aldermen, they would never do their Duties till they were put to Fine and Ranſom: And that he ſaid to his Majeſty, you will have no good of this Man, meaning the Lord Mayor, till he is laid by the Heels. 1641. 17 Car. I.

The Earl of *Berkſhire* depoſed, That the King propoſing to the Aldermen the City's lending him a Sum of Money on good Security, at 8 *per Cent*, and commanding them to give in the Names of ſuch as were able to lend, they refuſed: Whereupon the Lord *Strafford* ſaid, Gentlemen, in my Opinion, you may be liable to Fine and Ranſom.

Garaway, the Lord Mayor, depoſed, that having repreſented the Difficulty of levying Ship-money to His Majeſty, it was ill taken; and the Lord *Strafford* ſaid, Sir, you will never do good on this Man, till you have made him an Example; unleſs you commit him, you will do no good upon him; And, that waiting on His Majeſty again about the Loan, the Lord *Strafford* ſaid, Sir, you will never do any good on theſe Citizens of *London*, till you have made Examples of ſome of the Aldermen. —— Unleſs you hang up ſome of them, you will do no good upon them.

The Earl anſwered, that he acknowledged his adviſing and levying Ship-money, which had been levied ſeveral Years before, and adjudged legal by the Judges; and that he did ſay, the Lord-Mayor and Aldermen were liable to be fined for refuſing to lend His Majeſty Money on good Security, and ſuch an Exigency of the State; but denied he ever ſaid, there will be no good done on the Citizens, till you have hanged ſome of them up; and there was only *Garaway*'s Teſtimony, a ſingle Witneſs, and a prejudiced Perſon; and it was ſtrange that neither His Majeſty, nor any of the Council, ſhould remember any thing of them: And laſtly, if he did ſpeak them, they fell very ſhort of Treaſon.

The Managers replied, They hoped their Lordſhips would not paſs by thoſe haſty Words, which were conformable to his Actions for many Years; and as to the Objection of a ſingle Teſtimony, ſeveral Circumſtances indeed were proved by ſeveral Witneſſes; but they had all a Tendency to the ſame End, and made good the general Charge.

Then they proceeded to the 26th Article, *Art* 26. which charges the Earl with adviſing his Majeſty to ſeize the Money in the *Mint*, and debaſe the Coin; and that he procured 180,000 *l.* to be ſeized; and when the ill Conſequences of this Conduct were repreſented to the Lord *Strafford*, he ſaid, the City had dealt unduti-fully with his Majeſty, and were more ready to help the Rebels than the King, and they might thank themſelves for it.

The Evidence to ſupport this Article, was *Robert Edwards*, who depoſed, That deſiring the Earl to be a Means for reſtoring the Money that was ſeized in the Mint, he anſwered, if they did ſpeed amiſs, they might thank themſelves; they were more ready to hold with Rebels, than to give his Majeſty the 14000 *l.* that was due to him for Ship-Money; that they dealt very unthankfully and undutifully with the King; and though this ſeemed a ſtrange Buſineſs here, it was uſual beyond Sea, for People to have their Goods taken from them by Command.

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Anthony Palmer deposed, That waiting on the Earl with some other Officers of the Mint, to represent the ill Effects of debasing the Coin, he was dissuaded from it; but he read Part of a Letter from *France*, shewing that the *French* King had appointed Officers to inspect People's Books of Accounts and Estates there, that the King might know what to demand of them; and those who refused to pay the Sum demanded, were made to pay it by Force: And the Deponent thought the Earl mentioned it as a Precedent for *England*.

To this Part of the Charge, the Earl answered, that they had produced no Proof of his advising the Debasing the Coin, or Seizing the Money in the Mint; on the contrary, their own Witnesses had proved that he agreed not to debase the Coin; but he acknowledged he said the City dealt undutifully by his Majesty, who residing amongst them, and having conferred so many Favours on them, yet they refused him the Loan of 100,000 *l.* on good Security; and since they charged him chiefly with Words that expressed his Zeal for his Majesty's Service, he looked upon it as an Argument of his Innocence; and that they had nothing worse to accuse him of.

That he never had any thoughts of making the Practice in *France*, of levying Money by Force, a Precedent for *England*: And *Palmer*, who testified he spoke to that Effect, could not remember the Words; and he appealed to their Lordships, if he ought to be condemned for Words, which the Witness could not remember particularly, and who might be mistaken in the Sense of them, as he averred he was in this Case; for the Words he spoke, on reading the Letter from *Paris*, were, God be thanked they had a pious King, that thought of no such Methods, and that he said no more: And lastly, that there was but a single Witness of the Words.

The Managers replied, that the Lord *Strafford*'s retorting upon the Citizens in that Manner, when they only desired their Money out of the Mint, was a great Grievance, and not to be slighted; and that his Lordship had given no answer to those Words, that the City was more ready to help the Rebels, than his Majesty. And though his Lordship looked upon it as an Argument of his Innocence, that he was only charged with hasty Words; some Words might amount to Treason, and be of more pernicious Consequence than Actions; that his advising his Majesty to bring over an Army of *Irish*, was destructive both of King and People; and while he incited his Prince by false Insinuations, to tyrannize over his Subjects, he did not only abuse his Goodness for the present, but make him the Instrument of Ruining their Posterity: Nor did the Earl rest in Words, for four of the Aldermen were committed that very Day they gave their Answer about the Loan; and it was easy to conjecture by whose Advice it was done.

Art. 27. The next Article they proceeded upon, was the 27th, which charges the Earl with Imposing a Tax of Eightpence a Day, for the maintenance of every Soldier of the Trained-bands, in the County of *York*.

To prove this Charge, they produced a Warrant from the Vice-President of *York*, to Sir *Edward Osborn*, reciting, that the *Scots* having taken *New-Castle*, and being on their March to *York*, he was required by his Majesty's special Command, to raise by the Port Constable, or otherwise, twenty Shillings and Eightpence for each common Soldier belonging to certain Towns, and send the same to *York*, to be delivered to the Colonel, for the Payment of the said Soldiers; and likewise to charge and command all, and every Person, who were to find private Arms, to contribute thereto forthwith, and to send the like Sum to *York*, to be disposed as aforesaid; and in Case any of them refused to contribute, he was commanded to certify the Names of such Refusers, that they might be brought to *York* to serve in Person, and be severely punished, according to the Quality of so high an Offence; seeing the Safety of his Majesty's Person, and the Safety of the Kingdom, depended on it; and this he was not to fail exercising, on Peril of his Life. 1641. 17 Car.

Sir *Henry Cholmley* deposed, That he heard the Lord *Strafford* say, in the Presence-Chamber at *York*, it had always been the Custom, that the private Men should serve in Person, or maintain the Charge of those that served for them; and addressing himself to his Majesty, added, Sir, if you please, Mr. Vice-President may send out Warrants to that Purpose.

William Dowsen deposed, That Mr. *Yatworth*, Serjeant-Major to Sir *William Pennyman*, came with four Musqueteers to the Lordship of *Egton*, and gave a Warrant to the Constables for collecting the Money assessed; and that the Musqueteers went with the Constables from Place to Place to levy the Money; and that the Deponent was forced to serve in Person in Sir *William Pennyman*'s Regiment, because he did not pay the Sum required.

Sir *William Ingram* deposed, that the Lord *Strafford* said, the private Men must maintain their Soldiers after the Rate of Eight-pence a Day; and if they did not, he would commit them, and it should be raised out of their Estates: That the Earl ordered the Deponent to speak to the Constables to make the Assessments; and if any refused to pay the Eightpence a Day, he would have them know they were guilty of little less than Treason.

Sir *Henry Griffin* deposed, That the Lord *Strafford* granted Warrants to the Constables, for levying the Arrears of a Month's Pay for his Regiment, and it was paid thereupon: But it being demanded, if it were not paid voluntarily, he answered, it might for ought he knew.

And because the Lord *Strafford* had said, That the Gentlemen of the County themselves agreed, that the Money for the Militia should be raised in this Manner; they brought three or four Gentlemen, who deposed, that they did not agree to it, because the Lord *Strafford* refused to present their Petition for calling a Parliament.

The Earl answered, that he did not approve of the Clause in their Petition for calling a Parliament, because he knew the King intended to call one before, with which he had acquainted the Gentlemen

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tlemen before; and he thought it improper the King ſhould be preſſed to it, when it was an Act of his own mere Grace: That the Tax was levied by their own Conſent; and of two or three hundred Gentlemen that were preſent, not above three or four diſſented from it, and thoſe were the Perſons that had been examined before their Lordſhips.

Then Sir *Paul Neal* was called, who depoſed; That it was agreed by the County to advance the Month's Pay, or Eight-pence a Day, with which the Earl was charged with levying by his own Authority; that there were two hundred Gentlemen in the Town-Hall of *York* at that Time, and he believed not above four or five diſſented; but he could ſwear there were not above half a Score negative Voices. Sir *Edward Oſborne* depoſed to the ſame Effect, adding, that they all attended the Earl when he delivered the Meſſage to his Majeſty, offering to advance a Month's Pay; and that he thought there might be three hundred in the Hall when the Meſſage was agreed on.

Sir *William Pennyman* and Sir *William Savile* confirmed the Teſtimony of the former, and added, that in that Part of the Country where they lived, it was cheerfully paid, and no Complaint made; and Sir *Edward Oſborne* ſaid, he knew of no forceible Means uſed: Others confirmed this, and ſaid, if there were any Differences about it, it was where the People thought themſelves aſſeſſed above their Proportion.

Then his Lordſhip obſerved, that as to the Warrant that had been produced for levying this Money, directed to Sir *Edward Oſborne*, wherein the Money was ordered to be paid on Peril of their Lives, he declared he never iſſued any ſuch Warrant; and unleſs they produced ſuch a one under his Hand, he hoped their Lordſhips would acquit him of it: That the Money was, in Truth, voluntarily offered and paid, and no Force uſed; and ſince no ſuch Warrant appeared to be iſſued by him, he thought he muſt be adjudged clear of the Matter charged in this Article.

He obſerved farther, That his Commiſſion would bear him out, if he had no other Authority, for what he did; for by that he was empowered to command all Lieutenants and Deputy-Lieutenants, to ſend out ſuch able-bodied Men for the War as he ſhould appoint, ſufficiently armed; and that he did not ſend to them to raiſe Money, but Men; and if they found it for their Eaſe, they might be at the Charge of ſending others, and not ſerve in Perſon themſelves; and his Commiſſion indemnified him for what he ſhould do in the Premiſes; However, if he had erred in the Execution of his Commiſſion, he was juſtified by the Statute of 11 *Hen.* VII. *cap.* 1. which declared, that it was againſt Law and Conſcience, that Perſons executing the King's Commands in Time of War, ſhould loſe or forfeit any Thing; and therefore enacted, that all who ſerved the King in his Wars, ſhould not, for ſo doing their Duty, be proſecuted for Treaſon, or any other Offence, whereby they ſhould forfeit Lands or Goods; but ſhould be utterly diſcharged from all Vexation, *&c.*

The Managers replied, That if a Majority of the Gentlemen did agree to raiſe a Month's Pay, they could not lay a Tax upon the reſt of the County, or bind thoſe that diſſented: That the raiſing Money by ſuch Warrants was not legal, much leſs the levying Money by Force.

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That his Lordſhip's Commiſſion gave him no Power to levy Money, nor was the Statute he mentioned to his Purpoſe; for That only ſaid, when Men were doing their Duty, according to their Allegiance, they ſhould not be attainted of Treaſon: But this did not juſtify the levying of Money on the Subject in an unlawful Way, nor did the Warrants require the Subject to ſerve or pay Money in Lieu of it; but if they refuſed to pay ſuch a Sum of Money, then they were obliged to ſerve.

And though the Lord *Strafford* objected that the Warrants did not concern him, becauſe they were not under his Hand; it appeared they were under the Hand of the Vice-Preſident, who was ſuppoſed to have a Warrant from him.

That this Juſtification of the Priſoner's, in the Face of the Parliament, was ſufficient to condemn him: To ſay, becauſe he was Lieutenant-General of the Army, he might iſſue his Warrants, and tax the Subject, was to aſſume a Parliamentary Power, without which no Tax could be laid. —— Here the Earl interrupted the Manager, and ſaid, the commanding Men to perform their Duty in Defence of their King and Country, was very different from a Power of impoſing Taxes, which he never pretended to.

The Managers replied, he had maintained, that by the Authority of his Commiſſion he could juſtify what he had done: That he gave Warrants to levy Money, which was levied by Force; and conſequently he had aſſumed a Power of levying Money by Force: That it did not follow, becauſe a Man was bound to ſerve in Perſon, therefore Money might be required of him; and if he refuſed it, he muſt be forced into the Service, on pain of Death, according to the Tenor of Sir *Edward Oſborne*'s Warrant.

The Managers drop ſeveral Articles.

The Managers not thinking fit to ſay any thing to the 28th Article, (and having dropped ſeveral others before,) the 12th of *April* was appointed for ſumming up the Evidence on both Sides; when the Peers being aſſembled, and the Earl brought to the Bar, the Lord High Steward directed him to ſum up the Charge and his Defence as clearly and ſuccinctly as he could.

Whereupon the Earl addreſſed himſelf, to recapitulate what had been offered on either Side: But *Ruſhworth* has thought fit to give us only an Abſtract of this Speech in his Defence; though he omitted nothing that was ſaid or ſuggeſted on the other Side againſt him.

It is needleſs to mention any thing of this Recapitulation on either Side, which has been ſaid before, becauſe the Reader may turn back, and have Recourſe to the Evidence and Arguments; but if there be any Remarks or Obſervations that have not been made already, it may be proper to touch upon them.

The Earl obſerved that, in the Management of this Cauſe, the Managers had averred, that ſeveral

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The Earl sums up the Evidence, and Arguments on either Side.

ſeveral Articles were fully proved, of which no manner of Proof had been made.

That as they went on, Article by Article, the Managers had admitted that none of them were Treaſon ſingly; but urged that every one conduced to prove the Treaſon they charged him with: But he had watched all along to the laſt, to ſee if he could find that poiſoned Arrow that ſhould envenom all the reſt; that deadly Cup of Wine that ſhould intoxicate; a few alledged Inconveniencies and Miſdemeanors, to run them up to High-Treaſon; but could diſcover nothing of this kind.

It ſeemed ſtrange to him that, ſince there were ſuch eſſential Differences between Miſdemeanors, Felonies, and Treaſons, any Number of Miſdemeanors ſhould make a Felony, or an hundred Felonies make a Treaſon.

That many Things had been urged againſt him, as conducing to Treaſon; but, unleſs it appeared that ſome Treaſon had been actually committed, this could not effect him.

That the Managers endeavoured to ſhew, there were two Sorts of Treaſon; namely, Treaſon by the Statute, and Treaſon by the Common Law; and that the latter were conſtructive and arbitrary Treaſons; but conſtructive Treaſons, he obſerved, had been a great while Strangers to this Commonwealth; and he truſted, by their Lordſhips Wiſdom and Juſtice, would be ſo ſtill.

Then his Lordſhip, having gone through the twenty-eight Articles, and the Evidence on both Sides, with the Obſervations that had been made on them; ſaid, He did not find that either the Statute or Common Law had declared *an Endeavour to ſubvert the fundamental Laws* to be High-Treaſon; or that thoſe Things were Treaſon *accumulatively*, that were not ſo apart; and he thought it very hard, his Life and Honour ſhould be brought in Queſtion on a Law that was not extant, and which no Man could ſhew; concluding, according to *Ruſhworth*, in theſe Words: "Jeſu! my Lords, where has this "Fire lain all this while, ſo many hundred "Years together, that no Smoke ſhould ap"pear, till it burſt out now, to conſume me "and my Children: Hard it is! extreme hard, "in my Opinion, that the Puniſhment ſhould "precede the Promulgation of the Law: That "I ſhould be puniſhed by a Law ſubſequent to "the Act done. I moſt humbly beſeech your "Lordſhips, take that into Conſideration; for "certainly it were better a great deal to live "under no Law but the Will of Man, and "conform ourſelves in human Wiſdom as well "as we can, and to comply with that Will, "than to live under the Protection of a Law, "as we think; and then a Law be made to "puniſh us for a Crime precedent to that Law: "I conceive no Man living can be ſafe, if "that is to be admitted: Where no Token, "no Admonition is given, to beware of the "Offence, what human Prudence can prevent "a Man's Deſtruction, and that inſtantly?—— "May your Lordſhips have that Regard for "the Peerage of *England*, as never to ſuffer "yourſelves to be put upon thoſe moot Points, "upon ſuch Conſtructions and Interpretations "as theſe are, when the Law is not clear or "known. —— If there muſt be a Trial of "Wits, I beſeech your Lordſhips the Subject "may be of ſomething elſe than of your Lives "and Honours: It will be your Lordſhips "Wiſdom to caſt from you thoſe bloody and "myſterious Volumes of conſtructive and ar"bitrary Treaſons, and to betake yourſelves "to the plain Letter of the Statute, which tells "you where the Crime is, that ſo you may a"void it: And let us not, my Lords, be "ambitious to be more learned, in thoſe kill"ing Arts, than our Forefathers were. My "Lords, it is now full two hundred and forty "Years ſince any Man has been touched to "this Height upon this Crime, till I was ſin"gled out: Let us be content with what our "Forefathers left us, and not awake thoſe "ſleepy Lions to our own Deſtruction, by "raiſing up a Company of Records, that have "lain ſo many Ages by the Walls, forgotten "and neglected.

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"My Lords, it troubles me extremely, to "reflect that my Misfortunes may be made a "Precedent to the Diſadvantage of the whole "Kingdom: I beſeech your Lordſhips, there"fore, to conſider my particular Caſe, that "you do not, through me, wound the Intereſt "of the Commonwealth; for though the Gen"tlemen Managers ſay they ſpeak for the Com"monwealth, I believe in this Particular I "ſpeak for the Commonwealth too; and that "the Miſeries that will follow upon this will "be ſuch, that in a few Years it will come to "that which is expreſſed in the Act of *Hen"ry* IV: *That no Man will know what to do, or "what to ſay.*

"Do not, my Lords, put thoſe Difficulties "on the Miniſters, but that they may, with "Cheerfulneſs, ſerve the King and the State; "leſt it come to this, That no Man will med"dle with Affairs of State that hath Wiſdom, "and Honour, and Fortune to loſe.

"I have troubled your Lordſhips longer "than I ſhould have done, were it not for "the Intereſt of thoſe Pledges that a Saint in "Heaven left me. I would be loth, my "Lords,——— [*Here he wept, and pauſed.*] "What I forfeit for myſelf is nothing; but I "confeſs, that my Indiſcretion ſhould forfeit "for them, it wounds me very deeply. Par"don my Infirmity; ſomething I ſhould have "ſaid, but I ſee I ſhall not be able. And now, "my Lords, for myſelf, I thank God, I have been "taught, that the Afflictions of this preſent "Life are not to be compared with that eter"nal Weight of Glory that ſhall be revealed "hereafter. And ſo my Lords, with all Hu"mility and Tranquility of Mind, I ſubmit "myſelf clearly and freely to your Judgments; "and, whether that righteous Judgment ſhall "be to Life or Death,

TE DEUM LAUDAMUS: TE DOMINUM CONFITEMUR.

The Managers ſum up the Reply to the Earl.

To this Speech of the Earl's, Mr. *Glynn*, the Manager, replied, that notwithſtanding his Lordſhip had often obſerved that many of the Articles were proved but by one Witneſs, and that the Statute of *Ed.* VI. required two, this was a Fallacy, known to his own Breaſt; for the Treaſon laid to his Charge was, *The ſubverting the Laws*; and though ſome one Fact might be

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be proved only by one Witneſs; yet put the Witneſſes together, and there were an Hundred to the whole, which abundantly ſatisfied the Intention of the Statute. That his Lordſhip had aſperſed the Managers, by ſaying they had affirmed Things to be proved which were not proved; but they ſhould retort upon him, That he had been that Day guilty in the higheſt Degree, of what he moſt unjuſtly laid to their Charge.

As to his Lordſhip's Objection, that there had been no Treaſon committed: The very *Intention* of killing the King was Treaſon, and it was the Intention of the Death of the Law that was in Queſtion, it had been too late to queſtion him after the Law had been actually killed. The Law could not have adjudged him guilty of Treaſon, when the Law itſelf had been ſubverted. That *Guy Faux* had a fairer Excuſe than my Lord *Strafford*, for he only diſcovered Intentions of blowing up the King and State; but his Lordſhip by his Councils and Actions had expreſſed a Deſign of deſtroying the whole Kingdom, and the King's Claim by Law, and by Deſcent. (*And, having ſummed up the Evidence for the Commons, he ſaid*) If this Lion, now he is chained and muzzled, and under a Proſecution for High-Treaſon, would dare to vent ſuch Language, and expreſs ſo much Malignity, as he had done in his Defence, how would he deſtroy if he was unchained? The Lord *Strafford* was queſtioned for High-Treaſon, in going about to ſubvert the Laws of both Kingdoms, in Defence whereof their Lordſhips noble Anceſtors had ſpent their Blood; and as they were the Sons of thoſe Fathers, and the ſame noble Blood run in their Veins, he was confident they would not think that Man fit to live, who would deſtroy that which protected their Lives, Liberties, and Eſtates.

That their Lordſhips had the Complaints of three Kingdoms preſented before them againſt this great Man, whereby they might obſerve a mighty Storm was raiſed, that threatned their Ruin and Deſtruction: That the Commons had diſcovered this *Jonas* who occaſioned the Tempeſt, and as much as in them lay would diſcharge their Conſciences, and throw him out of the Ship to allay the Tempeſt; and they *expected*, and were confident their Lordſhips would finiſh the Work, and that with Expedition, leſt by the Continuance of the Storm, the Ship, Tackling and Mariners, both Church and Common-Wealth, ſhould be ruined and deſtroyed.

Mr. *Pym*, another of the Managers (uſually ſtiled in thoſe Days *King Pym*, from his Influence on that Factious Houſe of Commons, and the Mob) ſeconded Mr. *Glynn*, and averred that it was clearly proved, the Earl of *Strafford* had endeavoured, by his Words, Actions, and Councils, to ſubvert the fundamental Laws of *England* and *Ireland*, and introduce an arbitrary and tyrannical Government: That this was the envenomed Arrow for which he enquired; this was the intoxicating Cup that had tainted his Judgment, and poiſoned his Heart; and from thence was infuſed that ſpecifical Difference which turned his Speeches, Actions, and Councils into Treaſon, not Cumulative, as his Lordſhip expreſſed it, as if many Miſdemeanors could make one Treaſon, but formally and eſſentially; for it was the End that made the ſpecifick Difference: Even indifferent Words and Actions might be Treaſon, being done and ſpoken with a treaſonable Intention.

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Then he ſhewed the great Benefits both the King and the Subject received from the Laws, and the Miſchiefs that would follow from that Subverſion of them, which the Earl had conſpired, and endeavoured to bring about: That as to the Earl's Objection, that he ought not to be queſtioned for what he had adviſed as a Privy-Counſellor, according to his Conſcience; his being a Privy-Counſellor made his Fault the more heinous, as being committed againſt ſo great a Truſt, and endeavouring, under the Character of a Privy-Counſellor, to infect and poiſon his Majeſty with ſuch wicked Principles and Deſigns.

As to that other Plea, That whatever he had ſaid was with a good Intention: Where the Matters propounded were Evil in their own Nature, as theſe were, they could never be juſtified by any Intentions: And as to what he had urged of the Neceſſity of the Caſe; if there was a Neceſſity, it was of his own making: He had brought the King under this Neceſſity, and muſt not make that a Ground of his Juſtification, which aggravated his Offence: That though he alledged they had proved nothing but Words, and no Effect followed, the miſerable Diſtempers into which he had brought all the three Kingdoms, was a ſufficient Evidence of the miſchievous Effects of his Councils: That to alter the Frame and Conſtitution of Government was Treaſon in any State; and the Laws would be very defective, if they had not a Power to ſecure and preſerve themſelves.

That Life, Honour, and Eſtate, it was true, were all forfeited by Treaſon; but this Priſoner had committed ſo many Treaſons, that, though he paid all theſe Forfeitures, he would ſtill remain a Debtor to the State: And nothing could be more equal than that he ſhould periſh by the Juſtice of that Law he would have ſubverted. Neither was this a new way of Blood, but this Law might be traced to the very Original of the Kingdom. If, as he alledged, it had not been put in Execution theſe Two Hundred and Forty Years, it was becauſe, in all that Time, there had not been found a Man bold enough to commit ſuch Crimes as theſe.

Mr. Lane's argument for the Earl, as to Matter of Law.

Then Mr. *Lane*, Attorney-General to the Prince, being permitted to argue the Points of Law in behalf of the Earl of *Strafford*, obſerved, That it was admitted the Earl was not within the *Letter* of the Statute of 25 *Ed.* III. and proceeded to ſhew that he was not within the *Meaning* of it; for that, 1. It was a Declarative Law, and ſuch were not to be taken by Conſequence, Equity, or Conſtruction, but by the *Letter* only; and, 2. It was a Penal Law, and if their Grounds (as yet unqueſtioned) held good, ſuch Laws admitted of no Conſtructions or Inferences: That by the Statute of 21 *Edw.* III. it was made Treaſon for a Servant to kill his Maſter; and in the 23d

1641. 17 Car. I. of the ſame Reign, one was proſecuted for Treaſon, in killing his Father, grounded on that Argument, *a majore ad minus*; but it was reſolved that it could not be Treaſon, becauſe the 25th of *Edw.* III. had ſpecified what Facts ſhould be Treaſon, ſince which nothing could be conſtrued Treaſon that was not ſo by the Letter of that Act.

That one or more Acts of Injuſtice could in no Senſe be termed a Subverſion of the Laws; for, if ſo, we might have as many Traytors as Judges, theſe being all Men ſubject to Error, and might one Time or other have given erroneous Judgments.

That in the 28th of *Hen.* VI. *John de la Pole*, Duke of *Suffolk*, was charged by the Houſe of Commons with Articles of High-Treaſon, not unlike theſe; as that he had given bad Advice, that he had debaſed the Coin, ſeſſed Men of War, made ſummary Decrees, impoſed Taxes, corrupted the Fountains of Juſtice, perſuaded the King to an unneceſſary War, and to relinquiſh *Anjou*; but theſe Articles being debated by the Lords, they reſolved they were Felony, but not Treaſon: Another Perſon was charged with ſubverting the Laws in the Reign of *Hen.* VIII. and it was held not to be Treaſon; and this was the Caſe alſo of *Richard Larkes*.

Nor was the Earl charged here with ſubverting the Fundamental Laws, but with an *Intention* to ſubvert them; and an *Intention* was only Treaſon, when the Life of the King, or Queen, or of their Children, was deſigned: In other Treaſons, the Fact muſt be actually committed, as well as intended, by the 25th of *Edw.* III. as killing the Chancellor, Counterfeiting the Broad Seal, the Coin, *&c.*

And if ſuch an *Intention* was not Treaſon by the Statute, ſo neither was it by the Common Law; for all Treaſons were aboliſhed which were not ſpecified in the 25 *Edw.* III. and this was not to be found in that Statute.

As to the Saving in this Statute, that reſerved a Power to the Parliament to declare what ſhould be Treaſon for the Time to come: That Proviſo was repealed by a Statute made in the Reign of *Hen.* IV. and it was further enacted thereby, That nothing ſhould be deemed Treaſon, but what was literally contained in the 25th of *Edw.* III. whereupon the Record ſays, there was great Joy at the making this Act; for the drawn Sword, hanging over every Man's Head by this ſlender Thread of a Conſequence or Illation, was removed by that Act. And by the Statute of the 1ſt of *Mary* alſo it is declared, That none ſhall be puniſhed in Life or Eſtate as a Traytor, but for a Crime contained in the 25th of *Edw.* III. and no Mention is there made of the *Salvo*. That the Earl of *Northumberland*'s Caſe, in the Reign of *Hen.* IV. came the neareſt to this; and that was declared to be but Felony, though it would have been conſtrued Treaſon, if it had not been for the Statute of 1 *Hen.* IV. whereby that Proviſo was repealed. And he was confident, ſince that Act not one Man had ever been declared a Traytor, either by the King or Parliament, except it were upon the 25 *Edw.* III. or ſome other Statute literally and declaratively taken.

The Trial being over, and the Faction pretty well aſſured that a Majority of the Lords were of Opinion, that there was no Treaſon in the Articles preferred by the Commons, and that the Earl was in a fair way of being acquitted by his Peers, they did not think fit to rely on their Judgment, but immediately brought a Bill into the Houſe of Commons, to attaint the Earl of High-Treaſon, being reſolved, if there was no Law in being that would deſtroy him, they would make a Law on Purpoſe, and force the Royal Aſſent to it, as well as the Compliance of the Upper Houſe, by their Rebellious Mob.

1641. 17 Car. I. *The Commons neglect to demand Judgment, and bring in a Bill of Attainder.*

Upon bringing in the Bill of Attainder, the Lord *Digby*, who had been one of the Managers of the Commons, being now fully convinced of the Malice and Fury with which this Proſecution was carried on, made a Speech upon the Occaſion, wherein he ſaid, He muſt put the Houſe in Mind of the Difference between Proſecutors and Judges; how unbecoming that Fervour was in them, now they were Judges, which perhaps might be commendable in them as Proſecutors: That it was honeſt and noble to be zealous for the Diſcovery of Truth; but when that was brought to Light, their Judgment thereupon ought to be calm and cautious: That the Grounds on which he delivered his Opinion to the Houſe, that the Earl ought to be proſecuted for High-Treaſon, were vaniſhed; and, for that Reaſon, he begged Leave to alter his Opinion.

Lord Digby's Speech on this Occaſion.

Before he gave his Conſent to the Accuſation, he was aſſured it would be proved, that the Earl had adviſed the King to employ the Army of *Ireland* to reduce *England*. That Mr. Secretary *Vane*'s Notes, from which this was ſaid to be proved, appeared to be but diſjointed Fragments, which no Man could make any thing of: And none of the Council, but Sir *H. Vane*, heard any ſuch Words, and he varied in his Teſtimony. That the firſt Time the Secretary was examined, concerning the Army in *Ireland*, he ſaid poſitively, *I can not charge him with That*; and being examined another Time, he anſwered, *I can ſay nothing to That.* And yet at a third Examination he depoſed, that the Earl of *Strafford* ſaid to the King, *You have an Army in* Ireland, *which you may employ here to reduce this Kingdom.* Theſe Circumſtances induced his Lordſhip to diſcard that Grand Article, concerning his deſperate Advice to the King, of employing the *Iriſh* Army to reduce *England*.

Had this been proved, he could have condemned the Earl with Innocence, as he had proſecuted him with Earneſtneſs; but, as the Caſe ſtood, he could not ſatisfy his Conſcience in doing it.

That this Deſign of Force not appearing, his other wicked Practices could not amount to ſo high a Crime; there were more natural Sources to derive his other Crimes from, than a Deſire of bringing in Tyranny to enſlave them and his own Poſterity, namely, Pride, Revenge, Avarice, Paſſion, and Inſolence of Nature; but, had this of the *Iriſh* Army been proved, it would have diffuſed a Complexion of Treaſon over all.

That

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That his Crimes might perhaps render him worthier to die than many Traytors: And there might be Reaſon to Enact they ſhould be Treaſon for the future: But God forbid he ſhould give Judgment of Death on any Man, and ruin his Poſterity, upon a Law made *a poſteriori*.

The Parliament had a judicial and a legiſlative Power; the Meaſure of the one was what was legally Juſt, of the other, what was prudentially and politically fit for the Good and Preſervation of the whole; but theſe were not to be confounded in Judgment: They muſt not piece up want of Legality with Matter of Convenience. Beſides, he was aſſured neither the King, nor the Lords would paſs the Bill, and that it would cauſe great Diviſions in the State; he adviſed them, therefore, to lay aſide this Bill of Attainder, and think of another, which might ſpare his Life, and yet ſecure the State againſt the Lord *Strafford*, without endangering it as much by a Diviſion concerning his Puniſhment, as the Earl had endangered it by his Practices.

Every Man ought to lay his Hand upon his Heart, and conſider what they were about to do; Whether Juſtice, or Murder. And whether the putting this Lord to Death would not be Murder, with the higheſt Aggravation; Murder under a Colour of Juſtice. —— The beſt Lawyers were in a diametrical Oppoſition, as to the Nature of the Offence: They would do well, therefore, to diveſt themſelves of all Paſſion and perſonal Animoſity, as well as of all other unjuſtifiable Conſiderations, before they paſſed Judgment. —— Neither an Apprehenſion that the People would be incenſed, if this Lord's Blood was ſpared, or that it was not fit that one, who was accuſed by the Commons of High-Treaſon, ſhould eſcape with Life, were ſufficient Reaſons for condemning him: Of all ſuch corrupt Motives his Lordſhip did before God diſcharge himſelf, and waſh his Hands of the Earl of *Strafford*'s Blood.

The Bill of Attainder paſſed by the Commons, and ſent up to the Lords.

The Bill being read a third Time the ſame Day, it was carried by 204 againſt 59; after which it was ſent up to the Lords, by Mr. *Pym*, the great Promoter of it, with Orders to acquaint their Lordſhips, That it was a Bill which highly concerned the Common-Wealth, eſpecially the expediting of it: And Mr. *Pym* being returned; reported that he had delivered the Bill of Attainder to the Lords, and acquainted them, that the Commons were ready to juſtify the Legality of the Bill.

The Houſe of Peers having appointed the 23d of *April*, and afterwards the 29th of *April*, to hear the Points of Law argued, in Maintainance of the Bill of Attainder; Mr. Solicitor St. *John* was aſſign'd by the Commons for this Service, and Mr. *Glynn*, and Mr. *Maynard*, ordered to be his Aſſiſtants. In the mean Time, the Commons took Exceptions to the Lord *Digby*'s Speech, which he was obliged to explain with ſome qualifying Expreſſions: And Petitions were preferred to both Houſes, by the Citizens of *London*, ſaid to be ſigned by twenty thouſand Citizens, requiring, that Juſtice might be done upon the Earl of *Strafford*, and other Incendiaries; without which,

Tumultuous Petitions for Juſtice & Execution.

the Petitioners declared, That neither their Lives, Liberties, or Eſtates, could be ſecured: And the Commons ſent another Meſſage to the Lords, to expedite the Bill of Attainder; requiring alſo, that the Lord *Strafford* might be cloſe confined, becauſe they feared he would eſcape: And on the 29th of *April* Mr. St. *John* addreſſed himſelf, to make good the Legality of the Bill of Attainder, before the Lords in *Weſtminſter-Hall*, the Earl then ſtanding at the Bar.

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Mr. St. *John* obſerved, That in ſeveral Countries, there were different Meaſures of Puniſhment inflicted for the ſame Offence; and that in *England*, the ſame Law which enabled inferiour Courts to judge according to the Laws already made, empowered the Parliament to make New Laws: However, they did not intend to make a new Treaſon, and condemn the Lord *Strafford* for it; they were moved by other Conſiderations. He held that in former Ages, when Doubts in Law aroſe of great and general Concernment, the Parliament was uſually conſulted; which was the Reaſon that many Acts were declarative of the Old, and not introductive of any New Law. Secondly, They proceeded this way, to obviate thoſe Scruples and Delays, which through a Diſuſe of Proceedings of this Nature might ariſe; and becauſe ſome Doubts had been ſtarted, as if the Declaratory Power of Parliaments was taken away. Thirdly, In reſpect of the Proofs; for if it ſhould happen, that the whole Evidence given was not contained in the Charge, yet ſuch Evidence might be made uſe of by this way of Bill; it not being neceſſary, in this way of Proceeding, that there ſhould be any Articles or Charge at all: And ſo in the Caſe of double Teſtimony, though two Witneſſes might be required, by I. *Edw.* 6. in the Courts of Law; yet on a Bill of Attainder in Parliament, private Satisfaction to each Man's Conſcience, was ſufficient; although no Evidence at all was given. That theſe Proceedings by Way of Bill, was not to decline their Lordſhips Juſtice in the Judicial Way, but to husband Time in theſe Exigencies of State, and ſilence all Doubts.

St. John's Argument for the Bill of Attainder.

Then he endeavoured to ſhew, that the Earl was guilty of Treaſon, within the 25 *Edw.* III. But theſe Arguments having been urged before, and unanſwerably confuted by the Earl, I omit the Repetition of them; and he ſeems to have been conſcious there was very little in his Arguments on this Head: For he proceeds to tell their Lordſhips, that the Commons had given him Command, to offer further Reaſons, for their reſorting to their legiſlative Power; as firſt, from the Nature of the Earl's Offence, in endeavouring to overthrow the Laws; and ſecondly, from the Frame and Conſtitution of the Parliament, which comprehended the whole Body Politick, and conſequently had Power over every individual Member, for the Preſervation of the whole. And as to what had been ſo often inculcated, That the Law ought to precede the Puniſhment: Why ſhould the Earl expect any Benefit from the Law, that would take it from others? They allowed Law indeed to Hares

and

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and Deer, but it was never accounted foul Play to knock Foxes and Wolves on the Head: That the Earl's, was an Offence againſt the Light of Nature, againſt the Dictates of the dulleſt Conſcience: That he well knew he had offended the promulged and ordinary Rules of Law. That Crimes againſt Law had been proved and confeſſed; ſo that the Queſtion was not *de culpa, ſed de pœna*; and though his Lordſhip had aſſerted, that twenty Felonies could not make a Treaſon, they muſt differ from him, if he meant it in the Uſe of the legiſlative Power; for he that deſerved Death for one of thoſe Felonies, deſerved a more painful and ignominious Death for all together, and cited ſome Precedents, where the uſual Puniſhment had been increaſed, on Account of the heinous Circumſtances the Facts were attended with, as in the Caſe of the Biſhop of *Rocheſter*'s Cook who poiſoned the Broth, which was the Death of a great many People; the Cook was attainted of Treaſon, and it was enacted, that he ſhould be boiled to death.

The Lords refuſe to hear the Earl's Counſel, on the Bill of Attainder.

They next Day, being the 30th of *April*, the Earl petitioned that his Counſel might be heard, as to the Legality and Equity of a Bill of Attainder in this Caſe, where he was taken out of the ordinary Courſe of Juſtice, and a Law propoſed on Purpoſe to deſtroy him: But he was refuſed this Favour.

Thus far RUSHWORTH.

The King's Speech, acquitting the Earl of the Charge.

The King going to the Houſe of Peers the 1ſt of *May*, declared from the Throne, that he could not in Conſcience condemn the Earl of *Strafford* of High Treaſon, and that he would acquaint them with three great Truths. Firſt, That he never had any Intention to bring over the *Iriſh* Army into *England*, nor was ever adviſed by any one to do it. Secondly, That there never was any Debate before him, of the Diſaffection of his *Engliſh* Subjects, neither had he any Suſpicion of them. Thirdly, Neither was he adviſed by any one, to alter the leaſt of the *Engliſh* Laws. He did admit the Earl had been guilty of ſome Miſdemeanors, and ſuch as rendered him unfit to ſerve himſelf, or the Commonwealth, in any Place of Truſt: But he hoped there might be ſome Expedient found out, to ſatisfy Juſtice and their own Fears, without oppreſſing his Conſcience.

The Commons exclaim againſt the King's Speech, as a Breach of Privilege.

The Commons being acquainted with this Speech, exclaimed againſt it as a Breach of the Privileges of Parliament; and ſaid, it was a prejudging of their Councils, an Obſtruction to Juſtice, *&c.* and the next Day, they drew down five or ſix thouſand of the City Mob, armed with Swords and Clubs, to *Weſtminſter*, who having filled the *Palace-Yards*, and every other Avenue to the Parliament-Houſe, ſtopped the Members Coaches, crying out, *Juſtice, Juſtice! Execution, Execution!* Nor would they ſuffer ſome of the Lords to paſs, till they had promiſed to Vote for the Attainder and Execution of the Earl of *Strafford*. The ſame Rabble, with *Cornelius Burgeſs* the *Puritan* Preacher at their Head, broke into *Weſtminſter-Abbey*, plundered the Church of the Furniture and ſacred Veſtments; and then in a hoſtile Manner, marched to the Palace of *Whitehall*, where they inſulted and abuſed his Majeſty, who adviſed them to return Home and mind their Buſineſs.

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Nothing is more evident than that the Commons abetted and encouraged theſe Tumults, not only from their threatning the Lords with them; but from their impriſoning thoſe Juſtices of Peace, who endeavoured to diſperſe the Rabble, and declaring, it was free for all Men to petition the Parliament in this hoſtile Manner: Nor were theſe People only an undiſciplined Multitude; they were formed into regular Bodies, and had Arms given them; and every Profeſſion of Mechanicks, *Taylors, Tinkers, Shoemakers, Weavers, Porters*, and *Watermen*, had their particular Captains and Leaders, whom they obeyed implicitly: Theſe poſted up at *Weſtminſter-hall* Gate, and all publick Places about Town, the Names of the Commons, who voted againſt the Earl of *Strafford*'s Attainder, denominating them *STRAFFORDIANS*, and Enemies to their Country; but ſtill the Attainder was in danger of being rejected by the Houſe of Peers: Whereupon the Faction, to facilitate the paſſing it, pretended they had diſcovered a Plot, between the Court and the Army, for reſcuing the Earl of *Strafford*, and putting a Force upon the Parliament; which was worked up with ſuch Art, that both Houſes appeared in the utmoſt Conſternation, and entered into a ſolemn Proteſtation, to defend themſelves and their Privileges, againſt all Perſons whatever, which they impoſed on their Fellow-Subjects, by the Authority of their own Votes, without the King's Leave; and that having harraſſed and frightened the Lords with their Plots and their Mobs, they compelled them in a manner to paſs the Bill of Attainder on the 8th of *May*; there being twenty-five Lords *Content*, and nineteen *Not content*; ſo that the Bill was carried but by a Majority of ſix Voices.

A pretended Plot to facilitate the paſſing the Attainder.

The two Houſes impoſe a Proteſtation on the People.

The Bill carried by 6 Voices.

The ſame Day, (*viz.*) *Saturday* the 8th of *May*, both Houſes attended his Majeſty, importuning him to give the Royal Aſſent to the Bill; but could get no other Anſwer from him, than that they ſhould know his Mind the *Monday* following: Whereupon they ſent down the Rabble to *Whitehall*, who cried out, as they were taught, *Juſtice! Juſtice!* threatning the Deſtruction of the King, Queen, and Royal Family, unleſs his Majeſty conſented to *Strafford*'s Death: At which, it is ſaid, the Queen was ſo terrified, being conſcious of the Rage of the People againſt her, on Account of her Religion, that ſhe begged the King to yeild to their Demands, for the Preſervation of themſelves and their Children: But he was not to be moved by her Intreaties, to give up ſo brave and faithful a Servant. He ſummoned the Privy Council, the Judges, and five of the Biſhops therefore, and required their Advice, how to extricate himſelf out of the Difficulties that ſurrounded him. The five Biſhops that attended him, were Arch-Biſhop *Uſher*, Dr. *Morton* Biſhop of *Durham*, Dr. *Williams* Biſhop of *Lincoln*, Dr. *Potter* Biſhop of *Carliſle*, and Dr. *Juxton* Biſhop of *London*: But he could receive little Satisfaction from any

The Royal Family ſurrounded by the Mob, and threatned to be pulled to Pieces.

The King adviſes with the Biſhops, the Judges and Privy Council.

The Mob drawn down, to compel the Lords to paſs the Bill.

They plunder the Abbey Church.

1641. 17 Car. I. any of them, only Biſhop *Juxton* had the Honeſty and Courage to tell him, he ought to do nothing againſt his Conſcience, for any Conſiderative whatever; while ſome of the reſt of the Biſhops ſcandalouſly inſinuated, it is ſaid, that the King had a publick and a private Conſcience, and that he ought to diſtinguiſh between the one, and the other. And how Innocent ſoever he might believe the Earl in his private Opinion, he ought to be governed by the Opinion of the two Houſes of Parliament, and the Judges, who had declared the Earl guilty of High-Treaſon.

Still his Majeſty ſeemed determined not to give up this Great Man to the Malice of his Enemies; but the Earl, being informed of the Diſtreſs the King was in, and that the Ruin of the Royal Family was threatened, if he did not give the Royal Aſſent to the Bill, generouſly wrote to his Majeſty, not to hazard the Safety of his Family, and the Peace of the Kingdom, for his Sake, but paſs the Bill; adding, that his Conſent would acquit his Majeſty in the Eye of Heaven, and he ſhould reſign his Life with all the Chearfulneſs imaginable, as an Acknowledgment of the Favours he had received from his Sovereign. And this, it is ſaid, went a great way in determining his Majeſty's Reſolution: After he had ſpent two Days and Nights, therefore, in the utmoſt Perplexity, he ſigned a Commiſſion to the Earl of *Arundel*, and two other Noblemen, to paſs this Bill, with another, no leſs fatal to himſelf and the Kingdom, namely, The Bill to make the Parliament perpetual, unleſs they conſented to their own Diſſolution. This Bill was hurried on, and paſſed both Houſes in a Day or two, under Pretence, that they could borrow no Money for the Service of the State, unleſs the People had an Aſſurance that the Parliament ſhould not be diſſolved; and it was contrived to offer it to the King at this Time, when his Thoughts were entirely taken up with the Earl of *Strafford*'s Caſe, and he could not be ſuppoſed at Leiſure to examine into Conſequences of ſuch a Conceſſion.

The Earl himſelf adviſes the King to paſs the Bill.

The King gives his Aſſent to the Attainder, and to the Bill to perpetuate the Parliament.

The Commons were over-joyed at th epaſſing theſe two Bills, and returned his Majeſty their Thanks for his extraordinary Condeſcenſion, aſſuring him, THEY WOULD MAKE HIM A GLORIOUS KING, AND RICHER THAN ANY OF HIS PREDECESSORS: But, whatever they then deſigned to make him, certain it is, he became from that Hour Dependant on the Parliament, and by giving the Royal Aſſent to thoſe two Acts, reſigned his Authority and Influence over his People. No Man durſt ſerve him, after they ſaw this Great Miniſter ſacrificed to his Enemies; the Parliament perpetuated, and aſſuming a Power of compelling the King to yield to whatever they demanded. The giving up Lord *Strafford* to their Fury, therefore, was ſo far from reſtoring Peace and Tranquility to the Common-wealth, or Safety to the Royal Family, that it inſpired the Faction with ſtill more Inſolence, made them look upon the King and Peers as their Vaſſals, and uſe them for the future as if they really had no other Authority than what they derived from the People, whoſe Repreſentatives the Commons were.

The King, too late ſenſible of his Error, wrote to the Houſe of Peers, by the Prince his Son, to entreat that Mercy might be ſhewn the Earl: That they would be content with his perpetual Impriſonment; and endeavour to obtain a Conference with the Houſe of Commons, and bring them into the ſame Sentiments, adding, by way of Poſtſcript, *That if he muſt die, it were Charity to reprieve him 'till* Saturday. But ſo little Influence had the Prayers and Entreaties of their once Dread Sovereign, that the Lords let his Majeſty know, neither of his Intentions could be complied with, pretending that the Queen and their Children would be in Danger, if they ſhould conſent to either.

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The King begs Lord Strafford's Life.

but is refuſed.

Wedneſday the 12th of *May*, therefore, being appointed for the Execution of the Earl, he deſired the Lieutenant of the *Tower*, the Evening before, to let him ſpeak with the Archbiſhop of *Canterbury*, his Fellow-Priſoner; but the Lieutenant anſwered, he durſt not permit him, without an Order of Parliament: Whereupon the Earl related to Archbiſhop *Uſher*, who was then at his Lordſhip's Lodgings in the *Tower*, what he intended to have ſaid, if he had been permitted to ſee Archbiſhop *Laud*, namely, That he would have deſired his Grace to aſſiſt him with his Prayers that Night, and give him his Bleſſing when he went to the Scaffold the next Day; he deſired alſo he would be at his Window, that he might thank him for all his Favours; and Archbiſhop *Uſher* delivering the Meſſage to Archbiſhop *Laud* that Evening, his Grace of *Canterbury* appeared at his Window next Morning, as the Earl paſſed by, when the Earl looking up, and demanding his Prayers, and his Bleſſing, his Grace lifted up his Hands, and gave him both; then the Earl, making a ſubmiſſive Bow, ſaid, *God protect your Innocency*, and moved on towards the Scaffold, which was erected on *Tower-Hill*. The Lieutenant deſired he would take Coach, for fear the Mob ſhould ruſh on him as he walked, and pull him to Pieces: But the Earl anſwered, No; he was not afraid to look Death in the Face, and the People too. Have you a Care, ſays the Earl, that I don't eſcape; and whether I die by the Hands of the Executioner, or the Fury of the People, to me is perfectly indifferent.

The Execution appointed.

The Earl takes his Leave of the Archbiſhop of Canterbury.

Having mounted the Scaffold, he ſaluted the Gentlemen he found there, and began to take his laſt Leave of his Friends, who appeared much more concerned than himſelf, and obſerving his Brother, Sir *George Wentworth*, to weep: Brother (ſaid he chearfully) What do you ſee in me to deſerve theſe Tears? Does any indecent Fear betray in me any Guilt, or my innocent Aſſurance any Atheiſm? Think now that you are accompanying me the third Time to my Marriage Bed: Never did I throw off my Cloaths with greater Freedom and Content, than in this Preparation to my Grave. That Stock (pointing to the Block) muſt be my Pillow: Here ſhall I reſt from all my Labours: No envious Thoughts, no Dreams of Treaſon, Jealouſies, or Cares for the King, the State, or myſelf, ſhall interrupt this eaſy Sleep: Therefore, Brother, pity with me thoſe Men, who, contrary to

The Earl's Behaviour on the Scaffold.

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their Intention, have made me happy. Rejoice in my Happineſs, Rejoice in my Innocence. Then kneeling down, he made this Proteſtation: I hope, Gentlemen, you think that neither the Fear of Loſs, or Love of Reputation, will ſuffer me to belie God and my own Conſcience at this Time. I am now in the very Door going out, and my next Step muſt be be from Time to Eternity, either of Peace or Pain. To clear myſelf before you all, I do here ſolemnly call God to Witneſs, I am not guilty, ſo far as I can underſtand, of the great Crime laid to my Charge; nor have ever had the leaſt Inclination or Intention to damnify or prejudice the King, the State, the Laws, or Religion of this Kingdom; but with my beſt Endeavours to ſerve all, and to ſupport all, *ſo may God be merciful to my Soul.*

His Proteſtation of his Innocence.

His Speech to the People.

Then riſing up he ſaid, My Lord Primate of *Ireland*, and my Lords, and the reſt of theſe noble Gentlemen, It is a great Comfort to me to have your Lordſhips by me this Day, becauſe I have been known to you a long Time. I come here, by the good Will and Pleaſure of God, to pay that laſt Debt I owe to Sin, which is Death; and by the Bleſſing of that God, I truſt to riſe again, through the Merits of Jeſus Chriſt, to Righteouſneſs and Life Eternal.

I ſubmit to the Judgment, that has paſſed on me, with a quiet and contented Mind. I thank God I freely forgive all the World from my very Heart; there is not a diſpleaſing Thought ariſing in me towards any Man living; and my Conſcience bears me Witneſs, that in all my Employments, ſince I had the Honour to ſerve his Majeſty, I never had any Thing in the Purpoſe of my Heart, but what tended to the joint and individual Proſperity of King and People, although it hath been my ill Fortune to be miſunderſtood.

I am not the firſt that hath ſuffered in this kind; it is the common Portion of us all, while we are in this Life, to err: Righteous Judgment we muſt wait for in another Place; for here we are very ſubject to be misjudged one of another. There is one Thing I deſire to free myſelf of, and I am very confident I ſhall obtain your Chriſtian Charity in the Belief of it. I was ſo far from being againſt Parliaments, that I always thought the Parliaments of *England*, were the moſt happy Conſtitutions that any Kingdom or Nation ever lived under, and the beſt Means under God, to make both King and People happy.

My Lord Primate, it is a great Comfort to me, that his Majeſty conceives me not meriting ſo ſevere and heavy a Puniſhment. I do infinitely rejoice in this Mercy of his, and I beſeech God to return it into his own Boſom, that he may find Mercy when he ſtands moſt in Need of it.

I wiſh this Kingdom all the Proſperity and Happineſs in the World: I did it living, and now dying it is my Wiſh. I do moſt humbly recommend this to every Man who hears me; but deſire they would lay their Hands upon their Hearts, and ſeriouſly conſider, Whether the Beginning of the Happineſs and Reformation of a Kingdom ſhould be written in Letters of Blood; and may I never be ſo unhappy as that the leaſt Drop of my Blood ſhould riſe up in Judgment againſt any one of you; but I fear you are in a wrong way.

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My Lords, I have but one Word more: I profeſs I die a true and obedient Son to the *Church of England*, wherein I was born, and in which I was bred; *Peace and Proſperity be ever to it.* It has been objected, but it is an Objection ſcarce worth anſwering, that I have been inclined to *Popery*, though I can truly ſay, that from the Time I was One and Twenty Years of Age, to this preſent, going now upon Forty-Nine, I never had it in my Heart to doubt of the Religion of the *Church of England*, nor ever had any Man the Boldneſs to ſuggeſt any ſuch Thing to me. And now, being reconciled by the Merits of Jeſus Chriſt my Saviour, into whoſe Boſom I hope I ſhall ſhortly be gathered, to thoſe eternal Happineſſes which ſhall never have an End, I deſire heartily the Forgiveneſs of every Man for any raſh or unadviſed Words, or any Thing done amiſs. And ſo, my Lords and Gentlemen, farewell! farewell all Things of this World!

I deſire you will now join with me in Prayer, and I truſt in God we ſhall all meet, and live eternally in Heaven, there to receive the accompliſhment of all Happineſs, where every Tear ſhall be wiped away from our Eyes, and every ſad Thought from our Hearts: And now God bleſs this Kingdom, and Jeſus have Mercy on my Soul!

Then he ſaluted the Noblemen, and other Perſons of Diſtinction upon the Scaffold; after which he ſaid again, Gentlemen, I entreat you all to pray with me, and for me; and his Chaplain, having laid the Book of *Common-Prayer* before him, he kneel'd down, and prayed out of it a Quarter of an Hour, and as long without Book, concluding with the *Lord's-Prayer.*

Then ſtanding up, he ſaid (to Sir *George Wentworth*) *Brother, we muſt part.*— Remember me to my Siſter, and to my Wife, and carry my Bleſſing to my Son: Charge him that he fear God, and continue an obedient Son to the *Church of England*; warn him that he bear no private Grudge, or Revenge towards any Man concerning me. And bid him beware he meddle not with *Church* Livings; for that will prove a Moth and Canker to him in his Eſtate: And wiſh him to be a Servant to his Country, without aiming at high Preferment.

Carry my Bleſſing alſo to my Daughters *Anne* and *Arabella*: Charge them to ſerve and fear God, and he will bleſs them; not forgetting my little Infant, which yet knows neither Good nor Evil.

The Earl beheaded.

While he was undreſſing, he ſaid, I as chearfully put off my Cloaths at this Time, as ever I did when I went to Bed; and putting on a white Cap, he tuck'd up his Hair under it: Then having prayed again, and ſubmitted to the Block, his Head was ſevered from his Body at one Blow.

Inſtructions the Earl left his Son.

By the written Inſtructions the Earl left his Son, he commanded him to be obedient to the Governors he had appointed him; and charged him, as he would anſwer it at the laſt Day, not to enter upon any publick Employment,

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ment, 'till he ſhould be Thirty Years of Age; and then, if his Prince ſhould call him to publick Service, he ſhould readily undertake it, and be ſincere and faithful to his Maſter, though he ſhould come to the ſame End he did himſelf. And laſtly, that he ſhould never lay his Hands upon any Thing that belonged to the Church. He foreſaw that her Revenues would be ſeized, and conjectured they would be diſtributed among the Nobility and Gentry; and again, charged his Son, therefore, not to meddle with them, for the Curſe of God would follow thoſe, he held, that meddled with ſuch Things.

His Family and Character.

Thomas Earl of *Strafford*, was the Son and Heir of Sir *William Wentworth*, of *Wentworth-Woodhouſe*, in the County of *York*, Bart. He was a popular and weighty Speaker in Parliament, and oppoſed ſome of thoſe extraordinary Methods that were taken for raiſing Money in the Beginning of this Reign; but afterwards coming over to the Court, he was called to the Council-Board, and by Letters Patent, dated the 22d of *July*, in the fourth Year of this King, he was created Baron *Wentworth*, of *Wentworth-Woodhouſe*; and the 10th of *December* following, he was made Viſcount *Wentworth*, and conſtituted Lord Lieutenant of *Ireland*. On the 12th of *January*, the Title of Baron *Raby* was conferred on him, being deſcended from the Family of *Nevil*, heretofore Lords of *Raby-Caſtle* (which was however at this Time the Inheritance of Sir *Henry Vane*, who expected the Title) and laſtly, he was created Earl of *Strafford*, and elected one of the Knights Companions of the moſt Noble Order of the Garter.

This Nobleman, according to a late excellent Writer, was a Perſon of extraordinary natural Parts, improved by Education and Buſineſs. He had a lively and penetrating Genius, and his Manner of delivering himſelf was clear and moving. He was, without Queſtion, an accompliſhed Stateſman; and as he was happy in the deſigning Part, ſo he wanted no Courage to go through and execute: And as for Loyalty and Affection to the King, no Man poſſeſſed that Quality in a higher Degree; neither was he only thus well furniſhed for the Publick Service, but his private Life was likewiſe regular and unblemiſh'd. He was undone by his Zeal for his Maſter, and the Weight of his Merit ſunk him. Had his Advice been taken, the *Scotiſh* Invaſion muſt in all likelihood have miſcarried. This made the *Covenanters* implacable, and never give over, till they had purſued him to the Scaffold. Had he been falſe or indifferent to the Crown, theſe few Irregularities of his Government would probably have been overlooked, and he might have lived to the End of his Conſtitution: But he was too great a Terror to Rebellion to be endured at that Juncture.

The Senſe of both Houſes of Parliament (in relation to this Proſecution) after the Reſtoration, when they were no longer under the Influence of a Rebellious Faction, is ſufficiently manifeſted from the Act that paſſed in the 14th Year of *Charles* II. *For Reverſing the Attainder of the Earl of* Strafford. This Act recites, That whereas *Thomas* Earl of *Strafford* was impeached of High-Treaſon, upon Pretence of endeavouring to ſubvert the Fundamental Laws, and called to a publick and ſolemn Arraignment, and Trial, before the Peers in Parliament, where he made a particular Defence to every Article objected againſt him; inſomuch, that the turbulent Party, then ſeeing no Hopes to effect their unjuſt Deſigns by any Ordinary way of Proceeding, did at laſt reſolve to attempt the Deſtruction and Attainder of the ſaid Earl, by an Act of Parliament, purpoſely made to condemn him for Accumulative Treaſon, none of the pretended Crimes being Treaſon apart, and ſo could not be in the whole, if they had been proved, as they were not; and alſo judged him guilty of Conſtructive Treaſon, that is of levying War againſt the King, though it was only the commanding an Order of the Council-Board in *Ireland* to be executed by a Serjeant at Arms and three or four Soldiers, which was the conſtant Practice of the Deputies there for a long Time: To which End, having firſt preſented a Bill to the Houſe of Commons, and finding there more Oppoſition than they expected, they cauſed a Multitude of tumultuous Perſons to come down to *Weſtminſter*, armed with Swords and Staves, and to fill both the *Palace-Yards*, and all the Approaches to both Houſes of Parliament, with Fury and Clamour, and to require *Juſtice*, *ſpeedy Juſtice*, againſt the Earl of *Strafford*: And having, by theſe and other undue Practices, obtained that Bill to paſs the Houſe of Commons, they cauſed the Names of thoſe reſolute Gentlemen, who, in a Caſe of innocent Blood, had freely diſcharged their Conſciences, being Nine and Fifty, to be poſted upon ſeveral Places about the Cities of *London* and *Weſtminſter*, and ſtiled them *STRAFFORDIANS*, and Enemies to their Country, hoping thereby to deliver them up to the Fury of the People, whom they had endeavoured to incenſe againſt them; and then procured the ſaid Bill to be ſent up to the Houſe of Peers, where it having ſome Time reſted, under great Deliberation; at laſt, at a Time when great Part of the Peers were abſent, by Reaſon of the Tumults, and many of thoſe who were preſent proteſted againſt it, the ſaid Bill paſſed in the Houſe of Peers, and at length his late Majeſty, King *Charles* I. granted a Commiſſion for giving his Royal Aſſent thereto, which nevertheleſs was done by his ſaid Majeſty, with exceeding great Sorrow then, and ever remembred by him with inexpreſſible Grief of Heart, and out of his Majeſty's great Piety he did publickly expreſs it, when his own Sacred Life was taken away by the moſt deteſtable Traytors that ever were:

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The Attainder of the Earl of Strafford *reverſed.*

For all which Cauſes, it was enacted, That the Act for the Attainder of the ſaid *Thomas* Earl of *Strafford* ſhould be reverſed, and all Records and Proceedings relating thereto, be cancelled and taken off the File, or otherwiſe defaced, to the End the ſame might never be brought into Example, to the Prejudice of any Perſon whatſoever.

This

1641. 17 Car. I. *Remarks on the Trial of the Earl of Strafford.*

This Act of Parliament is ſo juſt a Comment on the Proſecution of the Earl, and his Remarks ſo full and comprehenſive at the Hearing, that there remains ſcarce any Obſervations to be made on this Trial: I ſhall only juſt touch upon ſome Particulars therefore, and leave the reſt to the Reader's own Reflections, now he has ſeen the Caſe ſo thoroughly examined.

1. And firſt, it is evident that the Faction which accuſed the Earl of High-Treaſon were themſelves guilty of the moſt notorious and deſtructive Treaſons againſt their King and Country, in inviting the *Scots* to invade the Kingdom, and joining with them in the Ruin of the Conſtitution, both in Church and State; and the principal Inducement to this Proſecution, next to the ſaving their own Heads, which they had juſtly forfeited, was their Deſpair of ever ſubverting the Eſtabliſhment, and introducing *Presbytery*, and a Republican Form of Government, while this conſummate Stateſman guarded the Throne from their rude and inſolent Attacks.

2. As the Earl was the only Perſon that ever was taken out of the Hands of a Court of Juſtice, after a Trial, wherein he had made a full Defence to every Part of the Charge, and murdered by a Statute made on Purpoſe; ſo never any Tranſaction reflected more Diſhonour on the Peerage, than their being made Tools in this Manner, to the Malice and Revenge of a Faction, who had refuſed to ſubmit to their Judgment in a legal Way. 1641. 17 Car.

3. That all the Miſeries the King hoped to avoid, by ſubmitting to give the Royal Aſſent to this Act of Injuſtice, were probably brought upon himſelf, the Nation, and his Poſterity, by this very Compliance.

4. We may obſerve, that thoſe brave Men that had the Courage to reſiſt the Torrent of the Times, and were marked out, under the Name of *STRAFFORDIANS*, to be ſacrificed to popular Fury, notwithſtanding all the Practices and Artifice of the Faction, eſcaped their Rage, and have rendered their Memories Immortal, by the noble Oppoſition they made to that Act of Injuſtice.

5. That ſome of his beſt Actions, and ſuch as conduced moſt to the Welfare and Proſperity both of *England* and *Ireland*, were made part of the Charge of High-Treaſon againſt him; among which we may reckon his eſtabliſhing the Linnen-Manufacture in *Ireland*, from which both Nations reap ſuch Advantages at this Day, and for which he ought to have his Statue erected in the Capital of each Kingdom; but, as it has been juſtly obſerved already, his Merit was his greateſt Crime in the Eyes of the Saints.

1643. 19 Car. I. *Fiennes's Trial.*

The Trial of Colonel NATHANIEL FIENNES, for *Cowardice*, before a Council of War at St. *Albans*. 14 *Dec.* 1643. 19 *Car.* I.

1643. 19 Car. I.

THE Articles were exhibited, firſt to the Houſe of Commons, and then to the Council of War at St. *Albans*, where the Commons ordered the Trial to be, by *Clement Walker* and *William Prynn*, Eſqs; Members of the Lower Houſe, in the behalf of the Common-Wealth of *England*.

The Articles. 1. The firſt Article ſet forth, That the ſaid Colonel *Nathaniel Fiennes* did ſuddenly apprehend, impriſon and remove Colonel *Thomas Eſſex*, late Governor of the City and Caſtle of *Briſtol*, upon Pretence that he intended to deliver up the ſame into the Hands of the common Enemies of the Kingdom and Parliament; and that thereupon the ſaid Colonel *Fiennes*, obtained the Government of the ſaid City and Caſtle for himſelf, and undertook to defend the ſame againſt the ſaid Enemy, for the Uſe of the King and Parliament.

2. That ſoon after he became Governor of *Briſtol*, he did, by Martial Law, condemn and execute ſome of the principal Citizens, namely, *Yeomans*, *Bouchier* and others, only for *intending* to deliver up the ſame to Prince *Rupert*.

3. That he put the Parliament and Kingdom to great Expence in fortifying, garriſoning and furniſhing the ſaid City and Caſtle with Ammunition and Proviſions for three Months, and undertook to defend them for that Space, in caſe they ſhould be Beſieged.

4. That, notwithſtanding the Premiſſes, when the Enemy came before the ſaid City and Caſtle with a ſmall Force, and had not beſieged it three Days, he did, before they had taken any of the Works, erected a Battery, or aſſaulted the Walls, moſt diſhonourably, cowardly, and traiterouſly deliver up the ſaid City and Caſtle, with the Cannon, Ammunition, ſmall Arms, Proviſions, Colours, and all his Priſoners, againſt the Conſent of the Parliament and the General, into the Hands of Prince *Rupert*, and other Enemies of the Kingdom and Parliament, to the Loſs of moſt of the Weſtern Parts of *England*.

5. That he beat a Parley without the Privity or Conſent of any general Council of War; or when divers of his Officers and Soldiers adviſed and perſuaded the contrary, and could have defended the ſaid City and Caſtle.

The other five Articles were not very material, only the 7th charges him with an Intention to deliver up the Place to the Enemy before they beſieged it; and the 9th charges him with preſuming to juſtify this cowardly Surrender before the Houſe of Commons in Perſon, and before the whole Kingdom in printed Relations, wherein he endeavoured to diſgrace

1643. 19 Car. I.

disgrace both the honourable Houses of Parliament, and the Earl of *Essex*, their Lieutenant-General, by publishing that, if he had held out the said City and Castle to the last Extremity, he could not have expected any Relief from them in Eight Weeks.

The Answer of Col. Fiennes.

To the first Article *Fiennes* answered, That Colonel *Thomas Essex* was never Governor of *Bristol*, but only commanded a Regiment there, and that he apprehended him, and sent him to the General, by his Order; nor did he ever seek the Government of *Bristol*, but endeavoured to be freed from that Employment; and denies he ever undertook to defend the City and Castle: On the contrary he declared, that they were not tenable, in the Condition they were in; and that they must fall into the Hands of the Enemy, unless better Provision were made for their Defence.

2. To the second he says, That soon after his sending away Colonel *Essex*, he discovered and defeated a Conspiracy, between the Inhabitants of *Bristol*, and some of the Officers of *Essex*'s Regiment, to deliver up the City to Prince *Rupert*; and that by apprehending several of the Conspirators, he disappointed the Designs of the Enemy: That he afterwards called a Council of War, by a Commission from the General, where divers of the Conspirators were condemned, and afterwards executed; but the Execution was stayed till the General was acquainted with the Proceedings.

3. To the Third he answered, That by his own Industry, and unwearied Application, he had endeavoured to furnish the Town, and put it in a Posture of Defence, without troubling the Parliament, and had well nigh finished a Line, or Rampart of Earth, about the Town; but denied that he could raise a sufficient Garrison to defend the City against all the Power of the Enemy for three Months, or that he undertook to keep it so long, in Case it should be besieged.

4. To the Fourth, He denies that he delivered up *Bristol* against the Consent of the Parliament, or the General; or delivered it up traiterously, or cowardly, or contrary to his Trust; but says, he did defend the same to the utmost of his Power, and that he surrendered it upon honourable Terms, in respect to the State he was in: For that the Enemy had entered the Line, or Rampart, which was not finished; and, the City having no Wall on that Side, it was impossible to prevent their possessing themselves of the Place.

5. To the Fifth, That he did not parley with the Enemy, when he was dissuaded from it by his Officers; but, on the contrary, he was advised to the Treaty by far the major Part, if not by the unanimous Consent of the whole Council of War, and the Gentlemen present. 1643. 19 Car. I.

He denied that he had any Intention to deliver up the Town before it was besieged, as he is charged in the 7th Article; or that he said any Thing untruly in his Justification of the Surrender of *Bristol*, as he is charged in the 9th Article: But says, that it was with great Difficulty and Hazard he held out four Days, considering the Condition the Place was in.

Mr. *Prynne*, the Prosecutor, who was fond of hearing himself talk, and would hold forth everlastingly upon any Subject almost, has filled fifty or threescore Folio Pages, with his Speeches and wise Harrangues at this Trial; but I believe my Readers, who know the Character of the Man, will gladly excuse the Repetition of them, and think it sufficient, in such a Case as this, to take Notice, That the Council of War being of Opinion, that Colonel *Fiennes* had surrendered *Bristol* sooner, and upon more dishonourable Terms, than a brave Man ought to have done, passed the following Sentence, which their Clerk read to him out of a Paper, *in hæc verba*.

Sentence on Fiennes.

Colonel Nathaniel Fiennes, *you have been arraigned and convicted before this honourable Council, for surrendering and delivering up the Town and Castle of* Bristol, *with the Forts, Magazines, Arms, Ammunition, Victuals, and other Things thereunto belonging; and for not having held the same to the utmost Extremity, according as by your Duty you ought to have done; for which Offence this honourable Council hath adjudged you to be executed, according to the Articles of War, by having your Head cut off. God have Mercy on your Soul.*

Pardoned.

But, notwithstanding this Sentence, the Usurpers thought fit to pardon him; for no Man had shewn more Zeal in the House of Commons, for ruining both Church and State, than this Gentleman; though it appeared he had but a very moderate Share of Military Skill, or Bravery, when he took up Arms in Defence of the Good Old Cause. He was Son to the Lord *Say*, and seemed to inherit his Father's Malice to the Crown; for though he chose to go Abroad, to avoid the Reproach of Cowardice at Home, he remained as unshaken in his Rebellious Principles, after this Disgrace, as he was before, and never attempted to reconcile himself to his injured Sovereign.

1643. 19 Car. I. *Archbiſhop Laud's Trial.*

The Trial of the Moſt Reverend Father in God WILLIAM LAUD, Lord Archbiſhop of *Canterbury*, before a remnant of the Houſe of Lords; which began *March* 12, 1643. 19 *Car.* I.

1643. 19 Car. I.

Impeached of High-Treaſon. &c.

THE Commons impeached his Grace of High-Treaſon, and other High Crimes and Miſdemeanors, at the Bar of the Houſe of Lords, the 18th of *December*, 1640, deſiring he might be committed to ſafe Cuſtody; whereupon he was delivered to the *Black-Rod*, till the Commons ſhould proceed in their Impeachment; and on *Friday* the 26th of *February* following, fourteen general Articles were ſent up to the Lords againſt him.

Committed to the Black-Rod.

The Articles againſt him.

1. The firſt charged, That he had traiterouſly endeavoured to ſubvert the Laws, and introduce Arbitrary Government.

2. He had denied the Authority of Parliaments, eſtabliſhing an abſolute Power, not only in the King, but in himſelf and other Biſhops, above and againſt Law.

3. That by Threats and Promiſes to the Judges, he had perverted the Courſe of Juſtice, and deprived the King's Subjects of their Rights.

4. That in his own Courts he had ſold Juſtice, and taken Bribes.

5. That he had cauſed divers Canons to be made, contrary to the King's Prerogative, and the Laws; eſtabliſhed an unlawful Authority in himſelf, and Succeſſors; and endeavoured to confirm his exorbitant Power by a wicked Oath.

6. That he had aſſumed a papal and tyrannical Power.

7. That he endeavoured to ſubvert the true Religion, and introduce *Popiſh* Superſtition.

8. That he abuſed the Truſt his Majeſty repoſed in him, procuring the Nomination of Perſons to Eccleſiaſtical Preferments, which belonged to others, and preferring Perſons that were popiſhly affected.

9. That his own Chaplains, to whom he committed the licenſing of Books, were Popiſhly affected, which had occaſioned the publiſhing of divers ſuperſtitious Books.

10. That he endeavoured the reconciling the Churches of *England* and *Rome*, and countenanced the eſtabliſhing a Popiſh Hierarchy in the Kingdom.

11. That he had cauſed ſeveral Orthodox Miniſters to be ſilenced, and deprived, and many Loyal Subjects to forſake the Kingdom.

12. That he had abrogated the Privileges granted the *French* and *Dutch* Churches in this Kingdom, endeavouring to cauſe Diſcord between the Church of *England*, and other Reformed Churches.

13. That he had laboured to bring divers Popiſh Innovations into the Kingdom of *Scotland*, in order to create a War between the Kingdoms of *England* and *Scotland*, and adviſed his Majeſty to ſubdue the *Scots*, forcing the *Engliſh* Clergy to contribute to that War: That he had cenſured the Pacification as diſhonourable, and ſo inceniſed his Majeſty, that he entered into an Offenſive War with the *Scots*.

14. That, to prevent his being queſtioned for theſe traiterous Proceedings, he endeavoured to ſubvert the Rights of Parliament, and to cauſe Diviſions between his Majeſty and his People; for which they impeached him of High-Treaſon.

Committed to the Tower.

Two or three Days after the ſending up theſe Articles, his Grace was committed to the *Tower*, where he remained from the 29th of *Feb.* 1640-1, to the 24th of *Oct.* 1643, when he received Ten additional Articles, together with an Order from the Lords, to put in his Anſwer in writing before the 30th of the ſame Month.

Ten additional Articles ſent him above two Years after his Impriſonment.

1. The firſt additional Article charges, that in the 3d and 4th Year of the King, he cauſed the Parliament to be diſſolved, and aſperſed the Members, affirming they were factious *Puritans*, and commended the *Papiſts*.

2. That for ten Years paſt he had endeavoured to advance the Power of the Council-Table, the Canons of the Church, and the King's Prerogative, above the Laws.

3. That to advance the Eccleſiaſtical Power, he had hindred the granting Writs of Prohibition to the Eccleſiſtical Courts.

4. That a Judgment being given againſt one *Burley*, a Parſon, for Non-reſidency, he had ſtayed Execution by applying to the Judges, and ſaid, *He would never ſuffer a Judgment to paſs againſt a Clergyman*, by nihil dicit.

5. That he had cauſed Sir *John Corbet*, a Juſtice of Peace, to be impriſoned, for cauſing the Petition of Right to be read at the Seſſions of the Peace; and, during his Impriſonment, granted away part of the Glebe Lands of *Alderly*, belonging to the ſaid Sir *John*; had prevented the Execution of a Judgment, which Sir *John* had obtained, and procured him to be committed by the Council-Table, till he ſubmitted to their Order.

6. That divers Sums being given for purchaſing Impropriations, he had cauſed the ſame to be overthrown in the Court of *Exchequer*.

7. That he had harboured and relieved *Popiſh* Prieſts, who had traduced the 39 Articles.

8. That he had ſaid, A Blow muſt be given to the Church, before it could be brought to Conformity.

9. That in *May*, 1640, he cauſed the Convocation to be held, after the Diſſolution of the Parliament, where Canons were made, contrary to Law and the Privilege of Parliament, and a dangerous and illegal Oath formed, approving the Doctrine and Diſcipline of the Eſtabliſhed Church, and promiſing not to conſent

1643. 19 Car. I. consent to any Alteration in the Government of the Church by Archbiſhops, Biſhops, Deans, Archdeacons, &c. Which Oath he had taken himſelf, and cauſed other Miniſters to take; and impriſoned the Biſhop of *Glouceſter*, for refuſing to ſubſcribe the ſaid Canons, and take the Oath, till he ſubmitted.

10. That a Reſolution being taken at the Council-Table for aſſiſting the King by extraordinary Means, if the Parliament ſhould prove peeviſh, the Archbiſhop wickedly adviſed his Majeſty to diſſolve the Parliament in 1640, and it was thereupon diſſolved; and ſoon after he told his Majeſty, *That he was now abſolved from all Rules of Government, and at Liberty to uſe extraordinary Ways for a Supply.*

He petitions for Money out of his Eſtate,

Upon receipt of theſe Articles, and the aboveſaid Order from the Lords, his Grace petitioned he might be allowed ſomething out of his Eſtate, which they had ſeized and ſequeſtred, to bear the Charges of his Trial:

for his Papers, Counſel, &c.

That his Papers might be reſtored him, that he might be enabled to prepare for his Defence; and that he might have Counſel, a Sollicitor, and ſome Servants to attend his Buſineſs: And upon a ſecond Petition, Mr. *Dell*, his Grace's Secretary, was aſſigned him for a Sollicitor; Mr. *Hearne*, Mr. *Chute*, Mr. *Hales*, and Mr. *Gerard*, were aſſigned him for Counſel; but they would not allow him a Penny out of his Eſtate, *Glynn* telling them he might proceed in *forma pauperis*: However, they made him pay even for the Copies of his own Papers.

and that they would diſtinguiſh between the Treaſons and Miſdemeanors he was charged with.

His Grace petitioned the Lords alſo, That they would diſtinguiſh the Treaſon from the Miſdemeanors in the Articles; for the Crimes were ſo interwoven and connected in the Concluſion, that they might all refer to Treaſon, and conſequently his Council would not be permitted to give him any Advice in Matters of Fact; but neither the Lords nor Commons would make any Diſtinction, though Application was made to them reſpectively: However, the Lords were ſo gracious to give him further Time to put in his Anſwer, till the 13th of *November*, when his Grace appeared at their Lordſhips Bar, and put in his Anſwer in writing to the laſt Article, *viz. That he was not guilty in ſuch Manner and Form as the ſaid Articles of Impeachment charged.*

His Anſwer put in

But his Grace appearing at the Lord's Bar again, the 16th of *January*, 1643-4, It was obſerved, there was no Anſwer put in to the firſt Articles, or any Iſſue joined; and thereupon his Grace was ordered to put in his Anſwer to the Original Articles the 22d of *January*.

Then his Grace petitioned that his Anſwer to the laſt Articles might be taken off the File, and that they would diſtinguiſh between Treaſon and Miſdemeanors, that he might give a particular Anſwer to both; and that they would give his Counſel leave to ſpeak to the Generality and Uncertainty of the Articles, which they declared no Man living could prepare an Anſwer to, as the Caſe ſtood; but his Grace was not indulged in any of theſe Particulars, and therefore found himſelf under a Neceſſity of putting in the ſame general Anſwer he had done before (*viz.*) *That he was not guilty:* Only as to the 13th Original Article, and the reſt of them that related to *Scotland*, he pleaded the late Act of *Indemnity*. 1643-4. 19 Car. I.

He is brought to his Trial.

His Grace, having received an Order to prepare for his Trial the 12th of *March*, 1643-4, was brought to the Bar of the Houſe of Lords that Day; where he found a Committee of the Commons, conſiſting of Serjeant *Wilde*, Mr. *Brown*, Mr. *Maynard*, Mr. *Nicholas*, and Mr. *Hill*, appointed to manage the Evidence againſt him; and *Prynne* acted as their Solicitor, having *Grice* and *Beck* to aſſiſt him. His Grace alſo obſerves, that *Prynne*, during the Trial, kept an Office, where he inſtructed and tampered with the Witneſſes.

Firſt Day's Hearing.

Wilde opens the Impeachment.

Mr. Serjeant *Wilde* opened the Charge, by a moſt ſcandalous and virulent Invective againſt this great Prelate; wherein he ſays, If the Memory of all the pernicious Practices, which had been from Time to Time attempted againſt our Religion and Laws were loſt, here they would find them revived: That had the Faults of this Man been no other than thoſe of common Frailty and Inadvertency, they would gladly have thrown a Veil over them; but, being wilful, deſtructive, and comprehenſive of all Evils, the Sin would lie on their own Heads, if they did not call for Juſtice. That here was Treaſon in the higheſt Pitch and Altitude; even the betraying the whole Realm, and the Subverſion of the very Foundations. That theſe Crimes, of themſelves ſo heinous, were aggravated by the Quality of the Offender, who had been advanced to the moſt eminent Stations in Church and State, and was endowed with many great Gifts of Nature: But all theſe Advantages he had preverted to the Deſtruction of the Publick.

A General Calumny on the Clergy.

That Churchmen in all Ages, were the archeſt Seedsmen of Miſchief, and the principal Actors in all the great Diſtractions that had happened; and as they meddled with temporal Things, heterogeneal to their Calling, God was pleaſed to ſmite them with Blindneſs, and infatuate their Councils, of which this Prelate was an Inſtance; who, employing his Time in State Affairs, became *the Author of all the illegal and tyrannical Proceedings and Innovations in Religion and Government, and indeed, of all the Concuſſions and Deſtractions, that had happened in Church and State.*

And when by the Magnanimity of former Princes, and the Wiſdom of their Anceſtors, they had ſhaken off the Antichriſtian Yoke; and when they had ſeen ſuch bloody Maſſacres, Plots, and Proſecutions at Home and Abroad, in order to introduce it again: That this Man ſhould go about to reduce them to thoſe rotten Principles of Error and Darkneſs again: It could not be expected but the People ſhould be ready to ſtone him. He concluded, That though *Naaman* was a great Man, yet he was a Leper: And this Man's Leproſy had ſo infected all, that there remained no Cure, but the Sword of Juſtice; which they doubted not but their Lordſhips would apply, that the Commonwealth might live again and flouriſh.

His

1643-4. 19 Car. I.

The Arch-Biſhop permitted to reply to the Manager.

His Grace having obtained Leave to ſpeak in his Defence, ſaid,——— That it was a great Affliction to him to appear at this Bar as a Criminal, though he ſhould be acquitted; but he was not very ſolicitous about his Sentence, for he thanked God he had ſpent his Time ſo, that he was neither aſhamed to live, nor afraid to die; nor could the World be more weary of him, than he was of it: But if none of theſe Things whereof theſe Men accuſed him, merited Death by Law, though he might not in this Caſe appeal to *Cæſar*, yet he might, and did, to their Lordſhip's Juſtice; not doubting but God would protect his Innocence.

The Charge againſt him, he obſerved, was divided into two principal Heads, (*viz.*) His endeavouring to ſubvert the Laws, and, The Religion by thoſe Laws eſtabliſhed.

As to the Laws, he ſaid he had been a ſtrict Obſerver of them all his Life; and ſince he had any Share in the Adminiſtration, no Man had been more guided by them than himſelf, as the learned Counſel preſent, who had attended the Council-Table, could teſtify: Nay, he had ever held, that human Laws bind the Conſcience; and this Doctrine he conſtantly preached. That he looked upon an Endeavour to ſubvert the Law a greater Crime than to break any particular Law: And this they might obſerve was his Judgment, by the Book he wrote againſt *Fiſher*; out of which he read a Paſſage to this Purpoſe:

" As to Religion, he was born and bred " up in the Church of *England*, and by the " Bleſſing of God, and the Favour of his " Prince, grown up to the Years that were " then upon him, and to that Place of Pre- " ferment which he did yet bear; and in this " Church, by the Grace of God, he was re- " ſolved to die: That he had ever continued " ſteady to his Profeſſion and Principles, with- " out any Regard to worldly Views; though " if his Conſcience would have given him " Leave to ſhift his Tenets as Time and Oc- " caſion ſerved, he might have eaſily ſlid " through all the Difficulties of this Sort that " had preſſed him: That he had always en- " deavoured, that the publick Worſhip of " God, which was too much ſlighted, might " be preſerved, and that with as much De- " cency and Uniformity as might be: For he " was ſtill of Opinion, that Unity could not " long continue in the Church, without Uni- " formity. He ſaw that the Neglect of the " Publick Worſhip, and the Places dedicated " to that Service, had caſt a Damp upon the " true, and inward Worſhip of God; which, " while we live in the Body, needs external " Helps, and all little enough to keep it in " any Vigour: But, though he had endeavour- " ed to redreſs Things according to the Law " and Canons, he did not know he had ever " done it, but with the Conſent of the " People.

" That he was innocent, as well in Thought " as Practice, of any Deſign to alter Religion " and introduce Popery; and, if nothing but " Truth were ſpoken, he challenged what- " ever was between Heaven and Hell to ſay " their worſt againſt him, in Point of Reli- " gion, in which he ever hated Diſſimulation; " and though he might have procured his " Safety by it, he thought it no way became " a Chriſtian Biſhop to halt with God. 1643-4 19 Car I.

" Laſtly he ſaid, It was ſtrange, if he de- " ſigned to introduce Popery, he ſhould have " laboured ſo much to reduce thoſe who " were going, or had gone over to it; and " inſtanced in two and twenty Perſons, moſt " of them Men of Condition, whom he had " brought over to, or confirmed in the Pro- " teſtant Religion; and challenged any Cler- " gyman to give a better Proof of his Zeal to " the Eſtabliſhed Church; not doubting, but " he ſhould be able to anſwer, whatever " ſhould be more particularly objected a- " gainſt him.

The Archbiſhop being brought to the Bar again on the 13th of *March*, the Managers proceeded to make good the firſt and ſecond Original Articles; and the ſecond additional Article relating to the Subverſion of the Laws, introducing arbitrary Power, queſtioning the Authority of Parliaments, advancing the Power of the Council-Table, *&c.* *The ſecond Day The Managers proceed to make good the Articles againſt him.*

To prove this Part of the Charge, Mr. *Maynard* read the following Words out of his Grace's *Diary*, (*viz.*) the 5th of *December*, 1639. *The King declared his Reſolution for a Parliament, in caſe of the* Scotiſh *Rebellion: The firſt Movers of it were my Lord Deputy of* Ireland, *the Lord Marquiſs of* Hamilton, *and myſelf; and a Reſolution voted at the Board, to aſſiſt the King in extraordinary Ways, if the Parliament ſhould prove peeviſh and refuſe.* From whence it was urged, he had beſtowed the Epithet of *Peeviſh* on the Parliament; and that the Vote to aſſiſt the King by extraordinary Ways, proceeded from his Advice. The Evidence of Sir *Henry Vane*, the elder, alſo was inſiſted on; who depoſed, that his Grace ſaid to the King, after the riſing of the laſt Parliament, *Now he might uſe his Power.* *His Diary made Evidence againſt him.* *Sir Henry Vane.*

Alderman *Atkins* depoſed, that when he was brought before the Council about Ship-Money, none was ſo violent againſt him as his Grace.

It was objected to him, that he had aſſerted the King's Proclamations were of the ſame Force as a Statute; and, ſpeaking of the King's Power, he had ſaid, *Whoſoever falls upon it ſhall be broken; but upon whomſoever it falls, it ſhall grind him to Powder.*

And that, ſpeaking of an Act of Parliament, he ſaid, *That he ſaw nothing would down with them but Acts of Parliament: No Regard at all to the Canons of the Church; and that he would reſcind all Acts that were againſt the Canons; and hoped ſhortly, to ſee the Canons and the King's Prerogative of equal Force with an Act of Parliament.*

He was alſo charged with giving the King Subſidies in Convocation, without Conſent of Parliament; and with ſome other Matters of leſs Moment, to ſupport the three Articles above mentioned.

To this his Grace anſwered, That he believed the Word *Peeviſh* had been put into his *Diary*, ſince it was taken from him; and if not, he thought it was not impoſſible, that a Parliament ſhould prove Peeviſh. *His Defence to the Charge of the ſecond Day.*

Third and fourth Day's Trial.

That

1643-4. 19 Car. I. That it was not ſaid in his Diary, that the Vote *to aſſiſt the King by extraordinary Ways*, was his Advice, but that there was ſuch a General Vote of the Council; and beſides, this appeared by the ſame Diary, to be for the *Scotiſh* Buſineſs, which was within the Act of Oblivion.

That he never ſaid, *The King might uſe his Power*, or any other Words to that Effect; and if he had, they were not Treaſon; and if they were, there was but one Witneſs of them, and the Law required two in Treaſon: However this alſo related to *Scotland*, and was therefore within the Act of Oblivion.

That as to his preſſing the Payment of Ship-Money, this was after the Judges had given their Opinions of the Legality of it; and beſides, it was the Act of the whole Council, and could not be aſcribed to him in Particular; and it was ſtrange this ſhould be accounted High-Treaſon in him, and not in the reſt. As to the Words, *Whoever falls on that Stone ſhall be broken*, &c. Two of the Witneſſes were Soap-Boilers and Parties, and were ſentenced by the *Star-Chamber* for their Contempt: That the Words were ſaid to be ſpoken above twelve Years ſince, and he believed none of the Managers could think him ſo weak to have ſaid them: However, they were not Treaſon, and he was not anſwerable for every Thing the *Star-Chamber* had done. As to his ſaying, *Nothing would down with them but Acts of Parliament*, &c. this was proved but by a ſingle Witneſs, who was a Party; and though a great Regard ought to be had to Acts of Parliament, yet ſome ought to be paid to the Canons. And as to the giving the Subſidies in Convocation, it was the Act of that whole Body; and the Grant was no other, nor in other manner, than had been granted to Queen *Elizabeth*; and that the Clergy ever had a Power of granting Subſidies.

This Days Hearing being over, his Grace was ordered to appear again on *Saturday* the 16th of *March*, and a Note given him by the Committee, that they intended to proceed next on Part of the ſecond Additional Article, the third Original Article, and the third and fifth Additional Articles, which related to The Advancing the Power of the Council-Table, The Eccleſiaſtical Juriſdiction, &c. But the Hearing was put off to *Monday* the 18th of *March*, when his Grace being brought to the Bar of the Houſe of Lords again, he was charged with cauſing ſeveral Houſes about St. *Paul*'s, to be demoliſhed; to prove which, his Diary was produced; wherein he expreſſes a Deſign of getting that antient Fabrick repaired: Then three Orders of Council were produced, for compounding with the Tenants, and pulling down their Houſes if they refuſed to compound.

Third and fourth Day's Trial.

It was further objected, That his Hand was to another Order of Council, for the Goldſmiths to provide themſelves with Houſes in *Cheapſide* and *Lombard-Street*: And one *Burtley*, a *Stationer*, who had been put out of his Houſe to make Room for the Goldſmiths, was produced as an Evidence againſt him.

He was charged alſo with forcing People to lend Money for the Repairing of St. *Paul*'s, and with the Impriſonment of one *Vaſſal* by the Council-Board; who *conceived* his Grace to be the Author of it. The Impriſonment of Sir *John Corbet* by the Council-Board, was alſo imputed to him. His projecting to give the Miniſters of *London* ſome Aſſiſtance as to their Tythes, was urged as another Offence, and his Diary produced as an Evidence of it. 1643-4. 19 Car. I.

The Impriſoning *Burton*, *Prynne*, and *Baſtwick*, alſo was laid to his Charge; and particularly the cenſuring *Prynne* for Libelling: And laſtly, he was charged with being inſtrumental in removing two Brew-Houſes, that were a Nuſance to the Palace of St. *James*'s.

His Defence to the Charge of the 3d and 4th Day.

To the third and fourth Day's Charge his Grace anſwered, That when he came to the Biſhoprick of *London*, he thought himſelf obliged to endeavour the Repair of St. *Paul*'s, which was then ready to ſink into its Ruins, and eſpecially the Body of it; which, by the Local Statutes, the Biſhop was to repair while he enjoyed the Lands that belonged to the Church; and which very well enabled him to do ſo, till ſome ſacrilegious Hands deſpoiled that Biſhoprick of them: And as to the demoliſhing the Houſes that were built upon the Church-Yard, they ſtood ſo near the Church, that the Repairing of it was impracticable, till they were pulled down; and therefore eight or nine thouſand Pounds had been raiſed to compound with the Inhabitants, for taking down thoſe Houſes, though they had no Right to ſtand there: That he could not be charged with miſapplying any of the Money that had been raiſed for the Repairs; and he had indeed contributed twelve hundred Pounds out of his own Pocket towards the Work; nor had he done any thing in Relation to theſe Repairs, without the Approbation and Order of his Majeſty, or the Lords of the Council; and therefore this ought not to be imputed to him in Particular.

As to obliging the Goldſmiths to keep their Shops in *Lombard-Street* and *Cheapſide*, this alſo was done by Order of Council, and not to be aſcribed to him; and was however very far from High-Treaſon: And for his ſaying in this Caſe, That the Council-Board was not ſo weak, but it might command ſuch Things, he does not remember he ſaid ſo then; but he thought the Council-Table muſt be very weak indeed, if it could not command in things of Decency.

His forcing People to lend Money for the Repair of St. *Paul*'s, he had no Occaſion to ſpeak to, becauſe they did not attempt to prove it.

As to the Impriſonment of Mr. *Vaſſal*, that was alſo an Act of the Council-Board; and *Vaſſal*'s ſaying, He *conceived* his Grace to be the Occaſion of it, was no Proof of it.

The Impriſonment of Sir *John Corbet* alſo was the Act of the Council-Board.

And as to his contriving ſome Support for the *London* Miniſters, he ſhould have been to blame if he had not, when he was their Biſhop; and their Caſe was indeed very hard,

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all their Dues being ſhrunk into a poor *Eaſter* Book; and all that he had done in this Buſineſs was, to ſollicit the Citizens voluntarily to yeild ſome reaſonable Addition, where Right and Neceſſity appeared.

And as to the Cenſure of *Prynne*, that was the Act of the Court of Star-Chamber, and he did not ſo much as give his Vote for that Cenſure.

The Complaint of removing the Brew-Houſes, was very frivilous, conſiſting of ſome little Stories, that ſcarce deſerved mentioning in this Proſecution; or elſe they were of ſome Order of the Council-Board, that could not be charged on him in Particular: And if the Whole had been true, it was but Treaſon againſt a Brew-Houſe. Laſtly, his Grace deſired their Lordſhips to obſerve, That this Day there had been no leſs than thirteen Witneſſes examined againſt him in their own Cauſes; and although many Things had been urged, that concerned the Star-Chamber and Council-Table, the Act for taking away the one, and regulating the other, had no Reſpect to what was paſſed; and yet here Things that were paſſed, and were the joint Acts of the Council or Star-Chamber, and not his, were urged as treaſonable: Whereas the Proviſion made by the late Statute, againſt thoſe who ſhould offend for the future, only made ſuch Offences Miſdemeanors.

5th Day.

His Grace being brought before the Lords again on *Friday* the 22d of *March*, it was repreſented by the Committee, That Mr. *Newcommen* of *Colcheſter*, refuſed to adminiſter the Sacrament any where but at the Rails; that *Burroughs*, *the Witneſs*, indicting him for it, his Bill was thrown out, and he was afterwards called before the High-Commiſſion Court for it, by a Warrant from his Grace; that the Mayor would not obey a *habeas corpus*, but ſaid he would obey his Grace's Warrant, before the King's Writ; and that a Letter was ſent to Judge *Crawley*, and ſhewed to Judge *Hutton*.

One *Aſk* depoſed, That his Grace protected ſome Players, that were found at a Tavern at an unſeaſonable Time of Night: That there was a Plot to make the Deponent an Inſtrument, about receiving the Sacrament at the Rails: That Letters Miſſive were ſent him by the High Commiſſion, and that applying to his Grace, he told the Deponent, If he was ſo ſtrict againſt Churchmen, he muſt expect to be dealt with as ſtrictly by the High Commiſſion; and that the Deponent went to *Holland*, to avoid the Oath *ex officio*.

He was charged alſo with the Cenſure of the Inhabitants of *Beckington* in *Somerſetſhire*, for refuſing to place the Communion-Table at the upper End of the Church, North and South, according to the Biſhop's Order; which was ſaid to be an Innovation.

Grafton, a *Browniſt*, alſo depoſed, That he was impriſoned twelve Years ago, and fined 50 *l.* and believed he might have been ſet at Liberty ſooner, if it had not been for the Archbiſhop.

The Excommunication of one *Adams*, was aſcribed to his Grace; who had written over the Place where the Commiſſaries Court was kept in the Church, *My Houſe ſhall be called the Houſe of Prayer, but ye have made it a Den of Thieves.*

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He was charged alſo with complaining to the King of Mr. *Bagſhaw*, the Reader of the *Middle-Temple*, and threatening to proſecute him in the High-Commiſſion Court, for aſſerting, *That a Parliament might be held without Biſhops; and that Biſhops might not meddle in Civil Affairs.*

And the laſt Charge of this Day was, that he had cauſed Chief Juſtice *Richardſon* to be checked, for putting down Wakes, and his Orders to be reverſed.

His Defence to the Charge of the 5th Day.

To this Part of the Charge his Grace anſwered, That it was not proved Mr. *Newcommen* had any Directions from him for refuſing the Sacrament, but at the Rails: That *Burroughs* was taken up by a Warrant from the High Commiſſion; and that if the Mayor had ſpoken indiſcreet Words, he was not anſwerable for them.

That his Grace knew nothing of any Players, as Mr. *Aſk* depoſed: That the Letters Miſſive were the Act of the High Commiſſion, and could not be charged on him. That the Oath *ex officio* was the legal way of proceeding in that Court; and he could not help the tendering it to *Aſk*, who was a *Separatiſt*, and knowing himſelf guilty, durſt not appear.

As to placing the Communion-Table of *Beckington*, at the upper End of the Chancel, North and South, this was no Innovation; Queen *Elizabeth* having placed it ſo in her own Chapel; and that if the Church-Wardens were excommunicated for their Contempt, in not obeying their own Biſhop, this was none of his Act.

That *Grafton*, the *Browniſt*, was fined and impriſoned by the High-Commiſſion Court, and he was not then a Commiſſioner, nor was there any Proof of his being detained in Priſon by his Grace's Means.

That the Excommunication of *Adams* was no Act of his; but he thought he well deſerved to be excommunicated: And he acknowledged he did complain of *Bagſhaw*, and ſhould have been to blame if he had not, as the Conſtitution then was; and if he did tell him he ſhould anſwer it in the High-Commiſſion Court, This was no Treaſon.

And laſtly, It was the Lord-Keeper *Coventry* that commanded the Chief Juſtice's Order about Wakes to be revoked, which not being complied with, there was an Order of Council for the Chief Juſtice's revoking it; but this could not affect the Archbiſhop, who was of Opinion however, That, though theſe Wakes and Feaſts of Dedication were ſometimes abuſed, this was not a ſufficient Reaſon for taking them away.

6th Day.

Thus ended the 5th Day's Hearing, and his Grace being brought to the Bar again, on *Thurſday* the 28th of *March*, was charged with the Cenſure, Deprivation, and Impriſonment of Mr. *Huntley*, a Clergyman, and telling his Attorney he deſerved to be laid by the Heels.

That his Grace threatened and impriſoned thoſe who brought Prohibitions; and when *Prynne* brought a Prohibition, he ſaid that he would lay him by the Heels that brought the next:

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next: That he wondered who durſt grant Prohibitions, the High-Commiſſion Court being above all.

The next Charge was that of Bribery, and his obliging Sir *Edward Greſham* to give half the Penalty of a Bond of 200 *l.* which the Court aſſigned him, to the Repair of St. *Paul*'s. That the *Cheſter* Men being fined 1000 *l.* for feaſting of *Prynne*, his Grace, for a Bribe of two Hogſheads of Sack, procured the Fine to be leſſened to 200 *l.* And his Secretary received 150 *l.* to get his Hand to a Petition to the Lord Keeper.

That he made uſe of the Name of St. *Paul*'s to procure himſelf Money illegally, and that he had illegally applied the Money given to the Repair of St. *Paul*'s.

His Defence to the Charge of the 6th Day.

To this Charge of the 6th Day his Grace anſwered, That what had been done againſt *Huntley*, was done by the High Commiſſion, and that this Proſecution was in Archbiſhop *Abbot*'s Time: That his Attorney deſerved to be committed, for his contemptuous Behaviour, and was committed by the Lords of the Council for it. And here his Grace took leave to remind their Lordſhips, that there had been nothing tranſacted at the Council-Table, the Star-Chamber, or High Commiſſion, but ſuch Cauſes as had been determined there in the Reigns of Queen *Elizabeth* and King *James*; and that no Man had been ſo much as accuſed of a Miſdemeanor for what had been done there hitherto, much leſs of High-Treaſon.

He ſaid he thought it no Offence to complain to the King, who was the Fountain of Juſtice in both Courts, when Prohibitions were unjuſtly granted: And if he threatned to lay him by the Heels that brought the next, it was but a haſty Expreſſion, and not done; nor had any Perſons been committed for bringing Prohibitions, though they might ſometimes for their contemptuous Behaviour: There had been as many Prohibitions allowed in his ſeven Years, as in any ſeven Years of his Predeceſſors: That there was a great Difference between Prohibitions now, and in the Times before the Reformation; for then they were granted to reſtrain a foreign Juriſdiction, but now they were both the King's Courts, and there could not be that Reaſon for them as formerly: However, all that he had done was to endeavour that ſome Bounds might be ſet to each Court, that the Subject might not, to his great Trouble and Expence, be hurried from one Court to another; and took Notice, that Archbiſhop *Parker*, in the Beginning of the Reformation, had ſhewn that great Wrong was done to the Eccleſiaſtical Juriſdiction by Prohibitions.

As to the Corruption he was charged with, in the Caſe of Sir *Edward Greſham*'s Son, who married againſt his Conſent: That he had voted for greater Damages to Sir *Edward*, but it was given againſt him: That the Bond mentioned was entirely in his Grace's Power, and he might have applied the whole to charitable Uſes, and therefore there was no Colour to charge him with Corruption in that Matter: That indeed he did get the *Cheſter* Men's Fine abated from 1000 *l.* to 200 *l.* and that afterwards Mr. *Stone* did ſend him two Hogſheads of Sack, which he was very unwillingly prevailed on by Mr. *Wheat* (Mr. *Stone*'s Son-in-Law) to receive as a Teſtimony of their Gratitude, and this Mr. *Wheat* atteſted in Court.

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As to his Secretary's receiving 150 *l.* he ſaid he muſt anſwer for it, who thereupon called a Witneſs, and very handſomely cleared himſelf of the Aſperſion.

He denied his raiſing Money illegally for St. *Paul*'s; but ſaid his Majeſty had given him the Fines of the High Commiſſion towards thoſe Repairs; and that it was as lawful to commute in that Court as another; and it had been the Practice to commute, where the Offenders were Men of Quality.

Laſtly, as to his having illegally applied the Money given for the Repair of St. *Paul*'s, this he ſhewed to be entirely a Miſtake. After which his Grace was ordered to appear again, the 4th of *April*, and received a Note from the Committee, that they intended to proceed on the 5th and 6th Original Articles, and on the 9th Additional Articles, which charge his making Canons contrary to the King's Prerogative, and the Laws, and eſtabliſhing in himſelf and his Succeſſors an unlawful Authority: With his aſſuming a papal and tyrannical Power, in Matters Eccleſiaſtical and Temporal, denying his Eccleſiaſtical Power to be derived from the Crown, and framing an unlawful Oath.

7th Day.

His Grace being brought to the Bar again the 16th of *April*, was charged with the making Canons in Convocation, after the Parliament was diſſolved, *&c.* And to prove he had aſſumed Papal Power, ſome Letters from the Univerſity of *Oxford* were produced, wherein his Grace is ſtiled, *Sanctitas tua*, and *Spiritu ſancto effuſiſſime plenus*, *Summus Pontifex*, &c. That he had ſaid, *The Clergy were now debaſed; that heretofore it was otherwiſe, and he hoped to ſee it ſo again.* And laſtly, that he brought Sir *Richard Samuel* into the High Commiſſion, for doing his Office of Juſtice of Peace upon ſome Clergymen; and that one of the Articles againſt him was, *His being an Enemy to the Clergy.*

His Defence to the Charge of the 7th Day.

To this his Grace anſwered, That the Convocation might legally ſit after the Diſſolution of the Parliament, being called by a different Writ from that which called the Biſhops to Parliament, nor could they riſe 'till his Majeſty ſent another Writ to diſcharge them: That it was not at the Deſire of his Grace they continued ſitting; however, the Judges had given their Opinions they might legally ſit: That as to the Biſhop of *Glouceſter*'s being committed for refuſing the Oath, it was done by an Order of Council; and the principal Obſtacle to his ſubſcribing, was the Canon made againſt the Growth of Popery: And a to the Oath, the Canons in King *James*'s Time had enjoined ſeveral Oaths to be taken by Church-Wardens, and others, and yet neither thoſe Canons, or Oaths, had ever been declared illegal by any enſuing Parliament, or the Makers of them accuſed of any Crime, much leſs Treaſon; and his Grace was about to ſhew that there was nothing in theſe laſt Canons contrary to Law: But their Lordſhips would not ſuffer him to contradict what both

Houſes

1644. 19 Car. I. Houſes had voted; to which his Grace replied, That he conceived the Lords were as much concerned in Honour, as he was in Point of Safety, that no Charge ſhould be brought againſt him which he ſhould not be at Liberty to anſwer; and inſiſted, that theſe Canons, being made in full Convocation, could not be aſcribed to him in particular, whatever Conſtruction was put upon them.

As to his aſſuming Papal Power, and the Proof that was brought of it, The Univerſity of *Oxford*'s giving him the Papal Titles, he ſaid, the Title *Sanctitas tua* was not appropriated to the Pope, but frequently given to other Biſhops, both *Greek* and *Latin*; and as to the Stile of *Summus Pontifex*, this was no unuſual Stile of the chief Prelate of any Nation; and that theſe Titles were given him by others, who muſt be anſwerable for them; they were never aſſumed by him: Beſides, he thought it one Thing to aſſume a *Papal Title*, and another to aſſume *Papal Power*.

He did not remember he had ever ſaid, he hoped to ſee the Clergy exempted from the Civil Magiſtrate; but if he had, he could only mean it of an Exemption from Oppreſſion: He might ſay indeed, *That the Clergy were now debaſed; that heretofore it was otherwiſe, and he hoped to ſee it ſo again; and he thought there was no great Hurt in that.* He was alſo charged, he obſerved, with procuring ſome Clergymen to be made Juſtices of Peace, and with recommending Biſhop *Juxon* to be Lord Treaſurer; but he did not apprehend there was any Crime in this, much leſs High-Treaſon, as he aimed at the Service of the King, and the Good of the Church in it.

As to his proſecuting Sir *Richard Samuel*, for doing his Office of Juſtice of Peace on ſome Clergymen, he obſerved this was proved only by Sir *Richard*, who was a Witneſs in his own Cauſe; and beſides, the Proſecution was by the High Commiſſion, or the Council-Table, and ſo not chargeable on his Grace; and it did appear he oppreſſed the poor Clergymen, his Neighbours, which was not a genteel Part of a Man in Power.

This Day's Hearing being over, the Archbiſhop was ordered to attend again, the 22d of *April*, which he did, but was ſent back, and nothing done any more, than on the 25th and 30th of *April*, when he attended likewiſe, at the Expence of ſeven or eight Pounds a Day.

8th Day. On *Saturday*, *May* the 4th, his Grace was brought to the Bar again, when Mr. *Nicholas*, the Manager, again reproached him with the high Titles he had ſuffered the Univerſity of *Oxford*, and others, to confer upon him, and then proceeded to enforce that Part of the Charge, in Relation to his endeavouring to exempt the Clergy from the Civil Power; for Proof whereof they cited Part of a Speech of his Grace's in the *Star-Chamber*, wherein he adviſes them to take Care not to cauſe the Laws of the Church, and the Kingdom, to claſh: Another Proof was a Suggeſtion that he cauſed ſome Juſtices of the Peace to be ſummoned before the High-Commiſſion, for keeping their Seſſions at *Tewksbury* in a Part of the Church; and as a further Evidence of this Charge, they ſaid, When the Mayor of *Oxford* had ſet the Watch, they were diſturbed by the Proctors, and a Conſtable impriſoned, and that his Grace refuſed to refer the Matter: That he had alſo formed a Project to aboliſh all Impropriations: That he had introduced ſeveral new and exorbitant Clauſes into the High Commiſſion: And laſtly, That he had illegally extorted a Patent from the King, for the Fines in the High Commiſſion, towards repairing St. *Paul*'s. 1644. 19 Car. I.

To this his Grace anſwered, That he did not think it amiſs to adviſe that the Laws of the Church, and the State, ſhould not claſh; which might well ſtand together, if ſome did not ſet them at odds; and as for the Juſtices of Peace being called before the High Commiſſion, for keeping their Seſſions in a Church, he thought it a great Profanation; though Men in this Age were grown ſo bold with Churches, as if the Profanation of them was no Fault at all: However, there was no Proof of his cauſing this Proſecution. *His Defence to the Charge of the 8th Day.*

That as to the *Oxford* Watch, It was an antient Privilege of that Univerſity; but being lately diſputed by the Townſmen, they applied to his Grace, as their Chancellor, and he did agree to refer it to the Judge of the Circuit; but his Troubles coming on, they refuſed to ſtand to the Award, and would have had another Reference: As to his Project of buying in Impropriations, or prevailing with his Majeſty to give ſuch as were in his Power, to the Support of the Church of *Ireland*, and which were daily begged by private Perſons; This he did not think needed a Defence, any more than his propoſing to ſettle ſome fixed *Commendams* on the ſmaller Biſhopricks, which was made another Article againſt him.

As to the Clauſes that were ſaid to be added in the High Commiſſion, his Grace ſhewed, that they were in the former Commiſſion; and whatever Power that Court exerciſed, it was not aſſumed, but granted by his Majeſty; and though the Manager had compared his Grace to Pope *Boniface* VIII. as if he took on him the Power of both Swords, the Caſe was widely different; for that the Pope claimed them as originally due to him, and theſe Commiſſioners under the Prince, and by his Authority.

And laſtly, as to his having illegally extorted a Patent from the King, for the Fines in the High Commiſſion, his Majeſty's Piety was ſo forward in that Matter, that nothing need be extorted from him: And his Grace ſhould always look upon his Endeavours to have St. *Paul*'s repaired, as honeſt and honourable; neither could any Man, after the ſtricteſt Search, charge him with miſapplying a Penny of the Money.

This Hearing being ended, he was ordered to appear again the 9th, and then the 13th of *May*, both which Days he attended, and ſtood expoſed to the Scorn and Laughter of the Mob, and was at length diſmiſſed unheard, though not without a conſiderable Expence.

His Grace being brought to the Bar again, 9th Day. the 16th of *May*, was charged with preſenting a blind Man to a Living of Sir *Arthur Haſlerigs*, which was an Impropriation, and a Lay Fee, and with ſaying, If he lived, no Man ſhould ſtand upon his Lay Fee: That he had

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had illegally deprived one *Fautrye* for Simony, the High Commiſſion having no Power over Freeholds: That he had altered the Statutes of the Univerſity of *Oxford*, taking upon himſelf to be an Univerſal Law-giver: That he had illegally made new Statutes for Cathedral Churches; and ordered that nothing ſhould be done on thoſe Statutes, without adviſing with him. His Injunctions for the Viſitation of *Winton* alſo were complained of, requiring the pulling down ſeveral Houſes that were upon conſecrated Ground; and his Intention of viſiting the two Univerſities: Then he was charged with the Cenſure of *Baſtwick*, for a Book he wrote againſt Biſhops; and with ſaying, *That Chriſtian Biſhops, were before Chriſtian Kings.*

His Defence to the Charge of the 9th Day.

His Grace anſwered, That the Living he preſented to, (ſaid to be Sir *Arthur Haſelrig*'s) was not a Lay Fee; and his Words were, *That no Man ſhould make a Preſentative Benefice a Lay Fee*: That *Fautrye* was legally cenſured and deprived by the High Commiſſion, which had a Power of Deprivation, by the expreſs Words of the 1 *Eliz. cap.* 1. That as to the Statutes of the Univerſity of *Oxford*, they lay in a miſerable Confuſion; and it was the great Neceſſity of it that put him upon that Work; neither had he done any Thing in it, but by the Conſent of the Univerſity; and thought, he deſerved rather the Thanks of the Publick, than to be proſecuted for it: That there were no illegal Innovations introduced, as had been ſuggeſted, nothing but what had been put in Practice, and approved before his Time: That theſe Statutes were confirmed by the Broad Seal, made by the King's Power, and not by any Papal Power he had aſſumed, as was urged againſt him. That the Statutes of ſome Cathedral Churches alſo required great Alteration; and there was Reaſon he ſhould be conſulted about them, as his Majeſty had entruſted his Grace chiefly with that Matter, and expected an Account from him. That the Houſes ordered to be demoliſhed at *Winton*, were new erections upon conſecrated Ground, and were not to be taken down, till the Leaſes were expired; and this was to be done according to the Statutes of the Kingdom, and not otherwiſe.

As to his Intention of viſiting the Univerſities, it would not have been unlawful, as he had the King's Warrant for it; and it appeared, that three of his Predeceſſors did actually viſit the Univerſities.

That Mr. *Baſtwick* was cenſured by the High Commiſſion, which could not affect him in Particular; and that no body doubted, but Chriſtian Biſhops were before Chriſtian Kings: And whereas he was charged with ſaying, *No Biſhop, no King*; that was an Expreſſion of King *James*'s: And though he had affirmed, the Order and Calling of a Biſhop, to be from God and Chriſt, and by Apoſtolical Right; yet he held this Juriſdiction might not be exerciſed, but by the Leave and Power of the King, within whoſe Dominions they were.

th Day. His Grace attending again the 20th of *May*, the Committee proceeded on the 6th and 7th

Original Articles; which charge, That his Grace *had traiterouſly endeavoured to alter, and ſubvert God's true Religion*; which they endeavoured to prove by ſome Alterations he had made in his Chapel at *Lambeth*; as his turning the Table North and South, repairing the Windows with coloured Glaſs, and imitating the Pictures in the Maſs Book; that he uſed Bowings at his coming into the Chapel, and going up to the Altar; and the Organs, Candleſticks, the Hiſtory Piece at the Back of the Altar, and the wearing Copes at Communions and Conſecrations, were brought in, to ſupport the Charge. Another Inſtance produced, to ſhew his Intentions of altering Religion, was, his conſecrating the Communion Plate. A Bible that was found in his Study, with the five Wounds of our Saviour wrought on the Cover; a Miſſal, and other Books relating to the Popiſh Liturgy, and his own Prayer-Book, where the Times of Prayer were appointed at Canonical Hours, were held to be ſufficient Evidence of his Deſign to introduce Popery. The Pictures of the Fathers in the Gallery, and a Dove over one of them, (which they ſaid ſtood for the Holy Ghoſt) and an *ecce homo*, or *Pilate* bringing forth Chriſt, were all looked upon as Proofs of his Popery.

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His Defence to the Charge of the 10th Day.

His Grace anſwered, as to the Alterations in his Chapel, that it lay before in a very indecent Manner; that he had ſet the Table North and South, according to Queen *Elizabeth*'s Injunctions, and they were guilty of Innovations who ſet it otherwiſe; that the Windows were miſerably patched; and he did, by the Aſſiſtance of his Secretary, diſcover the Story by what remained, and got them repaired, but not by the Miſſal, as was ſuggeſted; they contained the whole Story from the Creation, to the Day of Judgment; and he did not believe this was in the Miſſal: And even *Calvin* was of Opinion, that Pictures and Images might be of Uſe to inſtruct the People; and that both in King *Edward*'s and Queen *Elizabeth*'s Reign, ſuch Pictures were allowed; that Bowings alſo were uſual in Queen *Elizabeth*'s Time, and if he muſt bow to Men, in either Houſe of Parliament, muſt he not bow and worſhip God in his own Houſe, though there were neither Altar or Communion-Table in it? That Organs, *&c.* were in the Royal Chapels in the laſt Reigns; and that in all Ages of the Church, the conſecrating the ſacred Veſſels, as well as Churches, had been uſed. And if there can be no Dedication of theſe Things to God, no Separation of them from common Uſes, then neither the Things or Place were Holy; and there would be no ſuch Thing as Sacriledge, no Difference between a Church and a common Houſe, between holy Tables and ordinary Tables: That St. *Paul*'s Queſtion puts the Matter Home, if they would conſider it, *Thou which abhorreſt Idols, doſt thou commit Sacriledge?* Thou who abhorreſt Idols to the very defacing of Church Windows, doſt thou of all others commit Sacriledge, which the very Worſhippers of Idols puniſh? As to his Prayer of Dedication, this was not taken from the Miſſal, but from one uſed by Biſhop *Andrews*. The

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Bible mentioned, was a preſent from a Proteſtant Lady, and never ſeen out of his Study, by any who might be offended at it: That he had alſo a Miſſal and other Popiſh Books, but more of the *Greek* Liturgies than the *Roman*; and he did not know how he ſhould anſwer their Errors, if he might not have them. That he had alſo the *Alcoran* in divers Copies, and they might by the ſame Rule, conclude him a *Mahometan*. And as to their expoſing his private Prayers, he thought this was not to be paralleled in any Heathen Nation. If he had enjoined, himſelf, his Prayers, at Canonical Hours, he hoped there was no Sin in it; and if his Prayer at the Conſecration of *Hammerſmith* Chapel might be read, no Offence could be taken at it. If he had been ſo addicted to Popery as they ſuggeſted, It was a wonder the diligent Mr. *Prynne* had found no Prayers to the Bleſſed Virgin, and the Saints, among his Papers.

That as to the Dove, repreſenting the Holy Ghoſt, this was more than the Witneſs could depoſe; and as to that and the *ecce homo* he anſwered out of *Calvin*, That it was lawful to make a Picture of any Thing that might be ſeen. And laſtly, theſe Pictures had remained in the Gallery, ever ſince the Reign of Queen *Mary*; nor had any of his Predeceſſors, during the Time of Queen *Elizabeth*, or King *James*, thought fit to remove them. And as to the Bowings he was reproached with, he was ſorry any Reverence in God's Houſe could be thought too much; but it was the Devil's Cunning, when he ſaw Superſtition thrown out of the Church, to bring in Irreverence and Prophaneſs. As to the Crucifix in the Altar-piece, there had been one in the old Hangings for thirty Years before, which had never given Offence.

After this Hearing was ended, his Grace was ordered to attend another Day, when nothing was done; but he was ſo fortunate, at laſt, to get an Order to the Committee of Sequeſtrations, to receive 200*l.* out of his own Eſtate; which was all they ſuffered him to take out of the Profits, in the two Years it was under Sequeſtration.

11th Day. At another Hearing on *May* the 27th, they renewed their Charge againſt the Windows in *Lambeth* Chapel; particularly they obſerved, that there was a Picture of God the Father in them; and *Prynne* depoſed, that his Grace had a Book of Pictures, containing the Hiſtory of our Saviour. They alſo urged, that the Ceremonies uſed at the Coronation were ſuperſtitious; and that he had taken upon him to alter the Coronation Oath. That his Grace ſuffered the Picture of the Bleſſed Virgin, to be painted on the Church Door of St. *Mary*'s in *Oxford*; and that Copes, Bowings, Pictures, and Candleſticks, were uſed at *Oxford*, and in ſeveral Pariſh Churches, and the Communion-Table placed Altar-wiſe; which they held to be ſufficient Evidence of his introducing Popery.

His Defence to the Charge of the 11th Day. To this his Grace anſwered, That the Picture of God the Father, ſaid to be in *Lambeth* Windows, appeared to be a Miſtake from their own Witneſſes: And for the Pictures in his Book, it was neceſſary he ſhould have them, there being ſome Things to be diſcovered from the Pictures the Papiſts allowed their People, which their Writings did not, or perhaps durſt not avow. And as to the Ceremonies uſed at the Coronation, and the Coronation Oath, he ſhewed they were the ſame as in the preceding Reign; adding, that his Predeceſſor was then Archbiſhop, and performed the Solemnity.

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As to the Virgin *Mary*'s Picture at *Oxford*, he neither ordered it, or knew of it till it was done; nor had he heard of any Abuſe or Diſlike of it ſince: And as to the Buſineſs of the Communion-Table, Copes, Bowings, Candleſticks, *&c.* he had already anſwered that Part of the Charge.

His Grace being brought to the Bar again *12th Day.* the 6th of *June*, great Part of the Charge of the Day before was repeated, and they accuſed him of promoting ſeveral ſevere Sentences in the High Commiſſion; and particularly one againſt Mr. *Workman*, for preaching againſt Images; and another againſt Mr. *Sherfield*, for defacing a Church Window at *Saliſbury*; wherein was the Picture of God the Father: And that his Chaplain Dr. *Bragge*, refuſed to licenſe Dr. *Featley*'s Sermons, till a Paſſage againſt Images was ſtruck out.

To this his Grace anſwered, That Mr. *Workman* was not cenſured for preaching againſt Images, but for affirming, That the Election of Miniſters was in the People; for preaching conſtantly againſt the Government of the Church; praying for the States of *Holland*, and the King of *Sweden*, before his Majeſty; and raiſing ſuch a Faction in *Glouceſter*, that the High Commiſſion did not think it proper he ſhould remain any longer there. *His Defence to the Charge of the 12th Day.*

As to Mr. *Sherfield*'s defacing the Church Window, it did not appear there was any Picture of God the Father in it; and if there had, It was not for private Men to demoliſh Churches or Church-Windows; but if there was any ſuperſtitious Pictures in them, they ought to complain to Authority: And beſides, theſe Cenſures were the Acts of the High Commiſſion, and could not be charged upon his Grace.

And as to the refuſing to licenſe Dr. *Featley*'s Sermons, till a Paſſage againſt Images were ſtruck out, he left the Care of the Preſs to his Chaplains, as his Predeceſſors had done: Whether ſuch a Paſſage was expunged, he knew not; but there were Paſſages as full againſt Images and Popery, left in Dr. *Featley*'s Sermons, as any that could be ſtruck out; where he ſtiles the Papiſts *Idolaters*, as groſs as the *Baaliſts*; and calls the Pope *Antichriſt, and the Whore of* Babylon.

At the Concluſion of this Hearing, his Grace complained of a Paper called *The Diurnal*, wherein he was ſcandalouſly abuſed; and obſerved, that it had been affirmed, in this and other Papers, that the whole Charge had been proved againſt him, which their Lordſhips knew to be falſe: But his Complaints were very little regarded.

His Grace being brought to the Bar again, *13th Day.* the 11th of *June*, the Managers proceeded to give Evidence of his Attempts to ſubvert the Eſtabliſhed Religion, of which his Conſecration

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tion of two Churches, *viz.* St. *Katherine Creechurch*, and St. *Giles's in the Fields*, were ſaid to be Inſtances. The Witneſſes depoſed, that he came in a pompous Manner to perform the Ceremony, and at his Approach to the Church Doot, cauſed the following Paſſage out of the *Pſalms* to be read, (*viz.*) *Lift up your Heads O ye Gates, and be ye lift up ye everlaſting Doors, and the King of Glory ſhall come in.* That he kneeled down at his coming in, and uſed many Bowings and Cringes, threw Duſt into the Air, and uſed ſeveral Curſes in Imitation of the Pontifical, taking alſo one of his Prayers from thence; and at laſt pronounced the Place Holy. He was charged alſo with the Conſecration of Chapels, and giving the Name of St. *John* to his own Chapel; and a Paper was read, ſaid to be a Liſt of his Chapel Furniture, wherein Wafers were mentioned inſtead of conſecrated Bread.

The publiſhing the Book of Sports was alſo urged as a Piece of Popery, and his puniſhing ſeveral of his Clergy for not reading it, as another Offence. Sir *Henry Mildmay*, and *Anthony Mildmay* depoſed, that his Grace was hated by one Faction at *Rome*, and loved by another; and, though he was but an obſcure Man, they obſerved, within theſe 15 Years, there was a ſtrong Opinion of a Reconciliation between the Churches of *Rome* and *England* ſince his Advancement.

His Defence to the Charge of the 13th Day.

To the Charge of this Day his Grace anſwered, That, as to the Pomp of the Conſecrations mentioned, he was only attended by ſome few Officers of the Arches, who uſually attended their Dioceſan: And though the Managers frequently repeated thoſe Words, *Lift up your Heads*, &c. *that the King of Glory may come in*, as if he had applied them to his own Perſon: It was a Paſſage antiently uſed at Conſecrations, and related to God Almighty, the true King of Glory; who, at the Dedication, took Poſſeſſion of the Place, by his Servant the Biſhop: And as to his Bowing and Kneeling, he looked upon this as his Duty, let them call it what they would: That there was no throwing Duſt in the Air, or Curſes uſed: And he obſerved, that one of the Witneſſes depoſed, That this Ceremony was performed at the Beginning, and the other, at the End of the Service; and therefore their Evidence was inconſiſtent. That he did not follow the Pontifical, but a Copy left by Biſhop *Andrews*, which he had ready to produce: That there were ſeveral Prayers in the Miſſal, the ſame with our Collects; which were, notwithſtanding, confirmed by our Laws; for though we had ſeparated the Chaff, we ought not to throw away the good Grain; and wiſhed only, that true Religion might remain, till it was overthrown by the Conſecration of Churches: That there was the ſame Reaſon for the Conſecration of Chapels as Churches; and theſe were things uſed long before the Times of Popery: Nor did he apprehend there was any Crime in giving a Chapel the Name of ſome Saint or Angel, for Diſtinction Sake, and in Honour to their Memories: This was a very antient Cuſtom, as appeared from St. *Auſtin*, and other Fathers: And as to the Paper that had been read, as a Liſt of his Chapel Furniture, this was the Model of Biſhop *Andrews*'s Chapel, and nothing of it his Grace's own Hand, but the Indorſement; though *Prynne* had ſworn it to be a Particular of the Furniture of the Archbiſhop's Chapel in his own Hand: And indeed, he never gave, or received the Communion in any Thing but common Bread.

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As to publiſhing the Book of Sports and Recreations on *Sundays*, this was done by the King's Authority; that he was always for keeping the Day Holy, but free from a ſuperſtitious Holineſs: That Recreations were not allowed, till after Evening-Service; and then, only to thoſe, who had been at Divine Service Morning and Evening: And if Recreations were not lawful after Divine Service, why were they allowed and encouraged at *Geneva*, where the elder Men went to Bowls, and the younger to the Exerciſe of their Arms: And *Calvin* gave it as one Reaſon of Inſtituting the *Sabbath*, *That Servants might have a Day of Reſt and Remiſſion from their Labour*: And what Manner of Reſt was that, where able young Men might uſe no Recreations? That ſome had indeed been ſuſpended *ab officio*, for not reading the Book, when his Majeſty required it; but none had their Livings ſequeſtred on that Account. *Wilſon*, one of the Witneſſes, was ſequeſtred for Delapidations, and not on Account of his refuſing to read the Book; and *Culmer*, the other Witneſs, for Piſſing in the Body of the Cathedral at *Canterbury*. Beſides, theſe Men were ſequeſtered by the High Commiſſion, and not by himſelf: And laſtly, it was an Obſervation of Calvin's, *that thoſe Men, who ſtood ſo ſtrictly for the Morality of the* Sabbath, *did, by groſs and carnal Sabbatization, thrice out-go the Superſtition of the* Jews.

As to Sir *Henry Mildmay*'s Depoſition, he obſerved, that he had formerly declared, That his Grace was the moſt hated at *Rome*, of any one that had ſat in the See of *Canterbury*, ſince the Reformation: And as for his being an obſcure Perſon till within theſe fifteen Years; he had been a Biſhop twenty-three Years, and it was eighteen ſince he was made Dean of his Majeſty's Chapel; and, if a Character given him by his Enemies, either maliciouſly or ignorantly, was ſufficient to ground a Charge of this Nature upon, it might lie in the Power of two or three Jeſuits, to deſtroy any Biſhop in *England*: And, after all, he much queſtioned, Whether Sir *Henry Mildmay*, had ever been at *Rome*.

At another Hearing the 17th of *June*, he was accuſed as being the Occaſion of *Dam-port*'s leaving his Benefice, and retiring to *Holland*; and with ſaying, (when he heard he was in *New-England*) *That his Arm ſhould reach him there.* *14th Day.*

That one *Nathaniel Wickens* had been impriſoned nine Weeks, only for being a Servant to Mr. *Prynne*; that upon his refuſing the Oath *ex officio*, his Grace ſaid, The Charge ſhould be taken *pro confeſſo*; and that his Friends were refuſed a Sight of the Articles againſt him.

His Grace was alſo charged with ſtopping Books at the Preſs, and expunging Paſſages out

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out of them; and particularly the *Engliſh* Bible with *Geneva* Notes: And that he had uſed his Power, to ſuppreſs ſome Books in *Holland*: That he ſuppreſſed an Almanack, that left out the Apoſtles and Saints, and inſerted the Martyrs of Queen *Mary*'s Reign in their Stead.

His Defence to the Charge of the 14th Day.

His Grace anſwered, as to *Dawport* the Clergyman's leaving his Benefice and flying to *Holland*, it appeared by the Evidence, That he went away upon a Summons from the High Commiſſion; that his Grace had prevented a Proſecution againſt him once, but he was not obliged to do it always; and that he was a dangerous and factious Man, nor was it fit the Plantations ſhould protect ſuch.

That as to *Prynne*'s Man, he was impriſoned for refuſing the Oath *ex officio*; and it was the conſtant Practice of the High Commiſſion, the Star-Chamber, and the Chancery, to take the Charge *pro confeſſo*, where the Party refuſed to anſwer upon Oath; nor did the High Commiſſion ever grant a Copy of the Articles, till the Party took the Oath *ex officio*.

That as to his ſtopping the Bibles with *Geneva* Notes, thoſe Notes were very partial, ſeditious, and dangerous, and of late uſed to very ill Purpoſes; for which Reaſon the High Commiſſion had been more ſevere againſt them than formerly; That they had alſo reſtrained the Importing Bibles from *Holland*, becauſe it was a great Diſcouragement to the *Engliſh* Printers; and that the States were prevailed on to ſuppreſs ſome ſeditious Libels againſt the State and Church of *England*, that had been printed in *Holland*.

15th Day.

His Grace being brought from the *Tower* to *Weſtminſter* every Day to his Trial, relates, that at his landing, he was generally ſaluted with reproachful Language, and particularly by one *Quarterman*, who this Day cried out, *What do the Lords mean to be troubled ſo often with this baſe Fellow? They would do well to hang him out of the Way.* Nor was *Nicholas* the Manager leſs ſcurrilous, when his Grace appeared at the Bar, giving him worſe Language, than a Man of any Education would have given to his Slave.

To prove the Charge of Popery againſt him this Day, they produced a Letter, found in his Grace's Study, that had been written from a Jeſuit to his Superior; wherein the Jeſuit ſaid, That Arminianiſm was their Drug, and their Plot againſt the Proteſtants: And urged, That his Grace was the great Supporter of the Arminians; that he diſcouraged Lecturers who preached againſt it; and that he had taken upon him to alter the Prayers for the 5th of *November*: And laſtly, That his Grace had refuſed to licenſe a Book of Sir *Anth. Hungerford*'s, and referred him to one of his Chaplains.

His Defence to the Charge of the 15th Day.

The Archbiſhop anſwered, If it was a Crime for a Miniſter of State, to ſeize the Jeſuits Letters, how ſhould they detect their Plots againſt Religion: That the Letter was not directed to him; and he did not ſee how he could be charged with any Thing the Jeſuits ſaid in their Letters: That it could never be for the Peace of the Church, to allow factious and humourſome Lectures: And if he had altered the Prayers for the 5th of *November* in ſome little Matters, his Accuſers ought to remember, they had not only altered, but taken away, this and the whole *Liturgy* of the Church of *England*, which had been ſo long eſtabliſhed by Act of Parliament; and aboliſhed Epiſcopacy, which had continued in the Church of Chriſt above ſixteen hundred Years. 1644. 19 Car. I.

As to his refuſing to licenſe Sir *Anth. Hungerford*'s Book, he left theſe things to his Chaplains, as his Predeceſſors had always done: It was impoſſible they ſhould peruſe every Book themſelves

16th Day.

On the 27th of *June* his Grace was charged with the following Paſſages out of a Speech he made in the *Star-Chamber*; from whence the Managers ſaid, it was evident he held Tranſubſtantiation, (*viz.*) *The Altar is the greateſt Place of God's Reſidence on Earth, greater than the Pulpit; for there it is*, hoc eſt corpus meum, This is my Body, *but in the other it is at moſt*, hoc eſt verbum meum, This is my Word; *and a greater Reverence is due to the Body, than to the Word of God.*

He was alſo charged again, with licenſing Popiſh and Arminian Books, and ſuffering his Chaplains to preach and print Arminian Doctrines.

His Defence to the Charge of the 16th Day.

To this his Grace anſwered, That Mr. *Nicholas* the Manager, confounded Tranſubſtantiation with the Real Preſence: That *Calvin*, who was an Enemy to Tranſubſtantiation, yet held a real and true Preſence: That St. *Paul* obſerves a great Sin was committed in his Time, *In not diſcerning the Lord's Body*, when unworthy Communicants received: That this was at the Holy Table or Altar, St. *Paul* ſays, they received, yet did not diſcern the Lord's Body; and yet he did not think St. *Paul* maintained Tranſubſtantiation: That the Communion was ever held to be the Touchſtone of Religion. All Divines agreed with what our Saviour taught, *Matt.* xxvi. 26. That the Paſſion of Chriſt, and this bleſſed Sacrament, have the ſame Effect, where the latter is worthily received.

He ſaid, he did not know his Chaplains preached or printed Popiſh or Arminian Doctrines, or licenſed any Book that maintained them; but if they did, they were anſwerable for it.

This Day an Order was made for removing all the Archbiſhop's Books from Lambeth; *and it is ſaid, they were given to the infamous* Hugh Peters, Cromwell's *Chaplain.*

17th Day.

The next Thing inſiſted on, was, his Grace's preferring none but Men Popiſhly affected; or thoſe, who promoted Ceremonies and the Arminian Doctrine; inſtancing in Archbiſhop *Neile*, Dr. *Bray*, Dr. *Pierce*, and other celebrated Clergymen.

Then they charged him with cauſing many pious and learned Divines to be ſilenced, deprived, *&c.* according to the eleventh Original Article. They alſo went upon the ſixth Additional Article, which charges him with hindering and buying in of Impropriations.

His Defence to the Charge of the 17th Day.

To theſe Articles his Grace anſwered, That moſt of the Clergymen, mentioned to be preferred by him, were preferred by others; neither did he know they held Popiſh or Arminian Doctrines: That none were ſilenced or deprived, but factious Preachers and Lecturers, and theſe moſt of them by other Biſhops or the High Commiſſion; for which he was not

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not answerable. That the Design of buying in Impropriations, was a Project to undermine the Church: The twelve Men who were made the Trustees in this Matter, took upon them, without any Authority, to dispose of this Charity, (as it was called) to whom they saw fit; and bestowed it only on Men disaffected to the Church, to School-Masters and Students of the University, to breed them up in Opposition to the Church; and disposed of none of it to the present Incumbents, to whom the Tythes were due, unless they appeared to be of their factious Principles; and by these Means they would, in a short Time, have brought great Part of the Clergy to depend on them: Whereupon, Mr. Attorney advising, that the Project was illegal, the Matter was tried and adjudged to be so in the Court of *Exchequer*; but that no Man had been more zealous for purchasing Impropriations, than himself, where they might be applied to their proper Use.

18*th Day.* His Grace being brought to the Bar again on the 17th of *June*, was charged with making a Division between the Church of *England* and the foreign reformed Churches, by depriving the foreign Churches here, of their Privileges; and that Passage in his Book against *Fisher*, (*viz.*) *No Bishop, no Church*, was urged as a further Proof of his Intention: A Passage in Bishop *Montagu*'s Book also was cited against his Grace, (*viz.*) *That none but a Bishop could ordain, unless in case of Necessity*: And a third Thing insisted on was, his advising Bishop *Hall*, not to affirm positively, That the Pope was Antichrist: Another Offence was, his having asserted, *That Church Government by Bishops* was not alterable by Human Laws.

Then the 13th Original Article, and the 7th Additional Article were proceeded on, which charge him with traiterously endeavouring to reconcile the Church of *England* to the Church of *Rome*; to maintain which, Dr. *Featley* deposed, That about thirty Years since his Grace was reported to be Popishly affected at *Oxford*; and one *Harris* deposed, that he was told, his Grace would leave the Church of *England*: And a Letter or two, found in his Grace's Study from the Pope to some other Persons, were looked upon as a further Evidence of his Grace's being in a horrid Plot, to reconcile the Church of *England* to *Rome*; which was said to be confirmed by his intimate Acquaintance with the Duke of *Buckingham*; by the Favour he was in with the Queen; and by Papers sent him by one *Habernfield*, about a Plot; and lastly, his having been offered a Cardinal's Cap.

His Defence to the Charge of the 18th Day. His Grace's Answer to this Part of the Charge was, That the Inference *No Bishop, no Church*, was St. *Jerome*'s; and if they were offended at it, they would do well to answer him; that it was the Opinion also of many learned and moderate Divines, that none but a Bishop could ordain, unless in case of Necessity; and whether the foreign Churches were under that Necessity, might deserve Consideration: That he did indeed advise Bishop *Hall*, not to assert positively, the Pope was Antichrist; and observed what King *James* said, when he was reflected on for saying, the Pope was Antichrist, (*viz.*) *I maintain it not as a Point of Faith, but as a probable Opinion; for which, I have more Grounds, than the Pope has for his Challenge of temporal Power over Princes: Let him recall this Opinion, and I will recall that*; adding, he did not believe the calling the Pope *Antichrist* ever converted one understanding Papist: Nor had *Gabriel Powel* done the Church of *England* much Service abroad, by affirming, *That he was as certain the Pope was Antichrist, as that Jesus Christ was the Son of God, and the Redeemer of the World*: However he said, He left People to think as their Judgments guided them; as appeared by his licensing Dr. *Featley*'s Sermons, where he endeavours to prove the Pope Antichrist, and the Whore of *Babylon*.

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To which *Nicholas* replyed, in a Flood of abusive Language, and concluded, That the Archbishop was *Pander to the Whore of* Babylon. Whereupon his Grace said, If they did not think fit to treat him as an Archbishop, he hoped he should be used as a Christian; and, were it not for the Duty he owed to God and his own Innocence, he would desert his Defence, rather than endure such Language: And the Lords were so good as to express some Dislike, at the abusive Language that had been given him.

Then his Grace proceeded in his Defence and said, Though he had asserted the Government of the Church by Bishops, was not alterable by Human Laws; yet he held, That Bishops might be restrained and limited by Human Laws, in those things which were but Incidents to their Calling; but their Calling, so far as it was by Divine Right, could not be taken away, which was the Judgment of the Church of *England*; as appeared by the Preface to the Book of Ordination, which says, *From the Apostles Time there have been three Orders of Ministers in the Church of Christ, Bishops, Priests, and Deacons*; and that this Book was confirmed by the Statute of the 8 *Eliz. cap.* 1. observing, That it was a little absurd in them, to cry out of Innovations, who had thrown Bishops out of the Church, after they had continued in it sixteen hundred Years.

As to *his being Popishly affected*, he observed, these were but Reports, and the Witnesses had not instanced in one Popish Opinion held by him, except it was, his asserting the Necessity of Baptism, in the Divinity-School at *Oxford*. As to their inferring that he was Popishly affected, from some of the Pope's Letters found in his Study, and directed to other People, this was not at all concluding; for his Predecessor had many such Letters by him, without any such Imputation; nor did his Intimacy with the Duke of *Buckingham*, prove him to be for a Popish Match, either with *Spain* or *France*, or discover his Inclination to Popery, any more than her Majesty's Favour.

As to *Habernfield*'s Plot, his Grace shewed, he sent the Papers to the King, immediately after his receiving them: And by those it appeared, There was a Conspir-y against his

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He did acknowledge, that a Perſon belonging to a certain Ambaſſador, did offer him a Cardinal's Hat, but he immediately acquainted his Majeſty with it; and they ought to have done him the Juſtice to have mentioned his Anſwer to the Offer, (*viz.*) *That ſomewhat dwelt in him, which would not ſuffer him to accept that, till* Rome *was altered*; But as to any other Offer by Signior *Con*, as his Enemies had ſuggeſted, he knew nothing of it; neither did he ſuffer *Con* to come near him, though great Application was made to him that he would: Concluding, That if the Offer of a Cardinal's Hat, would make a Man a Traitor, then any Papiſt might bring a Biſhop within the Danger of High Treaſon.

19th Day. On the 24th of *July*, the Managers went upon the ſame Articles they did at the preceding Hearing, and repeated a great deal of the ſame Matter: They charged him alſo with ſaying, *That the Church of* Rome *and ours, was all one; that we did not differ in Fundamentals, but in Circumſtances; that* Rome *was a true Church*, &c. That he favoured Papiſts and releaſed them out of Priſon; entertained and harboured Sir *Toby Matthew*, and ſeveral Popiſh Prieſts, refuſed to commit *Fiſher* the Jeſuit; and was very intimate with Secretary *Windebank*, who uſed to diſmiſs Popiſh Prieſts, when the Meſſengers had taken them: That the Prieſts had the beſt Lodgings in *Newgate*, and the Liberty of walking the Streets: That he would not ſuffer Popiſh Books that were taken to be deſtroyed, but frequently returned them to the Owners; and that he had ſaid in the Preface to his Book againſt *Fiſher*, *That to his Remembrance, he had not given him or his, any coarſe Language.*

His Defence to the Charge of the 19th Day. His Grace anſwered, as to the Churches of *England* and *Rome* being all one, That his Words were, *Nor do the Church of* Rome *and the Proteſtants ſet up a different Religion, for the Chriſtian Religion is the ſame in both*; and he obſerved, That unleſs they maintained Papiſts were no Chriſtians, they could make nothing of this Paſſage: And as to his ſaying, *We did not differ in Fundamentals*; *Calvin* himſelf had affirmed, *That in Deſpight of Antichriſt the Foundations of the Church remained in the Papacy itſelf, that the Church might not wholly periſh.*

As to his being intimate with Mr. Secretary *Windebank*, he was an old Friend, and he thought him a Man of Worth, but, if he was deceived, the Secretary was living, and muſt anſwer for himſelf. He acknowledged he ſent four Pounds to releaſe *Fludd* out of Priſon; it having been repreſented to him, That he was a Convert from Popery, and his Impriſonment occaſioned on that Account; of which he produced a Witneſs: He alſo brought the Servants that attended him conſtantly, who depoſed, They never ſaw Sir *Toby Matthew* with his Grace, or any Popiſh Prieſt entertained by him: And as to *Fiſher* the Jeſuit, he did not think it proper to act in that Matter, leaſt it ſhould be ſaid, he deſtroyed himſelf becauſe he could not anſwer him.

1644. 19 Car. I. As to Popiſh Books, he ſaid, it was the conſtant Courſe of the High Commiſſion to give them to their Regiſter, to lay up in his Office, and when they had a good Number of them, then to burn them; and if any were re-delivered to the Owners, it was, when they were not found Dangerous.

He thought it very hard they ſhould charge him with the Confinement or Liberty given to the Priſoners in *Newgate*; they did not ſure deſign to make the Archbiſhop Keeper of *Newgate*. And Laſtly, as to his not calling Names and giving *Fiſher* and the Pope ill Language, when he wrote againſt them, he was ſtill of Opinion that ill Language added very little weight to an Argument.

His Grace being brought to the Bar again, *20th Day.* the 29th of *July*, the Managers went upon the 14th Original Article, *(viz.) That to prevent his being queſtioned for theſe and other his Traiterous Proceedings, he had endeavoured to ſubvert the Rights of Parliament, and create a Diviſion between his Majeſty and his People, and ruin his Kingdoms; for which, they impeached him of High Treaſon.*

The Evidence, to ſupport this Charge was, That he had aſſiſted the Duke of *Buckingham* in making two Speeches, when he was impeached by the Houſe of Commons; and that he had drawn up two of the Kings Speeches to the Parliament, in which were ſome four Paſſages; and Sir *Sackville Crowe* depoſed, that his Grace ſhewed him a Paper, in which were ſeveral Aſperſions on the Parliament, and that the Paper was ſubſcribed *W. Laud*: A Paſſage out of his Diary alſo was read, to ſhew his enmity to Parliaments (*viz.*) *June* 15, 1626. *Poſt multas agitatione privata malitiain Ducem Buckinghamiæſuperavit & ſuffo. avit omnia publica negotia; nihil actum eſt, ſed Parliamentum ſolutum*: Wherein it was obſerved he charged the Parliament with Malice. Another evidence of his Averſion to Parliaments, was ſaid to be, his aſſiſting in drawing up the Proclamation for ſuppreſſing the (Rebellious) Remonſtrance; a Paper alſo was produced, called his Grace's *Reaſons againſt Parliaments*, ſaid to be of his own Hand-writing: And the following Words were read out of his Diary againſt him, (*viz.*) *The Parliament which was diſſolved* 10 *March*, 1628, *ſought my Ruin*; as alſo ſome Notes on Sir *Benjamin Rudyard's* Speech in Parliament.

Another Paſſage in his Diary was read, purely to expoſe him, (*viz*) 27 *October*, 1640. *Going into my upper Study to ſend away ſome Manuſcripts to* Oxford, *I found my Picture fallen down upon the Face, and lying on the Floor: I am almoſt every Day threatned with Ruin, God grant this be no Omen of it.* Another Paſſage half burnt out, which the Managers ſupplyed out of their own Invention, was read; wherein they make him ſay, that *Magna Charta had an obſcure Birth, and was foſtered by an ill Nurſe:* And concluded with part of a Dream, the Earl of *Pembroke* depoſed, that his Grace related to him, (*viz.*) *That he ſhould come to greater Preferment in the Church, and Power in the State, than any Man of his Birth and Calling, had done before; but in the End he ſhould be hanged.*

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Whereupon, *Nicholas* the Manager ſaid, the firſt Part of his Dream had proved true, to the great Hurt both of Church and State; and he hoped their Lordſhips would now make good the latter, and hang him.

His Defence to the Charge of the 20th Day.

To the Charge of this Day his Grace anſwered, That there were no particular Faults found with the Speeches he made, or corrected, for the Duke of *Buckingham*; and it was not Criminal for one Friend to aſſiſt another: And as to the King's Speeches, he acknowledged he drew them, but he followed his Inſtructions cloſe, and could not imagine that ever this ſhould have been made a Foundation for a Charge of High-Treaſon.

He proteſted he never gave Sir *Sackville Crowe* any ſuch Paper as was mentioned, and the Truth of it was very much to be ſuſpected, in as much, as it was ſaid to be Signed *W. Laud*, and he was then Biſhop of St. *Davids*, and always ſubſcribed himſelf *Guil. Meneven.* while he held that See: That the Teſtimony of *Bland* was Inconſiſtent; for he depoſed firſt, That the Propoſitions in that Paper, were the Occaſion of the Diſſolution of the Parliament; and within three Lines he ſays, they were delivered to the Duke of *Buckingham* after the Parliament was diſſolved ——That the Words *privata malitia* in his Diary, could not relate to the Parliament, but to ſome private Men in that Parliament: And as to the Paper called, *Reaſons againſt Parliaments*: It appeared to contain ſome Hopes and Fears, which were conceived of a Parliament, and not Reaſons againſt them. That his Grace was not the Author of thoſe Hopes and Fears, but only gave his Advice as a Privy Counſellor, when it was demanded; and this was his duty: However, thoſe Hopes and Fears related but to the ſucceeding Parliament and their hopes prevailing the Parliament ſat. ——As to the Note in his Diary, That a certain Parliament ſought his Ruin, this was a much better Argument to prove the Parliament Enemies to him, than he to them: And he thought his diſliking a Paſſage in Sir *Benjamin Rudyard*'s Speech, would never prove him an Enemy to Parliaments: That as to his drawing the Proclamation, containing an Anſwer to the Remonſtrance, he did it by Command, and agreeable to his Inſtructions; and what the Remonſtrance tended to, all the World were convinced by this time: That there was no Proof of that Paſſage *that Magna Charta had an obſcure Birth*, and indeed the Expreſſion was not to be found in ſeveral Law Books.——As to his pretended Dream, though the Earl of *Pembroke* had avered the Truth of it upon his Honour, he never had any ſuch Dream: He ſaid he had not forgotten the Prediction of our Saviour, *That in the World we ſhould be ſure to meet with Affliction.* Nor his Prayer, *Father forgive them, for they know not what they do*: And concluded his Defence with a Prayer, *That God would bleſs both King and People, ſubmitting himſelf to his Divine Will.*

Then his Grace moved, that a Day might be aſſigned him to make a Recapitulation of the whole Proceedings, and that his Council might ſpeak to the Points of Law, which was granted, after their Lordſhips had conſulted the Commons; and *Monday* the 2d of *September* was appointed for the Recapitulation.

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His Graces Recapitulation.

His Grace appearing at the Bar the 2d of *September*, ſaw that every Lord had a ſmall Folio in his Hand, which he found to be his Diary in print, with *Prynne's* Remarks upon it: Before he entred on his Recapitulation, he obſerved, That his Tryal began the 12th of *March* 1643---4, and ended the 29th of *July* following; during which Time their Lordſhips had heard him twenty Days, and twelve Days they had ſent him back without hearing; and the Intervals had been taken up, in finding and managing the Evidence againſt him. He deſired their Lordſhips would conſider his Function, his great Age, his long Impriſonment, the Loſs of his Eſtate, and the Reſignation with which he had borne theſe Afflictions: That they would alſo obſerve the Generality and Uncertainty of every Article, which made his Defence extremely Difficult: That the uſe of his Study, his Books and Papers had been taken from him, and of twenty three Parcels of Papers prepared for his Defence, and taken from him in the *Tower*, by Mr. *Prynne*, but three were returned again: That his very Pockets were ſearched, and even his Diary and Prayer-Book taken from him; and made uſe of, not to prove, but to Frame a Charge againſt him. But thus far theſe Hardſhips had been an Advantage to him; that their Lordſhips by his Diary had ſeen the Paſſages of his Life; and by his Prayer-Book, the greateſt Secrets between God and his Soul: And though theſe had been thoroughly ſearched, he thanked God, they could find no Diſloyalty in the one, or Popery in the other: That all the Council Books, thoſe of the Star-Chamber, High-Commiſſion, Signet-Office, Regiſter's of *Oxford* and *Cambridge*, had all been diligently ſearched for matter againſt him; yet he was ſuffered to have no Aſſiſtance from any of them, towards making his Defence.

That even his Actions, that tended to the Publick Good, and the Honour of the Church and Kingdom, and in which he had been at great Pains and Expences, ſuch as the Repairing St. *Paul*'s, and ſettling the Statutes of the Univerſity of *Oxford*, had been objected to him as Crimes: That moſt of the Witneſſes produced againſt him, had been exaſperated Sectaries, or Separatiſts, whom the Laws had been put in Execution againſt: But by the Civil Law, no Schiſmatick was to be admitted a Witneſs againſt his Biſhop: That theſe Men were made Witneſſes in their own Cauſes; and the Judgments of the Star Chamber, High Commiſſion and Council Table, were here on a ſudden overthrown, by the Teſtimony of the Parties themſelves; nor was it poſſible for one, who had ſat as Judge in ſo many ſeveral Cauſes, to give an Account of the reſpective Motives that directed his Conſcience in every one of them, after ſo many Years elapſed: That what he had done was, to the beſt of his Underſtanding, conducive to the Peace and Welfare of the Kingdom, and the Maintenance of the Doctrines and Diſcipline of the Church Eſtabliſhed by Law: And obſerved that, while he was in the Adminiſtration, God had been pleaſed to bleſs this State with ſuch Peace and Plenty, that the Neighbouring Nations looked

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on us with Admiration. What the Overthrow of this Conſtitution might produce, God only knew; but he prayed God to avert it.

He obſerved alſo, That every haſty Expreſſion to which he had been urged by any Provocation, had been inſiſted on to aggravate the Charge; but he hoped their Lordſhips would impute them to human Frailty: That he was in many Inſtances criminally charged with the Actions of other Men, and even with the Acts of the Star Chamber, Council Table, High Commiſſion and Convocation, where he had but a ſingle Vote; and in ſome of theſe Courts, there ſat with him Men of the greateſt Honour, Learning and Experience; and it was hard, that the ſame Facts ſhould be conſtrued Treaſon in him, which were not cenſured as Miſdemeanors in any of the reſt. —— That there had been no Proof of his ſoliciting any Man to concur with him, nor could his Vote influence others, becauſe it was always given laſt.

That as to what had been ſo ſtrenuouſly urged againſt him, That he aſcribed that Power to the Church which belonged to the Parliament; he conceived, the Parliament could not as the Law ſtood, determine the Truth of Doctrines, without the Aſſent of the Church in Convocation; that the firſt Clauſe in *Magna Charta*, eſtabliſhes the Church in all her Rights, of which, *the Power of Determining in Matters of Doctrine, and Diſcipline was one, at that Time*; nor had this Right of the Clergy been limited by any Law ſince, but by that Clauſe of 1 *Eliz. cap.* 1. which impowers the Parliament *with the Aſſent of the Convocation*, to judge of Hereſy, &c. and ſtill he held, thatthe judging of the Truth or Falſhood of any Doctrine was in the Church; though the Power of puniſhing Offenders was in the Parliament, with the Aſſent of the Clergy.

That it was true the King and Parliament might, by their abſolute Power, change Chriſtianity into Mahometiſm; and thoſe who could not obey, muſt either fly, or endure the Penalties inflicted for their Diſobedience; but both King and Parliament, muſt Anſwer for the abuſe of their Power to God: And though it had been objected, that if the Parliament would not have meddled with Religion without the Convocation, there had been no Reformation: Yet the Articles of Religion were ſettled by a Synod of the Clergy, at the Reformation; and confirmed by Parliament, with the Aſſent of the Clergy, in Convocation.

And whereas, his Accuſers had not been able to charge any one of his Actions as Treaſonable; and yet had notwithſtanding, urged that the *Reſult* of them all together amounted to Treaſon. He beged leave to obſerve, that the *Reſult* muſt be of the ſame Nature and Species with the Particulars, from which it ariſes: And as this Rule held in Nature and Morality, ſo it did in Law; for where there were never ſo many Crimes heaped together, yet there was no Law that made the Reſult of different Crimes, Treaſon, where none of the Particulars were Treaſon by Law: That the Statute of the 25 *Edw.* III. had determined what ſhould be deemed Treaſon, and what not; and unleſs this Reſult was ſomething within that Statute, it could not be Treaſon: *But I refer to the preceeding Tryal for the reſt of the Arguments, in his Grace's Speech, as well as the Arguments of Mr.* Brown *the Manager, who replyed to his Recapitulation; there being ſcarce any thing in either, but what was inſiſted on more at large, in the ſeveral Hearings already recited.* 1644. 19 Car. I.

His Grace afterwards moved, that his Counſel might be heard to the following Points, (*viz.*) whether all, or any of the Articles amounted to High-Treaſon: Secondly, whether the Charge contained in them, was made with that Certainty the Law required: But theſe Points being communicated to the Commons, they would not ſuffer the Counſel to argue any more than the firſt; with whom their Lordſhips (now in a Manner ſubject to the Commons) agreed; and Mr. *Hern*, was pitched upon, to deliver his own, and the Arguments of the reſt of his Grace's Counſel, at the Bar of the Houſe, the 11th of *October*. Wherein, beſides what his Grace had already inſiſted on, they obſerve, that as nothing is Treaſon by the Law of *England*, but what is made ſo by the 25 *Edw.* III ſo that Act ought not to be conſtrued by Equity or Inference: 1. Becauſe it is a Declarative Law, and no Declaration ought to be ſurcharged with another Declaration. 2. This Law was provided for a Security in Life, Liberty, and Eſtate: But to admit Conſtructions and Inferences upon it, muſt by Conſequence deſtroy the Intent and Force of the Proviſion. 3. It has been held in Parliament and judicial Debates, that this Act ſhall be literally conſtrued, and not ſtretched to Inferences. *The Arguments of his Grace's Counſel, as to Points of Law.*

Then they proceed to ſhew, that no Part of the Charge contains any of the Treaſons declared by the 25 *Edw.* III. or any ſubſequent Statute: That an *endeavour* to ſubvert the Fundamental Laws is not Treaſon by any Law. 1. Becauſe it is not comprized within any of the Words of the 25 *Edw.* III. nor can be brought within it, by any Conſtruction or Inference. 2. Becauſe an *endeavour* to ſubvert Laws, is of ſo great a Latitude and Uncertainty, that every Action not warranted by Law, might by this means be ſtrained to Treaſon; and to corroborate their Argument, cited the following Caſe out of Sir *Edw. Coke*, (*viz.*) 'A Con-'veyance was made in Tail, with a Proviſo, 'that if the Tenant did *go about* or *attempt*, 'to diſcontinue the Entail, the ſame ſhould be 'void; and it was reſolved by the Judges, that 'the Proviſo was void, becauſe the Words 'attempt, or *go about*, are uncertain Terms: And the Reporter adds, *God defend that Inheritances and Eſtates of Men ſhould depend upon ſuch uncertainties. Miſera eſt ſervitus, ubi jus eſt vagum, & quod non definitur in jure quid ſit Conatus.* And therefore the Rule of Law decides this Point; *Non efficit conatus niſi ſequitur effectus*, the Law rejects *conations* and *goings about*, as things uncertain, that cannot be put in Iſſue: And his Grace's Counſel urged, that if Eſtates were thus well guarded, it was preſumed this Reaſoning would hold much ſtronger in Caſes of Life.

Then they ſingled out two Particulars, that ſeemed to have been urged with the greateſt Force againſt the Archbiſhop.

1. *That*

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1. *That he had traiterously endeavoured to reconcile the Church of* England *to the Church of* Rome. But if this was Treason, they observed it must be so by the 5th *Eliz. cap.* 4. which enacts, *That if any Man shall put in Practice, to reconcile any of his Majesty's Subjects to the Pope or See of* Rome, *he shall incur the Forfeitures of Treason.* But first, the Article only charges an *Endeavour*, whereas the Statute mentions a *putting in Practice.* Secondly, the Article charges an Endeavour of reconciling the *Church* of *England* with the Church of *Rome*; whereas the Statute mentions the reconciling *His Majesty's Subjects* with the See of *Rome.*

The other Particular is in the 7th Additional Article; in which, the Archbishop is charged, with wittingly and willingly receiving and harbouring divers Popish Priests and Jesuits, and particularly, *Sancta Clara* and Mons. St. *Giles*: But they observed, that the harbouring Priests and Jesuits was *Felony*, and not *Treason*; and that the Statute extends only to Priests born within the *English* Dominions, which *Sancta Clara* and St. *Giles* were not.

They urged also several things which his Grace had insisted on before; and in the whole Argument confined themselves to the Nature and Degree of the Crimes exhibited in the Articles, without touching on Matter of Fact, or enquiring whether the Particulars of the Charge were proved or not.

A Petition for executing Delinquents.

The Hearing being over, a Petition was handed about *London*, for bringing Delinquents to Justice; and several Preachers did all that lay in their Power to inflame the People; telling them, that nothing could conduce more to the Glory of God, than the Execution of Delinquents: And by these Means, a Multitude of Hands were procured to the Petition, which was delivered to the Commons the 28th of *October*, none being named in it but the Archbishop, and the Bishop of *Ely*.

The Lords shew no Inclination to convict his Grace. He is heard at the Bar of the House of Commons.

And now the Commons finding that the Lords would not do their Business, and convict the Archbishop of High-Treason, resolved to destroy him by a Bill of Attainder, which they were so gracious to acquaint the Archbishop with, and ordered him to be brought to their Bar the first of *November*; where Mr. *Brown*, one of their Managers, gave them a Summary of the Proceedings, before the House of Lords, and his Grace was permitted to answer it, the 11th of the same Month; wherein he observed that, though Mr. *Brown* was a very able Man, and had with a great deal of Art summed up the Evidence, yet the Commons had not heard the Witnesses themselves, as the Lords had done; and that what had been represented to them, was but the Collection of one Man's Judgment, who related what he *conceived* had been proved: But his Opinion possibly might differ widely from the Opinion of the Judges themselves, who heard the Evidence at large: And besides, Mr. *Brown* had been absent several Days, when his Grace was heard; and of those Days, he could only *report* what had been *reported* to him: And he thought, never any Jurors, who were Tryers of Facts, either in Criminal or Civil Cases, founded their Verdict upon Evidence only *reported* to them, which they did not hear themselves: He offered it to their Consideration also, Whether it were just and honourable, to judge him in that House, when he had been impeached by them, and pleaded, and Issue joined, and Evidence given in upon Oath, in another Place: Whether, after this, they would think fit to judge him in their own House, only upon a *Report* or *Hear-say*, without any Oath made before them.

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On the 14th of *November*, his Grace was brought to the Bar of the House of Commons again, to hear Mr. *Brown*'s Reply, but was not suffered to speak afterwards; and within two Days they passed the Ordinance, or Bill of Attainder, and sent it up to the Lords; who were still of Opinion, That the Facts his Grace was charged with, did not amount to High-Treason: But the Commons sending them a Message, *That they would do well to pass the Ordinance, or the Multitude would come down and force them to it*; and giving them to understand also, that they would be soon voted useless, if they did not comply; a small Remnant of the Lords (not above fourteen, at most, present in the House) passed the Ordinance for the Archbishop's Attainder, on the 4th of *January*; and on the 6th, an Order of both Houses, was made for his Execution on the 10th of the same Month. Some Historians relate there were only seven Lords present at the passing the Bill of Attainder, and give us the Names of six of them, (*viz.*) the Earls of *Kent*, *Pembroke*, *Salisbury*, and *Bolingbroke*, the Lord *North*, and the Lord *Grey* of *Werk*.

An Ordinance, or Bill of Attainder, passes the Commons.

They threaten the Lords, to make them pass the Ordinance.

But seven present at the passing the Ordinance. Their Names.

The Archbishop afterwards acquainted the Houses, that he had his Majesty's Pardon; but this would not avail him. First, because it was granted before Conviction, they said; and secondly, that if it had been subsequent, yet in a Case of Treason, against the Kingdom, (as they termed it) it could be of no Force. However they indulged his Grace so far, as to remit all the rest of the Sentence, but the Beheading.

The A. Bp. pleads the King's Pardon; but it is disallowed.

This Heroick Confessor being brought to the Scaffold on *Tower-Hill* the 10th of *January*, mounted it with an Air of great Resolution and Chearfulness, beginning his Speech with the following Text of Scripture, (*viz.*) *Let us run with Patience the Race that is set before us, looking unto Jesus*, &c. And among other Things he said, That he was well assured, God was able to deliver him from this Violence, as he did the three Children from the Furnace; and that by our Saviour's Assistance, his Resolution was the same with theirs: They refused to worship the Image the King had set up; neither would he idolize the Imaginations of the People, nor forsake the Temple and Truth of God, to follow the Bleating of *Jeroboam*'s Calves. As for the People, he observed, they were miserably misled; the Blind led the Blind, and if they went on, they would both certainly fall into the Ditch. Then he observed, that he was not only the first Archbishop, but the first Man, that ever died by an Ordinance of Parliament; and hoped his Cause would appear in Heaven, with a

His Behaviour at his Execution.

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different Complection from what was put upon it here: That his Caſe, as foul as it was repreſented, looked ſomething like that of St. *Paul's*, who was accuſed as a great Criminal againſt the Law and the Temple; and St. *Stephen's*, who was arraigned for breaking the Ordinances that *Moſes* had delivered; that is, for *endeavouring* the Subverſion of the Laws and Religion of his Country.

Then he proceeded to clear the King of being Popiſhly affected; a Calumny, which he ſaid he knew him to be as free from, as any Man living; for he held him to be as ſound a Proteſtant, (according to the Religion by Law eſtabliſhed) as any Man in the Kingdom; and that he would venture his Life as far and as freely for it. He complained of the riotous Tumults of the People, and their clamouring for Juſtice at the Parliament Houſe: This was the way he ſaid, to draw the Guilt of Blood upon their Heads; and theſe mutinous Diſorders he obſerved, were not reſtrained by the Magiſtracy. He lamented the calamitous Condition of the Church of *England*: She was become he ſaid, like an Oak, cleft in Pieces with Wedges made of her own Body, while Iniquity and Profaneneſs triumphed under the Pretence of Godlineſs: That the Subſtance of Religion was loſt; and that Church, which ſtood firm againſt the Attacks of the Jeſuits, was terribly battered by her own Party.

As to his Religion, he declared himſelf of the Communion of the Church of *England*, eſtabliſhed by Law; and in this Perſuaſion, he ſaid he had always lived, notwithſtanding the unreaſonable Clamours raiſed againſt him. He declared himſelf alſo a Friend to the Conſtitution, and particularly to Parliaments; but the beſt things, he obſerved, were often corrupted, and became the worſt: Thus the Parliament being the higheſt Court, the laſt Reſort, from which there was no Appeal, when this laſt Reſort was miſinformed or miſgoverned, it turned to be the moſt fatal Grievance; for in ſuch Caſes the Subject was left without Remedy.

After this Speech, the Archbiſhop performed his Devotions with great Fervency, and then moving towards the Block, found the Scaffold ſo crowded with his Enemies that came to triumph, that he was forced to entreat them to make Way, and give him Room to die: But Sir *John Clotworthy*, who endeavoured to give him all the Diſturbance he could in his laſt Moments, ſtill ſtood in his Way, and demanded, What Text of Scripture was moſt comfortable to a dying Man: To which his Grace anſwered, *Cupio diſſolvi, & eſſe cum Chriſto*: But Sir *John* replied, there muſt be an *Aſſurance* to found that Deſire upon: And Sir *John* continuing this barbarous Treatment, the Archbiſhop could find no other way to get rid of the impertinent Zealot, than by bidding the Executioner do his Office, who ſeparated his Head from his Body at one Blow.

His Character.

A late Eccleſiaſtical Writer ſays, He was of a lively and penetrating Genius; of a ſociable Temper, and innocently pleaſant upon Occaſion: And if we conſider his Function, he had paſſed through almoſt all the Employments of a Churchman; and how much he was a Maſter of his Profeſſion, is ſufficiently evident from his Book againſt *Fiſher*. He was a Perſon of unblemiſhed Integrity: Money had no Share in his Inclination; for, notwithſtanding the Largeneſs of his Revenues, his Fortune was almoſt exhauſted, in his Benefactions to *Oxford*, *Reading*, St. *Pauls*, &c. His Piety was no leſs exemplary and diſtinguiſhed: He was conſtant at his Chapel, and private Devotions: His warm Loyalty, and Zeal for Uniformity, brought him to this tragical End. The Earl of *Clarendon* obſerves, that he was ſomewhat Paſſionate; that he failed in a plauſible Application; neglected Addreſs, and believed bare Honeſty, and a vigorous Purſuit, ſufficient to carry him through. However the Noble Hiſtorian ſays, he was eminent for his Learning and Piety; that he behaved himſelf with great Courage and Magnanimity upon the Scaffold: That his good Qualities were attained by very few, and the greateſt of his Infirmities common to the beſt of Men. He was put to Death in the 72d Year of his Age. He was a great Benefactor to the Church; annexed Commendams to ſeveral ſmall Biſhopricks, particularly to *Briſtol*, *Peterborough*, St. *Aſaph*, *Cheſter*, and *Oxford*. He procured a Charter, to confirm the antient Privileges of the Univerſity of *Oxford*, and enlarge them to an equal Extent, with thoſe granted to *Cambridge*. He ſettled two hundred Pounds *per Annum* upon an Hoſpital at *Reading* in *Berkſhire*. (*His Father was a Clothier, of good Subſtance in this Town, and here he was born.* He founded the *Arabick* Lecture at *Oxford*; procured a new Charter, and a Body of Statutes, for the College of *Dublin*. He was endeavouring to provide a Fund for the Augmentation of poor Vicarages, and for ſettling the Tythes of *London* between the Clergy and City; and indeed his principal Views were, the rendering the Church of *England*, the Monarchy, and the Kingdom happy and flouriſhing; which were the real Crimes for which he was made a Sacrifice: Neither the Fanatick or Republican could be ſatisfied, till they had ſpilled the Blood of a Prelate, that had ſo nobly oppoſed their Schemes. He was buried in *Barking* Church near the *Tower*, with the Office appointed by the Liturgy: And it is ſomething extraordinary, that the ſame Day the Lords agreed to the Archbiſhop's Attainder, they paſſed an Ordinance, That the Book of Common-Prayer ſhould be laid aſide, and the Directory uſed inſtead of it; and his Grace is ſaid to be the laſt Man, that was buried, according to the Rites of the Church of *England*, in *London*, during thoſe Times.

Remarks on Archbiſhop Laud's Trial.

What goes under the Name of Archbiſhop *Laud's* Trial, may properly be looked upon, as the Trial of the Conſtitution in Church and State, by the Presbyterians and other Republicans, its moſt inveterate Enemies: And what would be the Reſult of a Trial, where Rebels ſat in Judgment on the Laws, and on their Sovereign and his Miniſters, whoſe Buſineſs it was to ſee them put in Execution, was not difficult to conjecture: It was natural to believe they would paſs a ſevere Sentence againſt

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againſt thoſe Laws, and that Adminiſtration which declared them Traitors and Rebels: That they would turn the Tables on their Sovereign and his loyal Subjects; call Uſurpation and Rebellion, the Conſtitution; and make all thoſe Rebels and Traytors, who oppoſed them.

It is manifeſt, the Star-Chamber, the High-Commiſſion, the Convocation, and Council-Table, were all tried and cenſured, by this corrupt Remnant of a Parliament, and included in the Sentence or Attainder, that paſſed on the Archbiſhop; for he was condemned for voting in the Proceedings of all theſe High Courts, and for the Decrees *they* made.

The Sum of the Charge againſt his Grace was, *That he had endeavoured the Subverſion of our Religion, and Civil Government.* But by Religion, it is evident they meant the Presbyterian; and by Government, they meant the Republican Form.

For as to Religion, they charge him with affirming, That without a Biſhop there could be no Church; and that only Biſhops could Ordain, unleſs in Caſes of Neceſſity. They accuſed him alſo of maintaining Arminianiſm; by which they meant the Freedom of the human Mind, or, that Man is a free Agent, (and not under a fatal Neceſſity of being damned, as the Presbyterians maintain.) Theſe Points were held to be down-right Popery, by the Puritans of thoſe Days; though they are generally looked upon as orthodox Opinions, by our Church. They cavilled alſo with him about leſſer Matters; ſuch as placing the Communion Table North and South; the kneeling at the Sacrament; the Conſecration of Churches, and ſacred Utenſils, and endeavouring to guard them from Prophanation; and even his repairing the Cathedral of St. *Paul*'s, was made Part of an Impeachment for High Treaſon.

Then as to the State, his advancing the Prerogative and Power of the Star-Chamber, High-Commiſſion, Council-Table, and the Convocation, were the Treaſons chiefly inſiſted on; which part of the Charge was fully anſwered, by ſhewing that thoſe Courts acted more Arbitrarily in the preceeding Reigns than in this; and if they did not, he was not anſwerable for their Determinations: But it is evident, from the whole Tenor of the Tryal, that they intended to place the laſt Reſort, in one or both Houſes of Parliament; and to eſtabliſh it for a Maxim, That not only thoſe Courts, but his Majeſty and his Miniſters were ſubject to their Reſolutions; and that a Vote of the Houſes might abrogate, or ſuſpend our Laws; and that they uſurped a more unlimited Power themſelves, than ever the Crown or Miniſtry, were charged with aſſuming: And if this were not demonſtrable from this Tryal, their ſubſequent Conduct abundantly manifeſted, that the Religion they were afraid, ſhould be ſubverted, was the Presbyterian, not the Eſtabliſhed Church; and the Government they charged him with conſpiring againſt, was the Republican Form, which they were reſolved to maintain, to the Deſtruction of the Monarchy.

It is acknowledged however that, at firſt, the Members of both Houſes were generally of the eſtabliſhed Church, even in the Parliament of 1641, that deſtroyed both Monarchy and Epiſcopacy: Nor had the greateſt Part of them any thoughts of altering the Conſtitution. But it has been obſerved by the Lord *Clarendon* and others, that, beſides the profeſſed Presbyterians and Republicans, there were a great many others who out of Ambition, Avarice, or Revenge, joined themſelves with that Party, and were inſenſibly led into their Meaſures; till at length there was no Retreating: They had been drawn into down-right Rebellion, and were glad to Unite themſelves afterwards with any ſett of Men, that might prevent the Return of their Sovereign to his Throne: Or, the Reſtoration of thoſe Laws, that would puniſh their Diſloyalty.

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There were a great many Gentlemen alſo, that thought the Eccleſiaſtical Government laid too ſevere Reſtraints upon the Liberties of Free-born Engliſhmen: They did not approve of it, becauſe they, or their Friends, were ſometimes called to an Account, and puniſhed for Vice or Profaneneſs: And they thought the readieſt way, to throw off that Tyranny, as they ſtiled it, was to join the Presbyterians: Not that they ever deſired to ſee that Sect uppermoſt, for they knew their Diſcipline was much more unſupportable, then that of the Church; but they hoped by theſe means, ſo to ballance the two Parties, that neither of them ſhould be able to exerciſe any Eccleſiaſtical Authority over them. We find that the Nation afterwards, became more uneaſy, under the Presbyterian Yoke, than ever it had been under Epiſcopacy; and at length, proceeded to renounce all Eccleſiaſtical Authority. Every Man did what was Right in his own Eyes: Which ſeems to be the Liberty that moſt of the Rebels fought for.

To mention the Hardſhips the Archbiſhop underwent in this Proceeding, when the whole was one continued Act of Tyranny, Injuſtice and Oppreſſion, ſeems unneceſſary: But that the Faction may have no Colour to Clamour, for the future at the uſage their Friends met with in any Trials, or Proſecutions for Treaſon, or Rebellion, in the ſucceeding Reigns, I ſhall give ſome Inſtances of their Humanity towards this Great Man.

And firſt, he was Impeached and Committed to the Black Rod, above two Months before any Articles were exhibited againſt him; then he was kept, between two and three Years more, a cloſe Priſoner in the Tower, before he was brought to his Tryal: All his Eſtate Real and Perſonal; Books and Papers, were Seized, on his Commitment; his very Pockets ſearched, and the Writings he had prepared for his Defence taken from him; by what Law, or Colour of Law, God only knows.

When he was firſt carried to the *Tower*, the Mob was ſpirited up to revile and reproach him; they were even taught, that it would be meritorious to kill him, and only reſtrained from pulling him to Pieces, that his Suffering might be prolonged, and they might in a more Solemn Manner, ſatiate their Thirſt of Blood.

Every Day, when he landed at *Weſtminſter*, ſome of the Faction ſtood ready to curſe, and revile him; the Managers of the Commons, ſpoke to him, and off him, as the moſt infa-

mous

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mous Malefactor; and his Judges treated him with the utmoſt Scorn. One of the Noble Peers, who ſat in Judgment upon him, namely, the Earl of *Pembroke*, deſcended ſo low as to call the Greateſt Subject in *England*, *Raſcal*, and *Villain*. He was brought to *Weſtminſter*, Twelve ſeveral Days, only to be expoſed to the Scorn and Laughter of his Enemies, and ſent back again without being heard; though they put him to the Expence of Seven or Eight Pounds a Day; but it muſt be acknowledged, they were ſo good as to allow him Two Hundred Pounds, out of the Profits of his own Eſtate, after they had Sequeſtred it for three Years; the reſt was applyed to the Support of the Rebellion, againſt their Sovereign, as was the Money his Grace had collected for the Repairs of St. *Paul*'s: And when the Peers could find no Treaſon in the Archbiſhop, unleſs Loyalty to his Prince was deemed ſuch, how Arbitrarily did the Commons ſend for his Grace before them, and of Accuſers become his Judges; paſſing an Ordinance for his Condemnation; which they forced through the little Remnant of the Lords Houſe, by their Mobs and Threats to lock up their Doors! And when the Ordinance was paſſed for his Murder, and they had rejected the King's Pardon, which he pleaded; how cruelly, did they deny him his own Chaplains to attend him, in his laſt Moments! And Laſtly, when he came to the Scaffold, how did their Malice purſue him thither; *Clotworthy*, and the Fanatick Crew, Reviling and Perſecuting him even there, and not ſuffering him to Die in quiet! Theſe are ſuch Flagrant Inſtances of Presbyterian Humanity, and Moderation, as I am confident no Tory Adminiſtration can parallel: Nor can the Presbyterians excuſe themſelves, by throwing the blame on the inferiour Sectaries; for this was long before the Independants had the Power in their Hands.

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Lord Macguire's Tryal.

Arraigned as a Commoner.

CONNOR Lord MACGUIRE, a Peer of *Ireland*, was arraigned at the *King's Bench* Bar in *England*, as a Commoner, for High-Treaſon committed in *Ireland*.

The charge. The Indictment charges the Priſoner with Compaſſing and Imagining the Death of the King, Conſpiring to raiſe a Rebellion, and inviting over foreign Forces to invade the Realm of *Ireland*, and particularly, with a Deſign of ſeizing the Caſtle of *Dublin*, and other Forts and Magazines in that Kingdom. It Charges him alſo, with Levying open War againſt his Majeſty; ſurprizing the Caſtles of *Charlemont*, *Cragan*, &c. and murdering the Lord *Calfield*, and other Proteſtants in *Ireland*.

Plea of Peerage The Priſoner pleaded his Peerage; ſhewing, that by the Statute of *Magna Charta*, every one ought to be tried by his Peers, and that by the 10 *Hen.* VII. the Statutes of *England* were made part of the Laws of *Ireland*.

Over-ruled. The Council for the Parliament, demurring to this Plea, Mr. Juſtice *Bacon* over ruled it; declaring that a Baron of *Ireland* was triable by a Jury of Commoners in *England*; and of this Opinion it ſeems were both Houſes of that Parliament: Whereupon, the Priſoner pleaded *Not Guilty*, and deſired time to bring his Witneſſes from *Ireland*; but this was denied him: Then the Jury were called over, and he challenged Twenty-three peremptorily, which were all that appeared but one: Whereupon a *Tales* was granted, and he was brought to the Bar again the next Day by the Lieutenant of the *Tower*, when he challenged as many of the *Tales* as, with thoſe challenged before, amounted to Thirty-five; and at length, a Jury being ſworn, the Council for the Parliament produced their Evidence.

His Challenges.

A Tales awarded for want of Jurors.

The Evidence. And Firſt, they brought Witneſſes that deposed, the Priſoner was a Papiſt, and was very inquiſitive about the Condition of the Magazines of Arms and Ammunition in *Dublin*.

A Depoſition read as Evidence. Then the Depoſition of *John Woodcock* the Sheriff of *Dublin* was read, who depoſed, that he apprehended the Lord *Macguire* and ſeveral of his Accomplices at *Dublin*, on the Twenty ſecond of *October* 1641, (being the Day before the Inſurrection of the Papiſts in *Ireland*.) That it was then late at Night, and the Priſoners had Arms about them, and ſeveral Petards for breaking open Doors; and that he carried them before the Lords Juſtices.

The Priſoner's Examination read againſt him. The Priſoner's Examination alſo was read, who confeſſed before the Lords Juſtice's, that he was engaged in a Conſpiracy to raiſe an Inſurrection, in order to reſtore the Catholick Religion in that Kingdom, and recover their Lands from the Proteſtants. He acknowledged alſo, that they intended to have ſurpriſed the Caſtle of *Dublin*; that he came to *Dublin* for that purpoſe, and that he ſhould have attempted the Caſtle the next Morning, (the 23d of *October*, 1641.) if they had not been apprehended: But he knew of no Letters or Meſſages from *England*, to countenance the Attempt.

Other Witneſſes depoſed, that there was to have been a General Inſurrection in *Ireland*, the 23d *October*; that it was intended to ſeize all the Caſtles and ſtrong Places in the Kingdom, and to Maſſacre the Proteſtants.

Above an hundred Thouſand Proteſtants ſaid to be murdered in one Province. It was alſo proved, that the *Iriſh* broke out into an actual Rebellion, on the ſaid 23d of *October* and ſurpriſed the Caſtle of *Charlemont*, where they murdered the Lord *Calfield*; that they alſo ſeized ſeveral other Fortreſſes, and murdered the Proteſtant Inhabitants: And Sir *Charles Coote*

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posed, that upwards of an Hundred Thousand Protestants were massacred in the Province of *Ulster* only, (which were a great many more than the whole Province contained.) He deposed also, that the *Irish* Papists set up a New Form of Government, by a supreme Council, constituted Judges and Magistrates, and coined Money.

The Pope's Indulgence to the Rebels.

A Bull of Pope *Urban*'s VIII. also was read in Evidence, whereby he grants a plenary Indulgence and absolute remission of all Sins to such *Irish* Catholicks as should make War upon the Heretick Protestants, and endeavour to extirpate them. Dated at *Rome*, the 25th of *May* 1643, in the 20th Year of his Pontificate.

The Prisoners defence.

To this Charge and Evidence the Lord *Maguire* answered, that he knew of no such Examinations as had been produced against him, but insinuated they were forged, and observed that it was impossible the Testimony of *Coote*, and others, as to the Number of Protestants sworn to be murdered, could be true, because there were not so many Protestants in that Kingdom: And, if there had been several murders and Outrages committed by others, that did not affect him. He knew nothing of the Plot but by Hearsay, but the Jury giving little credit to the Prisoner's Asseverations found him *Guilty*: And it being demanded, What he had to say, why Judgment should not be pronounced, he insisted again on his Peerage; he objected also, that the Judges had no legal Commissions, as they acted only by the Power of the Parliament, without any Authority from the King; to which one of the Judges answered, that he was made a Judge by the Old Seal, and continued by the Parliament: Then Sentence was passed upon the Prisoner as a Traitor. He afterwards petitioned the Commons, that he might have the Favour of being beheaded, but his Petition was rejected, and he was hanged drawn and quartered, on the 20th of *Feb.* according to his Sentence.

Objections to the Jurisdiction of the Court.

Remarks on Maguire's Trial.

It is generally held, that a Peer of *Ireland* may be tryed by a Jury of Commoners in *England*, for a Fact committed in *England*: But I do not see how an *Irish* Peer could be legally tryed here, for a Fact committed in *Ireland*; because, at this rate he loses his Privilege of Peerage; and there is this further Objection to it, that every Treason must be laid and proved, to be committed in some County of *England*; and here all the Proof was, of Facts committed in *Ireland* only: They also read the Deposition of the Sheriff of *Dublin* against him, though the Sheriff was in *England* just before the Trial, and ought to have given his Evidence Personally in Court: The Prisoner very justly objected, that the Judges who tryed him had no lawful Commission from the King for trying him: For, though one of them had formerly a Commission from his Majesty, they did not sit by the King's Authority at this time; but derived their Power from a body of Men in actual Rebellion against the Crown, and consequently the Bench were no less Traytors than the Prisoner at the Bar: But it is no new thing to see Criminals sit in Judgment on their Brethren in iniquity, there is not much Doubt to be made of the Lord *Maguire*'s Guilt; but yet the putting him to Death by those Usurpers, who could have no Legal Authority to try or condemn him, was Murder in them. It is observeable also, that the Commons made use of *Coote*, and other Tools to aggravate matters and testifie that there were Ten times more Protestants murdered in *Ireland* than there really were; and this with an Intention to render the King odious to his Subjects, whom they charged with countenancing the *Irish* Rebellion, though nothing could be more false and unjust: And here we find them tampering with *Maguire*, to acknowledge a Correspondence between the *Irish* Rebels, and the *English* Royalists; but he had the Grace to acquit the King's Party of having any Share in that Insurrection, though he might possibly have saved his Life, if he would have humoured the Parliament in this particular. He was long detained in Prison, in order to extort something out of him to the prejudice of the Royal Party; and one while had so much liberty allowed him in the *Tower*, that he made his Escape from thence: He was afterwards indeed retaken; and, when they found he would not answer their purpose, they put him to Death by Forms of Law.

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1648-9. 24 Car. I. *Proceedings against King* Charles I.

The Proceedings of the Uſurpers againſt their Sovereign King CHARLES I. under the Mock Form of a Trial, in the Month of *January*, in the 24th Year of his Reign, *Anno Domini*, 1648-9.

An Ordinance for his Trial.

THE Commons began the Year 1648-9, with framing an Ordinance for the Trial of the King, which they ſent to the Houſe of Peers for their Concurrence; but the Lords rejected it, and, that they might not be preſſed any more upon that Head, adjourned for nine Days. Whereupon ſome Members of the Commons moved, that the Lords might be impeached of High-Treaſon, in favouring the grand Delinquent (their King;) however, they contented themſelves with making the following Reſolutions. 1. That the People were, under God, the Original of all juſt Power. 2. That the Commons of *England* being choſen by, and repreſenting the People, were the Supreme Power of the Nation. And 3. That whatever was enacted or declared to be Law, by the Houſe of Commons aſſembled in Parliament, had the force of a Law, though the conſent of the King, and the Houſe of Peers was not had thereto: And thus, having Voted the King and Houſe of Lords uſeleſs, they proceeded to finiſh their Ordinance for the pretended Trial, in the Preamble whereof they recite. "That the King, not being contented "with the many Encroachments made by his "Predeceſſors on the Peoples Rights, but deſigning totally to ſubvert the Conſtitution, "and introduce an Arbitrary Government, "had levyed War againſt the Parliament, "whereby infinite Miſchiefs had enſued; for "which High and Treaſonable Offences; and "to the End, no chief Officer or Magiſtrate "might preſume for the future to attempt the "enſlaving and deſtruction of the Nation with "Impunity; they did Ordain and Enact, "that *Thomas* Lord *Fairfax*, *Oliver Cromwell*, "*Henry Ireton*, (*and an Hundred and Thirty "more, of whom upwards of Fifty never "acted*) ſhould be Commiſſioners and "Judges for the Trying of the King: And "the Lord *Fairfax*, and all other Officers, Civil and Military, were required to be aiding "and aſſiſting to them in the Execution of "their Commiſſion; and it was provided that "this Act ſhould remain in force for one "Month and no longer.

Reſolutions of the Commons.

The Judges conſtituted to try the King.

Bradſhaw *Preſident.* *John Bradſhaw*, Serjeant at Law, was appointed their Preſident, Mr. *Steel*, was made their Attorney General, and Mr. *Cook*, their Solicitor, to manage the Evidence: A Court alſo was erected at the upper End of *Weſtminſter-Hall*, and the King brought to *Cotton-Houſe*, that he might be near their Mock Tribunal.

Reſolutions concerning the Tryal. Theſe pretended Judges, ſitting in private in the Star-Chamber, the 20th of *January*, reſolved that the method of Proceeding as to the reading the Commiſſion, ſending for the Royal Priſoner, asking him Queſtions, &c. ſhould be left to their Preſident, on whom they conferred the Title of *LORD PRESIDENT*. And it was further reſolved, that if his Majeſty carried it inſolently, or contemptuouſly to their Mock Court, It ſhould be left to their Lord Preſident to reprehend him, and admoniſh him of his Duty, or command him to be taken away: But as to the Priſoner's taking off his Hat, they determined not to inſiſt on it that Day; and if he deſired Time, the Lord Preſident ſhould give him Time. It was ordered alſo that Mr. *Liſle*, and Mr. *Say*, ſhould be Aſſiſtants to the Preſident, and ſit near him. After which the Preſident, and the pretended Judges, attended by their Officers, and One and Twenty Gentlemen armed with Partizans, went down to the Court erected in *Weſtminſter-Hall*, a Sword of State and Mace being carried before them: The Preſident having placed himſelf in a Crimſon-Velvet Chair, and the reſt of the Members on each Side of him, on Benches hung with Scarlet, their Guard of Partizans divided themſelves on each Side the Court: Then the Ordinance for erecting this pretended Court was read, and the Commiſſioners called over, of whom Sixty-ſeven appeared and anſwered to their Names. After which the King was brought from *Cotton-Houſe*, and placed at the Bar, beneath his High and Mighty Judges: And having looked for ſome time with a Majeſtick Air upon his Sovereign Subjects ſeated upon the Bench, He ſat down in a great Chair provided for him, without moving his Hat, or paying any reſpect to his pretended Judges.

The King brought before the Regicides.

Then *Bradſhaw* with unparalleld Impudence told the King, That the Commons of *England* aſſembled in Parliament, deeply ſenſible of the Evils and Calamities he had brought upon the Nation, and of the Innocent Blood he had ſpilt; in purſuance of what they owed to God, to Juſtice, the Kingdom, and themſelves; and in purſuance of the Truſt repoſed in them by the People, had Reſolved to bring him to his Tryal, and had thereupon Conſtituted this High Court of Juſtice, before which he was now brought to hear his Charge: Then *Cook* their Solicitor, in the Name of all the People of *England*, exhibited the Charge; which ſet forth, That *Charles Stuart*, being admitted King of *England*, and entruſted with a limited Power to govern according to Law; and by his Truſt, Oath and Office being obliged to uſe the Power committed to him for the good of the People; out of a wicked Deſign to erect in Himſelf and his Family a Tyrannical Power, and to overthrow the Rights and Liberties of the People, had Traiterouſly and Maliciouſly levyed War againſt the Parliament and the People therein repreſented, particularly at *Beverly*, *Nottingham*, *Edge-hill*, *Naſeby*, &c. Whereby

Bradſhaw's *Speech to his Majeſty.*

The Charge againſt the King.

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Whereby the ſaid *Charles Stuart* had cauſed many Thouſands of the free People of this Nation to be ſlain, Families had been ruined, Treaſure waſted, Trade decayed, and many parts of the Land ſpoiled and become deſolate; And this, in order to advance the perſonal Intereſt, Will, Power, and pretended Prerogative of the ſaid *Charles Stuart*, againſt the publick Intereſt, Rights and Liberties of the People, by whom he was entruſted as aforeſaid: Wherefore the ſaid *John Cook* did, for the Treaſons and Crimes aforeſaid, on the behalf of the People of *England*, Impeach the ſaid *Charles Stuart*, as a *Tyrant*, *Traytor*, and *Murderer*, *and a publick and Implacable Enemy to the Common-wealth*; and prayed that Juſtice might be done upon him.

The King refuſes to acknowledge their Juriſdiction.

The Preſident requiring the King's Anſwer to the Charge, His Majeſty demanded by whoſe Authority he was brought thither, at a Time when he was engaged in a Treaty with Parliament; adding, that there were many unlawful Powers in the World, and that theirs ſeemed to be no better than that of Pyrates and Robbers: He told them he was their King, and had a Truſt committed to him by God which he would not betray, together with the Liberties of the People, by anſwering to an unlawful Power, as he held that Court to be: To which the Preſident replied, They ſat there by the Authority of the Commons of *England*, and it did not become him to Interrogate the Court in the Condition he was. The King ſaid, there was God in Heaven that would call them to an Account for the Authority they had uſurped; and that it was as great a Sin to ſubmit to an unlawful Authority, as it was to reſiſt a lawful Authority. To which *Bradſhaw* replied, that in their Apprehenſions, who were his Judges, their Authority was lawful; but the King ſaid, it was not their Apprehenſions or his, that muſt decide that; and abſolutely refuſing to acknowledge their Juriſdiction, he was carried back to *Cotton-Houſe*.

His Contempt Recorded.

The King being brought before this Mock Tribunal again the two ſucceeding Days, and ſtill refuſing to acknowledge their Authority, his Contempt (as they called it) was Recorded.

Witneſſes examined againſt him.

Then they proceeded to examine Witneſſes againſt him in the Painted Chamber, and take their Examinations in Writing; and on the 25th the Witneſſes atteſted the Truth of their Depoſitions, in open Court, upon Oath.

Who depoſe that the King began the War.

Several Witneſſes depoſed, that the King began the War in the Month of *July*, 1642 and others, that he charged at the Head of his Troops at *Edge-hill*, *Cropredy-Bridge*, *Newbury*, *Naſeby*, &c. Whereby they propoſed to ſhew that his Majeſty was the Author of the War, and the Occaſion of all the Blood that had been ſhed.

That he was not ſincere in his Treaties with them.

They endeavoured alſo to traduce his Majeſty as inſincere in his Treaties with the Parliament; for which purpoſe, *Henry Gooche*, of *Gray's-Inn*, was produced as a Witneſs, who depoſed that he waited on his Majeſty at the *Iſle* of *Wight*, and acquainted him, that he had many Friends; that, ſince he was pleaſed to juſtifie the Parliament in taking up Arms, moſt of the *Presbyterian* Party, both Soldiers and others, would ſtick cloſe to him: To which the King anſwered, that he would have his old Friends know, that though for the preſent he was content to give the Parliament leave to call their own War what they pleaſed, yet that he neither did at that Time, or ever could decline the Juſtice of his own Cauſe: The Deponent alſo told the King, that his Buſineſs was much retarded, becauſe his Friends wanted Commiſſions to act under, to which the King anſwered, that while he was engaged in a Treaty with the Parliament, he could not in Honour iſſue out any Commiſſions; but if the Deponent would apply to his Son, they might have any Commiſſions they deſired, and he would order the Marquis of *Hertford* to write to his Son in his Name.

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Richard Price, a *London* Scrivener, alſo depoſed, that the King's Agents in *London* tampering with the Independents, to draw them off from the Parliament, and being diſcovered, the Committee of Safety directed thoſe that were tampered with, to comply ſeemingly with the King's Agents; and the Deponent, having obtained a ſafe Conduct thereupon, attended the King at *Oxford*, in *January* 1643, to treat with his Majeſty on that Subject. When his Majeſty obſerved to the Deponent, that the Independents were the moſt active Men in the Kingdom againſt him, and deſired the Deponent would endeavour the bringing them over to his Intereſt; promiſing on the Word of a King, if they would join him, and be as active for him, againſt the Parliament, as they had been againſt him, he would grant them whatever Freedom they could deſire.

The King brought before the Regicides, to hear his Sentence.

The King being brought to the Bar again, on *Saturday* the 27th of *January*, where he found Sixty-ſeven of his pretended Judges upon the Bench, *Bradſhaw* told him, that he had ſeveral Times been brought before that Court to anſwer the Charge of High-Treaſon, &c. that had been exhibited againſt him in the Name of all the People of *England* (Whereupon a Lady cryed out, *No, nor half the People of England*) However the Preſident went on, and having recapitulated the Proceedings, obſerved again that his Majeſty had there ſeveral Times refuſed to anſwer or own them for a Court, and that his Contumacy had been thrice Recorded: But they were ſtill ready to hear him in any Thing relating to his Defence, though they ſhould not ſuffer any Thing to be offered againſt their Juriſdiction.

He deſires to be heard by both Houſes.

The King anſwered, that ſince they would not admit it, He ſhould waive ſaying any Thing further to their Juriſdiction, though he thought the ſettling That, moſt conducive to the Peace of the Kingdom, and the Liberty of the Subject: That, if he had regarded his own Life more than the Welfare of the Publick, he ſhould have made a particular Defence, which would at leaſt have delayed an ugly Sentence, that he believed would paſs upon him. He ſaid a haſty Sentence once paſſed, might ſooner be repented of, than recalled. And therefore, more for the Kingdoms Sake than his own, he deſired to be heard by the Lords and Commons, before they proceeded to paſs Sentence. That this was but a ſmall Delay, and he might offer Reaſons conducive to the Peace and Welfare of the Kingdom; and therefore conjured

1644. 19 Car I. them once again, if they had that Regard to the publick Welfare they pretended, that he might be heard by both Houſes before Sentence paſſed.

The Commiſſioners hereupon withdrew into the Court of Wards to conſider of his Majeſty's Requeſt, and being returned, *Bradſhaw* told him that they were his Judges, conſtituted by the higheſt Authority; and that Judges ought no more to delay, than to deny Juſtice according to the Great Charter.

That it was their Unanimous Reſolution, they ſhould proceed to Judgment without further Delay; and having endeavoured to juſtify their Proceedings, by inſtances of ſeveral Rebellions in this and other Kingdoms, he ſaid, he apprehended theſe to be good Precedents for their bringing him to Judgment, contending that the King was Guilty of the whole Charge: Adviſed him to reflect on the greatneſs of his Sins, and hoped the Conſideration of them would produce a ſerious Repentance, and prayed God would have Mercy upon his Soul. After which he ordered the Sentence to be read, being of the following Tenour.

The Sentence pronounced on the King.

"That whereas the Commons had by the late Act Authoriſed and Conſtituted them an High Court of Juſtice, for the trying and judging, of *Charles Stuart*, King of *England*, for his Treaſons; &c. by virtue whereof, he had been three ſeveral times Convented before them, and refuſed to anſwer the Charge exhibited againſt him; they being ſatisfied in their Conſciences, as well from the Notoriety of the Fact, as by Examination of Witneſſes, that the ſaid *Charles Stuart* had been guilty of the wicked Deſigns and Endeavours in the Charge ſet forth; and that he had been and was, the Occaſion, Author and Contriver of the ſaid Unnatural, Cruel and bloody Wars, and thereby guilty of High Treaſon; and of the Murders, Rapines, Burnings, Spoils, Deſolations, Damages and Miſchiefs to this Nation, acted and committed in the ſaid Wars; *They do adjudge that he the ſaid* Charles Stuart, *as a Tyrant, Traytor and Murderer, and publick Enemy to the good People of this Nation, ſhall be put to Death, by ſevering his Head from his Body.*

Then the Preſident ſaid, *This Sentence, now read and publiſhed, is the Act, Sentence, Judgment and Reſolution of the whole Court:* And all the Regicides preſent ſtood up thereupon to expreſs their Aſſent; whoſe Names are, *John Bradſhaw*, Preſident; *John Liſle, William Say, Oliver Cromwell, Henry Ireton*, Sir *Hardreſs Waller*, Sir *John Bourchier*, Kt. *William Heveningham, Iſaac Pennington*, Alderman of London; *Henry Marten, William Purefoy, John Barkſtead, Matthew Tomlinſon, John Blackſtone, Gilbert Millington*, Sir *William Conſtable*, Bart. *Edmund Ludlow, John Hutchinſon*, Sir *Michael Livеſey, Robert Tichbourne, Owen Roe, Robert Lilburne, Adrian Scroop, Richard Dean, John Okey, John Hewſon, William Goffe, Cornelius Holland, John Carew, John Jones, Miles Corbet, Francis Allen, Peregrine Pelham, Daniel Blagrave, Valentine Walton, John Downs, Thomas Horton, Thomas Hammond, Nicholas Love, Simon Meyne, Thomas Wayte, Thomas Harriſon, Edward Whaley, Thomas Pride, Iſaac Ewers, Tho.* Lord *Grey*, of *Groby*, Sir *John Danvers*, Sir *Thomas Maleverre*, Bart. *John Moore, Vincent Potter, Auguſtine Garland, John Dixwell, George Fleetwood, Peter Temple, John Alured, Henry Smith, Humphrey Edwards, Gregory Clement, Thomas Wogan*, Sir *Gregory Norton*, Bart. *Edmund Harvey, John Venn, Thomas Scot, Thomas Andrews* Alderman of London, *William Cawley, Anthony Stapeley*, and *James Temple.*

The Names of 67 Regicides, preſent at the paſſing Sentence on the King.

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His Majeſty preſſed earneſtly to be heard, after the Sentence was read, but *Bradſhaw* rudely refuſed it, and ordered him to be taken away. As he went down the Steps ſome of the Soldiers blew their Tobacco in his Eyes, and ſome Spit in his Face, while others as they were taught by *Hugh Peters* and their Officers, cried out, *Juſtice, Juſtice*, which his Majeſty obſerved, they would do as loudly againſt any of their own Generals for a little Money.

The King uſed barbarouſly.

On *Monday* the 29th of *January*, Forty-eight of the Regicides met again in the Painted Chamber, and ſigned a Warrant for the Execution of the King, the next Day, in the open Street, before the Gates of his own Palace of *Whitehall*; and accordingly his Majeſty was brought through the Park on Foot from St. *James's* to *Whitehall*, on *Tueſday* the 30th of *January*, the Way being lined with Soldiers, and a Guard of Halberdiers attending him. The King being permitted to remain ſome time in a Room at *Whitehall*, attended only by Biſhop *Juxon*. Mr. *Nye* and ſeveral other Fanatick Fathers, offered to aſſiſt his Majeſty in his laſt Moments; but he thanked them for the Tender of their Service, and ſaid, as they had ſo often cauſleſly prayed againſt him, he would not admit their praying with him at that time; however, if they pleaſed, they might pray for him. His Majeſty, having finiſhed his Devotion, and taken a piece of Bread and a Glaſs of Wine, was led by Colonel *Hacker*, into the Banqueting Houſe, and from thence through one of the Windows to the Scaffold erected before it, where he found two Executioners masked and dreſſed in looſe Frocks, who had provided Cords and Staples to drag him to his Execution if he reſiſted; however his Majeſty not at all terrified at theſe Preparations, with a compoſed Countenance, addreſſed himſelf to the People about him; declaring that he did not begin the War, and calling God to Witneſs, to whom he was juſt going to give an Account, That he never intended to encroach on the Privileges of Parliament: He acknowledged the Juſtice of God, however, in ſuffering him to die by an unjuſt Sentence, he himſelf having ſuffered an unjuſt Sentence to be executed (on the Lord *Strafford.*) Then turning to Biſhop *Juxon* he ſaid, that good Man could Witneſs for him, he had forgiven all the World, even thoſe that had been the chief Cauſers of his Death: He wiſhed they might repent, and prayed with St. *Stephen*, that this Sin might not be laid to their Charge; but told them they would never proſper, unleſs they gave God, the King, and the People their Due: That they muſt give God his Due, by regulating the Church according to the Scriptures, for which he propoſed the calling of a free National Synod: As to the King's Due, the Laws of the Land would inſtruct them in that: And the

A Warrant for the King's Execution.

His Speech on the Scaffold.

1648. 24 Car. 1.

the People's Due was Liberty and Freedom, which no Man desired more than himself, and for the endeavouring to restore which he was now brought to that Place. If he would have yielded to arbitrary Sway, to have all Laws, Ecclesiastical and Civil, changed according to the Power of the Sword, he needed not have come thither; and wished it might not be laid to their Charge, that he was the MARTYR of the People, concluding with a Prayer, that they would take such Courses as were for the Good of the Kingdom, and their own Salvation.

The Bishop putting the King in Mind, that it might be expected he should declare what Faith he died in, his Majesty thanked him for putting him in mind of it, and said, he died a Christian, according to the Profession of the Church of *England*, as he found it left him by his Father, of which the Bishop was a Witness; and then, preparing for the Block, said, *I go from a corruptible to an incorruptible Crown:* Then he gave his *George* to the Bishop, and said, REMEMBER, with a particular Emphasis; (which gave the Regicides some Uneasiness, till they understood the Meaning of it from the Bishop;) then laying his Neck upon the Block, and stretching out his Hands, which was the Sign, one of the Executioners severed his Head from his Body at one Blow: But it was afterwards put into a Coffin with his Body, and exposed for several Days, both in the Palaces of *Whitehall* and *St. James's*, to the View of the People. His Majesty was in the forty-ninth Year of his Age when he was thus put to death, by those Sons of Violence, who were not content with his Death, but washed their Hands in his Blood, and gloried in the Parricide.

Bishop Juxon hardly used.

Bishop *Juxon*, who attended his Majesty on the Scaffold, had all his Papers taken from him, his Scrutores, Boxes, and his very Pockets were searched; and he was threatned very severely, by the Regicides, if he did not discover what the King meant by bidding him REMEMBER; to which the Bishop answered, that the King bid him remember to carry that supreme Command to his Son, that if ever he was restored to the Crown, HE SHOULD FORGIVE THE AUTHORS OF HIS FATHER'S DEATH, which surely must have put them into some Confusion, if they were not hardened beyond all Sense of Shame.

The Royal Corps interred at Windsor.

The King's Servants afterwards made their Application to the Men in Power, that the Royal Corps might be interred, with the Kings his Predecessors, in *Henry* the Seventh's Chapel; but this they refused, alledging, that Multitudes of People would probably resort thither, out of a superstitious Respect to his Memory, which might be dangerous to their Goverment; but at length they agreed it should be buried in St. *George*'s Chapel at *Windsor*, where the Duke of *Richmond*, the Marquis of *Hertford*, the Earl of *Southampton*, and the Earl of *Lindsey*, saw it interred, in the same Vault where King *Henry* VIII. and his Queen, *Jane Seymour*, lie; but *Whitchcott*, the Governor of the Castle, would not suffer the Burial Service to be used after the Manner of the Church of *England*. And here the Corps of the Royal Martyr still remains, as appears by unquestionable Evi-

dence, notwithstanding the Doubts of the Lord *Clarendon*, and some others, that it was removed elsewhere.

1648. 24 Car. 1.

Remarks on the Proceedings against King Charles I.

It has been observed of the *English*, that though they are generally a religious, loyal, and virtuous People, yet when they are wicked, they exceed all others in bold and daring Villanies. Sovereign Princes have been privately assassinated and murdered by their rebellious Subjects in other Countries; but the *English* Sectaries were the first that ever openly avowed they had a Right to try and put their Kings to Death, and actually arraigned their Sovereign in so solemn a Manner. It is doing those Regicides too much Honour, though they followed the Forms, to suppose there was any Colour of Law to justify their Conduct; for it is a Maxim with us, never disputed till this Rebellion, that the *Persons* of our Kings are sacred; and by an Act of Parliament still in Force, it is declared, *That neither the Peers of this Realm, nor the Commons, nor both together in Parliament, nor the People collectively or representatively, nor any other Persons whatsoever, had, have, hath, or ought to have, any coercive Power over the Person of the King*; much less could a small Remnant of the Commons, who had expelled a Majority of their own Members, and wanted the Concurrence of the House of Lords, have any Authority to judge and condemn their King; and indeed they first voted away the Constitution; before they pretended to sit in Judgment on their Sovereign: They resolved, *That the Commons of* England *were the supreme Power of the Nation; and that whatever was enacted or declared to be Law by the House of Commons, had the Force of a Law, though the Consent of the King and the House of Peers was not had thereto*; which every one knows to be false at this Day, and yet it was on a Supposition that these Propositions were true, that they proceeded to judge their King; consequently the whole Proceeding was an Act of Violence: They were all guilty of the foulest and most consummate Treason, when they arraigned and prosecuted the King for Treason against themselves, who were not so much as one of the three Estates; nor would their Proceedings have been justifiable, if they had had that Authority to call their King to an Account they pretended to; for the Evidence they produced to convict him was far from proving the two grand Points they insisted on, (*viz.*) 1. That the King began the War, and, 2. That he was the Occasion of the Continuance of it.

For the Witnesses who deposed the King began the War, make the marching of his Troops into *Beverly*, in *July* 1642. the first Act of Hostility committed by his Majesty's Forces; which was long after the Parliament had armed their rebellious Mobs, and driven the King from his Palace of *Whitehall*; it was after they had seized the Royal Navy, new-modelled the Militia of *London*, and several other Counties, and armed them against the King; and after they had surprized the Town of *Hull*, and seized his Majesty's Magazines and Stores there, which were most notorious Acts of Hostility, if any thing can be accounted such; and consequently it must be admitted, the Parliament began the War.

1648. 24 Car. I.

And it is as evident, they were the Occaſion of the *Continuance* of the War; for in all the Treaties between the King and Parliament, after the Commencement of the War, whether at *Oxford*, *Uxbridge*, *Newcaſtle*, the *Iſle of Wight*, or elſewhere, they ever inſiſted on the aboliſhing Epiſcopacy, and the whole Eccleſiaſtical Conſtitution, and the Eſtabliſhment of Preſbytery, or ſomething worſe. They alſo demanded the Power of appointing the Great Officers of State, the Command of the ordinary Militia, and a Power to raiſe what Forces they pleaſed, by Sea and Land, and to levy Money on the Subjects to pay them, by their own Authority; And, laſtly, that he ſhould deliver up his faithful Friends and Followers to their Mercy. And from theſe Demands the Commiſſioners for the Parliament at the Treaty of *Uxbridge*, were order'd *not to recede one Tittle*. Even *Rapin*, Vol. xii. p. 268, 271. ſays, "It is evident "that the Parliament intended to leave the "King only an empty Title, and inveſt themſelves with the Sovereignty, and that not by "Artifice, but openly and publickly; that their "Aim was to deſtroy entirely the Worſhip of "the Church of *England*; to aſſume to themſelves the Sovereignty, under Colour of a-"bridging the Power of the Crown, and to "change the Conſtitution in Church and State." And ſurely thoſe who inſiſted on theſe unjuſt and unreaſonable Terms, muſt be allowed to be the Occaſion of the *Continuance* of the War.

To ſay that it was only the Parliament's *Diſtruſt* of the King that occaſioned the Continuance of the War, and that it was the King's Inſincerity that prevented a Peace, is ridiculous; when their Friends admit, that nothing leſs than the Deſtruction of the Conſtitution in Church and State, and their being veſted with an abſolute uncontroulable Power, would ſatisfy them: Had the King been never ſo inſincere, they had already extorted ſuch Acts of Parliament from him, and retrenched his Prerogative to that Degree, that they had very little to fear from that Quarter; and if thoſe Acts had not been ſufficient, His Majeſty offered to paſs what Acts they deſired for their Security. But after all, this want of Sincerity, ſo much talked of in the King, appears to be no more than this, that he ſometimes treated with one Party of his rebellious Subjects, and ſometimes with another, in order to put an End to the War; and if he could have made an Advantage of their Diviſions, re-eſtabliſhed himſelf upon the Throne, reſtored the Conſtitution, and delivered his People from the arbitrary Dominion and Oppreſſion of the Uſurpers, I believe few People, at this Day, will look upon ſuch ſeparate Treaties as Arguments of Inſincerity, or to deſerve any manner of Cenſure. 1648. 24 Car. I.

And if the King did yield to ſome of the Rebels Demands, with a View that, when Peace was reſtored, and a free Parliament called, the Houſes themſelves would deſire they ſhould be repealed, I cannot ſee the Immorality of ſuch a Proceeding; if the King knew he had not a Power of repealing the Laws, and altering the Conſtitution, without a legal Parliament, and his Conceſſions in this Reſpect therefore would be of no force, his Enemies were ſenſible of this too, and therefore, it was not only unreaſonable and unjuſt to inſiſt on ſuch Terms, but extremely weak and fooliſh to ſuppoſe they would ever be ſubmitted to, when the People returned to their Senſes and their Duty. If they would have been contented with the antient legal Conſtitution, which they pretended at firſt to contend for, they might have received a full Pardon for all that was paſſed, and had their Liberties and Properties ſecured to them, beyond a Poſſibility of their being infringed: But it is evident, it was DOMINION they fought for, and to make their Sovereign, as well as their Fellow Subjects, SLAVES. Nor do I perceive any material Difference between the *Preſbyterians* and *Independants* in this Reſpect; they both of them, in their Turns, inſiſted upon much the ſame Terms. The *Preſbyterians* fought the King in the Field, and refuſed to make Peace with him, unleſs he would yield to the unreaſonable Demands above-mentioned; they diveſted him of all his Prerogatives, made him a cloſe Priſoner, and delivered him into the Hands of his Murderers; and the *Independants* indeed committed the laſt horrid Act, and put him to death. The one would have buried him alive, and the other, perhaps, more mercifully took away his Life, and rendered him a glorious Martyr. If he would have conſented to an Abrogation of all the Laws, and have inveſted either Party with an arbitrary unlimitted Power, as the King himſelf obſerved on the Scaffold, he had never been brought thither; and therefore it may, with great Propriety be ſaid, he ſuffered for defending the Conſtitution in Church and State, and conſequently for the Liberties and Properties of his Subjects. 1648. 24 Car.

1648-9. 1 Car. 2.

Duke Hamilton's *Trial.*

The Trial of JAMES Duke of *Hamilton* and Earl of *Cambridge*, before another pretended *High Court of Juſtice*, for *High-Treaſon againſt the Kingdom and People of* England, which began the 9th of *Feb.* 1648-9. 1648-9. 1 Car. 2.

The Charge againſt him.

HE was impeached by the Name of *James Earl of Cambridge*; for that, on or about the Nineteenth of *July* then laſt paſt, he had traiterouſly invaded the Kingdom, and levied War, in Behalf of the late King, againſt the Kingdom and People of *England*, committing many Murders, Outrages, *&c.* And particularly that, on or about the Twentieth of *Auguſt* then laſt paſt, he did join Battle, and fought the Forces of the Parliament, near *Preſton* in *Lancaſhire*, and did, then and there, murder Colonel *Thornby*, and others.

To

1648-9. 1 Car. 2. *His Plea.*

To this Charge the Duke pleaded 1. that he was Duke of *Hamilton* in *Scotland*, and by the Authority of the Parliament of that Kingdom, the ſupreme Power of the Nation, he undertook the command of their Armies, for juſtifiable Ends. 2. That he was born in *Scotland*, before his Father's Naturalization in *England*, and being an Alien born, could not be tried for High-Treaſon againſt the Kingdom of *England*. 3. That he was not only a Priſoner of War, but had ſurrendered upon Articles whereby his Life was ſecured; and deſired Counſel might be aſſigned him to argue theſe points of Law, and accordingly Mr. *Chute*, Mr. *Hales*, Mr. *Parſons*, and Dr. *Walker* were aſſigned his Counſel; but his petitioning for Time to ſend for his Witneſſes was not granted.

The Evidence.

The Priſoner being brought to the Bar the 17th of *February*, produced Duplicates of his Commiſſion, and his Orders from the Parliament, and the Committee of Eſtates in *Scotland*; and the Declaration containing the Ends of the Engagement was read.

The Articles of Capitulation alſo were read, whereby it appeared that the Duke ſtipulated for his Life; but ſome of the Officers who treated with the Duke averred, that they only meant to ſave his Life from the Soldiers, and not from the civil Power; others inſiſted, that the Treaty was in general Terms, and they underſtood his Life could not be taken away, either by the Civil or Military Powers, the Duke having ſurrendered to them upon condition, that his Life and the Lives of thoſe under his Command, ſhould be ſpared.

Then the Counſel for the Parliament, produced the reſt of their Evidence againſt the Duke: One of their Witneſſes depoſed, he heard his Grace ſay, that he was ſome Years younger than King *Charles* I. from whence it was inferred he was born after King *James* came to the Crown, and conſequently might be deemed a Subject of this Kingdom, and guilty of Treaſon: Other Witneſſes depoſed, that he joined Sir *Marmaduke Langdale*, who commanded the late King's Forces in the North of *England*; that he fought the Forces of the Parliament at *Preſton*, &c.

The Duke's Defence.

To which Charge and Evidence his Grace made the following Defence: He ſaid, that Capitulations had always been held inviolable by all Princes and States, as well with their Subjects, as with Independant Nations; that Prince *Rupert*, and the Lord *Cottington*, though excepted from Pardon by an Ordinance of Parliament, were notwithſtanding, upon the Articles for the Surrender of *Oxford*, permitted to tranſport themſelves beyond Sea; as were alſo the Earl of *Briſtol* and Lord *Paulet* upon the Articles for the Surrender of *Exeter*, though both of them were excepted from Pardon. That the Lord *Fairfax*, and the reſt of their Officers, had always carefully obſerved all Articles of Capitulation, and had frequently written to the Parliament on that Subject; and his Grace hoped he ſhould meet with the like Juſtice that others had done: He ſaid it had not been ſufficiently proved that he was a *poſt natus*, conſequently he muſt be deemed an Alien, and could not be guilty of High-Treaſon in invading the Kingdom: That as to Sir *Marmaduke Langdale*, he neither received Orders, or the Word from him, but marched and quartered apart; but, had it been otherwiſe, it could not have been Treaſon in his Grace, to have joined Sir *Marmaduke*; being commanded by the Parliament of *Scotland*, to join all thoſe who ſhould concur with him, in proſecuting the Ends of the Engagement. 1648-9. 1 Car. 2.

He prayed alſo, that an Order of Parliament might be read, importing, that no Quarter ſhould be given to any of the *Iriſh* in Arms, from whence he inferred, that others might have Quarter given them. And another Order was read, wherein it was declared, that all the *Scots* that entered *England*, ſhould be deemed Enemies, and all the *Engliſh* and *Iriſh* that joined them, Traitors.

That he, having his Birth, Honour, and Fortune in *Scotland*, was bound to pay Obedience to the Orders of that State, and to undertake the Command of General, for purpoſes which he conceived lawful: That the entering of the *Scots* Army into *England*, in the Year 1640. was not accounted treaſonable, but was very acceptable to this Kingdom, who gave them their *brotherly* Aſſiſtance; and the late unfortunate Army was deſigned for as good Ends; that he was born before his Father's Naturalization, and ſo could not be deemed an *Engliſhman*, and his being made an *Engliſh* Earl, did not naturalize him: That Articles were to be expounded according to the plain Meaning of the Words, and not by the mental Reſerves of the Officers engaged in the Treaty: That had he only ſurrendered a Priſoner of War, without ſtipulating for his Life, his Life ought not to have been touched, much leſs when there was an expreſs Article for ſaving their Lives: That if theſe Articles were violated, and the War ſhould be revived, it would prove a perfect Butchery, ſince none would ever truſt to a Capitulation for the future; nor was his Eſcape out of Priſon any Breach of the Articles, which required only, that he ſhould deliver himſelf up a Priſoner, and not that he ſhould remain ſo.

The Defence made by his Counſel.

To which, his Grace's Counſel added, that his Obligation and Subjection to the Kingdom of *Scotland* was indiſpenſible, and indiſſoluble; and that he could no more refuſe the Commands of that Kingdom, than a Native of *England* living here could diſobey the Commands of the Parliament of *England*: That no Man could be the Subject of two diſtinct *Kingdoms*; and whatever Obligations his Grace might have to *England*, they could not come in Competition with what he owed *Scotland*: That no Treaſon could be without a Breach of Faith and Allegiance due to them againſt whom it was committed: That *England* and *Scotland* were two independent Kingdoms; and though the Allegiance due to the King was the ſame in both Kingdoms, yet the Kingdoms were diſtinct, when the Duke undertook this Expedition. The Adminiſtration was not in the King then, but in the reſpective Parliaments of each Kingdom; and as the Duke's Allegiance to the Kingdom of *Scotland* was antienter and ſtronger than any Tie that could be laid upon him in *England*, what he did by the Command of the Kingdom of *Scotland*, might make him an *Enemy* to the Kingdom of *England*, but not a Traitor: That in the Hoſtilities between the two Kingdoms, none of the Priſoners

1648-9. 1 Car 2. Priſoners on either Side, had ever been put to Death as Traitors, becauſe the Nations were independent of each other; nor could the Duke's making uſe of the Aſſiſtance of *Engliſh* Forces render him a Traitor: Indeed if an *Engliſhman* conduct a foreign Army againſt his Country, or a Foreigner reſiding here, aſſiſt the *Engliſh* in a Rebellion, it is Treaſon in either of them, for a Native's commanding of a foreign Army, does not make him an Alien; and an Alien reſiding here, and aſſiſting *Engliſh* Rebels, is by the Law of *England* deemed a Traitor, becauſe he owes a local Allegiance.

But where an Alien invades the Kingdom with a foreign Force, though he does join *Engliſh* Rebels, he is ſtill deemed an Enemy, and not a Traitor.

The Council for the Commonwealth reply.

To this Defence, Mr. *Steel*, Attorney-General for the Commonwealth, replied, that the Priſoner was very far from being under any Neceſſity of taking that Command upon him, that he was a principal Member of that Parliament, under which he would ſhelter himſelf, and adviſed the Expedition; that his accepting the Commiſſion, and the Oath he had taken, were ſtrong Arguments alſo of a full and free Conſent; nor would the *Scots* ever have truſted him with the Command of their Forces, if they had not been aſſured of his Heart as well as his Hand, in the Execution of their Deſign; that his Letters to Sir *Marmaduke Langdale* alſo, wherein he prays for an Encreaſe of their Diſtractions in *London*, and for his Friends in *Colcheſter*, ſhewed he was not an unwilling Inſtrument, but one who exceeded, rather than fell ſhort, in the Execution of his Commiſſion.

As to the ſecond Part of his Plea, *That he was a* Scotſman, *and an Alien*, Evidence had been given, that he was one of the *poſt nati*, born after King *James*'s Acceſſion to the Crown of *England*; and ſince he had not ſhewn the contrary, this ought to be taken for granted.

As to that Objection, *That it was abſurd to ſay, a Man might owe a natural Allegiance to two ſeveral Kingdoms*, he anſwered, it was ſo in a phyſical Senſe; but by Conſtruction of Law, he that was born in *Scotland*, might alſo owe an Allegiance to *England*, as had been reſolved in *Calvin*'s Caſe; and in like manner it had been held for Law, that the Natives of *Gaſcoigne* and *Aquitain*, while under the Dominion of the King of *England*, were Denizens and Subjects of *England*.

And as there was a *Ligeantia Regis*, ſo there was a *Ligeantia Regni*; as Allegiance was formerly due to the King in his politick Capacity, ſo it was now due to the Commonwealth, who were poſſeſſed of the ſame Sovereign Power the King antiently had; however, as the Priſoner had been guilty of Murder, there was no need of any Denization to find him guilty of that.

Then he returned to maintain the Charge of Treaſon, and obſerved, that by 4 *Jac.* I. Offenders in Treaſon were to be tried where they were apprehended, in which Kingdom ſoever the Treaſon was committed.

He alſo attempted to ſhew, that the Kingdom of *Scotland* owed Homage to the Crown of *England*, and therefore the Natives of *Scotland* ought to be looked upon as Subjects of *England*.

He obſerved further, that the Priſoner had contributed to his own Denization; for receiving a Writ of Summons, 15 *Car.* commanding him, *ex fide & Ligeantia ſua*, to appear in Parliament, as a Peer of this Realm, he did accordingly appear, and act in that Parliament, and was choſen of ſeveral Committees in Affairs of great Importance to this Kingdom, which was inconſiſtent with his being an Alien. 1648-9. 1 Car 2.

Another Argument he uſed to prove the Priſoner a Traitor, was, That it appeared by his own Confeſſion, and the Declaration he made on the entering on this Expedition, that the Nations were at Amity, and his coming in a hoſtile Manner to invade the Kingdom, in a Time of Peace, therefore made him a Traitor. Treaſon was properly a Breach of Truſt.

As to that Part of his Plea, *That he ſurrendered upon Articles, whereby he was to have his Life*, he ſaid, theſe Articles could not bind the Civil Power of the State; for, if they did, they muſt amount to a Pardon of Treaſon; an Authority that could never be ſuppoſed to be delegated to Military Officers: Beſides, the Intention of the Parties in all Contracts were to obſerved, and two of the Officers that treated with him, had ſworn, they never intended to include the Civil Power; and, if they had, ſuch an Article would have been void. But if he was intitled to his Life by the Articles, he had loſt the Benefit of them by making his Eſcape; for he who ſurrenders himſelf a Priſoner of War, on Condition of Quarter, and afterwards breaks through what was to have been performed on his part, has deprived himſelf of that Privilege which he might otherwiſe have enjoyed.

That he had received great Benefit from the Articles already, in not being put to Death by the Sword immediately, (which was all that was intended, by giving him Quarter,) and by being allowed a fair Hearing before the Civil Magiſtrate, and Council to plead his Cauſe; that they might have demanded Judgment againſt their Priſoner, for failing to make good his Plea; for a Plea of Pardon implied a Confeſſion of the Fact; but that he had been indulged, however, in offering what he could in his Defence.

The Duke being brought to the Bar again on *Tueſday* the 6*th* of *March*, the Preſident *Bradſhaw* re-capitulated what *Steel* had argued againſt the Priſoner the Day before; concluding, that the Court rejected his Plea in all its Branches; after which he paſſed Sentence upon him, and ſome other Loyaliſts, who had been tried before the ſame pretended Court, *viz. That their Heads ſhould be ſevered from their Bodies, on* Friday *the ninth Inſtant.* *Sentenced to be beheaded.*

The Duke was afterwards tampered with by *Hugh Peters*, and ſome other Tools of *Cromwell*, to betray his Confederates in *England*; but not being diſpoſed to purchaſe his Life, by ſo baſe a Sacrifice, it was put to the Vote in that ſmall Remnant of the Houſe of Commons on the 8th, *Whether he ſhould be reprieved or not?* which paſſing in the Negative, he was beheaded the next Day, being the 9th of *March* 1648-9. 'Tis ſaid the Duke's Friends offered an hundred thouſand Pounds to ſave his Life; but that *Cromwell* and *Argyle* had reſolved to take him off, to facilitate the *He is executed.*

1647. 23 Car. I.

Remarks on Duke Hamilton's Trial.

the reducing of *Scotland* to their Arbitrary Dominion.

After the Uſurpers had the Impudence to erect a mock Court of Juſtice, for the Trial of their Sovereign, tis now no wonder to ſee them erect another, for the Trial of thoſe who adhered to him: Beſides Duke *Hamilton*, there were tried before this Court, the Earl of *Holland*, the Lord *Capel*, the Earl of *Norwich*, and Sir *John Owen*, who were all condemned; but Application being made to the Commons to ſave them, the Earl of *Norwich* and Sir *John Owen* had their Lives ſpared, and the reſt were executed.

As to the Hardſhips the Duke underwent at this Trial, the greateſt was to be called in queſtion by Tyrants and Uſurpers, who had no manner of Authority over him: The whole Proceeding was one continued Act of Injuſtice, and the putting him and the reſt of the Royaliſts to Death in cold Blood, ſo many premeditated Murders: Nor did they only uſurp that Authority the King once had, but a more abſolute Power than any King of *England* ever pretended to, ſuſpending and altering the Laws at Pleaſure; for by Law, every Subject had a Right to be tried by his Peers. Theſe High Courts of Juſtice, as they were called, were never heard of in *England* before, and had no other Authority than what they received from that Refuſe of a Parliament, which conſiſted chiefly of Regicides: It muſt be looked upon as a Hardſhip upon the Duke alſo, to arraign him as a Traitor to the Commonwealth of *England*, when, according to the Notion they themſelves profeſſed to have, ſince the Depoſing of the King, the Nations were become two Independant Commonwealths. It is true, an Inſurrection in either Kingdom, would have been conſtrued Treaſon and Rebellion againſt the King, when he was upon his Throne: But what Authority could the *Engliſh* Uſurpers yet pretend, over the Subjects of *Scotland*? The aſſerting therefore, that the Duke owed Allegiance to the Commonwealth of *England*, was ridiculous, and the executing him for Treaſon, was certainly Murder in them, though it ſhould be admitted they had acquired the Dominion of *England*.

1647. 23 Car. I.

Their Pretence alſo, that he ought to be adjudged a Traitor, becauſe *Scotland* once owed Homage to *England*, was equally unjuſt, for this Claim had been long waved, and the *Scots* treated as Enemies, and not as Traitors, when the two Nations were in a ſtate of War; and beſides, if Homage was due to the King, it does not follow, it was due to thoſe who had no Right to his Throne.

Their other Pretence, that his coming from a Kingdom in Amity with them made him a Traitor, has little more in it; for where the Subjects of one Nation in Amity with another, infeſt the Coaſts of their Allies by Sea or Land, they are to be treated as Pirates and Robbers, and not as Traytors.

But nothing could be more unjuſt than their denying him the Benefit of the Capitulation; for ſuch Articles had been obſerved by both ſides from the beginning of the War, a very few Inſtances excepted.

1647. 23 Car. I.

The Proſecution of JOHN MORRIS, *alias* POYNTZ, and MARY his Wife; ISABEL SMITH, LEONARD DARBY, and JOHN HARRIS, for *Forgery*, before the *Houſe of Peers*. 1647. 23. *Car.* I.

1647. 23 Car. I.

The Charge.

A Charge was exhibited by *John Brown* Eſq; Clerk of the Parliament, againſt the ſaid *Morris*, and the other Defendants in the Houſe of Peers, on the 25*th* of *June*, 1647. for forging and publiſhing a Copy of a pretended Act of Parliament, to convey and aſſure certain Manors and Lands in *Eſſex* to the ſaid *Morris* and his Heirs; and that the ſaid *Morris*, produced and pleaded the ſaid Copy at *Chelmſford* Aſſizes; and the Defendants, *Darby* and *Harris*, falſly ſwore it to be a true Copy of the pretended Act: To which Charge, the Defendants put in their Anſwer in the Houſe of Peers, and the Cauſe was heard at the Lords Bar, where the Forgery being proved, and that no ſuch Act as was pretended, was ever made,

The Sentence.

their Lordſhips ſett a Fine of 1000*l. on the ſaid* Morris, *alias* Poyntz. 200*l. on* Iſabel Smith; 400*l. a piece, on the ſaid Witneſſes*, Leonard Darby, *and* John Harris; *and ordered the Defendants to pay* 500*l. to the ſaid* John Brown, *Clerk of the Parliament. That they ſhould be bound to their good Behaviours for Life, and be for ever incapable of being Witneſſes in any Court of Juſtice; and laſtly, that they ſhould be impriſoned during the Pleaſure of the Houſe.*

A Petition in favour of the Defendants.

Soon after this Sentence, a Petition was delivered to Sir *Thomas Fairfax* the General, by ſeveral of the General Officers and Colonels of the Army, who were alſo Members of the Commons, in behalf of the ſaid *John Morris*, alias *Poyntz*, and the reſt of the Defendants, complaining of this Judgment of the Houſe of Lords, and the Oppreſſion and Injuries the ſaid *Morris*, and the reſt of the Defendants, underwent, on account of the ſaid Judgment; and praying that the General would write to the Parliament, in the behalf of the Defendants, that they might remain in the Poſſeſſion of the Mannors and Lands abovementioned; be reſtored to their Liberty, diſcharged of their Fines, and that the Cauſe might be determined by the Courſe of the Common Law; but the Editor informs us, that he could not find any further Proceedings in relation to this Buſineſs.

Remarks.

It is very probable, the Matter was compromiſed, for both Sides were notoriouſly in the Wrong: The Forgery ſeems to have been manifeſtly proved; but then the Houſe of Peers had nothing to do to try the Cauſe, and fine and impriſon the Defendants: For no Cauſe can

1649. 1 Car. 2. come Originally before that Houſe; eſpecially where Commoners are concerned: All Cauſes are brought thither by Writ of Error or Appeal, from ſome Inferior Court, unleſs there be an Impeachment by the Commons, which does not appear in this Caſe. The Lords therefore having aſſumed a Juriſdiction that did not belong to them, and the Defendants being Favourites of the Commons and the Army, as appears by the Petition made in their Behalf, by the General Officers, the Lords did not think fit to inſiſt on the Puniſhment of the Forgery, as it deſerved; and indeed, that Remnant of a Houſe of Peers had then very little Influence or Authority: They were in a Manner Tools to the Commons, and their Names only made uſe of to countenance the Rebellion againſt their Sovereign; or they might poſſibly have inſiſted they had a Power of puniſhing ſuch People as were guilty of forging and counterfeiting their Records. 1649. 1 Car. 2.

1649. 1 Car. 2. Morris's *Trial.*

The Trial of Colonel JOHN MORRIS, late Governor of *Pontefract Caſtle*, during the Grand Rebellion, for *High-Treaſon*, before the Uſurper's Judges, at the Aſſizes held at the Caſtle of *York*, the 16th of *Auguſt*, 1649. 1 *Car.* II. 1649. 1 Car. 2.

The Indictment. THE Colonel was indicted on the Statute of the 25 *Edw.* III. for levying War againſt the late King *Charles*.

When he was arraigned, he ſaid, he conceived that Court had no Power to try him, for he was a military Man, and therefore ought to be tried by a Council of War; and it was with ſome Difficulty that he was perſwaded to plead NOT GUILTY.

His Challenge. Then the Jury were called over, and Mr. *Brooke* coming to be ſworn as Foreman, the Colonel challenged him; but was told, it was too late, for he was already ſworn. The Colonel replied, he had not kiſſed the Book: The Court ſaid, that was a needleſs Ceremony. Then the Colonel deſired he might challenge him for Cauſe, alledging that he was his Enemy; but the Court would not ſet him aſide. The Colonel afterwards challenged ſixteen more; whereupon *Puleſton*, one of the Rebel Judges ſeemed enraged, and ſaid he had beſt take Care to keep within Compaſs, or, he ſhould give him ſuch a Blow as would ſtrike off his Head: To which the Colonel anſwered, That he might by Law challenge thirty five, without ſhewing Cauſe.

Then Witneſſes were produced, to prove the Colonel was Governor of *Pontefract* Caſtle, which he did not controvert; but he ſaid, there were ſome Points of Law to be diſputed, in Relation to the Indictment; and deſired he might have a Copy of the Indictment, and Counſel to argue the Matters of Law; which being denied him, he obſerved, that the Treaſon laid in the Indictment was, his levying War againſt the late King, which could not be true; becauſe he had acted only for the King, and never againſt him, and produced his Commiſſion; but the Court looking on it, obſerved that it was not granted by the King, but the Prince. The Colonel replied, The Prince had his Commiſſion from his Father, conſtituting him Captain-General, by which he was authorized to grant Commiſſions to him and others; and conſequently he acted by the King's Authority: The Court anſwered this would not avail him, if he had nothing elſe to ſay.

He pleads, he had the King's Commiſſion.

The Colonel replied, That by the ſame Power, all Judges, Juſtices of Peace, and Officers, had acted, and all Proceſs of Law was iſſued in the King's Name.

The Rebel Judges ſaid, The Power was not in the King but the Kingdom; he acted but in Truſt for the Kingdom. It was called *The King's Highway*, and *The King's Coin*; but the Property was in the Subject, his Natural and his Legal Power were different Things. *The Court reply, the King was the Peoples Truſtee.*

The Colonel anſwered, the King's Legal and Perſonal Power were ſo united, that they could not be ſeparated.

To this the Court replied, If the King ordered him to kill a Man, this Command would not juſtify him; and demanded if he had any thing more to ſay.

The Colonel obſerved again, that he had acted for the King, and in his Name; that this was before the Regal Power was aboliſhed, and therefore he could not be ſaid to have committed Treaſon againſt the Parliament: That the Caſtle or Palace he held for the King, by Virtue of his Commiſſion, was demoliſhed before the Act for aboliſhing Kingly Power took Place: That it was ſtrange they ſhould aſſume a Power their Predeceſſors never exerciſed; and that the putting him to Death, who was a Soldier, in this Manner, might be retaliated on their Friends: There might come a Turn of Times, and the Marquiſs of *Ormonde* had aſſured him, that whatever ſhould befall him, the like ſhould be returned on the Priſoners he had taken: That he was bound by his Allegiance to do what he had done if he had no Commiſſion; he knew no other Power but the King's he owed Allegiance to. *The Colonel inſiſts, he acted for the King.*

The Court anſwered, this was not much to the Purpoſe: The Colonel replied, that it was true, ſince they had rejected the Authority he acted by, he might as well have held his Tongue, were it not for the Satisfaction of the Hearers: They might do by him, as they had done by his dear Lord *Strafford*, put him to Death without Law, and then make an Act it ſhould be no Precedent. Then he inſiſted on the Statute of 11 *Hen.* VII. which declares, that whoever ſhall aid

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aid or assist the King in his Wars, shall not be questioned for it.

He pleads the Stat. 11 Hen. 7.

The Court answered, *Henry* VII. was a Usurper, and made that Act for his own Security: To which the Colonel replied, as it was never repealed, he ought to have the Benefit of it; but the Rebel Judges would hear no more, and ordered the Colonel to be laid in Irons.

The Court orders him to be loaded with Irons.

The Colonel said this was a Disgrace to him, and to all Soldiers, and desired they would not use him and his Fellow-Soldiers, who were Prisoners, thus ignominiously; for it would trouble him more than the Loss of his Life: But notwithstanding the Colonel was extremely importunate that he might not be laid in Irons, they put Irons both on his Hands and Legs before he was removed from the Bar, and even before the Verdict was brought in against him. Then the Court adjourned, and being assembled again in the Afternoon, the Jury gave in their Verdict, That the Colonel was GUILTY, as they did also against *Blackstone* or *Blackburne*, another brave Royalist in the like Circumstances.

The Jury find him Guilty.

He bravely asserts the Royal Cause.

When the Court had pronounced Sentence against the Colonel as a Traitor, he said, If I must suffer, I receive it with all Alacrity and Chearfulness, and I thank God, I shall die for a good Cause, and the Testimony of a good Conscience; for which, had I as many Lives as there are Stars in the Firmament, I would sacrifice them all for the same. I beseech God bless King *Charles*, and fight for all those that fight for him, or have fought for him.

There was some Application made, even by the Officers of the Rebels Army, to save the Colonel, as he was a Prisoner of War: But he was too brave a Man, and too loyal to his Prince, to be suffered to live by those Usurers.

His Speech and Behaviour at his Execution.

The twenty third of *August* being appointed for the Colonel's Execution, when he was brought out of Prison, and saw the Sledge, he said, I am as willing to go to my Death, as to put off my Cloaths and go to Bed: Being drawn to the Place of Execution, he declared he was brought up in the true Protestant Religion, and had his Education in the House of his dear Lord and Master the Earl of *Strafford*, one of the best-governed Houses in the Kingdom: And as he had been bred up in, and hitherto professed the Protestant Religion, without wavering, he was now resolved, by God's Assistance, to die in it.

Then he proceeded, and said, These Pains are nothing, if compared to those Dolours and Pains, which Christ our Saviour suffered for us, when in a bloody Sweat he endured the Wrath of God, the Pains of Hell, and the cursed and shameful Death due to our Sins; I praise God, I am not plagued with a far more grievous Punishment: The like hath befallen others, who undoubtedly are most glorious and blessed Saints with Christ in Heaven. It is the Lord's doing; and who will not take any Affliction in good Part, when it comes from the Hands of God? *Shall we receive Good from the Hands of God, and shall we not receive Evil?* Though I desire, as I am carnal, *that this Cup may pass from me, yet not my Will, but thine be done.*

I bless God, that I am thought worthy to suffer in so good a Cause: If I had a Thousand Lives I would willingly lay them down for the King, the Lords anointed. The Scripture commands us to *fear God, and honour the King; to be subject to every Ordinance of Man for the Lord's Sake, whether to the King as Supreme, or to those that are in Authority under him.* I pray God to turn the Hearts of all the Soldiers to their Lawful Sovereign, that this Land may enjoy Peace, which till then it will never do.

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After which he took his Bible, and read several Passages, suitable to his Condition, out of the *Psalms*, and having finished his Devotions, the Executioner did his Office.

Remarks Historical and Critical on Morris's *Trial.*

This brave Royalist Colonel *Morris*, surprized *Pontefract* Castle for the King, on the Second of *June* 1648, and for this Service, had the Government of it conferred upon him: Here he kept the whole Country in Subjection, for twenty Miles round and more, and became exceeding terrible to the Adherents of the Usurpers in *Yorkshire*: Whereupon Forces were drawn together, to invest the Place; and in the Beginning of *October* 1648, *Rainsborough*, one of the Rebel Chiefs, was sent down to command the Siege: *Morris* having Intelligence thereof, either marched in Person, or sent a Detachment of his Garrison, to beat up his Quarters at *Doncaster*, and take him Prisoner if possible; and they were so fortunate, as to surprize *Rainsborough* in his Lodgings: But he making a Resistance, and some Forces drawing together to rescue him, *Rainsborough* was killed in the Action, but the Party from *Pontefract* returned to the Castle, with little or no Loss.

Cromwell returning from *Scotland* with his Army about this Time, his *Yorkshire* Friends begged of him to reduce the Castle of *Pontefract*, which continued such a Terour to them; but he being engaged in greater Matters at that Time, namely, the breaking of the Treaty at the *Isle of Wight*, and bringing the King himself to the Block, was obliged to continue his March to *London*: However, he left a Detachment of the Army, under the Command of General *Lambert*, to re-inforce the Siege. The Garrison held out, notwithstanding, six Months longer; but being reduced then to the last Extremity, and finding it impossible to hold out many Days more, they capitulated the latter End of *March* 1649, when they were forced to submit to the following hard Conditions; namely, that the Governor *Morris*, and five more Officers of the Garrison, whom *Cromwell*, according to the Noble Historian, was resolved to sacrifice to the *Manes* of *Rainsborough*, should be excepted out of the Capitulation, and left to their Mercy, if the said proscribed Men could not make their Escape within the six Days limited for delivering up the Place; four of whom actually got off in two desperate Sallies the Garrison made, and the other two were so well concealed under some Stones and Rubbish in the Castle, where Provisions were left them to subsist on for a Month, that they were never discovered by the Enemy; and they made their Escape within ten Days after the Rebels became Masters of the Place, the Castle being immediately demolished and abandoned: However, Colonel *Morris*, with Mr. *Beaumont*, Chaplain

1649. 1 Car. 2. Chaplain to the Garriſon, and Colonel *Blackburne* were afterwards taken, tried, condemned, and executed by the Uſurpers, in a pretended Court of Juſtice, for High Treaſon, in making War againſt King *Charles* I. by whoſe Authority they had acted, as Colonel *Morris* inſiſted at his Trial. The Uſurpers would not put them to Death by Martial Law, for which they might have had ſome Pretence, as being excepted out of the Capitulation at *Pontfract*; but choſe to bring them before their Courts of Law, that, in condemning them, they might ſhew they adjudged all thoſe to be guilty of High-Treaſon, who had ſerved the King, and oppoſed the Parliament; thus making the King himſelf, and his loyal Subjects, Traitors to the People; and ſince they had already taken upon them, to condemn and execute their Sovereign, under Colour of Law, no Wonder his faithful Servants found no better Quarter at their Hands, eſpecially one who had ſo long oppoſed their whole united Power, after all other Forces and Places had ſurrendered, and *Scotland* was ſubdued. The Uſurpers would have done themſelves too much Honour, had they ſaved the Life of ſo brave a Cavalier, whoſe Fame will never die, any more than the Infamy of thoſe Men that put him to Death in cold Blood, in Defiance of all Laws, civil and military, and againſt the Laws of Nature and of Nations. 1649. 1 Car. 1.

The Rebels, thoſe pretended Patriots, who formerly railed at the Adminiſtration, for not allowing their Fellow-Subjects the Benefit of the Law, here denied the Colonel the Benefit of his Challenges, and impanelled his Enemies againſt him: They murdered him for making War againſt the King, when he fought for him, and by his Commiſſion; and when he cited that Act of Parliament of King *Henry* VII. which indemnifies every Man that takes up Arms for the King, they ſlighted the Statute; though we find the Rebels and Regicides themſelves, ſome few Years after, endeavouring to ſkreen themſelves from Juſtice, under the very ſame Act; and urging that, as they acted under the Powers in Being, the ſaid Statute ought in Equity to be extended to them; inaſmuch as the Uſurpers had the Power of a King, though not the Name: But with how ill a Grace they pleaded this Statute, when they had denied the Benefit of it to thoſe who had actually fought for the King, will be obſerved hereafter, in the Trials of the Regicides.

1649. 1 Car. 2. Lilburn's *Trial.*

The Trial of Lieutenant Colonel JOHN LILBURNE, by a Commiſſion of *Oyer* and *Terminer*, at *Guildhall*, *London*, for *High-Treaſon*, the 24*th*, 25*th*, and 26*th* of *October*, 1649. 1 *Car.* II.

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The Objections to the Juriſdiction of the Court, &c.

THE Priſoner being brought to the Bar, before he was arraigned, deſired to be heard; which being granted him, he objected to his being tried by a ſpecial Commiſſion of *Oyer* and *Terminer*: He complained of his being apprehended by a Detachment of Soldiers, and not by the Civil Magiſtrate; that his Chamber and Pockets had been ſearched, and his Eſtate, to the Value of three thouſand Pounds, ſeized without legal Proceſs; and of his being committed to the Tower, and no Allowance made him, as other Priſoners uſed to have, who were confined there: He demanded alſo to hear the Commiſſion read, by which the Court was held; which he thought not agreable to the Petition of Right, and the reſt of the good old Laws of *England*.

Anſwers to his Objections.

To this, Mr. *Prideaux* the Attorney General anſwered, That this was not a Special, but a General Commiſſion of *Oyer* and *Terminer* in the uſual Form; that it had been read before he came, and that the Bill had been found againſt him by the Grand Inqueſt.

Judge *Jermin* alſo informed him, That the Court was conſtituted by the ſupreme Authority of *England*; that their Commiſſion was founded on the Statute of 1 *Weſtm.* 2. which the Barons obtained in their Wars, and purchaſed by the Sword, for the Liberties and Priviledges of the Subject: That he was to anſwer the Charge of oppoſing the ſupreme Power, now ſettled in the Houſe of Commons, not newly erected but revived; for it was ſo in the *Saxon*, and in the *Roman* Times; requiring the Priſoner to put himſelf upon his Trial, and hold up his Hand at the Bar.

The ſupreme Power ſaid to be originally in the Commons

Lilburne replied, He had good Reaſons to believe their Commiſſion to be illegal, and deſired all the good People preſent, to take notice, that they refuſed the reading the Commiſſion, by which they went about to take away his Life; nor did he know the Meaning of holding up his Hand: He looked upon it to be a tickliſh Point; he might throw away his Life, if he held it up, before he knew what it meant. *His Reply.*

To which Judge *Keble* anſwered, It was to ſignify he was the Perſon they enquired for, and if he did but own himſelf to be *John Lilburne*, it ſhould be ſufficient.

Then *Lilburne* ſaid, *His Name was* John Lilburne, *Son to Mr.* Richard Lilburne *of* Durham; *a Freeman of* London, *and late Lieutenant Colonel in the Parliament's Army*; but deſired they would not ſurprize him with Punctilio's.

The Court told him, if he talked of Punctilio's, they would put a Stop to that Language. *Lilburne* replied, *Give me Leave to ſpeak, or knock me on the Head where I ſtand.* Mr. *Bradſhaw*, Preſident of the High Court of Juſtice, as it was called, gave Duke *Hamilton* Leave to ſpeak to the Punctilio's of Law; and I hope you will grant me, that have been in Arms for you, as much Favour, as was granted to Duke *Hamilton*, who was againſt you.

Then

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Then the Clerk arraigning him, and demanding if he was *Guilty*, or *Not guilty*, *Lilburne* ſaid, he was not to anſwer Queſtions for or againſt himſelf; he did not know what Benefits he might loſe by anſwering, and therefore deſired a Copy of his Indictment, Counſel, and Time to conſult them; and that he might not be entrapped with Niceties, and Forms of Law, that could not be found in *Engliſh* Books. However, he was at length prevailed on to plead, *Not guilty of the Treaſons in Manner and Form, as laid in the Indictment:* And being aſked how he would be tried? he anſwered, By the known Laws of *England*, and a legal Jury of his Equals, And *in the Preſence of that God, who knew if the Court were poſſeſſed with premeditated Malice, to deſtroy him right or wrong:* And having repeated his Demand for Counſel, and a Copy of his Indictment, he was told, he could not have either: *Lilburne* replied, He deſired no other Privilege of them, the Nations pretended Friends, than he had at *Oxford* from its pretended Enemies, when he was tried before Chief Juſtice *Heath*, for Treaſon and Rebellion againſt the King. If they, for whom he fought, would not be as juſt to him, as the Cavaliers againſt whom he fought, he was reſolved to ſtand there, and die upon the Principles of a true *Engliſhman:* So they might murder him, and take his Blood if they pleaſed.

He is prevailed on to plead, with ſome Difficulty.

Demands Counſel, and a Copy of his Indictment.

Says, the Cavaliers allowed him Counſel.

Was it juſt to allow Counſel to plead for an Eſtate, and deny him Counſel in a Caſe of Life? And when Judges were ſeven Years ending a Suit for Money or Land, would they deny him a few Days, to prepare for his Defence? Theſe were pretended to be arbitrary and tyrannical Prerogatives of the King's; but if they were not taken away, by thoſe who took away his Life, then only the Name was gone, but the Tyranny remained. Judge *Heath* had allowed him Council in the higheſt Treaſon, even the levying War againſt the King, and fighting his Forces at the Sword's Point.

To which the Court anſwered, Judge *Heath* knew that was no Treaſon; he acted by the Parliament's ſpecial Authority; he had their Commiſſion to juſtify him.

Lilburne replied, *The Letter of the Law was point-blank againſt him; and if the Cavaliers had prevailed, both he and they might have been hanged, for all their Parliament Commiſſions.*

The next Day, being the 26th of *October*, the Priſoner was brought into the Court again; when the Jury were called over; and *Lilburne* having challenged two or three of them, twelve were ſworn, and the Indictment was read: Which ſet forth, that the Priſoner intending to diſturb the Government, then *happily* eſtabliſhed, without King or Houſe of Lords, in the way of a Commonwealth and free State, and to bring them into Hatred and Contempt with the good People of *England*, had written and publiſhed ſeveral treaſonable Libels: The firſt entitled, *Salva Libertate.* 2. *An Impeachment of High Treaſon againſt* Oliver Cromwell, *and his Son-in-Law* Ireton, *late Members of the forcibly diſſolved Houſe of Commons.* 3. *A Hue and Cry after Sir* Arthur Haſelrig. 4. *An Outcry of the young Men and Apprentices of* London: *or, An Inquiſition after the loſt fundamental Laws and Liberties of* England, *directed to the Soldiers of the Army.* 5. *The legal fundamental Laws and Liberties of the People revived, aſſerted, and vindicated:* Declaring, that the preſent Government was tyrannical, uſurped, and unlawful; and that the Commons aſſembled in Parliament, were not the Supreme Authority of the Nation: And the following Paſſages were extracted out of the ſaid Libels, to prove the Treaſon, *viz.*

The Charge againſt him.

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The People now ſee their Slavery and abſolute Bondage is like to encreaſe, under the preſent tyannical, arbitrary, new-erected, robbing Government.

The obnoxious Paſſages produced as Proof of the Treaſon.

The preſent Juncto *are no Parliament, according to Law or Reaſon, but a Company of uſurping Tyrants, and Deſtroyers of your Laws and Liberties.*

Moſt of our preſent Juncto, *and their new framed Council of State, muſt go to* Tyburn, *or* Tower Hill.

Your Officers have often ſtiled them no better than a Mock Parliament, A Shadow of a Parliament.

Miſery and Poverty were never ſo extreme, under the moſt tyrannical of our Kings, as under theſe pretended Friends.

Nothing but the groundleſs Wills of theſe Men of Blood, rageth and ruleth over us.

The preſent ſupreme Authority fought againſt both King and Parliament, rooted out all legal Magiſtracy, and left none but themſelves; and could be compared to none but Murderers and Robbers, having no more juſt Right than ſo many Algier *Pyrates.*

The King never acted the like Tyranny, and yet by St. Oliver's *Means loſt his Head; and* Oliver *and his Parliament have plucked up the Houſe of Lords by the Roots.*

They (The great Officers of the Army) *have had as much Power over their Parliament, now ſitting, as ever a School-maſter had over his Boys.*

The preſent Men in Power, have trod all Liberty under Foot, and ſet up their Tyranny by the Sword.

The High Court of Juſtice is unlawful, if thoſe who ſet it up were a legal Parliament, which they were not, but a Pack of traiterous tyrannical Uſurpers: And they being no Parliament, the other is no Court of Juſtice.

He tells the young Men, *They are obliged to exert themſelves, for their own and the Nations Advantage; and neither to addreſs or ſuffer the* TYRANTS IN POWER, *to be addreſſed or petitioned; but to chuſe ſome of the ableſt among themſelves, who would venture their Lives to oppoſe the preſent Uſurpers: Deſiring the Soldiers, if they had any Compaſſion for themſelves, or their Fellow Subjects, to aſſiſt in their* REDEMPTION FROM SLAVERY; *eſpecially thoſe, who ſigned the ſolemn Engagement: Adviſing them to chuſe two out of each Troop and Company, to correſpond and conſult with the ſaid young Men's Friends, for eſtabliſhing the Liberties and Freedom of the People.*

In another Place, he ſays, *That the young Men were reſolved to incite their Fellow Apprentices of the Out-Pariſhes to chuſe Agents, and deſire by Letter each County in* England *to do the ſame; which Agents ſhould, with their* Burford *Friends, meet and conſider of the ſpeedieſt Method of chuſing a new Parliament, according to the ſaid Agreement; ſeeing* THE PRESENT PRETENDED PARLIAMENT ONLY SHARED THE PUBLICK TREASURE, AND MOST BENEFICIAL PLACES

1649. 1. Car. 2. AMONG THEMSELVES, *without redreſſing Oppreſſions, or receiving Petitions or Complaints: For, notwithſtanding the many Oaths, Promiſes, and Engagements of the preſent Commonwealth, to maintain the Liberties and Properties of the People,* THEY WERE PERJURED TYRANTS, AND OUGHT TO BE ABHORRED OF ALL MEN.

That Cromwell *and his Confederates, were guilty of moſt of the Crimes in kind, charged againſt the late King, though under new Denominations.*

That no Promiſes could bind the chief Jugglers, and Leaders of the Army: And that he, (the Priſoner) *left their Council, eſteeming them a Pack of diſſembling Knaves, eſpecially* Ireton: And averred, *That the General, and chiefeſt of his Council, dreaded a new and free Parliament more than the Day of Judgment: That neither* Korah, Dathan, *and* Abiram *of Old, nor the* Anabaptiſts *with* John *of* Leyden, *and* Buperdullion *at* Munſter; *nor* Jack Straw *or* Wat Tyler *were comparable to the General and his Council, for Rebellions and Treaſons againſt all Kinds of Magiſtracy.*

He tells the Soldiers, *That they aſſiſted rather than endeavoured to ſuppreſs the Deſtroyers of the Liberties of the People: And if any one complained, his Houſe was immediately beſet with armed Janizaries, to take off the People's Courage, and prevent their maintaining their Freedoms.*

And the Indictment farther ſet forth, that the ſaid *John Lilburne*, not being an Officer, Soldier, or Member of the Army, did traiterouſly endeavour to incite Mutiny and Rebellion in the Army, under General *Fairfax*; and particularly did endeavour to draw *Thomas Lewis*, *John Skinner*, and *John Toppe*, from their Obedience to their ſuperior Officers; and did deliver to the aforeſaid three Soldiers the ſaid Books, containing the treaſonable Expreſſions aforeſaid, and which were written and publiſhed to the Intent to ſtir up, and raiſe Forces againſt the Commonwealth; and bring about an Alteration in the Government, in Contempt of the Laws, *&c.*

The Evidence of his printing and publiſhing the Books.

The Witneſſes, produced on Behalf of the Commonwealth, depoſed, That the Priſoner recommended the Books mentioned in the Indictment, and corrected one of the Sheets at the Printer's; and that he publiſhed them, by diſperſing them among the Soldiers: and endeavoured to incite, and ſtir up the Soldiers to Mutiny, againſt their ſuperior Officers and the Commonwealth.

An Ordinance of Parliament, which makes the oppoſing or reflecting on the Commonwealth Treaſon.

An Ordinance of Parliament of the 14th of *May* 1649, alſo was read; declaring, "That "whereas the Parliament had aboliſhed Kingly "Government, and reſolved, that the Peo"ple ſhould be governed by their own Re"preſentatives; it was hereby enacted, That "whoever ſhould maliciouſly publiſh, by "writing, printing, *&c.* that the ſaid Go"vernment was tyrannical, uſurped, or un"lawful, and not the Supreme Authority; "or, ſhould plot or endeavour to ſtir up, "or raiſe Forces againſt the preſent Govern"ment, for the Subverſion thereof, or a"gainſt the Keepers of the Liberties of *En*"*gland*, or the Council of State, or any "of them, ſhould be deemed guilty of High "Treaſon: And that whoever (not being an "Officer, or Soldier) ſhould endeavour to ſtir "up any Mutiny in the Army, or withdraw "the Soldiers from their Obedience to their "ſuperior Officers, or ſhould invite Foreign"ers to invade the Kingdom, or counterfeit "the Great Seal, ſhould likewiſe be adjudged "guilty of High Treaſon." 1649. 1. Car.

Lilburne in his Defence inſiſted, That it was not proved he was the Author of the Books laid in the Indictment; but was anſwered, That, ſince it appeared he had diſperſed and publiſhed them, this made him guilty of High Treaſon. *Lilburne's Defence.*

Then he objected, that he was indicted for Crimes committed againſt the Keepers of the Liberties of *England*, and one of them (Colonel *Purefoy*) was made an Evidence againſt him; but the Teſtimony of a Man that was a Party, ought not to be credited.

He obſerved, that a Priſoner ought to be tried in the County where the Treaſon was committed; and they had laid Facts in the Indictment, ſaid to be committed in three different Counties; and, that there was but one Witneſs to moſt of the particular Treaſons.

He ſaid he had ſtood five Hours waſting his Spirits already, and now to ſtand to anſwer a five Hours Charge *extempore*, was a Burthen too heavy for a Horſe; and hoped they did not deſign to hang him, becauſe he was tired, and had not Strength left to pronounce his Defence; and deſired a Week's Time, or at leaſt till the next Morning; but was told, he muſt enter upon his Defence immediately: Then he deſired he might withdraw an Hour to peruſe his Notes, and refreſh his Spirits: And this being alſo refuſed, he cried out, *Well, if you are reſolved to have my Blood, right or wrong, I appeal to the Lord God, Omnipotent, and a mighty Judge between you and me, to require and requite that Blood on you and your Poſterity, to the third and fourth Generation.* And a Scaffold falling down as he was ſpeaking, put the Court into ſome Conſternation. After which he ſaid, *If you will not allow me Liberty to withdraw and eaſe Nature, I deſire I may do it in Court?* Whereupon a Pot was brought him, and he was allowed ſome little Time to look over his Papers: But *Keble*, one of his Judges, ſoon interrupted him; and ſaid, *Take away his Chair; The Court cannot wait his Motions: Speak what ye have to ſay.*

Lilburne anſwered, I deſire to know, whether, after I have pleaded to Matter of Fact, you will permit me to ſpeak to the Jury, on whoſe Integrity my Life depends; and, *who are Judges of Law, as well as Fact; and you only the Pronouncers of their Will: You, who call yourſelves Judges of the Law, are only* Norman *Intruders, Cyphers to pronounce their Sentence who are Judges of Law, as well as Fact:* To which Judge *Jermin* anſwered, *Was ever ſuch damnable blaſphemous Hereſy, to call the Judges Cyphers: The Judges have been Judges of Law from the firſt Settlement of the Law of* England, *and the Jury only Judges of Fact.*

Lilburne replied, If you will permit me to read, I will diſprove this from your own Law: Here is the firſt Part of *Coke's* Inſtitutes, (holding the Book in his Hand) which all Lawyers allow to be good Law; and here *Coke* ſays, *That a ſpecial Verdict, or at large, may be given upon any Iſſue; but if they will take upon them the*

Knowledge

1649. 1 Car. 2.

Knowledge of the Law, they may give their Verdict generally.

Then he objected, That ſome of the Books laid in the Indictment, were publiſhed before the Act on which he was indicted took Place; and urged, That where there was no Law, there was no Tranſgreſſion: He obſerved farther, That it was the Intention, and not the Act, which made a Thing criminal; and he had always endeavoured the Proſperity of the Nation, he ſaid, though it was true he had been proclaimed a Traitor in all the great Towns in *England*, and impriſoned for Crimes with which he had never been charged ſince; and now, for complaining of hard Uſage, Acts were made on Purpoſe to bring him within a Charge of High Treaſon. The Court anſwered, this was nothing to the Purpoſe; they ſhould not ſuffer him to go on at this Rate: Whereupon *Lilburne* cried out, *Well, If you will not let me proceed, my Blood be upon your Heads:* I deſire the Jury will take notice of your unjuſt and cruel Uſage: Then he repeated his Complaints, That his Eſtate was taken from him; That he was refuſed Council, *&c.* but reſigned himſelf to the Care and Conſciences of his Fellow Citizens, the honeſt Jury; who (he again obſerved) were Judges of the Law, as well as Fact; and prayed God to direct them, to act according to Juſtice: Whereupon the Audience cried *Amen*, and gave a great Hum; and the Judges being apprehenſive of a Tumult, directed Major General *Skippon* to ſend for three Companies of Soldiers more for their Protection.

The People ſhew themſelves well-affected to him, and the Court ſend for a ſtronger Guard.

Then *Prideaux*, their Attorney-General, ſummed up the Evidence, and informed the Jury, that two Witneſſes were not neceſſary to convict the Priſoner of Treaſon; for the Statute of 1 and 2 *P. M.* had repealed the Statutes of *Edw.* VI. Then he made an Encomium on the Officers of that gallant Army, who had been ſo faithful to their Truſt, and had ſo much advanced the Peace and Happineſs of the Nation, obſerving, *That God had bleſſed and owned them in a miraculous Manner.* But *Lilburne* interrupted the Attorney, and obſerved, that he (the Attorney) was once one of thoſe that voted the Army Traitors, and was ſet down as a Malignant by the Commiſſioners of the Army, though he was now become a good acquieſcing Creature; and demanded, if, notwithſtanding their boaſted Faithfulneſs, the Army had not twice rebelled againſt their Creators, their Lords and Maſters.

The Army govern the Parliament at this Time. Mr. Attorney applauds the Army.

However, Mr. Attorney went on, ſhewing what great Things the Army had done, though they could not, he ſaid, eſcape the vile Tongue and Pen of Mr. *Lilburne*, any more than the Parliament and Civil Magiſtrate; and therefore, he hoped the Jury, as they tendered the Honour and Welfare of them all, and if they had any Remembrance of the great and wonderful Things their renowned Army had done, and with what Confidence and Deſpite to all Law and Authority *Lilburne* had publiſhed thoſe Books, they would take Care he ſhould ſmart for it; concluding, that the Court were Judges of the Law, as the Jury were of the Fact. Judge *Keble* alſo, in his Directions to the Jury, told them that the Statutes of *Edw.* VI. which required two Witneſſes, were repealed by that of Queen *Mary*, which enacted, that the Common Law ſhould be the Rule in Trials of Treaſon; and, by the Common Law, one Witneſs with concurring Circumſtances, was ſufficient; that he did not obſerve: That any Fact the Priſoner was charged with ſtood upon a ſingle Teſtimony, but was ſupported by many aggravating Circumſtances; and that this was the greateſt Treaſon that ever was attempted by one Man; that it ſtruck at the Subverſion of the Commonwealth, and to have laid them all in Blood; and left it to their Conſciences, if he was not guilty of the moſt tranſcendent Treaſon that ever was hatched in *England*.

Judge Keble affirms, two Witneſſes were not neceſſary in Treaſon.

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The Jury, before they went out, deſired they might have a Quart of Sack, to refreſh themſelves, but were told, No Jury were ever allowed to drink in Capital Caſes, and it was thought a great Indulgence that they were permitted to have a Candle. The Jury, returning into Court about an Hour afterwards, gave in their Verdict, that the Priſoner was NOT GUILTY; at which the People ſhouted for half an Hour, without ceaſing. But, notwithſtanding Mr. *Lilburne* was acquitted, he was remanded to the *Tower*, and Major-General *Skippon* ordered to guard him thither, with a good Body of Troops; however, the Multitude followed him, with loud Acclamations, to the *Tower* Gates, and abundance of Bonfires were made in the Streets that Night; and the People afterwards appeared ſo exaſperated at *Lilburne*'s being continued a Priſoner, that the Council of State, on the 8th of *November*, thought fit to direct their Warrant to the Lieutenant of the *Tower* to diſcharge him.

Wine denied the Jury.

Lilburne *acquitted.*

The People ſhout, and make Bonfires.

Cromwell appears to have been under great Apprehenſions from the daring Spirit of this Man, and could not reſt till he got an Ordinance paſſed for his Baniſhment; whereby it was declared, that he ſhould be adjudged guilty of Felony, if ever he appeared in *England* after a certain limited Time: But neither was this much regarded by *Lilburne*; he was afterwards found in *England*, and brought to his Trial, at the *Old-Bailey*, on that Act, the 20th of *Auguſt*, 1653. but again acquited by the Jury; at which the Parliament were ſo incenſed, that they ordered the Jurors to be apprehended, and brought before the Council of State, to ſhew Cauſe why they acquitted the Priſoner of Felony, againſt the plaineſt Evidence: And, though all the Jury was ſeparately examined and threatned, they would give no other Anſwer, but that they looked upon themſelves to be Judges of the Law as well as the Fact; that they gave the Verdict according to their Conſciences: As to the Reaſons that induced them to acquit him, they would give none. Nor had *Cromwell* any way to defend his Uſurpation againſt the Attacks of this brave and popular Man, but by impriſoning him arbitrarily in *Dover-Caſtle*, where he died a Sort of a Martyr to Liberty.

An Ordinance for the Baniſhment of Lilburne.

He is tried for remaining in England, *and acquitted.*

The Jury threatned.

Lilburne *impriſoned in* Dover-Caſtle, *dies there.*

The Trial of Mr. *Lilburne* gives us a very lively Idea of the Condition of the Subjects of *England* during the Uſurpation, and ſhews, that Tyranny and arbitrary Power were far from being baniſhed the Realm, on the aboliſhing of Kingly Government; or rather, that thoſe Men who rebelled againſt their King, and murdered him on the Pretence of Tyranny and Maladminiſtration, were ten times more arbitrary

Remarks on the Trial of John Lilburne.

1649. 1 Car. 2.

arbitrary and deſpotick than the King had been, and entirely ſubverted that Conſtitution and thoſe Laws they pretended to be ſo zealous to preſerve, proſecuting ſuch Men with the utmoſt Violence as complained of their Oppreſſions.

Lilburne informs us, the People were reduced to the utmoſt Slavery and Bondage, by a Company of uſurping Tyrants and Deſtroyers of their Laws and Liberties; that Miſery and Poverty were never ſo extreme, under the moſt tyrannical of our Kings, as under theſe pretended Friends to the Conſtitution; that they had trod all Liberty under Foot, and ſet up their Tyranny by the Sword: That *Cromwell* and his Aſſociates were guilty of the very Crimes they charged the late Adminiſtration with; that no Promiſes could bind them; they were a Pack of diſſembling Knaves; that the arbitrary Wills of theſe Men of Blood raged and ruled over all, and they were no better than Murderers and Robbers.

In this Situation of Affairs, the Priſoner had little Reaſon to expect the Benefit or Protection of the Laws; the ſeizing his Eſtate, the Impriſonment of his Perſon, and the reſt of the Outrages he complains of, were but the natural Effects of the Tyranny the Uſurpers exerciſed; and how they came to indulge him a Trial by a Jury, is not eaſy to conceive, unleſs they looked upon this as the moſt popular Way of cutting him off, and depended on the Sheriffs returning ſuch a Jury as would have anſwered their Ends.

Their affirming that the Jury were not Judges of the Law as well as Fact; that two Witneſſes were not neceſſary in Treaſon, and denying him Council to argue the Points of Law, were but trivial Jnjuries, compared with others they daily committed; with their rooting up and ſubverting the very Foundations of the Government, and ruling the Nation with a Military Force. 1649. 1 Car.

We find even *John Lilburne*, and all the Parliamentarians, who had been ſo zealous in deſtroying Kingly Government, now repenting their Raſhneſs, and wiſhing for a Reſtoration; even *Cromwell* and his Army could not awe them into Silence. The People looked upon *Lilburne* as the Champion of their Liberties; and ſo general was the Diſaffection, that the Uſurpers were not able to get a Jury to convict him, though they made Ordinances of Parliament on purpoſe to deſtroy him. And it is evident, if the People had not been kept in Bondage by an Army of Veteran Troops, to whom *Cromwell*, their Chief, in a manner gave the Plunder of the Nation, King *Charles* II. had been reſtored to his Throne within leſs than a Year after his Father's Murder. The People ſoon ſaw through the Hypocriſy of thoſe pretended Saints, and that, inſtead of vindicating their Liberties and Properties, the Uſurpers intended only to eſtabliſh their Tyranny, and bring them under a more intolerable Yoke than any People in *Europe* were ſubject to: And this we find they did *in the Name of the Lord*, and in the Name of a *Parliament*, an Aſſembly of Men of their own appointing, with whom they ſhared the Spoils of the Kingdom.

1650. 2 Car. 2. Andrewe's *Trial*.

The Trial of Colonel EUSEBIUS ANDREWE, a Barriſter of *Gray's-Inn*, for *High-Treaſon againſt the Rump Parliament*, before their pretended *High Court of Juſtice*, 16 *Aug.* 1650. 2 *Car.* II.

1650. 2 Car. 2.

The Charge. THE Editors of this Trials have not given us the Articles, or Charge, exhibited in the pretended High Court of Juſtice, againſt the Colonel: But from his Anſwers and Defence, it appears, he was charged with a Conſpiracy to ſubvert their (uſurped) Government; and the Overt-Acts laid of it, were his correſponding with King *Charles* II. endeavouring to bring him in; and, in order to it, conſpiring with Sir *John Gell* and others, to raiſe Forces; to ſeize upon the Iſle of *Ely*, and taking an Oath of Secrecy not to reveal the Conſpiracy.

The Colonel was apprehended at an Inn in *Graveſend*, the 24th of *March* 1649-50, and examined by Preſident *Bradſhaw*, Sir *Henry Mildmay*, and *Thomas Scot*, Members of their Council of State, and delegated to take his Examination.

Mr. *Buckley*, who publiſhed the Account of theſe Proceedings againſt his Friend Colonel *Andrewe*, ſays, the Colonel found, by the Queſtions that were put to him, that he was betrayed, and that his Examiners were acquainted with every Circumſtance of the Conſpiracy, and therefore endeavoured to merit their Favour, by freely confeſſing what he found it was impoſſible to conceal.

His Examination. In his Examination therefore, taken the 27th of *March* 1650, he confeſſed, that he had been unfortunately and treacherouſly ſeduced into an Action that rendered him obnoxious to their Diſpleaſure: He acknowledged, that he took up Arms for his late Majeſty King *Charles* I. in the Year 1642, and continued in his Service till the Surrender of *Worceſter*, in *July* 1645. That he had omitted to make his Compoſition with the State: That he had neither taken the Proteſtation required by the preſent Powers, the ſolemn League and Covenant, the Negative Oath, or the Engagement.

He confeſſed, That Mr. *John Barnard*, who was his Major, when he commanded a Regiment in the King's Service, had communicated to him the Schemes of ſome Reformades, Levellers, Agitators, and other Perſons diſaffected to the preſent Powers; but that he neither promoted, or conſented to them: That one *John Benſon*, who pretended to have ſerved in the Parliament Army under Sir *John Gell*, had

1650. 2 Car. 2. had ſhewn him alſo ſome Papers relating to Affairs of State, which he ſaid were intended to be ſent beyond Sea: And that both *Benſon* and Captain *Holmes*, who introduced him to the Examinant, magnified Sir *John Gell*'s Intereſt in his Country; ſaid he was inclined to join the Royal Party; that he ſerved the Parliament with Reluctance, and was willing to expiate his former Fault, by ſome beneficial Service for the Prince (King *Charles* II.)

That Major *Barnard* propoſed the reſuming a Deſign the Examinant had formed, during the War, of ſeizing the Iſle of *Ely*, with the Aſſiſtance of Sir *John Gell*, *Holmes*, and *Benſon*, and it was reſolved, that the Examinant and *Benſon* ſhould try if the People of *Cambridgeſhire* would engage in it, and if Sir *John Gell*'s Reſolution and Strength were ſuch as had been repreſented.

That he afterwards diſcourſed with Sir *John Gell*, who ſhewed he was diſſatisfied his Arrears were not paid, and that his Services for the Parliament were not requited; and intimated that, if ever he took up Arms again, it ſhould be for the Prince, deſiring that his Affection for the Royal Cauſe might be repreſented to him.

However, the Time for the Examinant's remaining in *England* (according to an Order of State, for baniſhing ſuch *Cavaliers* as did not comply with them) being expired, he was preparing to go over to *New England* or *Virginia*; when Major *Barnard* and *Benſon* came to him again, and told him, there was a Deſign laid, on the *Cavaliers* leaving the Town, to ſeize the Cavalry in the Service of the preſent Powers in their Quarters: That the Examinant was pitched upon to go over to *Holland*, to concert Matters with the Prince, and Money was raiſed to defray his Expences; and that he (the Colonel) anſwered, If the Money was ready, he would lay aſide his Deſign of going to the Plantations, and entertain the Motion.

That, a few Days after, Major *Barnard* and *Benſon* came to the Examinant again, and informed him, that ſeveral Perſons of Quality and Fortune, in *Kent*, *Buckinghamſhire*, and *Dorſetſhire*, would preſently come up near the Town, join in an Engagement to proſecute the Deſign, and advance Money for it; and deſired him to draw up an Engagement, which he did on the Inſtructions they gave him; and that they preſſed him to bring Sir *John Gell* into it, but propoſing it to Sir *John* the ſame Day, he anſwered, he was in no Capacity to enter upon ſuch an Attempt at preſent, neither would he come into any Engagement under his Hand and Seal to act for the Future, for that *Benſon* was given to drink, and laviſh of his Tongue; but entruſted the Examinant ſo far as to tell him, if he went to *Holland* upon this Occaſion, he ſhould poſſeſs the Prince with a good Opinion of him, let him know that he would do nothing againſt him, and if he (Sir *John*) were in Command, he would be ſo to the Prince's Advantage.

That giving Sir *John*'s Anſwer to Major *Barnard* and *Benſon*, they did not ſeem to be diſſatisfied with it, but ſaid, they had appointed a Deputation of Gentlemen, from the Counties of *Kent*, *Buckingham*, and *Dorſet*, to meet at the *Three Cranes* at the *Savoy-Gate*, and agree on their reſpective Proportions of Money, deſiring the Examinant to be there, who came accordingly, but no Gentlemen from the ſaid three Counties appeared; only Major *Barnard* produced two Letters, ſubſcribed by *Smith* and *Thatcher*, importing that the *Kentiſh* Gentlemen were come as far as *Rocheſter*, and would be within twelve Miles of *London* that Night, and would give them a Meeting any where near *London* the Day following, deſiring Major *Barnard* might come to them forthwith, who pretended to take Horſe accordingly, and go into *Kent*: That the ſame Night, one *Smith* and Captain *Aſhley* brought the Examinant a Letter from *Barnard*, reprehending him and Sir *John Gell* for their Backwardneſs in ſigning the Engagement, and declaring, that unleſs the Engagement was ſigned by Sir *John Gell*, his *Kentiſh* Friends would not proceed further: To which the Examinant anſwered, under a Vow of Secrecy, that he was ſatisfied concerning Sir *John Gell*, and if any Gentleman of Quality, in whoſe Judgment the reſt would abide, would addreſs to Sir *John*, he would ſatisfy him under an Oath of Secrecy; but that he durſt not truſt *Benſon*, and *Barnard* was a Stranger to him: That Captain *Aſhley* and *Benſon* thereupon took their Leaves, aſſuring the Examinant, that they thought no more would be expected from Sir *John*; they would return to their Company that Night, and the next Day, being *Tueſday*, the Money ſhould be paid at the *Palſgrave's-Head*.

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They broke their Word, however, as to the Payment of the Money; and the next Night Captain *Aſhley* and *Benſon* delivered the Examinant a Letter from Major *Barnard*, preſſing him to ſign the Engagement; upon which Condition, *Barnard* ſaid, he would go with him the next Day to *Graveſend*, where they ſhould meet the Gentlemen of *Kent*, and the Money ſhould be paid him: But that, having ſigned the Engagement, and going to *Graveſend* the ſame Night, he found no Gentlemen there, and having waited, in Expectation of ſeeing them, till *Monday* the 24th of *March*, he was ſeized at *Graveſend* by a Party of Horſe, and brought to *London*.

The Colonel diſcovers he had been betrayed.

The Colonel, at his Examinations before the Committee of the Council of State, obſerved, That there had been Spies ſet upon him for ſeveral Years, and particularly Major *Barnard*, which the Preſident did not deny: On the contrary, he took upon him to juſtify the Parliament, by the Practice of all States to ſet a Watch upon ſuch Perſons as they knew to be diſaffected to them.

He petitions for his Enlargement.

The Colonel afterwards ſent ſeveral Petitions to the Council of State, importing, that ſince he had not prevaricated with them, or concealed any Thing or Perſon from them, that might give *their Lordſhips* Satisfaction, or ſerve the State, he might have the Liberty of the *Tower*, and his Friends might viſit him.

To be brought to his Trial.

He petitioned alſo, that he might not be tried before the High Court of Juſtice; but afterwards he petitioned to be brought to a ſpeedy Trial, repreſenting, that he muſt otherwiſe infallibly periſh in the *Tower*, all Perſons being prohibited to come at him, or relieve his Neceſſities; but receiving no Anſwer from the Council of State, he drew up a Petition to the Parliament, wherein he ſets forth, that he had

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He petitions the Parliament to be releaſed, &c.

been betrayed by a Pack of Setters into Actions, which abſtracted from their Circumſtances rendered him liable to their Juſtice; and this had been done in Hopes that he would have drawn in divers Perſons of Quality and Fortune into the ſame Danger.

That, failing in that Part of their Deſign, they had betrayed the Petitioner to the Council of State, by whoſe Warrant he had been ſixteen Weeks a cloſe Priſoner, without the Acceſs of his Friends, or Means to ſubſiſt on; and was like to periſh by his Wants, before it was known by a publick Trial, whether he was an Object of their Juſtice or Mercy; and by this cloſe Reſtraint was deprived of all Means of making his Defence.

He humbly deſired therefore, 1. That they would admit him to ſue out his Pardon, on giving Security for his good Behaviour; and, 2. If that was too great a Favour, grant him Licence to depart the Commonwealth; but, 3. If that was not permitted, that he might receive a publick Trial, and have an Opportunity of preparing for his Defence; and, 4. That he might have the Liberty of the *Tower*, be permitted to ſee his Friends, and that the Debt he had contracted by his Impriſonment might be diſcharged.

He is brought before the High Court of Juſtice.

To this Petition I do not find he received any Anſwer, but in *Auguſt* he was brought before the High Court of Juſtiee: The Charge was opened and aggravated by their Attorney-General *Prideaux*, who gave the Colonel very abuſive Language; however, he was allowed to put in his Anſwer in Writing, which he did on the 16th of *Auguſt*, containing in Effect, a Plea to the Juriſdiction of the Court; for he inſiſted, that the Ordinance for eſtabliſhing a High Court of Juſtice, being contrary to *Magna Charta*, and the Fundamental Laws of the Kingdom, by which every Man ought to be tried by his Peers, was void.

Pleads to their Juriſdiction.

That this very Parliament had, by ſeveral Remonſtrances, declared, that the Preſervation of the Laws, and the due Adminiſtration of Juſtice, were their Juſtification in taking up Arms againſt the King, and the Ends they propoſed by the War; and had imprecated God's Curſe on all that ſhould decline thoſe Ends: That by the Ordinance, or Votes of Non-Adreſſes, *January* 1648. they aſſured the Kingdom, that, though they had laid the King aſide, they would govern by the Laws, and not interrupt the Courſe of Juſtice *in the ordinary Courts*.——The Conſtitution of the High Court of Juſtice therefore was a Breach of that publick Faith of the Parliament, exhibited and pledged in their Declarations and Votes to the Freemen of *England*.

He did inſiſt therefore, and affirm for Law, and claim as his Right, 1. That the Act being defective by which this Court was conſtituted, they had no Power over him, or to preſs him to a further Anſwer. 2. That by Virtue of *Magna Charta*, the Petition of Right, the ſaid Remonſtrances and Declarations of Parliament, he ought not to be proceeded againſt by this Court, but in an ordinary Court of Juſtice, and be tried by his Peers.

He alſo put in a ſecond and a third Anſwer, importing, That though the Court was legally conſtituted, yet they were no more than Commiſſioners of *Oyer and Terminer*, and ought to try him by a Jury; and at his Hearing repeated and enforced all that he had inſiſted on in his ſeveral Anſwers. 1650. 2 Car. 2.

Inſiſts that by Magna Charta he ought to be tried by his Peers.

In his Arguments at the Bar, he obſerves, that *Magna Charta* was but a Confirmation, or Reſtitution of the Common Law; that it had been thirty Times confirmed; that *Hubert de Burgh*, in the Reign of *Henry* III. was condemned for endeavouring a Reverſal of it; and *Hugh Spencer*, in the Reign of *Edward* II. for adviſing the making a Breach in it; and in the Reign of *Edward* III. it was enacted, That if any Statute ſhould be made contrary to it, it ſhould be void.

And by this Great Charter it was granted, *That no Freeman ſhould be taken, impriſoned, or condemned, but by lawful Judgment of his Peers.*

That the Ordinance for eſtabliſhing the High Court of Juſtice, being diametrically oppoſite to the Great Charter, was of no Force; but as the Makers of this Law were armed with Power, he confeſſed he was not in a Condition to diſpute it with them, and therefore proceeds to his ſecond Argument:

Wherein he ſhews, that their Commiſſion reſembled that in the Reign of King *Charles* I. which iſſued for the Trial of the Subject by a Court-Martial, againſt which the Petition of Right was particularly levelled; and it was granted there ſhould never be any ſuch for the future. 2. He obſerved that, though they were called Commiſſioners by the Act, they had no Commiſſion but the Act itſelf; whereas, in regard they were not a Court of Record, they ought to have had Commiſſions, returnable at a certain Day in ſome Court of Record, where their Proceedings might be extant and viſible; and if the Act gave them a Power to condemn and execute him, yet, he obſerved, they had none to acquit and releaſe him; ſo that if they did not kill him by the Sword of Juſtice, he muſt be left in worſe Hands, to be buried alive in Reſtraint and Want, which was againſt the Law of Nature and Nations, and particularly againſt the Laws of this Land.

But if they ſhould be granted to be a Court, They muſt acknowledge they were a Court *ex parte*, ſet up to ſerve a particular Purpoſe, to deprive the Subjects of their Lives and Liberties, by Ways unknown to our Laws; that as they had a Power over the Lives and Lands of the Subject, it was abſolutely neceſſary they ſhould be a Court of Record, that the State might know what was become of the Matter in Iſſue, and of the Perſon put upon his Trial; and that the Subject, if he was acquitted, might at all Times reſort to the Record, if he ſhould be queſtioned again for the ſame Fact in any other Court.

Another Exception he made to the Act was, that it was made for the Puniſhment of Perſons that had committed certain Facts before the Act was made, and who could not have been puniſhed by any Law in being at the Time of the Fact committed; and that it was not correcting the Fault, but the Deſtruction of the Perſon, which was manifeſtly deſigned by ſuch Clauſes of Retroſpection, as it appeared in the Lord *Strafford*'s Caſe; and he begged leave to ſay, that the

Magna Charta *and the Statutes out of Date.*

1650. 2 Car. 2.

the Act might rather be termed a Snare than a Law, and looked more like a Warrant for an Arbitrary Execution, than an Authority to support a Judicial and Legal Proceeding or Trial.

Another Exception he made, was, that the Oath taken by the Commiſſioners, was not an equal Oath to adminiſter Juſtice impartially, between the State and the Subject, or taken as it ought to be in open Court; that inſtead of being tried by ſworn Jurors, and adjudged by ſworn Juſtices; he and all who fell into his unhappy Circumſtances, were to be tried by their ſworn Enemies, from whom little Juſtice was to be expected.

He inſiſted farther, that if their Authority was admitted to be Legal, yet he ought to be tried by a Jury; for the Act which eſtabliſhed the High Court of Jnſtice, did not prohibit their trying him by a Jury, as *Magna Charta*, and the Statutes made in Confirmation of it, required; and if they were at Liberty to try him by a Jury; then *he ought* to have a Trial by a Jury, ſince *Magna Charta* and the reſt of the Statutes, which required that every Man ſhould be tried by his Peers, were ſtill in Force: If the Act for erecting their Court of Juſtice intended to enervate the force of thoſe Laws, it would have repealed them, or at leaſt have impowered them to proceed in this unuſual Way (*non obſtante*) notwithſtanding the ſaid Statutes; or at leaſt have declared they were to act in that manner, *pro hac vice*; and that it ſhould not be made a Precedent, (as they had enacted in the Lord *Strafford*'s Caſe.)

That it was his Right to be tryed by a Jury, and if they proceeded otherwiſe, *if Law was not out of Faſhion*, they would but weave *Penelope*'s Webb, and one Day's Judgment be unravelled by the next Day's Writ of Error, or a Reverſal in Parliament; but After-games for Life were dangerous, and he thought himſelf obliged in Duty to his Country, as well as for his own Preſervation, not to ſubmit to this manner of Trial, leſt in him a Precedent ſhould be made for the Deſtruction of his fellow Subjects.

That the Act or Ordinance for conſtituting this Court, authorized them to proceed to Trial, Condemnation, Execution, *&c.* but they were not reſtrained as to the Manner of their Proceedings to Trial, excluſively of a Trial *per pares*; but the *Manner* of Trial, as well as the Judgment and Execution, was left to them, or the Major Part of them, and if they thought fit, they might proceed by Preſentment and Jury.

But if when they lawfully might by their own Law (he urged it *ad hominem*) try him by a Jury, and would not, then they muſt pardon him, if he averred that they took from him, and in him from all the Commonalty in *England*, three Grand Priviledges; and firſt, the Benefit of his Challenges, for he might challenge thirty-five Jurors peremptorily, and challenge for Cauſe without number; and if this Benefit were allowed him here, he could challenge every one of the Bench for Cauſe, without inſiſting on his peremptory Challenges.

Magna Charta and the Statutes out of Date.

Here Commiſſioner Keble *told him, that the Statutes and Caſes he cited were now out of Date.*

Then the Colonel went on, and ſaid, a ſecond Benefit they deprived him of, was, a Trial *per pares* (by his Peers), and of ſeeing and croſs-examining the Witneſſes, produced againſt him, which ought to be by Law *viva voce*. Thirdly and Laſtly, they took from him the Right and Priviledge of a fair Verdict: A Verdict was the Senſe and Opinion of all the Jurors, and one knowing and Conſcientious Man, might preſerve an innocent Man, whom eleven ignorant or careleſs Men would deſtroy; whereas the Sentence of this Court was determined by a Majority of Voices, ſome of them influenced probably by the Opinions of others, which was the great Evil complained of in the Court of *Star-chamber*, in the preceding Reign; and certainly was a very great Evil, eſpecially in Caſes of Life.

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That a Verdict by a Jury, alſo, was to be given immediately before they had any Refreſhment, or had an Opportunity of converſing with any one that might influence or biaſs them: But this Court, that heard the Evidence to-Day, might at any time (before the 29*th* of *September*) give their Sentence; and in the mean Time how much their own Affairs might put the Evidence for him out of their Heads, and how much the State's Power might put his Safety out of their Hearts, he had juſt Cauſe to ſuſpect; but, *he was reſolved not to be in love with that Life, which the Common Law could not protect; he had rather die the Law's Martyr, than live the State's Slave.*

A ſhort reply to his defence.

To which the Attorney General *Prideaux*, replied, that the Court was not at leiſure to take notice of his Law Caſes; but obſerved, that by his Confeſſion he had an Affection to act againſt the State, though nothing was acted; which was Treaſon ſufficient to convict him, and for that Affection he deſerved Death.

The Court over-rule all his objections, and condemn him.

Whereupon the Court pronounced Sentence, that he ſhould be hanged, drawn, and quartered as a Traitor; but on his Petition to the Parliament, an Ordinance was made to change the Sentence, and that he ſhould be beheaded.

His Speech and Behaviour at his Execution.

The Colonel being brought to the Scaffold erected on *Tower-Hill*, on the 22*d* of *Auguſt*, ſaid when he ſaw the Block, *I hope there is no more but this Block between me and Heaven:* Having been ſome time upon the Scaffold, he addreſſed himſelf to the People, and ſaid: "Your "Buſineſs here this Day, is to ſee a ſad Spec- "tacle, a Man, brought in a Moment to be "cut off in the Prime of his Years; taken from "farther Opportunity of doing ſervice to him- "ſelf, his Friends, his Country, or his God: "This ſeldom happens but for very great Cauſe; "and though truly, if my general Courſe of "Life were enquired into, I might modeſtly "ſay, there would be found ſuch a Degree of "moral Honeſty, as ſome might be forward "to expoſtulate why this great Judgment is be- "fallen me? But know I am able to give them, "and my ſelf an Anſwer; and out of this Breaſt "to give a better Account of my Judgment "and Execution, than my Judges themſelves, "or you can do. It is God's juſt Diſpleaſure "to me for my Sins long unrepented of; ma- "ny Judgments withſtood, and Mercies ſlight- "ed; therefore doth my gracious Father chaſ- "tiſe me with this Correction, that he may not "loſe me: And pray aſſiſt me with your Pray- "ers, that this Rod be not fruitleſs; but, when

"under

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" under his Rod I have laid down my Life, " I may be comforted by his Staff, and re- " ceived into Glory.

" I am very confident, by what I have heard " ſince my Sentence, there are more Excepti- " ons made againſt the Proceedings than ever I " made: My Triers had a Law, and the Vali- " dity of that Law is not now to be diſputed " by me. My Accuſers, or rather Betrayers, I " pity, and am ſorry for them; they have com- " mitted *Judas*'s Crime; I wiſh and pray for " them with St. *Peter*'s Tears; but wiſh they " may be taken up, before they have drunk " more Blood of Chriſtian Men.

" There have been ſeveral Addreſſes made " for Mercy, and I ſhall impute the Obſtruc- " tions to nothing more than my own Sins; " and ſeeing God ſees it fit (I having not glo- " rified him in my Life) I ſhall do it in my " Death, I am content. In the Face of God I " profeſs, I have no particular Malice to any " one of the State or Parliament: For the Cauſe " in which I had a great while ſtrove, I muſt " ſay my Engagements and Purſuance of it, " hath laid no Scruple on my Conſcience: It " was upon Principles of Law, of which I am " a Profeſſor, and upon Principles of Religion, " my Judgment rectified, and my Conſcience " ſatisfied, that I have purſued theſe ways; for " which I bleſs God I have no Blackneſs on " my Conſcience, nor have I put this into the " Bead-roll of my Sins.

" I preſume not to decide Controverſies; I " deſire God to glorify himſelf in proſpering " that Side that hath Right in it, and that you " may enjoy Peace and Plenty here, when I " ſhall enjoy my God.

" In my Converſation in the World, I do " not know where I have an Enemy with Cauſe, " or that there is a Perſon who has injured me, " that I do not as freely forgive as if I had " named them; yea, I forgive all the World, " as I deſire my heavenly Father, for *Chriſt*'s " ſake, to forgive me.

" The Buſineſs of Death is a ſad Sentence in " itſelf, if Men conſult with Fleſh and Blood: " But, truly, without boaſting I ſay it, or if I " do boaſt, it is in the Lord; I have not to " this Minute had one Conſultation with Fleſh, " about the Blow of the Axe, or one Thought " of it, more than as my Paſs-port to Glory.

" I take it as an Honour, and I owe a Thank- " fulneſs to thoſe under whoſe Power I am, that " they have ſent me hither to a Place, how- " ever of Puniſhment, yet of ſome Honour, " to die a Death ſomewhat worthy of my " Blood.

" I deſire of God, that thoſe Gentlemen in " that ſad Bead-roll, to be tried by the High " Court of Juſtice, that they may find that real- " ly there, which is nominal in the Act, *An* " *High Court of Juſtice, or a Court of High* " *Juſtice*; High in its Righteouſneſs, not in its " Severity; no more clouded with the Teſtimo- " ny of Folks that ſell Blood for Gain: *Father* " *forgive them, and I forgive them, as I deſire* " *thee to forgive me.*

" I deſire you now to pray for me, and not " give over Praying until my laſt Moment; " that as I have a very great Load of Sins, ſo " I may have the Wings of your Prayers aſ- " ſiſting thoſe Angels that ſhall convey my " Soul to Heaven: And I doubt not but I ſhall " there ſee my bleſſed Saviour, and my gallant " Maſter the King of *England*, and another " Maſter I much honour, my Lord *Capel*; and " that I ſhall with them, and all Saints, rejoice " for ever more."

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Then having prayed a Quarter of an Hour, he turned himſelf again to the People and ſaid,

" One thing more I deſire to be clear in: " There lies a common Imputation on the *Ca-* " *valiers*, that they are *Papiſts*, and under that " Name we are made odious to thoſe of a con- " trary Opinion: I am not a *Papiſt*, but re- " nounce the Pope with all his Dependencies. " When the Diſtractions in Religion firſt ſprung " up, I might have been thought apt to turn " off from this Church to the *Romiſh*; but was " abſolutely unſatisfied in their Doctrine in " point of Faith, and very much as to their " Diſcipline. The Religion I profeſs, is that " which paſſeth under the Name of *Proteſtant*, " though that be rather a Name of Deſtinction " than properly eſſential to Religion: But that " Religion founded in the Reformation, purg- " ed from all the Errors of *Rome*, in the Reign " of *Edward* VI. practiſed in the Reign of " Queen *Elizabeth*, King *James*, and King " *Charles*, that bleſſed Prince deceaſed; that " Religion, before it was defaced, I am of, " which I take to be *Chriſt*'s Catholick, though " not the *Roman* Catholick Religion."——

Then turning to the Executioner, he ſaid, " I " have no Reaſon to quarrel with thee; thou art " not the Hand that throws the Stone: I am " not of ſuch Eſtate to be liberal, but here is " three Pounds for thee, which is all I have: And having undreſſed himſelf for the Block, and prayed again, he ſaid, " there is none that " looks on me, though many Faces, and per- " haps different from me in Opinion and Prac- " tice, but hath ſomething of Pity in it; and " may that Mercy that is in your Hearts fall " into your own Boſoms when you have need " of it; and may you never find ſuch a Block " of Sin, to ſtand in the Way of your Mercy, " as I have met with."

Then having ſaluted and taken leave of his Friends, he ordered the Executioner, when he ſaid, *Lord Jeſus receive me*, to do his Office; after which he ſubmitted to the Block, and his Head was ſevered from his Body at one Blow.

Remarks on Col. Andrewe's Trial.

In theſe Proceedings againſt Colonel *Andrewe*, we find the Uſurpers guilty of all thoſe arbitrary Practices they complained of in the preceding Reign, and made a Colour for their Rebellion, as the Colonel ſhews at large in his Defence; nay, that they were guilty of much greater Oppreſſions, governed much more arbitrarily, and with leſs Regard to the Laws and Conſtitution of the Kingdom, than any King had ever done: *Magna Charta* and the Laws made for the Confirmation of it, and of the Subject's Liberties, and the Breach whereof were ſo loudly complained of by thoſe pretended Patriots, before the War, were now laughed at, and become the Jeſt and Scorn of the Uſurpers: So little were the People bettered by depoſing and murdering their Lawful Sovereigns!

But

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But what is ſtill more to be lamented is, that ſuch were the Diſtreſſes of the oppreſſed Cavaliers, that ſome of them, unable to ſuſtain the Weight of their Misfortunes, became Spies for the Rebels, drew in and betrayed their beſt Friends, in order to ſave themſelves or their Eſtates, from the Jaws of thoſe devouring Tyrants and Oppreſſors, that now ruled the Kingdom with a Rod of Iron: All Converſation was become unſafe; no Man knew whom to truſt, even under Oaths of Secrecy; and very often were thoſe ſuſpected of Treachery that leaſt deſerved it; as we find here, ſome of thoſe very Men were put to Death for the ſame Conſpiracy, that the Colonel ſuſpected had drawn him into it with a Deſign to betray him.

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1651. 3 Car. 2.

Love's Trial.

The Trial of CHRISTOPHER LOVE Clerk, before a pretended *High Court of Juſtice*, in *Weſtminſter-Hall*, for *High-Treaſon* the 20th of *June*, 1651. 3 *Car.* II.

1651. 3 Car. 2.

The Charge, or Impeachment.

THE Charge which *Prideaux*, the Attorney General, exhibited on the Behalf of the *Keepers of the Liberties of* England, ſet forth, that the ſaid *Chriſtopher Love*, and his Accomplices, had traiterouſly conſpired and endeavoured to raiſe Forces againſt the Government, ſince it had been ſettled in a Commonwealth and free State, without a King and Houſe of Lords; and, in order to ſubvert the ſame, had, ſince the Death of *Charles Stuart*, the late King, (who, for his notorious Treaſons, Tyrannies, and Murders, was juſtly condemned and executed,) traiterouſly endeavoured to promote and advance *Charles Stuart*, his eldeſt Son, to the Throne; that he had alſo invited the *Scots* to invade this Commonwealth, and abetted, aided, and aſſiſted them with Money and Arms; as he had alſo *Titus*, *Maſſey*, and other Traitors, in Confederacy with the *Scots*, againſt the Peace of the Commonwealth, Free-Eſtate, Parliament, and People of *England*, and in Contempt of their Laws, *&c.* for which the ſaid Attorney, on Behalf of the Keepers of the Liberties of *England*, did impeach the ſaid *Chriſtopher Love* as a Traitor and publick Enemy, praying he might be brought to Trial, Judgment, *&c.*

The Priſoner being arraigned, inſiſted ſtrenuouſly, that he might have Counſel, to adviſe with him concerning the Legality of the Charge, before he pleaded; but this being refuſed, he pleaded *Not Guilty:* After which the Evidence was produced againſt him.

The Evidence.

The Witneſſes abundantly proved, and *Love* himſelf afterwards confeſſed, that he had been engaged in a Treaty with the King, and with the *Scots*, to reſtore his Majeſty, upon Condition he would eſtabliſh *Preſbytery*, ſacrifice all his Cavalier Friends, and extirpate Epiſcopacy; and that *Love*, and his Accomplices, had actually raiſed Money to enable Colonel *Titus* to negotiate a Treaty in the *Iſle of Jerſey* and at *Breda* with the King; and for the Relief of Colonel *Maſſey* and the *Scots*, who were taken Priſoners by *Cromwell*, at the Battle of *Dunbar*, in *Scotland*; and that they had often prayed and faſted for the Succeſs of the *Engliſh* and *Scots Preſbyterians* againſt the preſent Powers. Nay, it appeared that they had applied to the Queen Dowager, to perſuade her Son, King *Charles* II. to abandon the Church of *England* and the Cavaliers, and eſtabliſh *Presbytery*; and upon theſe Terms, they promiſed to endeavour the Ruin of the preſent Powers, and to become good Royaliſts.

Love's Defence.

Mr. *Love*, in his Defence, obſerved, that there were many Things laid to his Charge which were ſaid to be done before the Commencement of the Act, on which he was proſecuted: That he was charged with ſome Things which he knew not, and with ſome that he did not, as the raiſing Inſurrections and Rebellions; and declared, he never held Correſpondence with the late King's Son, the Queen, or their Miniſters, or with any of the *Scotiſh* Nation, or ever deſired or directed any Man to do ſo; but confeſſed, however, the reading over a Commiſſion, and ſeveral Letters and Papers at his Houſe, in order to a Treaty with King *Charles* II.

He objected alſo, that there had been but one Witneſs to any one Fact; and that the Witneſſes were incompetent, having confeſſed themſelves guilty of Treaſon: He acknowledged, he had been preſent at ſuch Conſultations as were mentioned, but ſaid, he was always againſt giving a Commiſſion to any Perſons to treat with the King; however, if it was true, that he was concerned in ſending Colonel *Titus* to King *Charles*, this was laid to be done in the the Year 1649. which was before the Act was made that made it Treaſon to treat with *Charles Stuart*; and though it was enacted, that it ſhould be Treaſon to ſend Money, Horſes, or Arms into *Scotland*, the moving others to do this, he held, was not Treaſon; and if it was proved, that Money was brought to his Houſe for theſe Purpoſes, it did not follow, that he was concerned in conveying it, either to the Agents employed to treat with *Charles Stuart*, or to the *Scots*.

He ſaid, he was unwilling to confeſs any thing, before he ſaw the Witneſſes Face to Face; for, ſhould his Confeſſion have amounted to Treaſon by their Law, they might have hanged him, and ſo he ſhould have been guilty of his own Death; but now he did confeſs, there had been ſeveral Meetings at his Houſe, and that he was preſent at the reading of the Commiſſion above-mentioned, and of ſeveral Letters relating to the *Scots*; but he did not give his Conſent to the Commiſſion, or know the Danger of it; and he was adviſed, that his being preſent at theſe Conſultations, and concealing of them, was but Miſpriſion of Treaſon, for which he ſubmitted himſelf to their Mercy.

1651. 3 Car. 2.

He ſhews what a violent Enemy he had been againſt the Royaliſts.

Then he ſolemnly proteſted, he was no Malignant, but on the contrary, had engaged many in the Parliament's Quarrel againſt the King; and though he gave but little to the War, yet he gave his *All*, (Cloaths and Books excepted.) When he was Maſter of Arts at *Oxford*, he ſaid, he was the firſt that refuſed ſigning the Canons concerning the Common-Prayer, for which he was expelled; that in 1640 and 1641, he was impriſoned at *Newcaſtle* for ſpeaking againſt the Errors of the Liturgy; and was the firſt Miniſter, after the Wars began, that was apprehended for preaching againſt the King: That he was afterwards complained of by the King's Commiſſioners at *Uxbridge*, for a Sermon he preached there againſt the Royaliſts; and now this great Trouble was fallen upon him: It was not Death he was afraid of, but was concerned that he ſhould receive it from thoſe Hands for whom he had ſuffered ſo much, with whom he had been engaged in the ſame Quarrel, and joined in the ſame Covenant: *This exceedingly touched him.*

He acknowledged, he was deſirous that the King and the *Scots* ſhould agree, becauſe he believed it much for the Intereſt of their Religion, that he ſhould not join with the Cavaliers and *Iriſh* Rebels; that ſince there was a Clauſe in the Covenant, which required them to ſeek the Union and Good of both Nations, and ſince the *Scots* had declared *Charles Stuart* their King, he believed it agreeable to their Covenant to deſire an Agreement betwixt them; he hoped they would not hearken to any politick Suggeſtions, as if it would not be for the Honour or Intereſt of the State to ſave him; but take care how they brought *innocent Blood* upon them, and ſo committed himſelf to God and their Conſciences.

The Reply to the Priſoner's Defence.

To this Defence Mr. Attorney replied, that Mr. *Love* had confeſſed much more than Miſpriſion of Treaſon; that the frequent Repetition and long Concealment of thoſe treaſonable Conferences was Treaſon; and he thought there was very little Ingenuity in the Priſoner's Confeſſion, which he did not make till the Facts were plainly proved upon him; that *his Imprecations, calling God to witneſs he never wrote, or ſent a Letter, or lent Money*, when it appeared he had moved and ſolicited others to write and to lend Money, were ſhameful Equivocations, eſpecially in a Miniſter of the Goſpel; but all the College of Jeſuits had not more Shifts and Evaſions than theſe Men had: One of his Brother-Preachers, he obſerved, refuſed to give Evidence againſt *Love*, becauſe *he believed the Life of the Priſoner precious in God's Sight*; which ſhewed, *they thought the Life of a Traitor more precious than the Commonwealth*; but he hoped they ſhould root out thoſe Opinions, or the Men that held them.

That Mr. *Love* had been guilty of the higheſt Ingratitude, conſpiring the Deſtruction of that State which had been ſo exceeding bountiful to him; he did not only enjoy his Liberty and the Protection of the Government, but, by his own Confeſſion, had one of the beſt Preferments in *London* conferred upon him: And what had he to do to interpoſe and diſquiet himſelf about the Adminiſtration of the Commonwealth? That he had dared to charge his Blood upon the Court, but it had been well if he had thought of Blood; before he had been inſtrumental in ſpilling ſo much Blood in *Scotland*; that there would be no living in Society, if ſuch Incendiaries were not brought to Juſtice; that he hoped the Court would conſider what Juſtice was due to the Commonwealth, and moved they would appoint another Day for the Counſel of the State to reply to the Priſoner's Defence. 1651. 3 Car. 2.

The Court reflect on the Priſoner.

Then the Preſident obſerved to Mr. *Love*, how zealous he had been for reſtoring the *Preſbyterian* Government and Diſcipline, and ſaid, he had diſplayed his Gift of Oratory in his Defence; but that the Orators amongſt the Heathens were the principal Incendaries, and there was ſcarce any Hereſies, Murders, Treaſons, or any other notorious Villanies perpetrated in Chriſtendom, but Prieſts, or thoſe that called themſelves Miniſters of *Jeſus Chriſt*, had a conſiderable Share in them; and though the Priſoner ſeemed to value himſelf upon his Office, he would have him know, that their Office of adminiſtering Juſtice was ſuperior to his, who only taught it, and that Judgment and Juſtice were the higheſt Religion in the World.

A further Reply to the Priſoner's Defence.

The Priſoner being brought before the Court again the 27th of *June*, the Counſel for the Commonwealth made a further Reply to the Priſoner's Defence: And as to his Objection, that the Witneſſes againſt him had confeſſed themſelves guilty of the ſame Crimes they accuſed him of, ſuch had always been deemed legal Witneſſes; They acknowledged, there ought to be two Witneſſes in Treaſon; but in a Caſe conſiſting of complicated Facts, and a Reiteration of many Actions, it was not neceſſary there ſhould be two Witneſſes to every Fact: But, if there was one Witneſs to one Fact, and another to another Fact, both tending to the Accompliſhment of the ſame Species of Treaſon, theſe were two Witneſſes, as the Law required: So when one Witneſs teſtified, he was preſent at Mr. *Love*'s at the reading of a treaſonable Letter, a Second atteſted the writing of it, and a Third the ſending of it, though they ſpoke to ſeveral Parts of the Buſineſs, yet all concurring to the ſame Treaſon, this was legal Proof,

That though Mr. *Love* had objected, that the Evidence of Treaſon ought to be as clear as the Sun, they thought it difficult to meet with ſuch Proof, where a Plot was hatched in Darkneſs, where every Thing had been tranſacted under a Diſguiſe: Their Meetings and Conſultations went under the Notion of Prayer and Faſting, and their Contributions to foment a Rebellion paſſed under the Name of Charitable Uſes; nor could any Place be more obſcure and unſuſpected than Mr. *Love*'s Houſe, who was a Miniſter of the Goſpel, and had been ſo very active in the Parliament's Service, that he had urged it as Meritorious.

As to his Objection, that he was charged with Crimes committed before this Court was erected, it was anſwered, That their Commiſſion gave them Cognizance of Crimes committed before and ſince; and it was never made an Objection at the Aſſizes, that the Offences were committed before the Judges received their Commiſſions; nor did he ſtand charged with any Crime before there was a Law made for the Puniſhment of it: For even on the 30th of *January*, 1648. an Ordinance paſſed, *That whoever ſhould proclaim, declare, publiſh, or any way promote* Charles Stuart,

1651. 3 Car. 2. Stuart, *or any other Perſon to be King, or chief Magiſtrate, without conſent of Parliament, ſhould be adjudged a Traytor*: Againſt which Mr. *Love* had highly offended, nor was there any Time limited for Proſecution by that Act: That another Law was made indeed, in *July* 1649. declaring what Offences ſhould be Treaſon; by a Third, that Court was conſtituted, and it was declared what Offences they were to take Cognizance off; and by a Fourth, all Correſpondence with the *Scots* was made Treaſon; againſt every one of which, the Evidence had ſhewn to a Demonſtration the Priſoner had offended: That Mr. *Love* was not impeached for a ſimple Omiſſion; he had acknowledged his debating theſe Matters; and though he pretended to abominate ſome of the Meaſures taken by his Accomplices, ſtill he continued amongſt them, and had ſeveral Meetings and Conſultations with them at his own Houſe, and therefore was guilty of the whole: There were no acceſſaries in Treaſon.

If the Priſoner had not been guilty of Actual Rebellion, he was proved to be guilty of ſuch Facts as tended to Rebellion; and though the Thing was not accompliſhed, it was nevertheleſs Treaſon: If they were to wait till a Rebellion was actually raiſed, it might probably be too late to call the Conſpirators to an Account.

As to his taking it ill of the State, that he ſhould ſuffer by them, for whom he had done and ſuffered ſo much, he thought the State had moſt reaſon to take up the Complaint: Had a Cavalier, a profeſſed Enemy, conſpired againſt them, they might have borne it; but that Mr. *Love*, who had preached and prayed for them, and gone along with them; that he, who lived like a petty King in this Commonwealth, ſhould conſpire againſt it, was a high Aggravation of his Crime; nor could it be thought hard, that he, who in ſuch Circumſtances proſecuted the State, ſhould be proſecuted by them.

It was obſerved alſo, that ſome Paſſages in the Priſoner's Sermon at *Uxbridge*, were very applicable to the preſent Occaſion, particularly where he ſays, *I have ever thought that too much Mercy towards Malignants, hath made more Delinquents than ever Juſtice hath done: Mercy ſhould not weigh down Juſtice: In God they are both equal; Why ſhould it not be ſo in Man? The ſparing of Offenders hath made many worſe, few or none better: To them that have ſhewed no Mercy, let Judgment be ſhewed without Mercy: Much Guilt contracted, much innocent Blood ſpilt, which muſt be avenged either on us, or by us; and thoſe who lie under the Guilt of much innocent Blood, are not meet Perſons to be at Peace with, till all the Guilt of Blood be expiated, either by the Sword of the Law, or by the Law of the Sword: A Peace can never be ſafe or juſt till then.* And the Counſel for the State concluded with demanding Judgment againſt the Priſoner, who thereupon offered a Paper of Exceptions, and deſired he might have Counſel aſſigned him to argue them; and accordingly Mr. *Maynard*, Mr. *Hale*, Mr. *Waller*, and Mr. *Archer*, were aſſigned to be of the Priſoner's Counſel.

The Priſoner's Rancour againſt the Royaliſts retorted upon him.

The Priſoner takes exceptions to the Charge.

The Subſtance of the Exceptions were, that the Impeachment had not ſtrictly purſued the Acts of Parliament on which it was founded; that the Priſoner was charged with treaſonable Facts, ſaid to be done ſome Years before ſome of the Acts paſſed; that the Witneſſes had been promiſed Rewards, and threatened, to make them give Evidence againſt him. 1651. 3 Car. 2.

Mr. *Archer* and Mr. *Waller*, the Priſoner's Counſel, offering to argue the Exceptions, the Court would not ſuffer it, becauſe they had not taken the Engagement; and Mr. *Hale* only was ſuffered to ſpeak to them: But there appearing very little in the Exceptions, it is ſufficient to ſay they were over-ruled. Mr. Attorney therefore moving again for Judgment, the Priſoner was ſentenced to be beheaded.

They are over-ruled. He is ſentenced to be beheaded.

The whole Body of *Preſbyterian* Fathers addreſſed the Parliament to pardon *Love*, but could obtain no more than a Month's Reprieve, and he was executed on *Tower-Hill* the 22d. of *Auguſt*; when he declared he deſired the King's Reſtoration on no other Terms than the Eſtabliſhment of *Preſbytery*, which was now in Danger of being ſuppreſſed by the *Independants*. A great many more of the *Preſbyterian* Preachers, in *London*, were diſcovered to be in a Confederacy with the *Scots* to bring in the King at this Time; but it was not thought expedient to drive the whole Body of them to Deſpair, by executing any more of them, now the *Scots* were in Arms; leſt by joining with that Nation, and the *Cavaliers*, their new erected Commonwealth ſhould be endangered; for at this very Inſtant Advice came to *London*, that the King was entered *England* with an Army of *Scots*, and that *Cromwell* was ſo far behind him, that he could afford the preſent Powers no Protection: However they were ſoon recovered from their Conſternation by the Battle the King loſt at *Worceſter*, the 3d of *September* following.

Remarks on Love's *Trial.*

The Uſurpers, finding that the People were no longer to be impoſed on by the ſpecious Pretences they made of defending their Religious and Civil Rights; that they were ſenſible, Ambition and Avarice, and a View to the advancing their private Fortunes, were the real Motives of all their Actions; that they were endeavouring to eſtabliſh an arbitrary, tyrannical Government, inſtead of vindicating the Subject's Liberties and Properties; did not think it proper to commit the Fortune of their State Priſoners to Juries according to the antient Laws; but when they determined to ſacrifice any Perſon, appointed a ſelect Number of their own Creatures, Sharers in the Plunder of the Nation, to judge, or rather murder, the pretended Criminal in a ſolemn Manner.

Love would never have been convicted by a Jury of Citizens, who were at this Time as much prejudiced againſt the Uſurpers, as ever they had been againſt the King; and yet it evident they were ſo biggotted to their Idol *Preſbytery*, that they would never have admitted the King to reign over them, on any other Terms than thoſe of eſtabliſhing it, and diſcarding the *Cavaliers*. The King and the Royaliſts therefore, were very little obliged to them; when, finding themſelves harraſſed, ſcorned, and derided by their preſent Maſters the *Independants*, they would have made the King their Tool, to have eſtabliſhed *Presbytery*, and ſuffered him to have enjoyed the Name of King, on Condition of lodging the Sovereign Power in

1651. 3 Car. 2. in their Hands; ſo that he would in reality have been no more than their Officer, to execute what they were pleaſed to decree. Theſe were the Favours *Love* and his Brethren intended to indulge the King and Nation in; for which neither the Church or the Crown ſeem to be much obliged to them, though they are very loud in crying up this Kind of Loyalty.

It is reported, that the Interceſſions for *Love* were ſo powerful, that *Cromwell* was prevailed on to ſpare him; but the Meſſenger who carried the Expreſs from *Holland*, where *Cromwell* then was, to *London*, falling into the Hands of ſome *Cavaliers*, they took away the Papers *Cromwell* had written in *Love*'s behalf, and detained the Meſſenger till the Execution was over; obſerving that *Love* had been the moſt implacable of all the late King's Enemies, and that he intended nothing more by the Treaty with his Majeſty King *Charles* II. for which he was condemned, than to re-eſtabliſh his own Sect upon the Ruins of the Church of *England*, and the Royaliſts.

1651. 3 Car. 2. Gibbons's *Trial.*

The Trial of JOHN GIBBONS, before the High Court of Juſtice in *Weſtminſter-Hall*, for *High-Treaſon*, the 18th of *July*, 1651. 3 *Car.* II.

The Charge. THE Charge was the ſame with that exhibited againſt *Love*, *viz.* that the Priſoner had endeavoured to advance *Charles Stuart* to the Throne, and correſponded with the *Scots*, who were preparing to invade *England*.

The Priſoner inſiſts on a Trial by Jury. The Priſoner inſiſted on his being tried by a Jury of his Neighbours, according to the antient fundamental Laws; but the Court told him, the State had preſcribed another Way of Trial, more honourable and advantageous to him, which he muſt ſubmit to.

The Evidence. Major *Adams* depoſed, that the Priſoner was preſent at a Conſultation, for endeavouring an Agreement between the King and the *Scots*, and drawing up a Petition to the King; and that there were ſome Letters ſent to, and received from *Scotland*, which the Priſoner was privy to; that there were Letters alſo ſent to, and from the King and his Agents, which were read at Mr. *Love*'s Houſe when the Priſoner was preſent; that he brought a rough Draught of the Inſtructions to one of their Meetings, which were to be ſent to *Holland* for treating with the King; that he was a conſtant Man at the Conſultations of the *Malcontents* in *London*, and particularly was preſent at Mr. *Love*'s, when a Letter was read from *Maſſey*, wherein he deſired that Arms and Money might be ſent down to *Scotland*, and the Company agreed to ſend him three or four hundred Pounds.

Major *Alford* depoſed, that he (the Deponent) was at a Conſultation at the *Swan* at *Dowgate-Hill*, when Mr. *Titus*, one of the King's Agents, was preſent, and gave them an Account of the good Inclinations of the King, declaring he was willing to caſt off the *Cavaliers*, if he could be aſſured there was a Party in *England* that adhered to the Covenant; and that a Petition to his Majeſty was drawn up, and ſent over, by *Titus*; but he could not be poſitive the Priſoner was preſent.

That a Commiſſion was prepared at Mr. *Love*'s Houſe for the Lord *Willoughby* and others, and Inſtructions concerning a Treaty between the King and the *Scots*, which the Priſoner and the Deponent carried down to *Graveſend*, and delivered to Mr. *Maſon* (a Domeſtick of the Lord *Percy*'s) to be carried over to *Holland*; that the Deponent was ſent over to *Calais* by the Conſpirators, and brought Papers back from thence, which were read at Mr. *Love*'s Houſe; and the Priſoner was preſent at the reading of ſome of them.

Mr. *Harvey* depoſed, that *Gibbons* informed him, two thouſand Pounds were ſent down to *Scotland*, and that *Maſſey* was to land with Forces in the *Weſt*; that many of the Lord General's Soldiers had deſerted, and that a Town was to be delivered up.

Major *Huntington* depoſed, that *Gibbons* firſt acquainted him with the Conſpiracy, told him he might hear News at Mr. *Love*'s Houſe, and that the Priſoner and the Deponent were preſent at Mr. *Love*'s, when a Paper ſent from *Maſſey*, *Graves*, and *Titus*, was read.

The Counſel for the State, having produced all their Evidence, and made their Obſervations upon it, the Priſoner deſired time to anſwer it, and was allowed till the 23*d*. Inſtant; when appearing before the Court again, he told them he was as ill provided for his Defence then, as he was before; for having employed one to take Notes of the Charge and the Evidence, the Court had ordered the Notes to be taken away, and deprived him of all Means of making his Defence: He deſired therefore, they would order his Notes to be delivered him, or it was impoſſible he ſhould offer any thing material; but this being refuſed, he only obſerved in general, that the Evidence was full of Contradictions; that the Witneſſes were not ſuch as the Law required, having confeſſed themſelves guilty of the Crimes they charged him with, and gave their Teſtimony againſt him, either through Fear of Death, or Hopes of Reward, and that there was but one Witneſs to any one Fact; concluding with Proteſtations of his Innocence, which the Court giving little Credit to, Judgment was pronounced, *That the ſaid John* Gibbons *ſhould ſuffer Death as a Traitor, by having his Head ſevered from his Body*; and he was executed accordingly.

The Court takes away the Priſoner's Notes.

He makes a general Defence.

Condemned and executed.

This Gentleman is another Inſtance of the Juſtice exerciſed by theſe Uſurpers: He was one of thoſe on whom they were determined to execute their Vengeance; and therefore, denying him

Remarks on the Trial of Gibbons.

1651. 3 Car. 2. him the Privilege of a Trial by a Jury, according to the antient Laws of *England*; they cut him off by a packed Aſſembly of their Creatures, whom they denominated a High Court of Juſtice: We ſee them alſo taking the Priſoner's Notes and Materials for his Defence, and they might with equal Juſtice have murdered him, without the Formality of a Trial.

The Reader, no doubt, obſerves alſo, from this and ſome former Proceedings, that the Uſurpers frequently changed the manner of Execution, as well as the manner of Trial; and that inſtead of hanging and quartering Perſons, condemned for what they called Treaſon againſt their Commonwealth, they were content ſometimes with beheading them.

1651. 3 Car. 2. *The Puniſhment for Treaſon altered by the Uſurpers.*

1652. 4 Car. 2. Faulconer's *Trial.*

The Trial of RICHARD FAULCONER, for *Perjury*, during the Uſurpation, in the *Upper-Bench*, as it was then called. *Paſch.* 1652. 4 *Car.* II.

1652 4 Car. 2.

The Indictment.

THE Indictment was found by the Grand Jury of the County of *Middleſex*, and charges, That *Richard Faulconer*, late of *Weſtbury*, in the County of *Southampton*, Gent. intending to bring the Right Honourable *William* Lord *Craven*, Baron of *Hamſted-Marſhal* in danger of his Life, and of the Sequeſtration of his Goods and Lands, did, on the 10th of *February*, 1650. at *Whitehall*, in the Pariſh of *St. Martins in the Fields*, in the County of *Middleſex*, before *Samuel Moyer*, Eſq; *James Ruſſel*, Eſq; and other Commiſſioners for compounding with Delinquents, and managing their Eſtates, corruptly, wilfully, falſly, and maliciouſly take his Corporal Oath, That ſeveral Officers, about thirty in Number, made a Petition to the *Scots* King *Charles* to entertain them to fight for him againſt the Commonwealth of *England*, by the Name of *barbarous and inhuman Rebels*, either in *England* or *Scotland*, for Recovery of his juſt Rights, and reinſtating him in his Throne; and that the ſaid Officers deputed him, the ſaid *Richard Faulconer*, and Colonel *Drury*, to preſent the ſaid Petition: That he, the ſaid *Faulconer*, drew up the ſaid Petition; and, with the ſaid Colonel *Drury*, applied to the Lord *Craven* to give it to the Queen of *Bohemia*, to preſent to the ſaid King of *Scots*; and that the Lord *Craven* directed them to deliver the ſaid Petition to the Queen of *Bohemia* themſelves, and he would ſpeak for them; and that the Queen of *Bohemia* did preſent the ſaid Petition; and that the Lord *Craven* afterwards told them, they ſhould receive an Anſwer from the Queen of *Bohemia* to their Petition, and that he (the ſaid Lord *Craven*) had ſpoken to the Queen of *Bohemia* in their Behalf: Whereas the whole Narrative, relating to the ſaid Petition, and the Delivery of it to the King of *Scots*, was falſe, and the ſaid *Richard Faulconer* perjured, *&c.* The Counſel for the Commonwealth having opened the Indictment, ſaid, they ſhould prove, that the Oath which *Faulconer* had taken was falſe, and that he had done it with a Deſign to get Money, and that the Conſequence of it might have been the Ruin of the Lord *Craven*, of his Eſtate, Fame, and Fortune: That there was indeed a Petition delivered, but not a Petition of the Tenor *Faulconer* had ſworn; and it was evident *Faulconer* knew the Contrary.

Then the Witneſſes were called, and Proof having been firſt made, that *Faulconer* had taken the Oath before the Commiſſioners for Sequeſtrations,

The Evidence againſt Faulconer.

Mr. *Horſnel* depoſed, that the Night before the King of *Scots* went from *Breda*, Colonel *Drury*, Captain *Briſcoe*, and divers others, carried a little ſhort Petition to the King, to put him in mind of a former Petition they had delivered, praying that ſome Courſe might be taken, that their Arrears, which they owed in Town, might be paid, or their Landlords, where they lodged, would be Sufferers, for they were not able themſelves to pay them; that he (the Deponent) ſet his Hand to the Petition, and was in the Room when *Drury* and *Briſcoe* came to deliver it; but there was not a Word in the Petition that related to any thing but the Relief of their preſent Neceſſities: And being aſked by the Court, if there was no Mention of *barbarous and inhuman Rebels*, he anſwered, There was nothing of that Nature in it.

Captain *Briſcoe* alſo depoſed, That there were divers Gentlemen in great Diſtreſs met at Colonel *Drury*'s Chamber, at the Time of the Treaty between the *Scots* King and the Commiſſioners at *Breda*, and they agreed to prefer a Petition to the King, which was drawn at Colonel *Drury*'s Chamber, expreſſing their Neceſſities, and that they might not be left to periſh, and deſiring that the People of the Town might be ſatisfied; but that, going to deliver it, they met Secretary *Long*, who told them, it was to no purpoſe, for there was no Money come in. That the Petitioners, having notice afterwards that the King was to depart from *Breda*, met together again, and drew a ſhort Petition, to put the King in mind of his Promiſe to Secretary *Long*, concerning ſatisfying the People of the Town, and the Relief of the Petitioners: Which Paper the ſaid *Briſcoe* delivered to the *Scots* King, who threw it on the Table, at which they ſtood amazed, being likely to be left in Diſtreſs; but the Lord *Craven* accidentally coming in, *Briſco* ſaid to him, Sir, We are a Company of poor diſtreſſed Gentlemen, likely to be left here in Miſery; (his Lordſhip ſaid, *Well*;) and the next Morning the King went away without giving any Relief to the Petitioners. And the Court demanding, if there were any ſuch Words in it as *barbarous and inhuman Rebels*, he anſwered, he read it, and there was no ſuch Thing in it; the whole Scope of it being to relieve their Neceſſities, there

1652. 4 Car. 2. was not ſo much as any Mention of the Parliament.

Colonel *Drury* depoſed to the ſame Effect, adding, That Major *Faulconer* drew the Petition himſelf in his Son's Paper-Book, and he had the Draught ready to produce; (exhibiting the Original to the Court at the ſame Time, under *Faulconer*'s Hand;) in which Petition they ſhewed how they had ſerved the late King, and what Neceſſities they were in; that they gave this Petition to Secretary *Long*, who told them, it was in vain to deliver it to the King, for he had not a Piſtole left: That they followed Secretary *Long*, however, and ſolicited him for three Weeks together, but he ſtill put them off; whereupon they drew a ſhort Petition, the Day before the King went from *Breda*, to remind the King of the Promiſe he had made to Secretary *Long*, and deſiring that the Inhabitants of *Breda* might be relieved, or they would be undone: That *Briſcoe*, and the Deponent, delivered it to the King, who laid it on the Table; and Lord *Craven* coming in at that Inſtant, Captain *Briſcoe*, who had trailed a Pike under his Lordſhip, told him there were many Gentlemen ready to ſtarve, and deſired him to ſpeak a favourable Word to the Queen of *Bohemia* for them; but the next Morning the King went away, and nothing was done for the Petitioners.

Then the firſt Petition produced by *Drury*, of *Faulconer*'s own Hand-writing, was read in Court, being couched in theſe Words:

The Petition, delivered to King CharlesII. *read.*

May it pleaſe your Majeſty,

" THE great Senſe we have always had " of your Majeſty's preſent Condition, " hath been the prime Cauſe of our long Si- " lence; but now our Neceſſities are grown ſo " great and inſupportable, that we are enforced " either to petition or periſh; moſt humbly de- " ſiring your Majeſty to take into your Prince- " ly Conſideration their Extremities, who have " been ever ready to proſtrate their Lives in your " Majeſty's Royal Father's Service; nor no leſs " willing and ready to proſecute the ſame in what " your Majeſty ſhall command; moſt humbly " petitioning your Royal Order, that ſome " Courſe may be taken for our preſent Subſi- " ſtance, that our future Endeavours may not " be buried in that unavoidable Calamity which " our Loyalty hath reduced us unto,

And we ſhall cordially pray for your Majeſty.

Colonel *Drury* further depoſed, that he dictated the Petition to *Faulconer*, who wrote it at his Chamber; and that it was afterwards written over fair, and delivered to Secretary *Long*, and that the ſecond Petition was only to put the King in mind of his Promiſe. And being aſked by the Court, whether the Words *barbarous and inhuman Rebels* were in the firſt Petition, he anſwered, That *Faulconer* moved to have the Words, *barbarous and inhuman Rebels*, inſerted, but was anſwered, That as they were Soldiers of Fortune, it was uncivil Language, and therefore they would not give way to it: He added, that Captain *Briſco* was one of them that was pitched upon to deliver the firſt Petition, on account of the many Wounds he had received, believing the King would commiſerate their Caſe the more; and the Deponent was appointed the other, becauſe he was known to the Queen of *Bohemia*: That the Lord *Craven* was not preſent at the Delivery of the firſt Petition, but was there when the laſt was delivered, to remind the King of his Promiſe. The Colonel further depoſed, that *Faulconer*, being diſcontented they got no Money, ſaid, as they were going to Town, *This is a horrid Thing, that we ſhould be in this Caſe, to follow a Thing they call a King. God damn me, I will go into* England, *and do all the Miſchief I can.* 1652. 4 Car. 2.

Then Witneſſes were produced, to ſhew that *Faulconer* was a Man that deſerved no Credit.

Wooldridge, an Attorney of *Clement's-Inn*, depoſed, That *Faulconer* came to his Chamber, about a Twelvemonth before, and told him, he had been in the *Low-Countries*, and ſeen ſome Lords ſit in Council with the King; that he had ſworn againſt the Lord *Craven*, which would bring great Advantage to the State: He had received fourſcore Pounds already for doing it, and expected a greater Reward. And as to *Faulconer*'s Character, *Wooldridge* depoſed, that he was as wicked a Man as any in *England*, had ſpent his Eſtate and left his Country; that at *Petersfield* he drank a Health to the Devil in the middle of the Street, for which a Juſtice of the Peace bound him over to the Seſſions. Mr. *Jackſon* depoſed, That about five Years before, *Faulconer* was ranting and drinking Healths at *Petersfield*, and among others, drank a Health to the Devil, and ſaid, *I have ſpent my Brother's Eſtate and my own, and will never want Money; for while there is any in the Nation, I will get it one way or other; I will do ſomething of Infamy to be talked of, that the Name of* Faulconer *may never die.*

Mr. *James Graham* depoſed, That in the Year 1647. being in a Cellar with *Faulconer*, he took out a two and twenty Shilling Piece of Gold, and put into the Deponent's Hand, and ſaid, *God damn him, Blood and Wounds, he would bugger his Soul to Hell*; and theſe Words he uſed frequently, to Man, Woman, and Child, and when he was corrected for it, he would anſwer, *Damn him, Blood and Wounds, he would do it:* But the Court demanding of the Witneſs, if *Faulconer* ever did any thing upon him, he anſwered, No; he was able to deal with as good a Man as he.

Mr. *Bradley* depoſed, that he heard *Faulconer* ſay, *Our Saviour* Chriſt *was a Baſtard, and a Carpenter's Son, and carried a Baſket of Tools after his Father.*

Mr. *Dyer* depoſed, That *Faulconer* procured a Man to perſonate Captain *Biſhop*; that he confeſſed he had once an Intention to murder Captain *Biſhop*, becauſe he did not ſupply him with Money ſo faſt as he expected, though he had received ſeventy Pounds of the Captain.

Captain *Ballard* depoſed, That *Faulconer* counterfeited a Letter from Colonel *Burgeſs* to Captain *Biſhop* one of the Council of State, in order to get Money of *Biſhop* for the Intelligence, and would have had the Deponent carry the Letter, but he refuſed.

Powel, a Juſtice of Peace of *Middleſex*, depoſed, that he committed *Faulconer* for Felony, and that he had the Reputation of a Highwayman.

Mr. *Goodman*, Goaler of *Ailesbury*, depoſed, that on the 20*th* of *March* 1648. *Faulconer* was committed

1652. 4 Car. 2. committed to *Ailesbury* Goal, by Sir *Thomas Saunders*, and three other Juſtices of the Peace, upon Suſpicion of Felony, Robbery, and Murder.

The Defence made by the Priſoner's Counſel.

To this Evidence, the Counſel for the Priſoner anſwered, that the Oath *Faulconer* had taken before the Commiſſioners for Sequeſtrations, was not duly proved; what had been produced being only the Tranſcript of a Copy of the Oath, as entered in the Journals of Parliament: And if the Words *barbarous and inhuman Rebels*, were not in the Petition delivered to the King of *Scots*, there was what amounted to as much: The Petitioners ſay, *They proſtrate themſelves before him, and promiſe to proſecute his Cauſe, as they had done his Father's*, who looked upon them as Rebels; that Mr. *Faulconer*'s Caſe was very hard, being employed at the Court at *Breda*, as an Emiſſary and Spy for the Commonwealth; and at his return, giving an account of his Obſervations at *Breda*, had let ſomething fall relating to the Lord *Craven*, without any Deſign; that the Subſtance of what *Faulconer* had ſworn, was acknowledged to be true, and that the very Words *barbarous and inhuman Rebels* were debated on drawing up the Petition, and he might forget whether they were inſerted or not, and therefore could not be charged with wilful and corrupt Perjury; it was but a Miſtake at moſt: Beſides, they ſhould ſhew that he did not ſwear to the very Words, but *to that effect*.

The Evidence for Faulconer.

Then Captain *Biſhop*, one of the Commiſſioners for ſequeſtered or forfeited Eſtates, was produced as a Witneſs in behalf of *Faulconer*. The Captain depoſed, that *Faulconer* had done great Service to the State; *that it was owing to him, the Commonwealth ſat ſafe at that Hour, and that he himſelf* (the Deponent) *was now alive*, and it was an ill Requital to proceed in this manner againſt ſuch a Man.

Then the Captain gave particular Inſtances of ſeveral Plots and Intrigues of the Royaliſts againſt the State, which he ſhewed, had been defeated by *Faulconer*'s Means, (*but the Editor is not ſo good as to give us the Particulars, though they might have given us great Light into the Tranſactions of thoſe Times.*

Captain *Biſhop* added, that he had never known *Faulconer* drink, or misbehave himſelf, but always obſerved him to be a ſober Man; that *Horſnel*, one of the Witneſſes againſt *Faulconer*, was a diſaffected Perſon, and ordered to be tried before the High Court of Juſtice; that Colonel *Drury* was a *Papiſt* in Arms, and being brought before him to be examined, appeared a forward Witneſs, having the Lord *Craven* in his Mouth before he was queſtioned about him; and that in his Evidence here, he contradicted what he had ſworn before him; (but this appeared a miſtake;) and as to *Faulconer*'s having Money given him, Captain *Biſhop* obſerved it was but reaſonable he ſhould be rewarded for the Services he had done the State; and, notwithſtanding what had been ſworn againſt him, he believed the Subſtance of *Faulconer*'s Information was true; and this was all that was requiſite; for he ſwore but *to that Effect*, as he could teſtify, having drawn up the Information for him; and if thoſe words were not in, *Faulconer* directed them to be put in.

Then Mr. *Winſlow*, another of the Commiſſioners for ſequeſtered Eſtates, being upon the Bench, deſired leave to inform the Court, that the Commiſſioners meeting at *Whitehall*, to adminiſter the Oath to *Faulconer*, the Information was read to them, which had been prepared by Captain *Biſhop*, and having no Clerk with them, and there being occaſion to make ſome Alterations, the Captain took the trouble of writing it over again; after which it was read over to *Faulconer*, and atteſted by him, and all the Commiſſioners preſent ſubſcribed their Hands; adding, that the Oath taken by *Faulconer*, was, that the Information or Depoſition made by him *contained the Truth, the whole Truth, and nothing but the Truth.* 1652. 4 Car. 2.

Mr. *Barners*, another of the Commiſſioners, alſo declared that this was true.

Then Lieutenant-Colonel *Joyce* was produced as an Evidence for *Faulconer*, and ſhewed, that ſeveral Plots and Conſpiracies againſt the Commonwealth, had been defeated by the Intelligence *Faulconer* had given of them; (*but theſe the Editor, it ſeems, did not think fit to acquaint us with, as not being material, he ſuggeſts; which ſhews either his Partiality, or a very great Defect in Judgment.*)

Colonel *Joyce* added, that *Faulconer* had been an Enemy to himſelf indeed, in ſpending his Eſtate, but that he was always faithful to the Parliament; and he believed that *Faulconer* had cuffed and buffeted ſome of the Witneſſes againſt him for their Malignity, and therefore nothing could be expected to come from them to *Faulconer*'s Reputation; and that *Faulconer* had been ſent over to *Holland* as a Spy, on account of his Fidelity to the Commonwealth.

Lieutenant-Colonel *Bardſey* depoſed, that he ſet his Hand to the Petition at *Breda*; that the Lord *Craven* was deſired to deliver it; but his Lordſhip ſaid he was no Courtier, he was a Servant of the States, and directed them to the Queen of *Bohemia*, who delivered it, and told the Petitioners, the King would do what he could for them; but he went away the next Morning. That *Faulconer* moved to have the Words *barbarous and inhuman Rebels* inſerted in the Petition he drew; but it was oppoſed, and they were omitted.

Michel an Innkeeper depoſed, that *Faulconer* had lain at his Houſe a Year and Half; that he was a Scholar bred up at the Univerſity, and he believed a very honeſt Man.

Captain *Mowbray* depoſed, that Captain *Briſcoe*, one of the Witneſſes againſt *Faulconer*, uſed to decoy the *Engliſh* Officers and Soldiers at *Amſterdam* on board the Dutch Ships, and ſell them for Slaves to the Plantations; that the *Dutch* immediately clapt ſuch *Engliſh* Men under Hatches, and gave *Briſcoe* ſix Dollars per Head for them when they were ſecured——That he had been acquainted with *Faulconer* five Years, and he behaved himſelf civilly, for ought he knew.

Mr. *Corey* (*the Editor tells us*) teſtified ſomething concerning *Briſcoe*'s ſending Men to the Plantations, and that he would drink and ſwear ſometimes, as other Men did, that were accuſtomed to it.

The Obſervations of Faulconer's *Counſel on the Evidence.*

Upon this Evidence the Counſel for *Faulconer* obſerved, that the Teſtimony of Captain *Biſhop*, and Lieutenant-Colonel *Joyce*, who gave an account of the Services he had done the Commonwealth, was to be regarded much more than the partial Evidence that had been given againſt him

1652. 4 Car. 2. him: That it appeared the Design was not only to convict *Faulconer* of Perjury, but, by this Conviction and discrediting of him, to undermine what had been done by the Parliament upon his Testimony, and other concurrent Evidence, and to avoid the Sale the Parliament thought fit to make of the Lord *Craven*'s Estate: That nothing had been objected against *Faulconer*'s Credit while they had any other Stone to turn, though there had been great Endeavours made in Parliament to prevent the Sale of that Lord's Estate: When all other Means failed, then they fell to framing this Indictment of Perjury.——*Faulconer* might have appeared guilty of some Extravagances, but they saw what Part he was appointed to act: He was to dissemble, and appear what he was not, and perhaps, when he was amongst the God-damn-me's, and such sort of Men, he might seem like his Company; this might conduce to his Designs: The Part he was appointed to act rendered it necessary to dissemble, and to wind and turn himself into all Shapes; and, though not *to drink a Health to the Devil*, yet, sometimes, *hold a Candle to the Devil*.

That it was proved, the first Petition declared they would serve the King as they had served his Father, and they served his Father against the Parliament; therefore their Petition must be understood to be entertained to serve the King against the Parliament.

That it was a melancholy Case, when this Gentleman had performed such Services for the Commonwealth, and Settlements had been made in Parliament grounded on his Information, that they should be blasted and reversed by an artificial Indictment, preferred a great while after: If he should, for what he had done with a View of serving the State, be convicted of *Perjury*, it would be a Discouragement to all Men to undertake the like Employment for the future.——Concluding, that if there was a Mistake in what he had sworn, yet it appeared not to be maliciously or corruptly done, and therefore the Jury ought to find for *Faulconer*.

The Reply of the Counsel against Faulconer.

To this Defence, the Counsel for the Commonwealth replied, That the Evidence which had been given for *Faulconer*, tended chiefly to magnify his Services to the Commonwealth: They did not dispute his Services, they said, but his having done good Service, as a Spy beyond Sea, did not licence him to give a false Accusation of another kind, that had no Relation to what he was sent about: And as to what Mr. *Bishop* deposed, that he made Oath *to that Effect*, Mr. *Bishop* acted but the Part of a Secretary; the Information was mended and settled by the Commissioners, and sworn by *Faulconer* without the Words *to that Effect* in it; and it was not for a Clerk to come and say, the Words *to that Effect* ought to have been added; at that rate any Oath may be evaded.

As to the Objection that had been made to *Briscoe*'s Credit, that he sold his Fellow-Soldiers to the *Dutch* Plantations, for twelve Stivers (Pence) a Day; this was but hearsay Evidence, what a *Dutchman* had been heard to say, and no Regard was to be had to it, nor would his being given to swear take off his Testimony.

That the Words *barbarous and inhuman Rebels*, it appeared, were proposed by *Faulconer* himself, and upon a Debate rejected, which *Faulconer* could not be ignorant of, or pretend not to know, when the Petition was drawn by himself. 1652. 4 Car. 2.

They had indeed brought some Witnesses to support *Faulconer*'s Credit, but they were to consider what damnable Blasphemy had been proved against him, (in Relation to our Saviour's Nativity, *&c.*) nor could there be any Excuse for a Man's kneeling down, and drinking a Health to the Devil; his good Services would not justify his complying with *God-damn-me's*, he was not sent to do such things; besides, they had proved, he had personated another Man, and offered at such Villany as a Man would be ashamed to name; these could not be palliated by any Service whatever: That Mr. *Bishop* appeared a very forward Witness, and when he had given his Evidence, took upon him the Part of an Advocate, and therefore could not be looked upon as impartial; he said, indeed, *that it was through* Faulconer *that the Commonwealth sat safe at that Hour*, but *it was God they sat safe by*, and not by him; and when they were upon a Question of Truth, Truth and Righteousness were to be considered, before all the Service in the World.

That it was evident, the Lord *Craven* was not concerned in the first Petition, in which they made the King of *Scots* Offers of their Service; this was three Weeks before the last Petition was delivered, which desired nothing more, than that they might have Money to pay their Quarters; and yet *Faulconer* had sworn, that in this last Petition, delivered the Night before the King left *Breda*, the Petitioners offered to serve him against the Commonwealth, *those barbarous and inhuman Rebels*; which appeared to be false; and where a Man swears what he knows to be false, Corruption is always implied.

Nor was even this last Petition promoted by the Lord *Craven*, for it was delivered before the Lord *Craven* came in: Neither would the Words *to that Effect* have helped the Defendant, if they had been in his Affidavit, for there was nothing like the Words *barbarous and inhuman Rebels*, in either of the Petitions; this could not be an Oversight in *Faulconer*, who was so well acquainted with the Contents of them; and besides, it had been proved, that when he could not obtain what he desired beyond Sea, he declared he would go over to *England*, and do what Mischief he could. And, lastly, as to the Objection, that the Oath he had made had not been duly proved, they found it recorded in the Journals of Parliament; and it was not to be presumed the Parliament would enter it into their Books, and cause a Nobleman's Estate to be sold upon it, if no such Oath had been made.

After the Reply, the Judges delivered their respective Opinions, but the Editor has not thought fit to give us their Reasons, or to tell us whether the Court were divided, or unanimous: He says no more, than that *Faulconer* was convicted of *Perjury*, and that thereupon the following Order was made by the Court: (*viz.*) Faulconer convicted.

The Defendant was this Day brought into Court, under the Custody of the Marshal, upon an Indictment for Perjury, whereunto he had formerly pleaded Not Guilty; *and the Jury thereupon being impanelled and sworn, found him guilty of the Perjury* Faulconer is committed; but no Judgment given.

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jury in the Indictment mentioned; and thereupon the ſaid Faulconer *is committed to the Cuſtody of the ſaid Marſhal, there to remain until*, &c.

Remarks on Faulconer's Trial.

Here we ſee ſome of thoſe infamous Arts practiſed by the Rebels, to dive into their Prince's Councils, in order to betray him, and prevent his Reſtoration: They made Choice of the moſt abandoned Wretches, ſuch as would curſe and ſwear, blaſpheme, perjure themſelves, or commit any Villany to promote *the good Old Cauſe:* All was innocent, all was meritorious, that was done to ſupport their Uſurpation; the End, in their Opinion, ſanctified the Means, how deteſtable ſoever. Such a Complication of Wickedneſs never was charged and proved upon any one Man as upon *Faulconer*; and yet did theſe Uſurpers ſkreen him from Juſtice, in Conſideration of the Services he had done their Commonwealth.——And we find ſome of their Leading Men declaring at this Trial, *That to* Faulconer *was owing the Safety and Eſtabliſhment of their State:* The Counſel for the Commonwealth, indeed, denied it, and inſiſted, that their Eſtabliſhment was *the Work of God.* But as their Uſurpation was founded in Treachery and Rebellion, and evidently ſupported by ſuch Inſtruments as theſe, though God in his Wiſdom ſuffered the Uſurpers to tyrannize over the Subjects of this Kingdom for a Time, their Power and Influence ſeem to be derived immediately from the Prince of Darkneſs, rather than from that Being, that is of purer Eyes than to behold Iniquity with Pleaſure.

Even their grand Argument of *Succeſs*, to prove the Juſtice of their Cauſe, failed them ſoon after; and God was pleaſed to work a much greater Miracle for the Reſtoration of their Lawful Prince, in Peace, without the leaſt Bloodſhed or Oppoſition, than they could pretend he ever wrought in all the Victories they were permitted to obtain over their Sovereign and their Fellow-Subjects. The Regicides themſelves, when they were brought to Juſtice, acknowledged, that *God had ſpit in their Faces*, and diſclaimed their accurſed Cauſe, of which they had long impiouſly declared him the Grand Patron and Protector.

I can not diſmiſs this Trial without obſerving the extreme Diſtreſs, both the King and his faithful Subjects were reduced to, during this intolerable Uſurpation: Thoſe of them that remained at home, were plundered, impriſoned, decimated, and forced to compound for their Eſtates over and over again, till they had nothing left: Impious Villains were encouraged to draw them into Plots for the Reſtoration of their Sovereign, and then betray them; perjured Men were frequently ſuborned to ſwear them out of their Lives and Eſtates. In this Trial we have an Inſtance of the Lord *Craven*'s loſing his Eſtate, on the Teſtimony of the infamous *Faulconer*, who ſwore he had promoted a Petition to his Majeſty King *Charles* II. in which he ſtiled the Uſurpers *barbarous and inhuman Rebels*; when *Faulconer* himſelf appeared to be the Man that propoſed that Expreſſion, and that it was unanimouſly rejected by the Cavaliers. If it be ſaid, that the State was ſo juſt to proſecute *Faulconer* for this notorious Perjury, I can not tell with what Views they might ſuffer this; but it appears that they had ſeveral Times before ſaved him from the Gallows; and even now, when he was evidently convicted of the Perjury, they would not permit him to be puniſhed for it: And it is very poſſible that ſome of the Chiefs of the Rebels found their Account in recovering the Lord *Craven*'s Eſtate for him again, or *Faulconer*'s Perjury had never been animadverted upon; no doubt his Lordſhip made very large Offers to ſome of their Grandees to preſerve *ſome Part* of his Eſtate from Sequeſtration.

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Nor were the Hardſhips of the Cavaliers abroad leſs than theirs at home: We find the King himſelf reduced to that Neceſſity, that he had not a Piſtole left, and all his Adherents ſtarving in the *Low Countries* and elſewhere, inſomuch that many of them ſold themſelves to the *Dutch* for Slaves, and were tranſported to their Plantations; as many *Engliſh* and *Scots* Gentlemen had been before to the *Engliſh* Plantations by the Uſurpers themſelves.

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Lilburn's Trial.

The Trial of Lieutenant-Colonel JOHN LILBURN, for *Felony*, in returning to *England*, (after an Ordinance of the Uſurpers made for his Baniſhment,) at the Seſſions at the *Old-Baily*, *London*, the 13th, 14th, 15th, and 16th Days of *July*, 1653. 5 *Car.* II.

1653. 5 Car. 2.

His Account of the Occaſion of this Proſecution.

LIEUTENANT-Colonel *Lilburn* relates, that he had been Solicitor for his Uncle, *George Lilburn*, Eſq; and Mr. *Joſiah Primate*, for the Recovery of a Colliery in the County of *Durham*, valued at 5000 *l. per Ann.* taken from them by Force and Violence by Sir *Arthur Haſlerig*; that they, the Plaintiffs, preferred a Petition to the Parliament for Juſtice, but Sir *Arthur*, by his Intereſt, procured a Report in his Favour; and that thereupon the Parliament voted the Plaintiff's Petition to be falſe, malicious, and ſcandalous, that Sir *Arthur* had not been guilty of Oppreſſion or Tyranny, as the Petition charged; that the Petition ſhould be burnt by the Hangman, and that *Primate* the Petitioner, ſhould pay ſeven thouſand Pounds, or lie in Priſon till it was paid. And on the 15th of *January*, 1651-2, made ſeveral Reſolutions againſt him the ſaid Lieutenant-Colonel *Lilburn*, who had ſolicited the Cauſe for his Uncle and the ſaid *Primate*, viz. *That he ſhould pay* 3000 l. *to the Uſe of the Commonwealth*, 2000 l.

1653. 5 Car. 2. 2000 *l. to Sir* Arthur Haſlerig, *and* 2000 *l. to the Commiſſioners for compounding with Delinquents* (for ſlandering them before the Houſe, I preſume.)

A Reſolution of the Commons to fine and baniſh him.

They reſolved alſo *That Colonel* Lilburn *ſhould be baniſhed out of* England, Scotland, *and* Ireland, *and the Territories thereto belonging, making it Felony for him to return thither; and that he ſhould depart within thirty Days.*

That the Serjeant at Arms ſhould apprehend him, and bring him to the Bar of the Houſe, to receive Judgment on the *Tueſday* following; and he thereupon ſurrendered himſelf voluntarily to the Serjeant, and was brought into the Houſe on the Day prefixed, when the Speaker ordered him to kneel, but he refuſed; whereupon they ordered him to withdraw, which he did,

A Bill for his baniſhment brought in.

and afterwards a Bill was ordered to be brought in for his Baniſhment, and that ten Days of the Time ſhould be taken off, that had been allowed for his Departure, by the aforeſaid Reſolution: Mr. *Lilburn* ſays farther, that he ſent the Houſe Word by their Serjeant, that the Reaſon he re-

He refuſes to kneel before the Houſe.

fuſed to kneel, was not out of any Diſreſpect to the Houſe; but he apprehended; if he kneeled at their Bar to receive Sentence, he ſhould ſeem to acknowledge the Juſtice of it; whereas he had broken no Law, but followed a juſt Cauſe in an honeſt Way, without uſing any baſe or wicked Means to effect his Deſigns; that though the Report had been made to the Houſe in Favour of Sir *Arthur*, they had fully proved every Clauſe and Circumſtance in their Petition (except Sir *Arthur Haſlerig*'s private Correſpondence with the Commiſſioners of Sequeſtrations); but if they had not, there was no Law to authorize the Parliament to paſs ſuch a Sentence upon him: He would therefore be cut in ten thouſand Pieces before he would kneel, and thereby betray his own, and the Nation's Liberties.

A Petition in his behalf.

In the mean Time a Petition was preſented by a Multitude of People, in the behalf of Colonel *Lilburn*, being directed *To the ſupreme Authority, the Parliament of the* Commonwealth *of* England, and entitled *The humble Petition of many well-affected People, inhabiting the City of* London *and* Weſtminſter, Southwark, *and Parts adjacent, in Behalf of the juſt Liberties of the free People, of* England, *highly concerned in the Sentence againſt Lieutenant-Colonel* John Lilburn.

In this Petition they tell this Rump, or Refuſe of a Parliament, that if Colonel *Lilburn*'s manifold Services for their *Cauſe* could be forgotten, and they looked upon him but as the meaneſt of well-affected Perſons, yet in their late Cenſure of him, they apprehended the native Rights of the Subject to be ſo invaded, that there never was greater Occaſion to apply for Redreſs.

For if he had in reality been an Offender, he muſt be ſo by ſome Law in being, made before the Fact, and ought to be proſecuted in the Courts of Law, and be convicted by a Jury, and ſuch Puniſhment inflicted as the Law preſcribed. The Law declared *that no Freeman ſhould be adjudged of Life, Liberty, or Eſtate, but by Juries*, a Freedom which Parliaments in all Ages contended for, as the Birthright and Inheritance of the Subject, as appeared in the *Petition of Right*, which this very Parliament once ſtiled *A moſt excellent Law.*

They truſted therefore, this Parliament would preſerve their Rights entire to them and their Poſterity, from the Encroachments of thoſe that would innovate upon them: They conceived alſo, that the Original of theſe unhappy Differences between Sir *Arthur Haſlerig* and Mr. *Lilburn*, were occaſioned by Sir *Arthur*'s ſtopping ſome Money that was due to Mr. *Lilburn*, without legal Proceſs; and that, had the Matter been duly tried by a Jury at common Law, all the Inconveniencies ariſing on his Proceeding had been avoided; that the Way of determining Cauſes by the major Votes of a Committee, was not ſo ſatisfactory as the Verdict of a Jury, where a Man might have his Challenges to thoſe that were evidently partial, or otherwiſe unqualified to judge of the Fact.

They took notice alſo, of the Exorbitance of the ſeveral Fines laid upon him, amounting to ſeven thouſand Pounds, which was more than the Colonel could ever be ſuppoſed able to pay, and was therefore contrary to *Magna Charta*: Nor did their Sentence reſt here; but they had condemned him to Death, if ever he was found in *England*, and that without any Crime laid to his Charge, for ought appeared (the Report of the Committee not being ſuffered to be publiſhed); and all this without any legal Proceſs commenced againſt him, or being allowed a Trial by Jury, which in Caſes of Life had never been denied a Commoner in the worſt of Times.

They pray therefore, 1. *That the Parliament will revoke their Sentence againſt Colonel* Lilburn: 2. *That they will permit the Parties to proſecute their Cauſe at Law.*

Lilburn goes into Exile.

But the Parliament taking no notice of the Petition, the Colonel deſired the Speaker's Paſs to go beyond Sea in purſuance of their Sentence; and this being denied him, he ſet out for *Dover*, attended by a Multitude of his Friends, where producing the Common's Votes for his Baniſhment, the Cuſtom-houſe Officers ſuffered him to paſs, and he arrived ſoon after at *Amſterdam*, where he met with the printed Act for his Baniſhment.

The Subſtance of the Act for his Baniſhment.

This Act or Ordinance, is entitled *An Act for the Execution of a Judgment given in Parliament againſt Lieutenant-Colonel* John Lilburn, and recites, that, whereas upon the 15*th* of *January*, 1651. a Judgment was given in Parliament, againſt the ſaid *Lilburn*, for High Crimes and Miſdemeanors, relating to a falſe, malicious, and ſcandalous Petition preſented to the Parliament, by *Joſiah Primate* of *London*, Leatherſeller (and, as I preſume, drawn up by *Lilburn*); it was therefore enacted that the ſeveral Fines, impoſed by the ſaid Judgment on the ſaid *Lilburn*, ſhould be forthwith levied and paid, and that the ſaid *Lilburn* ſhould within twenty Days, to be accounted from the 15th of *January* 1651. depart out of *England*, *Scotland*, *Ireland*, and the Iſlands, Territories and Dominions thereof; and

Made Felony for him to return.

if he ſhould afterwards be found, or ſhould be remaining in *England*, *Scotland*, or *Ireland*, or within any of the Iſlands, Territories, or Dominions thereof, he ſhould be adjudged a Felon, and be executed as a Felon, without Benefit of Clergy; and all Perſons, who ſhould harbour or conceal him, ſhould be adjudged acceſſary to the Felony after the Fact.

He comes to England again.

The Colonel returning to *London*, in *June* 1653. was apprehended and carried before *John Fowk*,

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His Arraignment.

Fowk, then Lord Mayor, who made his Mittimus, and ſent him to *Newgate*, and he was brought to his Trial at the *Old-Baily* on the 13th of *July* following. Mr. *Lilburn* being arraigned, and required to hold up his Hand, deſired the Court to inform him what that Ceremony meant; and whether he held up his Hand or not, does not appear; but he tells us that, after a great deal of Wrangling on that Point, he ſaid, *My Lord, I muſt acknowledge my Name to be* John Lilburn, *Gent. Son of* Richard Lilburn, *of* Thickley-Punchardon *in the County of* Durham, *Eſq; and I am here ready to anſwer any Thing any Man hath to lay to my Charge.* Then the Indictment was read; and it being demanded if he was *Guilty* or *Not guilty*, he made a Speech, applying himſelf to the Chief Baron *Wylde*, and deſiring he might ſpeak to the Inſufficiency and Illegality of the Indictment; for he apprehended it would be too late to aſſign Errors after he had pleaded: He alſo deſired he might have a Copy of the Indictment, and Counſel aſſigned him; abſolutely refuſing to plead, till he had an Order for them: And after having been brought ſeveral Times before the Court, and threatened ſeverely if he refuſed to plead, he did at length obtain a Copy of the Indictment, which ſet forth, that, in and by a Statute made in the Parliament of the Commonwealth of *England*, holden the 30*th* of *January*, 1651. entitled *An Act for the Execution of a Judgment given in Parliament, againſt Lieutenant-Colonel* John Lilburn, it was enacted, that the ſaid *John Lilburn* ſhould within twenty Days (to be accounted from the 15th of *January* 1651.) depart out of *England*, *Scotland*, *Ireland*, and the Iſlands, Territories and Dominions thereof, and if he ſhould after that time be found, or ſhould be remaining within *England*, *Scotland*, *Ireland*, or any of the Iſlands, Territories, or Dominions thereof, he ſhould be adjudged a Felon, and executed as a Felon without Benefit of Clergy; and that the ſaid *John Lilburn*, the Statute aforeſaid not weighing, nor the Puniſhment therein contained, any whit fearing, after the Time limited, *viz.* on the 15th of *June* 1653. was found, and was felonioufly remaining in *England*, *viz.* at *London*, in the Pariſh of *Giles* without *Cripplegate*, in the Ward of *Cripplegate London*, againſt the Form of the ſaid Statute, the public Peace, *&c.*

The Indictment.

His Exceptions to the Indictment

Not ſigned by Counſel.

Mr. *Lilburn* put in his Exceptions to the Indictment on *Saturday* the 18th of *July*, ſigned by himſelf; but the Court refuſed them, becauſe they were not ſigned by his Counſel; to which Mr. *Lilburn* anſwered, they had aſſigned him Counſel but to one Point; whereas he had ſeveral Pleas and Exceptions to the Indictment, which his Counſel durſt not ſign, unleſs they were aſſigned his Counſel at large: That his Counſel alſo informed him, that all the Judges and Lawyers in *England* were not able to draw up a legal Indictment on the Act of Baniſhment of the 30th of *January* 1651. and the Votes or Judgment as it was called, of the 15*th* of *January* 1651. upon which it was grounded; for that the Judgment and the Execution of the Judgment ought to be like a Pair of Indentures; tally exactly in every Circumſtance: But in the pretended Judgment, and the Act for the Execution thereof, there were theſe three Eſſential differences. *Firſt*, The Judgment ſaid, Lieutenant Colonel *John Lilburn* ſhall be baniſhed, and depart out of *England* within *thirty Days*, and the Act for executing the Judgment ſaid he ſhall depart within *twenty Days*; ſo that there was ten Days Difference betwixt the Judgment itſelf, and the Act for the Execution of it. *Secondly*, The Judgment baniſhed him out of *England*, *Scotland*, and *Ireland*, and the Iſlands and *Territories* thereto belonging, but not out of their *Dominions*; ſo that *Wales* being denominated in Law a *Dominion*, he might ſecurely have lived in *Wales* all his Days; notwithſtanding that Judgment: But then comes the Act of the 30th of *January* 1651. which is called an Act for the Execution of the ſaid Judgment, and baniſhes the ſaid *John Lilburne* out of *England*, *Scotland*, *Ireland*, and the Iſlands, Territories and Dominions thereof; ſo that here was another eſſential Difference between the pretended Judgment, and the Act for the Execution thereof. *Thirdly*, The Judgment ſays, *If he ſhall return into* England *at any Time after the Expiration of the ſaid thirty Days, he ſhall be adjudged a Felon*, &c. But the Act ſays, *If he ſhall return to* England *after his Baniſhment.*

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Whereupon the Court gave him time till Six in the Evening, that his Counſel might ſign his Exceptions; but *Lilburn* obſerved that the Time was ſo ſhort, that it would be impoſſible to get their Hands, and that they had ſo long denied him his Right in this Particular, that moſt, if not all his Counſel were gone the Circuit, adding that he was moſt concerned in the Exceptions; his Life muſt pay for the Faults in them, if there were any; and therefore preſſed that they would accept them without his Counſel's Hands; but the Court told him this could not be admitted.

He reflects on the Tyranny of the Adminiſtration.

Lilburne replied, it was very well known, that the greateſt Men now in *England* were his Adverſaries, and it was no great Difficulty for them to cruſh any Man they ſet themſelves againſt: That his Counſel durſt not oppoſe ſuch potent Enemies, nor was it reaſonable they ſhould; they were Men of great Eſtates, and great Practice, and it would probably be their Ruin; he could not in Conſcience deſire it of them, and therefore again deſired they would accept his Exceptions under his own Hand: But they refuſed, and ordered him to get his Exceptions ſigned before Six that Evening.

Some of his Exceptions ſigned by Counſel.

His further Demands.

Mr. *Lilburn* being brought into Court again at Six in the Evening, ſaid his Exceptions were ſigned by Mr. *Norbury* and Mr. *Maynard*; and that they blamed him very much for his Folly, in not demanding *Oyer*, or hearing in open Court, *Of the Act of Baniſhment, the Judgment upon which it was grounded, and of the Crimes that were charged as the Occaſion of it*; that it was his Right in Law to have *Oyer* of theſe, and afterwards Copies of them, to enable him to perfect his Exceptions, for they informed him, *That, if no legal Act could be produced, or if the Judgment was illegal, or if no Crimes in Law were charged, on which the Judgment could be founded, all was null and void*; and what was not good Originally, could never be made ſo by Tract of Time; and what was not found and ſubſtantial

1653. 5 Car. 2. ſubſtantial in its Foundation, could never be made ſo by the Superſtructure. He confeſſed they had not Time to draw up a formal Claim of this Right; but, according to their Inſtructions, he had got a Paper drawn up and engroſſed, which was ſigned with his own Hand; but the Court refuſed to receive it, becauſe it was not ſigned by his Counſel.

Whereupon *Lilburne* ſaid, his Counſel adviſed him to dwell upon his Demand of *Oyer*, as his Right, being his chief Shield and Buckler to defend his Life; demanding, if they would rob him of his Birthright, the Benefit of the Law? which he repeated ſeveral Times, with an exalted Voice, when the Court interrupted him; telling them, If they denied him Juſtice, and would not permit him to ſpeak for his Life, *he appealed to all the People that heard him that Day, declaring, that the Lord Mayor and the Court robbed him of his Birthright, and would not ſuffer him to ſpeak for his Life*; and being Maſter of very good Lungs, he perfectly drowned the Voices of his Proſecutors, and abuſed the Recorder *Steel*, and the Attorney-General *Prideaux* very handſomely; and when the Court endeavoured to brow-beat and ſilence him, he cried out again, *My Lord, will you murder me without Law, by robbing me of my Birthright, and denying me* Oyer *of the Act* &c? My able honeſt Counſel have commanded me to dwell upon my Demand of *Oyer* as upon my Life; if this were granted me I am ſecure; for you can produce no legal Act of Parliament, or Judgment againſt me, nor have I ever committed any Crime to found them upon.

He appeals from the Court to the People.

At length the Court, weary with the Oppoſition he made, told him, if he put in the Exceptions he had under his Counſel's Hand, they aſſured him, in caſe his Counſel, at their next Meeting, would avow his Demand of *Oyer*, they would grant it: Whereupon Mr. *Lilburn* delivered in his Exceptions; in which the Objections he had made verbally to the Proceedings, were drawn up in Form, and ſigned by his Counſel, *Norbury* and *Maynard*.

Lilburn afterwards made a Speech to the Court, in which he repeated much of what he had ſaid before, and then withdrew. He obſerves, that the Court were in ſuch Conſternation when he appealed to the People, that they thought fit to ſend for more Forces to protect them, though Colonel *Okey* had a ſtrong Guard of Soldiers there from the Beginning of the Trial.

The Trial imperfect.

Neither Mr. *Lilburn* or his Friends give any further Account of his Trial, only it appears he was *acquitted* by the Jury; from whence, I preſume, his Exceptions were all over-ruled. The Jury were afterwards called before the Council of State, and examined concerning their Verdict; but it does not appear any of them were puniſhed for the Verdict they had given.

He was acquitted.

Some of Lilburn's *bold Expreſſions in Court.*

Among other Expreſſions of *Lilburn*'s at the Trial, it is related by ſome, he told the Court, *That the Act for his Baniſhment, was an unjuſt, an unrighteous, and a treacherous Act; that he doubted not to ſhatter it to Pieces; they could not make an Act of Parliament ſince the King's Head was cut off:* That if there was any Judicatory in Parliament, it was in the Lords and not in the Commons; they had nothing to do to ſentence any but their own Members: That all Crimes ought to be adjudged by the Common Law; Acts of Attainder were unlawful: He told them, *They made the Land groan with their Oppreſſions.* To *Prideaux* he ſaid, It is the Admiration of my Soul, that a Man ſhould ſit in Judgment on me that thirſts after my Blood. 1653. 5 Car. 2.

The Army, he ſaid, had, many of them, been very good Inſtruments to deliver them from Tyranny, but *he wiſhed they had not then a greater Tyrant* (meaning *Cromwell*) *than they had delivered them from:* His Jury, he called, *His honourable Jury*, and affirmed, that it was *They that were the Keepers of the Liberties of* England; *they were Judges of the Law as well as of the Fact.*

Remarks on Lilburn's Trial.

All the World muſt allow Mr. *Lilburn's* Remarks on this Proſecution were very juſt; indeed he was furniſhed with them by ſome of the ableſt Counſel in *England*; and, if he was not the Author of them, yet his Courage in repeating and maintaining thoſe Maxims they had furniſhed him with, and in a Manner telling *Cromwell* to his Face, that his Power was uſurped, and his Adminiſtration tyrannical, was very heroical, and what few Men durſt have done, when he was arrived at that Height of Power.

And here we ſee how ſenſible the City of *London*, and the whole Body of the Nation, were, as well as *John Lilburn*, of the Oppreſſions they ſuffered, and how much they had contributed to the Subverſion of the Laws, and enſlaving themſelves and their Poſterity, by adhering to their hypocritical Leaders: We ſee they petitioned, threatened, and upbraided the Uſurpers with deſtroying that Conſtitution they pretended to preſerve, and deluding them with ſpecious Pretences of defending their invaded Liberties, till they had poſſeſſed themſelves of Sovereign Power, and eſtabliſhed their Tyranny, and then becoming much greater Oppreſſors than their Lawful Prince had ever been: They complain of thoſe very Abuſes, for the Redreſſing of which they had been ſpirited up into a Rebellion againſt their Natural Sovereign, and made acceſſary to his Murder. They obſerve that Men were condemned without a legal Trial, that they were exorbitantly fined, beyond the Value of their Eſtates; and an Ordinance of Parliament made for baniſhing a Man, who had offended againſt no Law in being. So ſenſible now were the People of the Hypocriſy of their Leaders, that it was not in the Power of the Uſurpers to pack a Jury to convict this Malcontent: But his Acquittal was of little Advantage to him; the Nation was then governed with a Rod of Iron, and ſince they could not get him condemned in the Courts of Law, they made uſe of pure Force, and detained this rough Member of the Church-Militant, who had done and ſuffered ſo much for the *good Old Cauſe*, in Priſon to his dying Day; and though he had quarrelled with, and oppoſed every Government he had lived under, it appears, he became at laſt a peaceable *Quaker*, and diſclaimed the Uſe of Carnal Weapons.

Lilburn dies a Quaker.

I ſhall only obſerve further, that That Rump of the Commons, that then went under the Name of the Parliament of the Commonwealth of *England*, aſſumed a greater Power, both in Civil and Criminal Caſes, than the Houſe of

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of Lords, or Commons, or both of them united, had ever exerciſed before the Conſtitution was ſubverted; fining and baniſhing Men at Pleaſure, without hearing them in their Defence; though indeed, they ſeem at this Time to have been no more than the Uſurper's Tools, to execute his Decrees, notwithſtanding the pretended Government was exerciſed in their Names.

Buried after their Way.

I ſhould have taken Notice before, that the Corpſe of *John Lilburn*, after he was dead, was brought by the Quakers to their Meeting-Houſe at the *Bull and Mouth*, in *London*, where it was put into a plain Coffin, without any Pall or other Covering, and from thence carried, in Contradiction to antient Cuſtom, with the Head foremoſt, to the New Church-Yard at *Bethlehem*, where it was interred, without Chriſtian Burial, or any Ceremony, but the Sighs of the Brethren.

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Streater's Caſe.

Proceedings in the *Upper-Bench* (as the *King's-Bench* was then denominated) on a *Habeas Corpus*, brought by Captain JOHN STREATER, in *Michaelmas* and *Hilary* Terms, 1653. 5 *Car.* II.

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The Habeas Corpus he brought.

THE *Habeas Corpus* was in *Engliſh*, and of the following Tenor: "By the Keep-
"ers of the Liberties of *England*, by Authority
"of Parliament, to the Keeper of the Priſon of
"the *Gatehouſe*, &c. We command you, that
"the Body of *John Streater*, in the Priſon un-
"der your Cuſtody detained, as it is ſaid, to-
"gether with the Day and Cauſe of his taking
"and detaining, by whatſoever Name the ſaid
"*John* is called therein, you have before us,
"in the *Upper-Bench* at *Weſtminſter*, on *Wed-*
"*neſday* next after the Morrow of St. *Martin*,
"to undergo and receive thoſe Things which
"our ſaid Court of *Upper-Bench* ſhall then and
"there order, concerning him in this Part. And
"this you may not omit at your Peril, and muſt
"bring with you this Writ. Witneſs *Henry*
"*Rolle*, (the Chief-Juſtice) at *Weſtm.* 12. *Nov.*
"1653."

Committed by a Warrant of the Council of State,

Captain *Streater* being brought before the Court the 23d of *November*, the Return of the *Habeas Corpus* was read, wherein were recited two Warrants; the firſt by the Council of State, dated 12 *Sept.* 1653. and directed to the Keeper of the *Gatehouſe*, commanding him to receive and keep the Body of the ſaid *John Streater*, committed for publiſhing ſeditious Pamphlets againſt the State: The other was a Warrant ſigned by the Speaker of the Commons, dated the 21ſt of *Nov.* and directed to the Keeper of the *Gatehouſe*, commanding him, by Virtue of an Order of Parliament, made the ſame Day to receive and keep the ſaid *John Streater* Priſoner, till he ſhould be delivered by Order of Parliament.

And continued by a Warrant from the Speaker of the Commons.

He moves to be bailed.

Then the Priſoner's Counſel moved, that, as to the firſt Order, if there was no more than the publiſhing of ſcandalous Pamphlets, he might be bailed; and the Court being of Opinion he ought to be bailed, ordered the Priſoner to ſpeak to the ſecond Warrant. Whereupon Captain *Streater* ſaid, As to the ſecond Part of the Return, which mentioned an Order of Parliament, he had this Exception: *That it did not mention any Cauſe of his Impriſonment.*

And whereas it had been objected, That the Parliament was not bound to ſhew Cauſe upon a Commitment, he hoped the Parliament would not encourage the maintaining an Argument ſo repugnant to their Honour, and which had, within Memory, been condemned by the Parliament themſelves: That the Parliament on the 17th of *March*, 1648. had declared, That their Authority was only by Law; that they were ſenſible of the Excellency and Equality of the Law of *England*, and would uphold the true approved Rules of Law: They had declared alſo, That the good old Laws, and Courts of Juſtice, and the Cuſtoms of *England* were the Badges of their Freedom, Rights, and Privileges; that by MAGNA CHARTA, *None ſhall be taken or impriſoned, but by legal Proceſs, according to the old Law of the Land*; and there being no lawful Cauſe ſhewn in the Return, let the Command come from whence it will, the Law would warrant his being diſcharged: That an Order of Parliament could not repeal or ſuſpend Laws; and Sir *Edward Coke* obſerves, that even an Act of Parliament is not pleadable in a Court of Record, but by Record or under Seal, much leſs an *Order* of Parliament that is not recorded on the Parliament Rolls itſelf.

The Attorney-General oppoſes his being bailed.

The Court demanding of the Attorney-General, what he had to offer in Anſwer to this, he ſaid, he ſhould not argue upon it; for the Priſoner was committed by an Order of Parliament, who need give no Account of their Reaſons for it to that Court; it was their Pleaſure to commit him, till he ſhould be cleared by an Order of the ſame Power, and the Court could not but remember Orders of the like Nature. To which it was ſaid, There had indeed been the like Orders, in the Caſes of *Lilburn*, *Chetwin*, and others, who made their Application to the Parliament, and if the Priſoner would apply himſelf to the Houſe, they would do him Juſtice; but as he was committed by them, who were a ſuperior Court, and they only knowing the Cauſe of his Commitment, it was not fit for the *Upper Bench* to controul the Parliament, or to enquire into it. That the Parliament were the ſupreme Power, and might alter or ſuſpend the Laws as they pleaſed, and were not obliged to expreſs the Cauſe of Commitment, as inferior Courts and Officers were; that their Orders were no more to be queſtioned than their Acts; and there was no Neceſſity of reading a Bill three Times now, as when the Legiſlative Power was in King, Lords, and Commons. Mr. Ju-

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tice *Nichols* alſo ſaid, he had known ſeveral Acts of Parliament paſſed on once reading: And upon the whole the Court was of Opinion, that an Order made by the Parliament, in whom the Legiſlative Authority was then veſted, muſt be Law to them; they muſt not diſpute their Authority.

The Court refuſe to Bail him. The Parliament diſſolved. He brings an alias Habeas Corpus.

The Parliament being diſſolved by *Cromwell*, in the *Michaelmas* Vacation, *Streater* obtained an *alias Habeas Corpus* in *Hilary Term*, of the following Tenor, *viz.*

" *Oliver*, Lord Protector of the Common-
" wealth of *England*, *Scotland*, and *Ireland*, &c.
" to the Keeper of the *Gatehouſe*, &c. We
" command you, as formerly we commanded
" you, that the Body of *John Streater*, Gent.
" in Priſon under your Cuſtody detained, to-
" gether with the Day and Cauſe of his taking
" and detaining, by whatſoever Name the ſaid
" *John* is called therein, you have before us
" at the *Upper Bench* in *Weſtminſter* upon *Mon-*
" *day* next, after the 15 Days of St. *Hilary*
" next coming, to undergo and receive thoſe
" Things which our Court of *Upper Bench*
" aforeſaid, ſhall conſider of him in this Behalf,
" and this you may not omit in any wiſe, upon
" Peril that will fall thereon. Witneſs *Henry*
" *Rolle*, at *Weſtminſter* the 26th of *January*,
" 1653."

To which *Aquila Wykes*, the Keeper of the Gatehouſe Priſon, made the following Return:

" To his Highneſs the Lord Protector of the
" Commonwealth of *England*, *Scotland*, and *Ire-*
" *land*, and the Dominions thereof, in the *Up-*
" *per Bench Weſtminſter*, at the Day and Place
" in the Writ to this Schedule annexed named:
" I do certify, that before the coming of the
" ſaid Writ to me directed, that is to ſay, the
" 12*th* Day of *September* 1653. *John Streater*
" in the Writ named, was committed to my
" Cuſtody, and there detained by Virtue of
" a Warrant from the late Council of State,
" and by another Warrant from the Speaker,
&c. (*both which Warrants are recited*) and then concludes, " And theſe are the Cauſes of the
" detaining of the ſaid *John Streater*, whoſe
" Body before the Lord Protector aforeſaid, I
" have ready accordingly, at the Day and Place
" in the ſaid Writ contained, as I am within
" commanded."

Aquila Wykes, *Keeper of the Gatehouſe.*

He moves to be diſcharged.

The Priſoner being hereupon committed to the Marſhal of the *Upper Bench*, and brought into Court again by Rule the 7th of *February*, his Counſel moved that he might be diſcharged; for that the Parliament being diſſolved, their Order was no longer in force.

The Attorney gives very odd Reaſons againſt it.

To which Mr. Attorney anſwered, that Parliaments could not be diſſolved; that the Parliament was the ſame Power that was ſtill in being; and as by this Commitment the Priſoner was not to be delivered, but by Order of Parliament, he conceived he could not be releaſed by any other Power; he muſt be content till the Meeting of the Parliament, which was to be the 3*d* of *September*, 1654. He admitted that an Order of one or both Houſes, when the Parliament conſiſted of King, Lords, and Commons, would not be binding on a Diſſolution; but now that Power was united in the Commons, their Order was of greater Force; nor was it material whether Cauſe was ſhewn or not; the Parliament might commit without, and it was to be preſumed, they had Cauſe for ſo doing; and therefore moved he might be remanded to the Gatehouſe. 1653. 5 Car. 2.

The Reply of the Priſoner's Counſel.

The Priſoner's Counſel replied, that Parliaments might, and did determine; and then their Orders determined, though their Acts remained in Force: But that this was not ſo much as an Order of Parliament; it was but a Warrant from the Speaker, that it had been ordained; that whoever ſaid the Parliament was in being, ſhould be adjudged guilty of an High Offence, and if it did not continue in being, their Orders could be of no Force; that an Order of Parliament was not a Judgment of Parliament; that they were here in Court, *coram Protectore*, and moved again that he might be diſcharged; but the Court took Time to conſider of it.

The Court diſcharge the Priſoner.

The Priſoner being brought to the Bar again the eleventh of *February*, Chief Juſtice *Rolle* delivered the Opinion of the Court, *viz.* that the firſt Part of the Return was too general, it not mentioning what Books, or whoſe Books they were, or where or when they were publiſhed: That the ſecond Part of the Return was grounded upon an Order of Parliament, which was determined with the Parliament; and that That Court was to take Notice when the Parliament was ſitting, and when diſcontinued, and which were Orders of Parliament, and which were Acts: That it was ever the Opinion of the Parliament themſelves, that upon a Diſſolution all their Pommittees and Orders ceaſe: That the Court did not reverſe the Order of Parliament; it was reverſed by their Diſſolution, and there was no viſible way to relieve the Priſoner but in that Court: Intervals of Parliament might be as long as they had been in ſome late Reigns; and if an Order of Parliament ſhould be binding on a Diſſolution, where was the Liberty of the Subject? The Court therefore was unanimous, that the Priſoner ought to be diſcharged; and a Rule was made accordingly.

John Lilburn refuſed the Benefit of an Habeas Corpus.

John Lilburn had not ſo good Fortune; for though he brought an *Habeas Corpus*, directed to Colonel *Barkſtead* Lieutenant of the *Tower*, the Lieutenant refuſed to bring him into Court, alledging he had received a Counter Order from the Council of State, *That* Lilburn *ſhould not be brought before the* Upper Bench, *but abide the Pleaſure of the Houſe*; and *Lilburn*'s Counſel ſaid, that they had no Inſtructions from their Client, for they were not permitted to have Acceſs to him, and moved for an *alias Habeas Corpus*; but the Court would not grant it, and told them the Council of State had their Reaſons for what they did: Nor would *Oliver*, after he had turned the Parliament out of Doors, and aſſumed the Title of *Protector*, ever ſuffer *Lilburn* to be diſcharged or bailed; but detained him in Priſon by his ſole Will and Power, without giving any Reaſon for it to the Day of his Death.

Remarks on the Habeas Corpus brought by Streater, Lilburne, &c.

Theſe Proceedings ſufficiently ſhew how much the Condition of the Subject was mended by the Uſurpers; they murdered their King, under a Pretence of reſtoring Liberty and Property, and when they had poſſeſſed themſelves of Sovereign Power, became greater Oppreſſors, and more arbitrary than any of our Kings. We find their

Attorney-

1653. 5 Car. 2. Attorney-General affirming, that Men might be impriſoned for Life, by a Vote or Order of the Commons without a Trial, and even without ſhewing any Cauſe of Commitment: To ſome they refuſed the Writ of *Habeas Corpus*, and others, when they were brought before the *Upper Bench*, were told that this Court could not relieve them: *It was the Pleaſure of the Commons to commit the Priſoner, and he could not be releaſed by any other Power*, even after the Parliament was diſſolved; that the Commons might alter or ſuſpend the Laws as they pleaſed, and their Orders were no more to be diſputed than their Acts: In ſhort, the People were now Slaves to a ſmall Remnant of the Commons, as they were afterwards to *Cromwell*, and no Shadow of Law, Liberty, or Property remaining. 1653. 5 Car. 2.

1654. 6 Car. 2. *The Trial of Gerhard and Vowel.*

The Arraignment of SOMERSET FOX, JOHN GERHARD, and PETER VOWELL, for *High-Treaſon*, againſt the Protector, CROMWELL, before pretended *High Court of Juſtice*, of which JOHN LISLE was *Preſident*, the 30th of *June*, 1654. 6 *Car.* II. 1654. 6 Car. 2.

The Charge THE Priſoners were charged with High-Treaſon, in conſpiring againſt the Life of the Lord Protector, to ſubvert that pretended Government, bring in *Charles Stuart*, and proclaim him King; ſeize on the Protector's Guards, and involve the Nation in a bloody War.

Fox confeſſes it. *Fox* confeſſed the Charge; but *Vowel* for ſome time objected to the Juriſdiction of the Court, inſiſting he ought to be tried by a Jury, by *Magna Charta*, and the antient Laws of the Kingdom, as well as by the ſixth Article of the Protector's Inſtrument of Government; but this being over-ruled by their pretended Judges, the Evidewas produced againſt *Vowel* and *Gerhard*.

Objections to the Juriſdiction of the Court over-ruled.

The Evidence. The Witneſſes depoſed, that the Priſoners, *Gerhard* and *Vowel*, were in a Plot to ſeize on the Lord Protector, and ſeveral of his Council, and murder them, and to bring in and proclaim *Charles Stuart*, Son of the late King; that this being reſolved on by the Conſpirators in *England*, Mr. *Hinſhaw*, one of their Number, and others, went over to *France* to acquaint *Charles Stuart* with the Deſign, without whoſe Approbation ſome of them refuſed to act: That Mr. *Hinſhaw* applied himſelf to Prince *Rupert*, who brought him to *Charles Stuart*, who was of Opinion the Conſpirators ought not to proceed in their Deſign, for three Reaſons; firſt, It would be diſhonourable to come in by ſuch Means; ſecondly, It did not ſeem feaſible; and thirdly, It was not Seaſonable at that Time: But that Prince *Rupert* afterwards encouraged the Deſign, and promiſed his Aſſiſtance.

That Mr. *Hinſhaw*, Mr. *Wiſeman*, and Mr. *Gerhard*, three of the Conſpirators, returning to *England*, *Hinſhaw* acquainted their Accomplices of the Overture that had been made to *Charles Stuart*, and affirmed that Prince *Rupert* had engaged to ſend over ten thouſand *Engliſh*, *Scots*, and *French*, to be commanded by the Duke of *York*, and land in *Suſſex* and other Places; and that there were Forces ready to join them.

That they had agreed to ſurprize the Protector with a Body of Horſe as he went from *White-Hall* to *Hampton-Court*, which he uſed to do every *Saturday* Night with a very ſmall Guard; they were to ſeize the Forces quartered in *Weſtminſter*, the *Meuſe*, *&c.* to ſurprize the *Tower*, raiſe an Inſurrection in the City of *London*, and Proclaim *Charles Stuart* there; and one *Billingſly*, a Butcher in *Smithfield*, was to raiſe a Party, and take the Troopers Horſes that were at Graſs in *Iſlington* Fields, which was ſaid to be a Project of *Vowel*'s.

The chief Witneſſes againſt the Priſoners, were Mr. *Wiſeman*, Mr. *Charles Gerhard*, and Mr. *Hudſon*, a blind Clergyman, all of them very honeſt Gentlemen, and were certainly engaged with the reſt to pull down the Uſurper, and bring in the King, but obliged to become Witneſſes to ſave their own Lives: However, they teſtified no more than they found the Uſurpers were very well acquainted with before.

The Priſoners' Defence. Mr. *Vowel* and Mr. *Gerhard*, the Priſoners, denied the whole Charge at their Trials, and inſiſted that Treaſon (if the Facts were proved) could only be committed againſt a King; the Protector was a Perſon not known in our Law: To which *Prideaux*, the Attorney-General for the Commonwealth, replied, that the Laws which made it High-Treaſon to Conſpire the Death of the King, were ſtill in force; and that by King was meant any Supreme Governor, whether King, Queen or Protector, though the King only was named in the Act.

Liſle endeavours to ſhew the Wickedneſs of the Conſpiracy. The Priſoners being afterwards brought into Court to hear Judgment, the Preſident *Liſle* made a Speech to them, wherein he endeavoured to ſhew the Wickedneſs of this Conſpiracy, and the Reaſonableneſs of the Puniſhment the Law had inflicted upon ſuch Offences: After which the Sentence was read againſt the three Priſoners, being of the following Tenor, *viz.*

The Sentence. *That the Court, upon due Conſideration had of the Treaſons and Murders plotted and contrived by the Priſoners againſt his Highneſs the Lord Protector and the Commonwealth, and to raiſe a bloody War therein, did adjudge them to be hanged by the Neck till they were Dead.*

Fox pardoned. *Somerſet Fox* however was reprieved, on Account of his acknowledging the Offence, and pleading guilty; and Mr. *Gerhard*, upon his Petition, had the Manner of his Execution changed, from hanging to beheading; however, both Mr. *Vowel* and Mr. *Gerhard* were executed the

1654. 6 Car. 2. Vowel *hanged.* Gerhard *beheaded.*

the ſame Day, namely, on *Monday* the 10th of *July*; the firſt being hanged in the Morning, on a Gallows erected for that Purpoſe at *Charing-Croſs*, and Mr. *Gerhard* was beheaded on a Scaffold at *Tower-Hill*, at Four in the Afternoon. They both gloried in their Loyalty to their Sovereign, declaring themſelves true Members of the Church of *England*, exhorting the People to remain ſtedfaſt in that Profeſſion, and in their Loyalty to their Prince. They did not deny but there had been ſome Diſcourſe how the Uſurpation might be demoliſhed, and the King reſtored; but affirmed, there was no Scheme actually agreed on for bringing theſe Things about.

Remarks on the Trial of Vowel *and* Gerhard.

They were both brave Men, and far from regreting the laying down their Lives for their Religion and their Country; and as the Uſurper knew them to be immoveably loyal, he was determined to make them Examples of his Vengeance, whether they were actually in a Plot to deſtroy him or not. And here we ſee how ſome Lawyers, whoſe Buſineſs it is to defend the Laws and Conſtitution, can proſtitute their Profeſſion to the vileſt Purpoſes, and make the Laws ſpeak a Language directly contrary to their true Meaning, and the Intent of the Legiſlators that made them; telling the People, that the Statutes that were made for the Preſervation of the King and Government, were to be interpreted to the Deſtruction of both; that the Uſurper, who had killed the King, and taken Poſſeſſion of his Throne, was their lawful Prince; and the preſent King and his loyal Subjects Rebels, by thoſe very Statutes that eſtabliſhed the Rights of both. Of all Kinds of Murder, thoſe that are committed under a Colour of Law are the moſt to be deteſted. How vile muſt thoſe Judges and Counſel appear therefore, who thus pervert Law and Juſtice, in order to deſtroy the beſt and braveſt Men! Surely the Names of *Liſle* and *Prideaux* muſt remain infamous to lateſt Poſterity, while thoſe of Vowel and Gerhard, whoſe Blood they hunted after, ſhall ſhine in the Annals of Fame, as long as the Sun and Moon endures. 1654. 6 Car. 2.

1654. 6. Car. 2. Pordage's *Proſecution*

The next Proceeding in the State Trials is the Proſecution of Dr. John Pordage, Rector of *Bradfield*, in the County of *Berks*, for certain Heretical Doctrines, before Commiſſioners for ejecting ſcandalous and inſufficient Miniſters, *Octob.* 1654.

1654. 6 Car. 2.

The Charge againſt him.

THE principal Errors he was charged with were, his *denying the Divinity of* Chriſt, *and the Merits of his Paſſion*; *his maintaining that* Chriſt *was a Type, and but a Type, and not perfect*; which Charge the Doctor denied, nor was it well proved againſt him; and the Commiſſioners, on paſſing Sentence, declared, that they did not think him guilty of it; however, they thought fit to adjudge and decree, *That he ſhould be ejected out of the Rectory of* Bradfield, *and the Profits thereof.*

He is deprived.

Remarks on this Proſecution.

This ſhews how great a Power the Uſurpers conferred on their Commiſſioners for ejecting ſcandalous Miniſters; that they made them Judges of Hereſy and erroneous Doctrines, as well as of the Lives and Morals of the Clergy, and authorized them to ſuſpend and deprive whom they ſaw fit; and poſſibly the greateſt Crime the Doctor was guilty of, was his being poſſeſſed of one of the beſt Livings in *Berkſhire*, which the Uſurpers thought fit to beſtow on one of their Favourites. Thus we ſee thoſe Men who uſed to complain of the Juriſdiction of the Biſhops and Eccleſiaſtical Courts, ſet up a more arbitrary Tribunal, to take Cognizance of thoſe Matters, than ever was erected in *England* ſince the Reformation.

1655. 7 Car. 2. Penruddock's *Trial.*

The Trial of Colonel John Penruddock, for *High-Treaſon*, by a ſpecial Commiſſion of *Oyer* and *Terminer*, held at *Exeter*, the 19th of *April*, 1655. 7 *Car.* II.

1655. 7 Car. 2.

Short Minutes of it only.

THIS which is denominated a Trial, is no more than ſome ſhort Notes, or Memorandums of the Colonel's, in which he relates, That he was arraigned together with *Hugh Grove*, *Richard Reeves*, *Robert Duke*, *George Duke*, *Thomas Fitz-James*, *Francis Jones*, *Edward Davis*, *Thomas Poulton*, and *Francis Bennet*, Gent. and that he, in Behalf of himſelf and his Fellow Priſoners, excepted to the Indictment, as not according to Law, deſiring Counſel might be aſſigned to argue the Errors it contained: That this being denied him, he pleaded *Not Guilty*, and having challenged twenty-four of the Pannel, a Jury was ſworn; that he afterwards deſired a Copy of the Indictment, and Time to prepare for his Defence, which were refuſed, and he was obliged to enter upon his Defence immediately; wherein he urged, among other Things, that the Law knew no ſuch Perſon as a Protector, againſt whom the Treaſon was ſaid to be committed, and cited a Paſſage out of *Bracton*, who ſays, *Omnes ſub Rege, & ipſe nullo niſi*

His Defence.

1655. 7 Car. II.

niſi tantum Deo, &c. He cited alſo a Parliament Roll, where it is ſaid, *Whoever ſhall refuſe Aid to the King when War is levyed againſt him, is guilty of Treaſon; and that all Men who adhere to the King in Perſonal Service, are freed from Treaſon by Law:* He thought it ſtrange therefore, they ſhould found their Indictment on a Statute which made his adhering to the King Treaſon; and deſired that the Statute might be read, but the Court would not indulge him ſo far. Then Mr. Attorney made a long Speech, aggravating the Charge againſt the Colonel, and telling the Jury, he had been four Years in *France*; that he held a Correſpondence with *Charles Stuart*, of whom he had learned the Popiſh Religion, and intended to introduce Popery; that *Charles Stuart*, whom he would bring in, was a debauched lewd young Man, and would engage the Nation in another bloody Quarrel; in which he told the Jury, they with their Wives and Children would be deſtroyed, if the Cavaliers ſucceeded.

The Charge enforced.

His Defence continued.

To which the Colonel replied, Mr. Attorney had put on him a Bear-Skin, and now deſigned to bait him; but ſaid, he had ſurrendered to Captain *Crook* upon Condition of Quarter, and ought not after that to have been tried for his Life: He obſerved alſo that the Witneſſes produced againſt him had teſtified, that when King *Charles* II. was proclaimed at *Salisbury*, he had declared for the true Proteſtant Religion, the Liberty of the Subject, and Privilege of Parliament; from whence he concluded it was obvious, that he was not for bringing in the Popiſh Religion.

Had he ſeen the Crown upon the Head of any Perſon, he ſaid he might have known what was Treaſon; but here was no ſuch Land-Mark, and he did not know how he could be guilty of what he was charged with: He adviſed the Jury not to be terrified by the Power and Splendor of the Court, and betrayed into a Sin of a deeper Die, than the Judges Scarlet, by drawing his Blood upon their Heads: He bid them look upon him as the Image of his Creator; for that Stamp of God's which was upon his Viſage, was not to be defaced without an Account given for it: He had inſiſted to be tried by thoſe Laws, which were eſtabliſhed by the Wiſdom of their Anceſtors; but he was tried by a Law, that was cut out by a rebellious Sword; and if they did not look well to it, the Sheets on which it was recorded, might ſerve ſome of them for Winding-Sheets: That the moſt they could make of the Matter was but a Riot; however, if they found it Specially, they would in ſome Meaſure acquit themſelves, and throw the Blood that was ſpilled upon the Judges: But the Jury, after a ſhort Receſs, brought him in GUILTY.

His Defence continued.

On *Monday* the 23d of *April*, the Colonel was brought to the Bar again with twenty-ſix Gentlemen more, who had been tried in the mean Time, and the Court demanded what he had to ſay, why Sentence ſhould not be pronounced: He anſwered, he could have offered the Articles of Surrender, but did not think it proper in this Court: If the Protector would give him his Life, he ſhould return him Thanks; but if not, he ſhould forgive him and the Court. After which Sentence was pronounced on the Colonel and the reſt of the Priſoners, *That they ſhould be drawn, hanged, and quartered, as Traitors.*

1655. 7 Car. II. *Sentence paſſed.*

Whereupon they obſerved, that this was but an odd way of performing Articles of Capitulation, whereby they had ſtipulated for Life, Liberty, and Eſtate.

The Colonel and Mr. *Grove*, had the Honour done them of being beheaded at *Exeter*; ſeveral other Priſoners were hanged at *Exeter* and *Salisbury*, and a great Number of Royaliſts were tranſported to the Plantations like convicted Felons.

He is executed.

This Proceeding, how imperfect ſoever, could not be omitted, becauſe it is the beſt we could meet with of the Sufferings of theſe brave Men: The Hardſhip Colonel *Penruddock* and the reſt of the Priſoners chiefly complained of, we find was, the Violation of the Articles of Capitulation, whereby their Lives, Liberties, and Eſtates, ought to have been ſecured. But the Uſurpers were now ſo firmly eſtabliſhed, that they feared no Retaliation; and as for the Injuſtice of putting theſe brave Cavaliers to death, it never troubled them in the leaſt: They had waſhed their Hands in the Blood of their Sovereign, and deſtroyed ſo many thouſands of his loyal Subjects in the Name of the Lord; that they looked upon ſuch human Sacrifices, (eſpecially thoſe of the beſt Blood in the Nation) as meritorious Offerings to their Maker: And here it may be proper to give ſome Account of the Occaſion of *Penruddock*'s Misfortune. The Nation it ſeems, became generally diſaffected on *Cromwell*'s aſſuming the Protectorſhip, even the Independants as well as the Royaliſts: The Presbyterians were exaſperated to the laſt Degree, to find themſelves over-reached; and when they had, with the utmoſt Hazard, ſubverted the Monarchy, ſaw one of their own Number aſſume the ſole Government of the Nation, and exerciſe a more abſolute Tyranny than any Sovereign in *Europe*, not allowing them any Share in the Adminiſtration. While the People were in this Diſpoſition, the Royaliſts ſent over to the King (then at *Cologn*) for Commiſſions and Generals, to conduct an Inſurrection in his Favour: Whereupon his Majeſty ſent them *Wilmot* Earl of *Rocheſter*, and Sir *Joſeph Wagſtaffe*, and went himſelf in Diſguiſe to *Fluſhing* in *Zealand*, that he might be ready to embark for *England* on the firſt Notice of their Succeſs. *Wilmot* and *Wagſtaffe* finding the People generally diſaffected on their Arrival, the former went into the North of *England*, and *Wagſtaffe* into the Weſt; but their Deſigns were fruſtrated by the Treachery of one *Manning*, who having ſerved King *Charles* I. afterwards entered himſelf in the Service of the Uſurpers, and was employed by *Thurloe*, Secretary to *Cromwell*, as a Spy in the Family of King *Charles* II. From this Man it was *Cromwell* received Advice that the King was gone to *Zealand*, in Expectation of an Inſurrection in *England*, and named ſeveral Royaliſts as concerned in a Conſpiracy againſt him; which occaſioned their being taken

Remarks on Penruddock's *Tryal.*

1655 7 Car. II. up, and put *Cromwell* upon his Guard: But *Manning* was not acquainted with the Meaſures that had been concerted, or the particular Perſons that were to conduct the Enterprize. However *Cromwell*, upon the Intelligence he had received, cauſing ſeveral Leading Men among the Royaliſts to be apprehended, and narrowly watching the Motions of the reſt, the Deſign was ſo far defeated, that *Wiltſhire* and *Hampſhire* were the only Counties which found it practicable to appear in Arms, and here they were not very numerous. The Royaliſts of *Wiltſhire* amounting to two hundred Horſe, among whom were Colonel *Penruddock*, *Grove*, *Jones*, *Mompeſſon*, *Maſon*, and other Perſons of Diſtinction, led by Sir *Joſeph Wagſtaffe*, aſſembled the 11th of *March* and came to *Salisbury*, where the Aſſizes was then held, about five in the Morning, and ſurprized *Rolls*, the Uſurper's Lord Chief Juſtice, Mr. Juſtice *Nicholas*, and the High Sheriff, in their Beds, and locked up all the Stables which were then full of Horſes, in order to mount their Friends in Town; and *Wagſtaffe*, it is ſaid, would have hanged up the Judges and Sheriff, in order to render his Party deſperate; but *Penruddock* and the Country Gentlemen, would not conſent to it; and having ſpent three or four Hours in Town, in Expectation of being joined by the *Hampſhire* Men, they retired towards *Devonſhire*, but ſo fatigued and diſpirited, that Captain *Crook* purſuing them with a Troop of Horſe, they ſurrendered to him, on Condition their Lives, Liberties, and Eſtates ſhould be ſecured; but *Wagſtaffe*, *Maſon*, and *Mompeſſon*, not truſting to the Capitulation, made their Eſcapes beyond Sea: In the mean Time *Wilmot* finding it impracticable to aſſemble the Royaliſts in the North with any Proſpect of Succeſs, adviſed them to remain quiet, and return to his Majeſty at *Cologn*; where *Manning*'s Treachery being diſcovered, the King ordered him to be ſhot to death. 1655. 7 Car. II.

Proceedings againſt JAMES NAYLOR, before a Committee of the Commons, for Blaſphemy and other Miſdemeanors in *December*, 1656. 8 *Car.* II.

1656. 8 Car. II. Naylor's Tryal. 1656. 8 Car. II.

The Charge.

THE Priſoner was charged, Firſt, with aſſuming the Geſtures, Words, Honour, Worſhip, and Miracles of Chriſt. Secondly, with aſſuming the Names, and incommunicable Attributes of our Bleſſed Saviour.

Some Account of the Man.

James Naylor, was born at *Ardiſloe* near *Wakefield* in *Yorkſhire*, and entering himſelf in the Rebels Army, at the Beginning of the Civil Wars, became Quarter-Maſter in Lieutenant-General *Lambert*'s own Troop; but falling Sick in *Scotland*, he returned Home, and became a Member of an Independant Congregation; from which he was excluded for Blaſphemy, and giving out that it was lawful to lye with any Woman of the ſame Sect; and his Familiarity with one Mrs. *Roper*, a married Woman. From *Yorkſhire* he went to *Cornwall*, to viſit the Quakers there, and was committed to *Exeter* Goal as a Vagrant, with ſeveral of that Sect who attended him; but being ſet at Liberty, by an Order of the Uſurper's Council, he and his Diſciples began a kind of ſolemn Proceſſion from *Exeter* to *Briſtol*, in Imitation of our Saviour's riding to *Jeruſalem*.

The Evidence againſt him.

The Witneſſes depoſed, That *James Naylor* was ſet upon an Aſs which was led by a Woman, and in all the Towns they paſſed through in their Way to *Briſtol*, his Diſciples ſpread their Garments, and ſung, *Holy*, *Holy*, *Holy*, before him, and ſaid they were moved by the Spirit ſo to do: And *Naylor* himſelf ſaid, That Garments were ſpread, and Praiſes ſung to the Lord before him, at his Entrance into *Briſtol*; and ſaid, It was as the Lord put into their Hearts; it was done to the Praiſe of his Father, and he might not refuſe any Thing that was moved of the Lord; he did think the Father commanded them to do it: And being asked, Who they meant by *Holy*, &c. he anſwered, *They were of Age, let them anſwer for themſelves*: He had alſo the Deſcription of our Saviour's Perſon about him; and it was obſerved by the Committee, that his Perſon much reſembled the Picture commonly drawn for our Bleſſed Saviour; and he affected to give the like Anſwers that Chriſt gave; as when he was asked, How he could live without Food fifteen or ſixteen Days? (as he pretended he had) He anſwered, *Man liveth not by Bread alone, but by every Word that proceedeth out of the Mouth of God*; and in another of his Anſwers he ſaid, *If they had known the Father, they ſhould have known him alſo.* It was teſtified alſo, that ſeveral Women kneeled before him, and kiſſed his Feet; and one *Dorcas Erbery* depoſed, That ſhe was dead two Days in *Exeter* Goal, and *Naylor* laid his Hands on her, and raiſed her up: And when the Committee demanded of the Priſoner, If he raiſed her from the dead? he anſwered, *I can do nothing of myſelf, but there is a Power in me from above*: And being asked, Who bore witneſs of him? he anſwered, *The Scriptures do bear Witneſs to the Power which is in me, which is everlaſting*; and that it was the ſame Power, whereof they read in Scripture, that had raiſed the dead, according to the Power manifeſt: That as to what *Dorcas Erbery*, or any other, attributed to him as a Creature, that had Beginning and Ending, he utterly denied; but what any Perſon ſaw of God in him, that he did not deny: That the ſame Power which did raiſe the dead, which they read of in Scripture, the ſame Chriſt,

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Chriſt, the ſame Anointing according to the Meaſure of him, was manifeſt in him, (the Priſoner) and no other: And being asked, If any prayed to him? he anſwered, as a Creature, he did diſown it. A Letter from one *Hannah Stranger* being found about him, wherein ſhe gives him the Title of *The faireſt of ten thouſand*; he ſaid, if ſhe meant it of what was viſible, he denied the Title; but as ſpoken of that which the Father had begotten in him, he durſt not diſown it; for that was beautiful wherever it was begotten: In the ſame Letter *Stranger* gave him the Title of *The only begotten Son of God*: And it being demanded, If he was the only begotten Son of God? he anſwered, He was the Son of God, and that the Son of God was but one.

In another Letter from *Jane Woodcock*, ſhe gave him the Title of *The Prophet of the moſt High*; and *Naylor* himſelf at his firſt Examination, averred, That he was the Prophet of the moſt High God; but afterwards he only ſaid, He was *a* Prophet of the moſt High God.

In a Letter from *Thomas Simmons*, he was ſtiled *The King of* Iſrael; and being asked, If he aſſumed that Title? he anſwered, *He had no Kingdom in this World; yet a Kingdom he had, and he that had redeemed him, had redeemed him to be a King for ever*; but he denied any ſuch Thing as a Creature, further than as God manifeſted in the Fleſh; and if they gave that Title to Chriſt in him, then he owned it. In another Letter from *Hannah Stranger*, ſhe gave him the Title of *The everlaſting Son of Righteouſneſs*; and *Naylor* being examined about it ſaid, God manifeſt in the Fleſh, he did witneſs and might not deny; and that where God was manifeſted in the Fleſh, there was the everlaſting Son of Righteouſneſs. *Jane Woodcock*, in another Letter to *Naylor* ſays, *He was ſent to judge and try the Cauſe of* Iſrael; and at his Examination he averred, He was ſent to try the Cauſe of *Iſrael*, by him who made all Creatures, who had ſent his Spirit and his Son into him, to try the Cauſe; but ſaid, he was no judge of carnal Matters.

In the Poſtſcript to *Hannah Stranger's* Letter, her Husband wrote, *Thy Name ſhall no more be called* James *but* Jeſus; and *Naylor* on his Examination ſaid, If they gave it to any other but the Son of God that was in him, he denied the Name; but he underſtood they gave that Name to the Jeſus, the Chriſt, that was in him: That he did not call himſelf by that Name, but what his Father had publiſhed, was another Thing.

In another Letter from *Martha Simmons* to *Naylor*, ſhe ſtiles him, *Thou well beloved Lamb of God, in whom the Hope of* Iſrael *ſtands*; and *Naylor*, at his Examination ſaid, If he were not his Lamb, he ſhould not be ſought to be devoured: And being asked, If the Hope of Iſrael did ſtand in him? he anſwered, It ſtands only in Chriſt, and as Jeſus Chriſt is known in me: And being aſked again, Are you he, in whom the Hope of *Iſrael* ſtands? he anſwered, *Chriſt in me, the Hope of Glory*: Being queſtioned further concerning the Titles given him in the Letters, he ſaid, He did not deſign they ſhould have ſeen them, becauſe he knew there were Things in them, that many could not bear; but now he ſaw his Father purpoſed they ſhould not be hid. Being asked, Whether he owned or diſclaimed the Attributes? he anſwered, If they had it from the Lord, what was he that he ſhould judge it? But if they were aſcribed to the Creature, then it was reprovable: If they did it to the Lord, he durſt not reprove it; adding, that he looked upon the Honour and Worſhip given him, to be to the true Honour of Chriſt, or elſe he would utterly have denied it.

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It was further depoſed by *John Baynham*, Deputy-Serjeant to the Commons, That while *Naylor* was in his Cuſtody, he uſually ſat in a Chair, and his Diſciples, Men and Women, kneeled about him, or ſat on the Ground when they were weary of kneeling, ſinging, *Holy, Holy, to the Almighty, to the true God and great God, and Glory to the Almighty*, &c. and this they did all Day long, but *Naylor* never ſung himſelf.

That there was a great Reſort of other People to him, who in like Manner kneeled before him; and that *Naylor* never ſhewed any Diſlike, or reproved them for it.

Naylor's Defence.

It being demanded of *Naylor*, what he had to ſay in his Defence, he anſwered, That he abhorred that any Honour which was due to God, ſhould be given to him, as he was a Creature; but it pleaſed the Lord, to ſet him up as a Sign of the coming of the Righteous One: And as to what had been done in paſſing through Towns, he was commanded by the Power of the Lord, to ſuffer ſuch Things to be done to the Outward Man as a Sign; but he abhorred any Honour as a Creature.

He is convicted.

Upon the Whole, the Committee reſolved that the Charge was fully proved againſt the Priſoner; who being ſent for to the Houſe the ſixth of *December*, and commanded to kneel, he refuſed; and ſtanding with his Hat on at the Bar, the Serjeant, by the Speaker's Order, took it off; and being asked, If his Name was *James Naylor*? he anſwered, He was ſo called ever ſince he could remember; and acknowleged he had given the Anſwers abovementioned to the Committee: After which he was commanded to withdraw; and it was reſolved to agree with the Committee, firſt, That *Naylor* was guilty of horrid Blaſphemy; ſecondly, That he was a grand Impoſtor and Seducer of the People: And the Queſtion being put, That it be Part of his Puniſhment to have his Hair cut off, it paſſed in the Negative: But on the 17th of *December*, the following Sentence was agreed on, (*viz.*) That *James Naylor* be ſet in the Pillory in the *Palace-Yard* on *Thurſday* next, and be whipped from thence to the *Old Exchange*, by the Hangman; where, on the *Saturday* following, he ſhall likewiſe be ſet in the Pillory; and in each Place wear a Paper, ſignifying his Crimes: That at the *Old Exchange*, his Tongue ſhall be bored through with a hot Iron; and he ſhall be there alſo ſtigmatized in the Forehead with the Letter *B*, and afterwards conveyed to *Briſtol*, and ride

His Sentence.

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ride into and through the ſaid City, on a bare Horſe's Back, with his Face to the Tail, and be publickly whipped the next Market-Day after he comes thither; and afterwards be committed to *Bridewell* in *London*; and reſtrained from the Society of all People; and have neither Pen, Ink, or Paper, or any Relief, but what he gains by his Labour.

The Execution of it.

While this Sentence was executing on the Priſoner in the Pillory, his Followers adored him, and afterwards licked his Wounds, and kiſſed his Feet. When he came firſt to *Bridewell* he faſted three Days, but then was glad to eat, and work to keep himſelf alive; while another Quaker, attempting to faſt forty Days in Imitation of our Saviour, was ſtarved.

Remarks on Naylor's Trial.

Theſe were ſome of the happy Conſequences of the Subverſion of the Church and State: Sound Religion, and ſound Politicks, were now entirely baniſhed the Nation; the People were divided into a Multitude of impious and blaſphemous Sects, every one of which propoſed the new-modelling of the State, as well as the Church, after the Whimſies of their own Brains; and we ſee how tenderly Blaſphemy and Idolatry were then dealt with: Theſe Saints, who could not bear the Image or Picture of our Saviour on a Glaſs Window, in the Days of Monarchy and Epiſcopacy, now fall down and worſhip a Man like themſelves, in the publick Streets and Highways, in the Face of all the World, aſcribing to him the Attributes of the Deity; and yet, we do not find any one of them puniſhed for it, except this *James Naylor*: And whether his Sentence was adequate to the Offence, I leave the World to judge.

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Quakers, Fifth-Monarchy Men, The Family of Love, and every Enthuſiaſtical Opinion was tolerated; only the Diſciples of the National Church and the Loyaliſts, were perſecuted with Rigour; and as to theſe, the Powers then in Being, publiſhed a Declaration, to let them know, That they would not allow them the Favour of a Trial, if any of them were ſuſpected of conſpiring to reſtore the Conſtitution, but they would *believe* them all guilty; and put them to death, without ſo much as ſuffering them to have the Benefit even of the *Forms of Law*.

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Sindercome's *Trial.*

The Trial of MILES SINDERCOME, *alias* FISH, for High-Treaſon, at the Upper Bench, *Weſtminſter*; the 9th of *February*, 1656. 8 *Car* II.

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The Indictment.

MILES *Sindercome*, was indicted for High-Treaſon, in conſpiring againſt the Life of the Lord-Protector, to ſubvert the Government of the Common-Wealth, and to levy War againſt the ſame. The Overt-acts laid of the Conſpiracy were, That he, with one *William Boyce*, and others his Accomplices, hired a Houſe in *Weſtminſter*, to which they carried Arms and Ammunition, with an Intent to murder the Protector; that they alſo provided Horſes, and took another Houſe at *Hammerſmith* for the ſame Purpoſe; and that they brought Gunpowder, Brimſtone, and other combuſtible Materials, into the Chapel of *Whitehall*, and ſet Fire to the ſame, to the great Danger and Diſturbance of the Protector.

Notes only of the Evidence.

All the Account the Editor has given us of this Trial, is ſome ſhort Notes that ſeem to have been taken by a Friend of the Uſurper's; who relates, That *Toope*, one of the Priſoner's Accomplices, depoſed, That the Priſoner had made him Offers of Money and Preferment, to join with him in murdering the Protector; That the Deponent, (who was a Soldier in *Cromwell*'s Guards) was to give Notice when the Protector went abroad, and what Part of the Coach he ſat in; he gave Evidence alſo of their buying up fleet Horſes; of the Priſoner's lodging Gunpowder, &c. in the Chapel of *Whitehall*; and his Reſolution to kill the Protector, if the Fire did not take.

That *Cecil*, another of the Conſpirators, depoſed, That the Priſoner engaged him in the Deſign of aſſaſſinating the Protector; and that they were upon the Road five or ſix Times, in order to effect it, particularly once in *Hyde-Park*, when *Toope* gave them Notice the Protector went abroad; That they took a Houſe at *Hammerſmith* alſo, and lodged Arms in it on Purpoſe to ſhoot him as he came by; and that one of their Guns would carry 12 Carbine Bullets and a Slug; and he deſcribed the Fire-Works prepared for burning *Whitehall*.

He depoſed alſo, That Forces were expected from *Spain* and *Flanders*, to join the Conſpirators, and that great Part of the Fleet would revolt; and believed that Colonel *Sexby* was the principal Agent at *Bruſſels*: That there were thirty or forty engaged to aſſaſſinate the Protector; but it was ſo ordered, that not any one ſhould know the others were in the Plot, untill the Matter was ripe for Execution.

He depoſed further, That Houſes were taken in *Weſtminſter*, and Arms lodged in them, to kill the Protector as he went to the Parliament-Houſe: That the Priſoner, *Cecil* the Deponent, and *Boyce*, actually went out into a Yard near *Weſtminſter-Abbey*, to ſhoot the Protector, as he paſſed from the *Abbey* to the Parliament, in the *Painted-Chamber*; but were prevented by ſome Accident.

The Witneſſes depoſed further, That this Attempt not ſucceeding, they provided fleet Horſes to kill him as he rode out; and attempted the firſt Time, the latter End of *September*; a ſecond Time, as the Protector went the Back-Way from *Kenſington* to *London*; a third Time, when he went to *Hyde-Park*

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Park in his Coach; a fourth Time, when he went to *Turnham-Green*; and a fifth Time, when the Protector alighted from his Horſe in *Hyde-Park*, but were prevented then by *Cecil*'s Horſe being out of Order: That *Sindercome* rode out once alone to kill him; and all theſe Attempts failing, they reſolved to fire *Whitehall*.

The Priſoner's Defence.

Sindercome abſolutely denied he knew of any Plot; and inſiſted, as others had done, that no Treaſon could be committed againſt the Perſon they ſtiled Protector: To which the Uſurper's Chief Juſtice *Glynn*, and Juſtice *Warburton*, replied, That to compaſs the Death of the Chief Magiſtrate, by what Name ſoever he was called, was High-Treaſon; and that he (the Protector) was *the Fountain of Juſtice*, in whoſe Name all Writs run, and all Commiſſions and Grants were made: And the Jury finding him GUILTY, the following Judgment was paſſed on the Priſoner, *Viz.*

He is convicted.

The Sentence paſſed.

That he ſhould be drawn upon a Hurdle from the Tower *to* Tyburn, *and there be hanged untill he was half dead, and then being cut down, his Bowels ſhould be taken out, and burnt in his Sight; his Body divided into four Quarters, and diſpoſed of as his Highneſs the Lord Protector ſhould think fit.*

He is found dead in his Bed.

Whether *Sindercome* poiſoned himſelf, becauſe he apprehended the Sentence would be rigorouſly executed, or to avoid the Ignominy of the Execution; or whether he was poiſoned, or otherwiſe privately murdered, by the Direction of the Uſurper, leaſt he ſhould diſcover more of his Villainy, does not fully appear: But it is certain he was found dead in his Bed, the Night before he ſhould have been executed; whereupon the Coroner ſat upon his Body, and ſeveral Witneſſes were examined, as to the Manner of the Priſoner's Death.

The Coroner ſits on him.

The Evidence before the Coroner.

Sir *Richard Napier*, Doctor of Phyſick, and Doctor *Fern*, Reader of Anatomy in *Greſham-College*, depoſed, That being deſired by Sir *John Barkſtead*, Lieutenant of the *Tower*, to ſee the Head of *Miles Sindercome* opened (his Body having been opened before their coming by the Surgeons) and make their Obſervations thereon; they found the Brain much inflamed, red, and diſtended with Blood, ſwollen as full as the Skull could well hold; beſides much grumous and clodded Blood out of the Veins, which muſt be the Effect of ſome very violent and preternatural Cauſe. Yet were they not able poſitively to determine what that was, or whence it proceeded, the Motion being much more ſudden and violent than that of Apoplexies, and other known Diſeaſes of the Brain, except when cauſed by Contuſion, and other the like extraordinary Violences.

Charles Stamford and *Nicholas Brethers*, Wardens of the Surgeons Company, and *Laurence Loe*, another able Surgeon, depoſed, That being ordered to open the Body of *Miles Sindercome*, Priſoner in the *Tower*, they could not find out, or diſcover any the uſual Symptoms, or Effects, accompanying the taking of known and ſharp Poiſons, cauſing ſudden Death; but by the Diſtenſion and Swelling of the Brain and Veſſels in the Head, with much coagulated Blood, which they found there: Their Opinions therefore were, That the Priſoner had cauſed the ſame by ſome extraordinary Means, for the haſtening of his Death.

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Under the Cloſe-Stool, in *Sindercome*'s Room, was found, after he was dead (as it is ſaid) the following Paper, ſubſcribed with his own Hand, *(Viz.)*

A Note ſaid to be found in the Priſoner's Room.

GOD knoweth my Heart, I do take this Courſe, becauſe I would not have all the open Shame of the World executed upon my Body: I deſire all good People not to judge amiſs of me; for I do not fear my Life, but do truſt God with my Soul. I did this Thing without the Privity of any Perſon in the World: I do before God and the World clear my Keeper, my Siſters, Mother or Brother, or any other of my Relations; but it was done alone by my ſelf: I ſay by me,

The 13th Day, 1656. February.

MILES SINDERCOME.

Further Evidence.

Elizabeth Herring, Wife of *William Herring* Mariner, and Siſter to *Miles Sindercome*, depoſed, That ſhe went ſeveral Times to ſee her ſaid Brother in the *Tower*, and that going to him on *Monday* the 9th of *February*, after he had received Sentence of Death, and lamenting his Condition, he ſaid, before they ſhould have his Life ſo ſhamefully (meaning the Lord Protector, ſhe believed) he would poiſon himſelf, and deſired her to procure him ſome Poiſon, which ſhe refuſed; and that coming every Day after to ſee him while he lived, he did not mention Poiſon any more, or ſpeak any Words of Diſcontent, as if he intended to deſtroy himſelf; nor did he complain of any Sickneſs, or Diſeaſe, that he was troubled withal: That on *Friday* the 13th of *February*, the laſt Day he lived, ſhe perſuaded him to confeſs who had a Hand in the Plot againſt the Lord Protector; and told him, if he would confeſs, his Highneſs would grant him his Life, and wiſhed him to truſt to God and Man. To which the ſaid *Sindercome* replied, He would have it under black and white, and *that he would truſt no Man*: That about Eight at Night ſhe left him in good Health, as ſhe thought; and that he found in his Conſcience he had made his Peace with the Lord: ——Denied ſhe ever brought him Poiſon, or any other Thing to deſtroy him; yet confeſſed, that on the ſaid *Friday* Night before he died, ſhe did ſay, ſhe deſired with all her Heart to ſee him die a natural Death in that Chamber.

Two other Women, who viſited *Sindercome* after Sentence, depoſed, That they did not know of any Poiſon brought him; nor did they ever hear him ſpeak any Words as if he intended to deſtroy himſelf by Poiſon, or otherwiſe.

The Evidence of the Officers that guarded him.

William Foſter, one of the Officers appointed to remain in the Chamber, where *Sindercome*

1656. 7 Car. II. *come* was impriſoned, depoſed, That on *Friday*, the 13th of *February*, about Nine at Night, the Priſoner deſired him and four more, that were then in his Room, to withdraw out of the Chamber, while he went to Prayers, which they did; and within a Quarter of an Hour he called them in again, and took a Book in his Hand to read, after which he ſaid he would go to Bed, and that was the laſt Night he ſhould go to Bed; and laying himſelf down, fell aſleep, and ſnored, as the Examinant thought; but deſiring *Daniel Steer*, his Keeper, to take a Candle and ſee how the Priſoner lay in his Bed, *Steer* ſaid he was almoſt dead; however, he lay Speechleſs for two Hours after, and then died.

Philip Brown, another of the Officers appointed to wait in the Priſoner's Chamber, depoſed, That he was at Dinner with *Sindercome* on the 13th of *February*, and he ſaid, That was the laſt Meal he ſhould ever eat: And that afterwards two of the Priſoner's Siſters, a Couſin, and another Woman, came to ſee him, and would have perſuaded him to confeſs who brought him into thoſe Troubles, and he anſwered, *To whom ſhould he confeſs? He could not expect Mercy from him who was reſolved to give him none:* Adding, That *Cromwell* ſaid to him when he was taken and brought before him, *Sindercome, Have I caught you? You that have ſought many ways to take away my Life, I will have no Conſideration at all of thy Life.* That when *Sindercome* had repeated theſe Words, he fell in a great Paſſion, and ſaid he might go and accuſe the Lord *Fleetwood*, the Lord *Lambert*, Sir *John Barkſtead*, Sir *Thomas Pride*, or any other Member of the Army, if he was minded to deſtroy innocent Blood. That about Seven the ſame Evening this Examinant received Orders from the Major, That *Sindercome* ſhould have ſome Time allowed him apart to prepare himſelf, if he deſired it; and thereupon the Examinant retired out of the Chamber, and left him alone; and ſtanding at the Door, a quarter of an Hour after, he ſaw the ſaid *Miles* kneeling by the Bed-ſide; but ſoon after this, one of the Centinels, who ſtood at the Chamber-Door, told the Examinant, that *Sindercome* did cough and keck, as if he was vomiting; and opening the Door, he found the Priſoner walking about the Room. That Captain *Foſter*, and Captain *Sharp*, who were ordered to be there that Night, then came into the Room; and about Nine at Night *Sindercome* deſired all the Company to withdraw out of the Room, and within a quarter of an Hour called them in again, took a Book in his Hand to read, and then ſaid he would go to Bed, That was the laſt Night he ſhould go to Bed; and that a little Time after he lay down they diſcovered he was dying, as the laſt Witneſs depoſed.

Daniel Steer, the Priſoner's Keeper, depoſed, That *Sindercome* being a Priſoner in the *Tower*, the latter End of *January*, told the Examinant, If he would be faithful to him, he would give him the Value of his Place, were it worth two hundred Pounds, deſiring he would provide him (*Sindercome*) a Black Suit of Cloaths, a Peruke, and ſhort Dagger, and paſs him out of the Water-gate, and he would kill any Man that ſhould oppoſe him: That the Priſoner, coming back to the *Tower* from his Trial, the 9th of *February*, was in a great Paſſion, and ſaid they ſhould not have their Ends, and deſired the Examinant to help him to ſome Poiſon, that he might make away himſelf; and he refuſing, the Priſoner applied himſelf to his Siſter, *Elizabeth Herring*, who was preſent, to bring him ſome Poiſon, but ſhe fell a crying; and afterwards the Priſoner and the ſaid *Elizabeth* had ſome private Diſcourſe, which the Examinant did not hear: That his Siſter being gone, the Priſoner demanded if he could not poſſibly help him to make his Eſcape, and if he could, he would make Two Hundred Pounds good to him that Night; and if the Examinant would go along with the Priſoner, he would make that 200 *l.* Seven Hundred Pounds, or what he ſhould deſire; but the Examinant replied, it was impoſſible for him to make his Eſcape, there was ſuch a ſtrict Guard kept about him. That on the 13th of *February*, about Ten at Night, the Examinant was in the Priſoner's Chamber, together with Captain *Sharp*, Captain *Foſter*, Enſign *Browne*, and Serjeant *Stock*; and that the Priſoner deſired them to withdraw, called them in again within a quarter of an Hour, went to Bed, and died as the former Witneſſes had depoſed; but that he knew of no Poiſon, or any other Means the Priſoner uſed to take away his Life.

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Captain *Henry Sharpe*, who was in *Sindercome's* Room, on *Friday* the 13th of *February*, confirmed the Evidence the former Witneſſes gave; adding, that after the Priſoner's Siſter, and the reſt of the Women were gone, they cauſed the Room and the Bed to be ſearched, leſt any Thing ſhould be left there for the Priſoner to do himſelf a Miſchief withal; but nothing could be found.

Elizabeth Sindercome, of *Deptford*, Widow, the Priſoner's Mother, depoſed, That ſhe went three Times to ſee her Son while he was Priſoner in the *Tower*; and that ſhe did not know of any violent Means uſed by him, or any other, to haſten his Death: That he told her, the laſt Time ſhe was with him, he was prepared to die, and *ſhe ſaw him no more.* But about Twelve a Clock on *Friday* Night, the 13th of *February*, ſhe *heard* ſhe was ſent for, and *heard* he was very ſick and weak, of which Sickneſs he died preſently after.

The Coroner's Inqueſt doubtful, and adjourn.

The Coroner's Inqueſt having conſidered the aboveſaid Depoſitions, could come to no Reſolution, as to the Cauſe of his Death, and therefore adjourned.

They meet, and adjourn again.

On the 16th of *February*, they ſat again, when it is ſaid they were of Opinion, that the Priſoner, by ſome extraordinary Means, had been the Occaſion of his own Death, and believed the ſame to be by Poiſon; but adjourned however until Seven the next Morning, at the Lord Chief Juſtice's Houſe, where having received his Lordſhip's Direction, they gave in their Verdict, *That the ſaid* Miles Sindercome, *on the 13th of* February, *about Nine at Night, ſnuffed up a certain poiſoned Powder, through his Noſe, and by the Strength and Operation*

Directed by the Ch. Juſtice find he poiſoned himſelf.

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Operation of the ſaid Poiſon, he, the ſaid Miles Sindercome, *within three Hours after, died; and ſo they found that he did felonioufly kill and murder himſelf.*

Whereupon the Coroner iſſued his Warrant to the Conſtables and Headboroughs within the Liberty of the *Tower*, requiring them to bury the Corpſe of the ſaid *Miles Sindercome* in the common Highway; and it was accordingly, the ſame 17th of *February*, drawn to the open Place on *Tower-Hill* at a Horſe's Tail, with the Head forward, and thrown into a Hole dug under the common Scaffold forExecution, ſtark naked; and a Stake, ſpiked with Iron, driven through the Corpſe; that Part of the Stake, that remained above Ground, being plated with Iron.

Lord Clarendon's *Account of* Sindercome.

The Lord *Clarendon*, ſpeaking of *Sindercome* in his Hiſtory of the Grand Rebellion, ſays he was a very ſtout Man, and had been much in *Cromwell*'s Favour, but afterwards became his Enemy, and had twice or thrice, by wonderful and unexpected Accidents, been diſappointed in the Minute he made ſure to kill him; and that when *Cromwell* cauſed him to be apprehended, his Behaviour was ſo reſolute at his Examination and Trial, as if he thought he ſhould ſtill be able to do it; and it was manifeſt he had more Aſſociates who were undiſcovered, and as reſolute as himſelf; and though *Cromwell* had got him condemned to die, the Fellow's Carriage and Words were ſuch, as if he knew very well how to avoid the Judgment; which made *Cromwell* believe, that a Party in the Army, would attempt his Reſcue: Whereupon he gave ſtrict Charge, that he ſhould be carefully looked to in the *Tower*, and three or four of the Guards always with him Day and Night. At the Day appointed for his Execution, thoſe Troops *Cromwell* were moſt confident of, were placed upon *Tower-Hill*, where the Gallows was erected; but when the Guard called *Sindercome* to riſe in the Morning, they found him dead in his Bed, which gave Trouble exceedingly to *Cromwell*; for beſides that he hoped, at his Death, to avoid the utmoſt Rigour of it, he would have confeſſed many of his Confederates; he now found himſelf under the Reproach of having cauſed him to be poiſoned, as not daring to bring him to publick Juſtice; *nor could he ſuppreſs that Scandal.* This Accident perplexed *Cromwell* very much; and though he was without the particular Diſcovery he expected, he made a general Diſcovery by it, that he himſelf was more odious in his Army, than he believed he had been. See *Clarendon*'s *Hiſtory*, Vol. III. p. 646, & *Seq.* 8vo. Edit.

The Account the Uſurper thought fit to give of this Event.

In a Pamphlet entituled, *A further Narrative of the Paſſages of theſe Times in the Common-Wealth of* England, is recited, *A brief Relation of the late dangerous Plot*, publiſhed, as is evident from the Face of it, by the Uſurper's Authority and Direction; in which it is ſaid, "The principal Perſon employed in "the traiterous Deſign, for the Deſtruction "of his Highneſs's Perſon, was a notable "deſperate Fellow named *Sindercome*; one "who, heretofore, had been a Quarter-Maſter "under Sir *John Reynolds* in the Army; "and was, about two Years before, caſhiered "by General *Monk*, among others in *Scotland*: He aſſociated to himſelf one *Cecil*; "and many others were engaged in the Buſineſs: For the carrying on their Work, they "held Correſpondence with ſome in *Flanders*, "received Directions from thence, from Time "to Time; and for their Encouragement, "*Don Alonzo*, the late Ambaſſador of *Spain* "in *England*, returned them over Sums of "Money, with which they were enabled to "proceed."

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In the ſame Pamphlet entitled, *A further Narrative*, &c. is recited alſo a Narrative, which, it is ſaid, Colonel *Edward Sexby* delivered to Sir *John Barkſtead* Lieutenant of the *Tower*, the 12th of *October* 1657; wherein they make Colonel *Sexby* ſay, "Sir *John*, "I ſent to you, to tell you that I am "guilty of the whole Buſineſs of *Sindercome*, "as to the Deſign of killing the Lord Protector, *&c.* And to that Purpoſe I furniſhed *Sindercome* with about 500 *l.* in Money, "and alſo with Arms; and tied him to an "Engagement, that he ſhould not reveal the "Deſign": Adding, "The Letters they "have of mine, they could not prove to be "mine; but by my own Confeſſion, which "I now confeſs and acknowledge, are mine. "And that I was with *Charles Stuart*, and "acquainted him, That I was an Enemy to "the Lord Protector: And I alſo declare, "That I received a large Sum of Money "from the *Spaniards*, to carry on the ſaid "Deſign, and to make what Confuſion I "could in *England*, by endeavouring the "killing of the Lord Protector, and by what "other Means I had in Deſign: And to that "End, the better to effect it, I came into *England* in a diſguiſed Habit, and was the Principal in putting on others in the ſaid Deſign: I was the only Man that ſet on *Sindercome* to kill the Lord Protector. He "owned the Book, called *Killing no Murder*, "and ſaid he was ſtill of that Judgment; "and yet they make him ſay, It was both "fooliſhly and knaviſhly done in that Book, "to charge the Lieutenant of the *Tower* "touching *Sindercome*'s Death.

Colonel Sexby *died in the* Tower *the* 13*th of* January, 1657, *almoſt a Year after* Sindercome's *Death.*

Some Account who Sindercome *was.*

Miles Sindercome, was the Son of —— *Sindercome* of *Deptford* near *London*, and it is probable his Father was a Seaman, a great many of the Inhabitants of that Town being ſuch, and his Siſter appearing to be married to one *Herring* a Seaman, of that Place: However the Son (it is related) was Apprentice to a Surgeon at St. *Katherine's* near the *Tower*; and went into the Rebels Army, when the Civil Wars broke out, where he arrived at the Poſt of Quarter-Maſter of Horſe, and was a great Favourite of *Cromwell*'s, till he found him averſe to his aſſuming Sovereign Power.

Having thus ſtated the Facts, as well as I was able, from the Materials before me; I ſhall now proceed to make ſome Remarks on the Trial and Death of *Sindercome.*

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Remarks on Sindercome's *Trial and Death.*

I do not find any body doubts of *Sindercome*'s Deſign to aſſaſſinate the Uſurper *Cromwell*; all the Diſpute was, whether ſuch a Conſpiracy was High-Treaſon, or rather, whether it was not a laudable Attempt, to endeavour to take away the Life of a Man, who had invaded the Liberties of his Country, which he pretended to defend; of one who had murdered his Sovereign; abſolutely deſtroyed the Conſtitution; and uſurped an arbritary Dominion over his Fellow-Subjects, whom he held in the moſt abject Slavery.

The Chief Juſtice *Glynn*, and his Brother, it ſeems, held, That this Uſurper and Tyrant was as lawful a Prince as ever reigned; and that all the Statutes made againſt Treaſon were equally in Force againſt thoſe who conſpired his Death, as if they had conſpired the Death of a Prince, againſt whoſe Title there was no manner of Exception; which was in Effect to adjudge there was no Diſtinction between Right and Wrong, between a Legal Government, and a Power that had nothing but Force to ſupport it: That a Pyrate, or a Highwayman, had as much Right to the Submiſſion and Obedience of thoſe he had got in his Power, as any Sovereign had to the Submiſſion and Allegiance of his Subjects; which is a Doctrine that might be expected from ſuch Judges, who were content to take their Commiſſions from the Uſurper, and who daily put Men to Death, and deprived them of their Liberties and Eſtates, by no better Authority. But I ſhall ſpend no Time in refuting an Opinion that all the World condemns at this Day. I proceed to another Queſtion that was made upon the Occaſion, *viz.* Whether it was lawful for any Subject, over whom *Cromwell* had (without any Colour or Pretence of Law) uſurped a Dominion, to endeavour to deliver himſelf, his Prince, and his Fellow-Subjects, from this Man's Tyranny and Oppreſſion, by taking away the Uſurper's Life: It ſeems, it was the Opinion of many in thoſe Times, that it was lawful, and an Heroick Act, to take off the Uſurper, by any Means whatever, when he was grown too great to be called to an Account by the ordinary Methods of Juſtice; and accordingly a Book was publiſhed, ſaid to be written by Colonel *Titus*, (though here they make *Sexby* the Author of it.) to prove *Killing* (in this Caſe) *No Murder*: And this, it ſeems, was the Opinion of the Old *Romans*, and the Maxim *Brutus* went upon, when he murdered *Cæſar* in the Senate, who had leſs to juſtify him than *Sindercome* had, inaſmuch as *Cæſar* did not add Oppreſſion to his Uſurpation, as *Cromwell* did to a very great Degree.

But whether ſuch Aſſaſſinations are juſtifiable or not, ſure I am, King *Charles* II. never gave any Countenance to them; either becauſe he did not approve of them, or becauſe he was ſatisfied the Uſurper would encourage the like Attempts upon him, and would be much more likely to ſucceed in them; the King having no Guards to ſecure his Perſon, as the Uſurper had. It may be obſerved farther, that *Sindercome* acted upon a different Principle than either the ancient *Romans*, or the modern *Royaliſts*, went upon; for he was a true *Leveller*, one who had been taught by the Uſurper, or his Creatures, that there ought to be no Diſtinction or Superiority amongſt Men: And, by Virtue of this Principle, had aſſiſted *Cromwell*, firſt in murdering his Prince, and then in ſubduing the Rump: And the poor deluded Enthuſiaſt expected, when this was accompliſhed, that *Cromwell* ſhould have relinquiſhed the Power, he had poſſeſſed himſelf of by their Means, and have left every Man to do what was Right in his own Eyes. And when *Sindercome*, and his *Fellow-Levellers*, found he aſſumed a more arbitrary and tyrannical Government than any they had demoliſhed, they were reſolved to cut him off: And it coſt him more Trouble and Diſquiet to ſubdue thoſe, into whom he had inſtilled the Levelling Principles, in order to deſtroy all the Powers above him, than it did to defend himſelf againſt the *Loyaliſts*, and all the Reſt of his Enemies. It is evident he never enjoyed any tolerable Security, after he diſcovered there was nothing in all that Hypocritical Zeal he had pretended for Religion and Liberty, and that Ambition was the Spring of all his Actions: When the *Levellers* ſaw this, they bent their whole Force againſt him; and he ſo much dreaded them, that he wore Armour under his Cloaths, and ſcarce ever lay twice in the ſame Chamber. Fear and Perplexity might be diſcovered in his Countenance, and he could not take his natural Reſt; he was ever diſtracted with frightful Dreams, and became the moſt uneaſy Mortal in the three Kingdoms he had ruined: This was the happy State he had waded through Seas of Blood to arrive at. But to return to *Sindercome*, and enquire a little into the Cauſe of his Death.

The Coroner's Jury (as well as the People) it appears, were in great Doubt what was the Occaſion of his Death; they adjourned twice, and could come to no Agreement, until they were carried to the Chief Juſtice's Chamber, and received his Directions. To ſuggeſt, as the Uſurper's Friends do, that they were carried thither only to learn how to put their Preſentment into Form, was ridiculous; this was the Coroner's Buſineſs, and not theirs; and he could not have wanted Inſtructions, if he had been ignorant of the Form himſelf: It is evident, therefore, the Jury were carried to the Chief Juſtice's Chamber to be threatened, or otherwiſe influenced in their Verdict; and here they are made to ſay, *That he killed himſelf, by ſnuffing Poiſon up his Noſe*: Though it did not appear to them that he ever had any Snuff, or that there was any lodged in the Noſtrils, or the Paſſages to the Brain, which ſurely there muſt have been, if the Brain had been affected by it: Beſides, *Sindercome* muſt be exceeding well skilled in Poiſons, to find one that ſhould operate ſo kindly, and ſo ſeaſonably; that only threw him into a pleaſant Slumber, according to the Depoſitions of his Guards, and killed him within the Space of two Hours, without a Struggle or a Groan, or at leaſt any ſuch Agonies or Convulſions, that might have been expected from a Poiſon, that had its Effect ſo ſuddenly; and as there were no Symptoms of

Poiſon

1656 7 Car II. Poiſon appeared, either in the Manner of his Death, or on the opening his Head or Body, it ſeems much more probable that he was ſmothered with the Bed-cloaths, than poiſoned. If it be demanded, why the Uſurper ſhould murder the poor Wretch privately? The Lord *Clarendon*, has furniſhed us with two very good Reaſons for it, (*viz.*) Leſt he ſhould be reſcued by his Brethren, the *Levellers* in the Army; or, he ſhould declare ſome unſeaſonable Truths, having been very intimate with the Uſurper.

His Mother's Depoſition is ſo drawn up, I muſt confeſs, that on the firſt Reading, one would be inclined to think ſhe was with him when he died; but upon reading it more carefully, I find ſhe only ſays, ſhe *heard* he was very ſick, and ſhe *heard* he died ſuddenly: Beſides the Coroner's Inqueſt find he died at Twelve a Clock at Night, and ſhe did not *hear* of his Illneſs, it appears, till then, if ſhe did till the next Day; for this Senſe the Words will very well bear, namely, That ſhe heard the next Day, that ſhe was ſent for at Twelve the preceding Night. 1656. 7 Car. II.

And laſtly, there can be very little Streſs laid on theſe Words of the Priſoner, that *That was the laſt Bed he ſhould go into*, if he did ſpeak them; for he might very well ſay this, though he had no Deſign of poiſoning himſelf, becauſe he knew he was to be executed the next Morning, and had Time allowed him by his Guard to ſay his Prayers, and prepare for his Execution: Their producing ſuch Circumſtances, therefore, to prove he murdered himſelf, ſeems to intimate they wanted better Evidence of it.

1658. 10 Car. II. Slingsby's Trial.

The Trial of Sir HENRY SLINGSBY, Knt. for High-Treaſon, before a pretended High Court of Juſtice in *Weſtminſter-Hall*, the 25th of *May*, 1658. 10 *Car.* II.

1658. 10 Car. II.

The Charge THE Impeachment charges Sir *Henry* with High-Treaſon againſt the Lord Protector (*Cromwell*) and the Common-Wealth, in conſpiring to betray the Town and Garriſon of *Hull*, to *Charles Stuart*, eldeſt Son of the late King *Charles*; and with endeavouring to withdraw *Ralph Waterhouſe*, *John Overton*, and other Officers of the ſaid Garriſon, from their Obedience to his Highneſs the ſaid Lord Protector: With endeavouring to raiſe an Inſurrection in Favour of the ſaid *Charles Stuart*, the Son, correſponding with him, and contriving to advance him to the Throne; and with delivering a Commiſſion from *Charles Stuart* to the ſaid *Waterhouſe*, to be Governor of the Caſtle of *Hull*.

He deſires a Trial by Jury Sir *Henry* being arraigned, deſired he might be tried by a Jury, according to Law; but was told, the Court conſiſted of a Number of Perſons amounting to two or three Juries: That Acts of Parliament made Law and Juſtice, and theſe had altered the Manner of Trial, and conſtituted this Court both Jury and Judges; and that he was a Parliament-Man when the Act was made, and ſo conſented to it.

Sir *Henry* replied, he was a Priſoner when the Act was made, and could not be ſaid to treſpaſs againſt their Laws, becauſe he never ſubmitted to them: That Laws were intended for the Preſervation of Liberty and Property; but every Thing was taken from him, he had received no Benefit by their Laws: However, Sir *Henry* being at length prevailed on to plead *Not Guilty*, the Attorney-General called his Witneſſes.

The Evidence *Ralph Waterhouſe* depoſed, That Sir *Henry* tampered with him, and offered him 5000 *l.* to ſecure the *South-houſe* for the King's Service, and ſaid that the Duke of *York* would bring over 7 or 8000 Men from *Flanders* to beſiege *Hull*, and if the *South-houſe* were ſecured, the Work would be half done: That Sir *Henry* alſo offered the Deponent a Commiſſion to be Governor of the Caſtle, and two Block-houſes near *Hull*, which was dated at *Bruges*, *March* 12, 1657, and that the Deponent had then the Command of a Company, and of the *South-Block-Houſe*.

Overton depoſed, he ſaw Sir *Henry* deliver the ſaid Commiſſion to *Waterhouſe*, in *April*, then laſt paſt: And that he alſo being an Officer of the Garriſon of *Hull*, and Sir *Henry* his Priſoner, he had in like Manner tampered with the Deponent to betray the Town to the King, and told him, the King would land either at *Hull* or *Scarborough*; and that the Priſoner ſaid, his Son aſſured him the Town was too ſtrong for the Garriſon.

George Thompſon, Lieutenant to *Waterhouſe*, alſo depoſed, That Sir *Henry* had tampered with him, and told him there was a Deſign to bring in the King with a conſiderable Army; and that the King had promiſed Pardon to all Officers, but the Lord Protector and *Bradſhaw*.

His Defence. Sir *Henry* in his Defence ſaid, he perceived he had been trepaned by theſe Fellows, and that they had ſworn that ſeriouſly, which he had ſpoken in Mirth, while he was their Priſoner in *Hull*; but that indeed they had moved the Matter to him, and not he to them; and that the Commiſſion they mentioned was a Blank he had by him theſe four Years.

See the Sentence in Mr. Mordant's *Trial.*

1658. 10 Car. II. Hewet's *Trial.*

The Trial of JOHN HEWET, D. D. for High-Treason, before a pretended High-Court of Justice in *Westminster-Hall*, the first of *June*, 1658. 10 *Car.* II.

The Charge. THE Attorney-General exhibited an Impeachment against the Doctor, wherein he is charged with High-Treason, in conspiring, with other Traitors, to levy War against the Protector and Common-wealth, in order to subvert their Government, and advance *Charles Stuart* to the Throne: He is also charged with delivering Commissions from the said *Charles Stuart*, to *John Stapely*, and *Henry Mallory*, to levy War, &c.

He questions the Authority of the Court. The Doctor, being arraigned as usual, desired he might have Counsel; and this being denied, he demanded by what Authority the Court sat, and that their Commission might be read; but the President answered, they sat there by a Commission under the Great Seal, in pursuance of an Act of Parliament; and that it was not usual to read Commissions to Prisoners.

The Doctor replied, He was not to own every Person who would take upon himself to judge him, and therefore again desired to know by what Commission they sat; and if all the Commissioners were there, as he apprehended they ought to be, by the Earl of *Leicester*'s Case in *Plowden*.

The Attorney-General said, the Commission authorized all the 150 named in it to be his Judges, *or any Seventeen of them*; but indeed where no *Quorum* was appointed, as in the Case in *Plowden*, they must be all present.

The Clerk demanding of the Doctor again, If he was *Guilty*, or *Not Guilty?* the Doctor answered, he should be loth to save his Life, by forfeiting a good Conscience: That he was looked upon in a double Capacity, as a Clergyman, and Common-wealths-man, and he would not give Scandal to either; therefore, if they would do Justice to themselves, and vindicate the Legality of their Judicature, he would proceed: Otherwise he would rather die ten thousand Times, than be guilty of giving up his Fellow-Freemens Liberties and Privileges: And the Doctor, refusing peremptorily to plead, was ordered to be taken away, and *John Mordant*, Esq; to be brought to the Bar. *Refuses to plead.*

1658. 10 Car. II. Mordant's *Trial.*

The Trial of the Hon. JOHN MORDANT, Esq; for High-Treason, before a pretended High Court of Justice, the first of *June*, 1658. 10 *Car.* II.

The Charge. THE Prisoner was impeached of High-Treason, against the Lord Protector and Common-wealth, for inciting and endeavouring to raise a new War, in order to subvert their Government, and advance *Charles Stuart* to the Throne; and for that he consulted with *John Stapely* and *Henry Mallory* how to effect the same, and delivered Commissions to several other Persons to levy War against the Government.

Mr. *Mordant*, being arraigned, made the same Objections to the Court, and the Legality of this Method of Trial, that Dr. *Hewet* had done; but at length, by the Advice of his Friends, and an Intimation that Mercy was intended towards him, he pleaded *Not guilty*.

The Evidence. Then the Protector's Counsel produced their Evidence, and first Mr. *John Stapely* was sworn, who deposed, That the Prisoner told him there was a Design to bring in the King, who had wrote to him to speak to his Friends to be ready; and that the King would bring 7000 Men with him; and Sir *Francis Vincent* and Sir *William Waller* were in the Conspiracy.

Mr. *Anthony Stapely* deposed, That being at the *Half-Moon-Tavern*, in *Aldersgate-street*, with Captain *Mallory* and Mr. *Mordant*, the latter enquired into the Affairs of *Sussex*, and what Preparations there were, in case the King of *Scots* should land; and the Deponent answering, There would be an Appearance answerable to his Expectations; but there was a considerable Strength ready to assist them in *Surrey*; Mr. *Mordant* replied, He had delivered out four Commissions, three of Horse, and one of Foot, to the best of his Remembrance, but he durst not swear it; and it was agreed to meet at *Crawley*, in *Surrey*, the *Tuesday* following, to concert Matters between *Surrey* and *Sussex*.

Then the Deposition of Captain *Mallory*, who had escaped out of Prison, was read; giving an Account of the Conspirators meeting at the *Half-Moon*, and appointing to meet again in *Surrey*, to see how Affairs stood in relation to the Counties of *Surrey* and *Sussex*. *His Defence.*

Mr. *Mordant* observed in his Defence, That the first Witness did not swear he saw any Letter from *Charles Stuart*, and however he was but one Witness; that the next was very uncertain in his Evidence, and could not tell, whether the Commissions were for Horse or Foot; that there was no Meeting at the Place mentioned in *Surrey*, nor was it said what they were

1658. 10 Car. II.

The Prisoners called to Judgment.

were to meet about. Then the Court adjourned; and on the 2d of *June*, Sir *Henry Slingsby*, Doctor *Hewet*, and Mr. *Mordant*, were again brought to the Bar, and Mr. Attorney prayed the Judgment of the Court as to Sir *Henry Slingsby* and Mr. *Mordant*; and as to Doctor *Hewet*, who refused to plead, he demanded their Justice.

The President thereupon demanding of Sir *Henry Slingsby*, what he could say, Why the Court should not proceed to Judgment? He answered, he desired to be tried by a Jury, looking on the Court as his Enemies, some of them having already sequestered and sold his Estate, because he would not compound; and if he had compounded, the Times were so unsettled, that he did not know but he might be compelled to compound over again; and thought it strange, that his Enemies should be both his Judges and Jury: But the Court would hear no more of this; and the Presi-

The President's Speech to the Prisoners.

dent proceeded to make a Speech to the Prisoners, wherein he tells them, That it was a great Aggravation of the Sins of the *Egyptians*, that when God had declared himself by so many Signs and Wonders on Behalf of the *Israelites*, they should still pursue *Moses*: And who could be so much a Stranger to these Nations, as to be ignorant what God had done among them, by a Series of wonderfull Providences so many Years together, against a Party, who were still hatching of Treasons and Rebellions against them? That it grieved his Soul to think, after so many signal Providences, wherein God seemed to declare himself as it were by Signs and Wonders, that their Hearts should be more hardned than the *Egyptians*; for they did at length see that the Lord fought against them: But the *Cavaliers*, though they could not but see that the Lord fought against them, that the Stars in their Courses fought against them, yet they would not see or confess it, till their Destruction overtook them; and if these wonderful Providences would not move them, he thought National Considerations might deter them from these Practices: For *Charles Stuart* was in Confederacy with *Spain*, that great Popish Interest against *England*: And it was very strange that a Protestant could assist such an Interest as this; yet such Protestants were the Prisoners. And as to Sir *Henry Slingsby*'s observing that he was a Prisoner, and therefore not subject to their Laws; he said every Man owed a Natural Allegiance to the supreme Magistrate, and that his not owning the Government was in itself a great Offence, and far from being an Excuse for Treason: And what did they think would have become of the Protestant Interest if they had succeeded, and *Charles Stuart* had been brought in? Did they but review the Declarations of Parliament, since 1640, they would see what Family it was betrayed the Protestants of *France*, when *Rochel* was taken? What Family it was that betrayed the Protestants in *Germany*, and in the *Palatinate*, when a Peace was made with *Spain*? What could they think of that Family that could tolerate Popery for a Match with *Spain*? What would that Family have done if they had regained the three Kingdoms once again?

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As to Mr. *Mordant*, he said, God appeared to him at this Time, as he did to Sinners in Jesus Christ; for he did clear Sinners in Jesus Christ, *even when they were Guilty*, and so God cleared him. He would not say he was Guilty, but bid him ask his own Conscience, whether he was so or not? and bless God as long as he lived, and bless the Lord Protector, by whose Authority he was cleared.

Mordant *acquitted.*

Then the Clerk was ordered to read the Sentence against the other two Prisoners, *viz.)* That they should be Drawn, Hanged, Beheaded and Quartered; but the Protector was pleased to be contented with the severing their Heads from their Bodies: And they were beheaded on *Tower-Hill*, the 8th of *June*.

Sentence passed on Slingsby *and* Hewet

They are Executed.

I do not perceive, there was any formed Plot for bringing in the King at this Time; but his Majesty had been endeavouring to prevail with the *Spaniards*, to spare him a Body of Troops; and the *Cavaliers*, in hopes that a Negotiation would have succeeded, were numbering their Friends, and computing what Forces they might depend on, if the King should Land. And it is amazing that, after so long and so cruel a Tyranny, the Spirits of the *Cavaliers* were not yet broken; that after so many Repulses and Defeats, they should retain their Courage, and dare to oppose the Usurper, who was supported by an Army of *Veteran* Troops: They were not yet convinced it seems, that Success was an Argument of a good Cause; nor would the President of this Mock-Court, if he had foreseen that, within the space of Two Years, all his Arguments, drawn from the Success of the Tyrant's Arms, would have retorted with so much Advantage upon the Rebels, so shamefully have insulted these brave Men, who refused to acknowledge the Tyrant's Jurisdiction.

Remarks on the Trial of Sir Henry Slingsby, *&c.*

We see the President also, urging the danger of Popery against a Restoration; not reflecting, that his Masters had destroyed all Appearance of Religion; unless Hypocrisy and Cant, Oppression and Injustice, might pass for such: And as to the State, they could not be ignorant that the Constitution was entirely subverted, and all their Liberties and Priviledges swallowed up, by the successful Usurpation they so much adored.

What worse could have happened by the Restoration of the King, with what he endeavoured to terrify the People? And when this Event, which he seemed so much to dread, happened, how were the Days of King *Charles* II. when the Laws flowed in their proper Channel, and every Man remained secure in the Enjoyment of his Property, preferable to that Iron Age, when every Thing, and every Person, was forced to submit to the arbitrary Dictates of the Usurpers!

With what a different Face did the Nation appear after the Restoration! Arts and Sciences, universal Benevolence, good Humour, and Freedom of Conversation, were some of the blessed Fruits of the King's Return; while nothing but Murders, Robberies, Sequestrations, and Decimations, were exercised on the best and greatest Part of the Nation, during the

1658. 10 Car. II. the Reign of thoſe pretended Saints; and the Spies and falſe Friends thoſe Uſurpers employed, to inſinuate themſelves into every Company, made the moſt intimate Friends afraid to communicate their Thoughts to each other: Gloomy, melancholy Looks, Treachery and Cruelty, were the diſtinguiſhing Marks of thoſe Times; their Tyranny extended even to Thoughts, Words, and Geſtures; and a chearful Countenance was looked upon as a Sign of Diſaffection and Reprobation. 1658. 10 Car. II.

1660. 12 Car. II.

The Trials of Twenty-Nine of the REGICIDES, for High-Treaſon, by a Commiſſion of *Oyer* and *Terminer*, at the *Old-Bailey*, *London*, 10 *October*, 1660. 12 *Car.* II.

The Trials of the Regicides.

The Charge THE Indictment charged them with Compaſſing and Imagining the Death of the late King *Charles* I. And the ſitting in Judgment on his Majeſty, and ſigning a Warrant for the Execution, were laid as Overt-Acts of that Treaſonable Imagination.

Harriſon *tried.* Colonel *Thomas Harriſon*, was the firſt of the Regicides that was brought upon his Trial; who being Arraigned and directed to plead *Guilty* or *Not Guilty*, ſaid they were vain Words, and deſired he might anſwer the Charge his own way; however, he was prevailed on at length to plead *Not Guilty*.

The Evidence againſt him. Then the King's Counſel opened the Indictment, and produced Five Witneſſes, who depoſed, that *Thomas Harriſon*, the Priſoner, ſat as one of the King's Judges, in the pretended high Court of Juſtice; and particularly on the 27th of *January*, 1648. when the Sentence was read; and that he ſtood up with the reſt, to expreſs his Aſſent to it: And one of the Witneſſes made Oath, that the Members of that pretended Court, ſitting in the Exchequer Chamber, and debating concerning the Impeachment of the King, *Harriſon* ſaid, *Gentlemen, it will be good for us to Blacken him*; and that he heard *Harriſon* tell the other Regicides, that when he was bringing the King to *London*, the King asked him when they were in the Coach together, what they intended to do with him; whether to Murder him or not: And the Priſoner anſwered, there was no intention to Murder him; they had no ſuch Thoughts; but *the Lord hath reſerved you for a publick Example of Juſtice.* The Priſoner's Hand alſo was proved to the Warrant for ſummoning the High Court of Juſtice, and to the Warrant for Beheading his late Majeſty

The Lord *Newburgh* depoſed further, That *Harriſon* commanded the Party that brought the King from *Hurſt-Caſtle* to *London*; and that his Majeſty dining on the Road, at *Bagſhot-Lodge*, where the Deponent then reſided, *Harriſon* gave Orders for placing the Centinels; and when they ſet forward for *Windſor*, *Harriſon* ordered ſeveral of his Officers to ride cloſe to his Majeſty, leſt he ſhould make his Eſcape.

Harriſon's *Defence.* The Priſoner ſaid in his Defence, that the Matter, he was charged with, was not done in a Corner; the Sound of it had reached moſt Nations: And he believed the Hearts of ſome had felt the Terrors of that Preſence of God that was with his Servants in thoſe Days; however it had ſeemed good to God to ſuffer this Turn to come upon them: That he had earneſtly deſired of God, the Searcher of Hearts, if he had done amiſs, that he might receive ſome Convictions on his Conſcience; but though he had ſought it with Tears many a Time of that God, in reſpect of whom they and all Nations were but as a Drop of the Bucket, to that Moment he had rather received Aſſurance of the Juſtice of what he had done: And he believed, e'er long, it would be made known from Heaven, there was more of God in it, than Men were aware of: That their Lordſhips knew what a Conteſt there had been for many Years, and how active many upon the Bench had been. *And being reprimanded by the Court for his Reflections, he went on, and ſaid,* That what he had done was out of Conſcience to the Lord; and he conceived, that what had been done by Authority of Parliament, no other Juriſdiction could meddle with: That they were the ſupreme Authority, and thoſe who acted under them could not be queſtioned by any Power leſs than that. And whereas it had been ſaid they uſurped that Power, he ſaid it was rather done *In the Fear of the Lord. (Here he was interrupted again, and told, that ſuch Things were not fit to be vented in an Aſſembly of Chriſtians, to make God the Author of all their damnable Treaſons.)* He proceeded, however, and ſaid, That what he had done by Authority of Parliament, he ought not to be queſtioned for: Otherwiſe they were in a miſerable Condition, *Bound to obey thoſe that were in Authority, and yet to be puniſhed when they obeyed*; and deſired Counſel to that Point. The Court anſwered, If there was any Difficulty, they ſhould, and ought to be Counſel for him; but that neither one or both the Houſes of Parliament, neither the People, collectively or repreſentatively, had any Coercive Power over their King; much leſs thoſe few Members of the Commons, after they had purged their Houſe of the Corrupt Majority, as they called it: And Mr. *Anneſley* put the Priſoner in mind, That he was the Man that forcibly removed the Parliament's Guard, and placed other Guards at the Door of the Houſe, who threatened and inſulted the Members: That after the Houſe had reſolved, *That the Treaty in the* Iſle of Wight *was a*

The Court reply to his Defence.

Ground

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Ground for Peace, Forces were drawn down to the Houſe of Commons, and none ſuffered to come in, but thoſe the Soldiers approved of: And all, who profeſſed any Duty to the King, were ſeized on by *Harriſon*, and his Fellows; and then the Priſoner, and a ſmall Remnant of the Houſe, declared againſt the Vote that had paſſed for a Treaty with his Majeſty, and took upon them to exerciſe Sovereign Authority; and under theſe he would skreen himſelf, as acting by Authority of Parliament, when a Majority of the Houſe of Commons diſavowed their Proceedings: And had they been Entire, they could have had no Pretence to the ſupreme Authority.

The Chief Baron's Charge to the Jury.

Then the Lord Chief Baron proceeded to direct the Jury, and informed them, That if any of the Overt-Acts, laid in the Indictment, was proved; either his Conſulting, Adviſing, Sitting in Judgment, or Sentencing the King, they ought to find the Priſoner Guilty; but here All theſe Facts were proved, not only by Witneſſes, but by the Priſoner's Confeſſion: He obſerved alſo, that the Priſoner had the King; in his Cuſtody, and brought him Priſoner from *Hurſt-Caſtle*, *without any Authority from thoſe he called the Supreme Power*: And that if any Man went about to impriſon the King, it had been often adjudged an Evidence of imagining and compaſſing the King's Death: That the Priſoner was ſo far from denying the Facts, that he juſtified what had been laid to his Charge. Whereupon the Jury found him guilty, without going out of Court; and Sentence was pronounced on him as a Traitor.

He is convicted and condemned

Scroop *tried.*

Then *Adrian Scroop* was brought to the Bar, againſt whom ſix or ſeven Witneſſes depoſed, That they had ſeen him ſit as one of the late King's Judges, in the pretended High Court of Juſtice; and particularly, on the 27th of *January*, when the Sentence was read, and they all ſtood up to expreſs their Aſſent to it: His Hand was alſo proved to the Warrant for ſummoning the Court, and to the Warrant for beheading the King.

The Evidence.

His Defence.

Mr. *Scroop* ſaid in his Defence, That the High Court of Juſtice was erected by the Parliament, which was then the Supreme Authority of the Nation, and generally ſubmitted to; and what he had done, was in Obedience to that Authority.

The Court reply to him.

The Lord Chief Baron replied, That what he had offered in his Defence, tended rather to aggravate, than extenuate his Crime; that he (as well as others) was miſtaken in the Word *Parliament*: There was not one Precedent of any other Houſe of Commons aſſuming Legiſlative Power, or making an Act to erect a Court of Juſtice, for the Trial of their King: And beſides, there were but Forty-ſix, even of the Commons, that ſat in the Houſe; Two Hundred and Forty were excluded; ſo that they had no Pretence to be called an Houſe: That the Lords alſo were then in being, and rejected that pretended Act, under which they would ſhelter themſelves; and of the Forty-ſix Commoners that remained in the Lower-Houſe, there were not more than Five or Six and Twenty that were for erecting that Court; and theſe Men had taken the Oaths of Allegiance and Supremacy, and ſworn to defend the King, his Crown and Rights, againſt all Perſons whatſoever: That they had acknowledged, in the Oath of Supremacy, that the King was the ſupreme Governor of theſe Nations; and ſworn that they would maintain all the Priviledges, Immunities and Preheminences, annexed to the Imperial Crown of this Realm; and thoſe who pretended that Men, by breaking through all the Ties and Obligations of Allegiance, could gain any lawful Authority, muſt ſpeak againſt the Light of their Conſciences, and all Laws, Divine and Human. Mr. *Scroop* ſaid, If he had been miſled, he was not the only Perſon. He ſaw a great many Faces that were miſled as well as himſelf; and he hoped an Error in Judgment would not be accounted Malice: He never went to Work with a malicious Intent, or bore Malice to his late Majeſty: But the Lord Chief Baron told him, that though this might be ſome Excuſe for him before God, in Law the Fact itſelf implied Malice; and the Jury, without going out of Court, found him guilty.

But 26 of the Commons that voted for trying the King.

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Scroop *reflects on the Court.*

He is convicted.

Then Mr. *John Carew* was brought to the Bar, and the King's Counſel having opened the Indictment, the Witneſſes depoſed, That the Priſoner ſat as one of the late King's Judges, in the pretended High-Court of Juſtice: That his Hand was to the Warrant for ſummoning the ſaid Court, and to the Warrant for beheading his late Majeſty; and that the Priſoner was a Member of the Long Parliament.

Carew *tried.*

The Evidence.

Mr. *Carew*, in his Defence, ſeemed much offended, that it was ſaid in the Indictment, he had not the Fear of God before his Eyes, but was moved by the Devil to murder the King; and averred, that what he had done, was *in the Fear of the Lord, and in Obedience to his Holy and Righteous Laws*: He confeſſed that he did Conſent to be one of the late King's Judges; firſt, in Obedience to the Lord; and, ſecondly, in Obedience to that which was then the Supreme Authority of the Nation: That the Matter in Queſtion had been controverted in the Face of the whole World; and the Lord had given an Anſwer upon ſolemn Appeals; (*And was entering upon the Grounds and Reaſons of the War*) But the Court let him know, That they muſt not hear him make Diſcourſes in Juſtification of a horrid and notorious Treaſon; and as to his having acted *in the Fear of the Lord*, they bid him remember, that the Devil appeared ſometimes as an Angel of Light: And that he ſhould not be ſuffered to caſt in Bones of Contention, to revive thoſe Differences which were but juſt laid aſleep. That this Treaſon had no Relation to what was done by the Lords and Commons, at the Beginning of the War; for the Act, under which he pretended to skreen himſelf, was not made by the Authority of either Houſe: There were but Forty-ſix of the Commons in the Houſe, when it was debated; and not more than Twenty-ſix that voted it; which could never be underſtood by any one to be an Act of Parliament: It was no more than an Order of a

His Defence.

The Court reply to his Defence.

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ſmall Remnant of the Commons, after they had excluded a vaſt Majority.

He continues to juſtify the Fact.

The Priſoner replied, Since they would not ſuffer him to open the Nature of theſe Things, and the Grounds he went on, which ſatisfied his own Conſcience, that what he did was from the Lord, he left his Cauſe to the Jury; telling them, that the Authority he ſpoke of was a Rightful Authority; it was the Supreme Power: It was well known what they were: Concluding, he had deſired to ſpeak the Words of Truth, and Soberneſs; but was prevented.

He is convicted.

Then the Court having obſerved to the Jury, that the Treaſon was fully proved, both by Witneſſes, and his own Confeſſion, they found him Guilty, without going from the Bar: After which the Court adjourned.

Scot *tried.*

The Court ſitting again the 12th of *October*, *Thomas Scot* was brought to the Bar, againſt whom the Indictment being opened, and the

The Evidence.

Jury ſworn, ſeveral Witneſſes depoſed, That the Priſoner ſat as one of the late King's Judges, in the pretended high Court of Juſtice, and particularly, on the 27th of *January*, when all the Members ſtood up, to expreſs their Aſſent to the Sentence: Another Witneſs depoſed, That his Hand was to the Warrant for beheading the late King. Sir *Theophilus Biddolph* depoſed, that he heard Mr. *Scot* ſay, in *Richard*'s Parliament, That he ſat as one of the King's Judges; and he was ſo far from repenting of it, that he deſired this Inſcription might be upon his Tomb, (*Viz.*) *Here lies* Thomas Scot, *who adjudged to Death the late King.* Colonel *Copley* teſtified the ſame Thing; and that the Priſoner added, *He hoped he never ſhould repent of the King's Death.*

The Lord Mayor Elect depoſed, That on the laſt Day of the ſitting of the Parliament, a little before his Majeſty's Return to *England*, Mr. *Scot*, ſeeing the Houſe muſt break, ſaid, *Their Heads muſt be laid to the Block, if there was a new Parliament: I confeſs* (ſaid he) *I had a Hand in putting the King to Death, and I deſire all the World may take Notice of it; and when I die, that it may be written on my Tomb. I do not repent of any Thing I have done; if it it were to do, I could do it again.* *William Lenthall*, Eſq; alſo depoſed, That, the Houſe being about to diſſolve itſelf, Mr. *Scot* made a Speech, juſtifying the putting the King to Death; but he did not remember the particular Expreſſions mentioned by the other Witneſſes. Then the Lord Mayor further depoſed, that this was the Concluſion of Mr. *Scot*'s Speech in the Houſe, *Being it is your Pleaſure to have it ſo* (the Houſe diſſolved), *I know not how to hinder it; but when that is done, I know not where to hide this hated Head of mine.* Mr. *Baker* alſo depoſed, that diſcourſing with Mr. *Scot*, in the Time of *Richard*'s Parliament, he ſaid, *He had cut off one Tyrant's Head, and he hoped to cut off another.*

Scot's *Defence.*

The Priſoner ſaid in his Defence, that it was a Breach of Privilege to proſecute him in an inferiour Court, for what he had ſaid, or done, in Parliament; but the Court informed him, that for Treaſon, or Felony, committed in the Parliament-Houſe, there was no Privi- 1660. 12 Car II.
ledge that could prevent his being tried for them in the Courts of Common-Law; but that there did not want other Evidence of his compaſſing and imagining the King's Death.

Then Mr. *Scot* proceeded in his Defence, and averred, That he never ſaid, *He hoped he ſhould never repent of the King's Death:* But on the contrary, he had often, by Prayers and Tears, beſought the Lord, that if there were any Iniquity in it, he would ſhew it him: That it was by the Command and Authority of a Parliamentary Power he ſat as one of the King's Judges; and this muſt juſtify him, whatever the Nature of the Fact was: That this Court could not take Cognizance whether they were a legal Parliament, or not; and he did not know, but it might be as fit for that Parliament to make Laws, as the laſt, being called by the *Keepers of the Liberties of* England: That if they were not properly a Parliament, they were the Legiſlative Power, and their Acts binding: That if two Eſtates might exclude a Third, as they had done the Biſhops; if the ſecond did not continue to exerciſe their Truſt; they that were in, by Occupancy might have a Title to the whole; and continued to inſiſt he had a Parliamentary Authority, a Legiſlative Power, to juſtify him.

The Court reply to his Defence.

The Court replied, That theſe Things had been urged already, and that no ſingle Perſon or Community, neither the People collectively, or repreſentatively, had any Coercive Power over the King. That the Aſſembly, who made that pretended Act, were not an Eighth Part of the Commons Houſe: That the Houſe of Lords was then ſitting, and rejected it; and therefore there was nothing like Parliamentary Authority to juſtify him. That Forty Highwaymen, met together at *Shooter's-Hill*, might as well pretend to Parliamentary Authority, as that little Convention at *Weſtminſter:* That the vulgar Acceptation of the Word *Parliament*, had led many into Miſtakes; but that nothing could properly be ſaid to be done by Parliamentary Authority, but what was done by King, Lords, and Commons: And as to what the Priſoner mentioned, concerning the ejecting the Biſhops, this was not at all to the Purpoſe; for that Act was made by the Conſent of King, Lords, and Commons: And,

Mr. *Anneſley* put the Priſoner in mind, that when the People appeared jealous that they intended to alter the Government, the Parliament called it A *Black Scandal, caſt upon them*: And that the two Houſes cauſed a Declaration to be affixed on all the Churches in *England*: That they held the Government of King, Lords and Commons, to be the Fundamental Government of this Kingdom. Then the Priſoner claimed the Benefit of his Majeſty's Pardon; but the Court replyed, It was very odd to talk of a Pardon, after ſuch a Juſtification: That the King's Proclamation could not be pleaded in Bar to the Proceedings of the Court: They could take no Notice of a Pardon that was not under the Broad Seal; though they did not doubt his Majeſty would Inviolably make it good, if he appeared to be within it. Then the Lord Chief Baron directed

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directed the Jury, and took particular Notice of the aggravating Speeches of the Prisoner, his Justifying the King's Murder, and *wishing the Action might be Engraven on his Tomb*: And the Jury thereupon found him *Guilty*.

Clement pleads Guilty.

Then *Gregory Clement* was brought into Court, and pleaded *Guilty*.

Jones Convicted.

John Jones also, being set to the Bar, offered to make a partial Confession, which the Court not accepting, the Jury was sworn, and the Witnesses produced, who deposed they saw the Prisoner sit as one of the late King's Judges, in the pretended High Court of Justice. His Hand also was proved to the Warrant for summoning the Court, and to the Warrant for beheading the King: And the Jury found him *Guilty*.

The Chief Baron's Speech to the Prisoners.

Then all the Prisoners, that had been tried after *Harrison*, were set to the Bar; and it was demanded, what they had to say, why Judgment should not pass upon them: To which they generally answered, they threw themselves on the King's Mercy: And the Lord Chief Baron made a Speech to them on the Occasion, in which he set the horrid Crime the Prisoners were convicted of, in a proper Light: He told them the King they had murdered, was a Person of eminent Parts and Virtues, that would have rendered him admired even in a private Station: That his Clemency appeared in the beginning of his Reign; and, if they looked back, they would find the People enjoyed greater Peace and Prosperity in his Days, than in the Reigns of former Princes: That but one Nobleman had been put to Death in his Time, and that for an Offence not to be named. That they might remember the King had, before the Wars, redressed every Grievance they could complain of; the Star-Chamber, High-Commission, Ship-Money, the Claim of Stannery, *&c.* That they would do well also to reflect what Concessions his Majesty made at the *Isle of Wight*; how he wooed and courted the People to obtain Peace: And that they should kill their King, and such a King, They ought to lay it to Heart, and consider with themselves; for, though they pretended Conscience, they should remember what Our Saviour said: That *the Time will come, when they will persecute you and kill you, and think they do God good Service.* That there was such a Thing as Spiritual Pride, and Men might be over-run with an Opinion of their own Holiness, and go by pretended Revelations, and say they prayed about such a Thing, and found no Remorse or Reluctance; as the Man in *Shropshire*, who murdered his Father and Mother, when he was questioned for it, alledged, *he had prayed against it, and could not understand it to be a Sin.* And therefore he exhorted the Criminals to try their Spirits, and examine the Fact by the Word of God, and not think every Fancy and Imagination to be Conscience: After which, the usual Sentence in High Treason was passed upon them, and the Court adjourned.

Sentence passed on the Prisoners.

Cook tried.

The Court meeting again the 14th of *October*, *John Cook*, Solicitor to the Regicides, who preferred the Charge of High Treason against the late King, was brought to the Bar: And not challenging any of the Pannel, the first twelve were sworn of the Jury. Then the Solicitor-General opened the Indictment, and observed that this was the Man, who exhibited that wicked Instrument, called *A Charge of High-Treason*, against his late Majesty in the Name of all the People of *England*: That he aggravated the Charge, and would not suffer his Majesty to speak in his Defence: Told the King he endeavoured to spin out Delays, and desired the Charge might be taken *pro confesso*: That this was the Man that pressed the pretended Court to give Judgment against the King; and demanded that wicked Judgment before it was pronounced: And though he had acknowledged his Majesty to be a Wise and Gracious King, yet declared, *That he must die, and Monarchy with him*: That this was the Prisoner's part, who had also received Wages, and a Reward for his Iniquity. Then the Witnesses were called, who deposed, That the Prisoner exhibited an Impeachment, or Parchment-Writing, to the pretended High Court of Justice, which was called A Charge against the King; and the said Charge being now produced, it was proved that *Cook*'s Hand was subscribed to it: That he often interrupted his Majesty, and prayed that the Charge might be taken *pro confesso*; and for several Days pressed for Judgment against his Majesty.

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The Indictment opened.

The Evidence.

It was testified also, that *Cook* charged his Majesty with being guilty of the Highest Treasons and Crimes, that ever were acted on the Theatre of *England*; and pressing that Judgment might be given against his Majesty, said, *That it was not so much he, as the Innocent and precious Blood that had been shed, that cryed for Judgment against the Prisoner at the Bar* (The King). And one *Starkey*, of *Gray's-Inn*, deposed, that, discoursing with *Cook* about his being made Solicitor-General, he answered, *He was serving the People; that he would see strange Things; and that he must wait upon God*: He did acknowledge the King was a Wise and Gracious Prince; but said, *He must die, and Monarchy with him.*

Cook's Defence.

But *Cook* cross-examining *Nutley*, one of the Witnesses, *Nutley* deposed, that he heard the Prisoner say, He hoped they did not intend to take away the King's Life: That he (the Prisoner) laboured against it; and they told him, they only intended to bring him to submit to the Parliament.

The Prisoner further said in his Defence, That the Words he used at that Proceeding, were not his own; he was directed what he should speak, and he hoped he might make much the same Plea St. *Paul* did, *That against* Cæsar *or against the Law, he had not offended at all*: For first, he was commanded to do what he did, and acting only within his own Sphere as a Counsellor, by the Command of the then supreme Power, he could not be guilty of Treason: Secondly, Words could not amount to Treason; and though it was said, his Hand was to the Impeachment, he thought that was not well proved: He insisted further, That one who writes or speaks Words dictated by another, (though they might

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might be in their own Nature treaſonable) yet they were not Treaſon on the Writer or Speaker, becauſe they did not diſcover a traiterous Heart; and he appealed to God, if he uſed one irreverend Expreſſion towards his Majeſty, or ſtiled him, *The Priſoner at the Bar*, as the Witneſs had ſworn: That a Counſellor was to make the beſt of his Client's Cauſe, and leave it to the Court; and Counſellors did frequently engage in Buſineſs, before they rightly underſtood the Fact: He appealed to the Counſel, if they had not many Times been ſorry, that a Verdict had been given for their Client, when they diſcovered the Right lay on the other Side; and this might be his Caſe. Had it been a Time of Peace, he acknowledged this would have been Treaſon; but his Majeſty being in the Power of the Army, the drawing up a Charge againſt him, and deſiring Juſtice, and that he might be brought to a ſpeedy Trial, in order to his Acquittal, was rather a Service to his Majeſty, than Treaſon againſt him: He urged further, That what he had done in that Matter, was for his Fee, and not of Malice; though it might be called *Avaritia*, it could not be called *Malitia*; he did nothing Judicially but Miniſterially: But conſcious his Defence was very weak, he ſaid he laid hold on his Majeſty's Declaration at *Breda*, wherein he promiſed to pardon all who were not excepted in a free Parliament; and he obſerved, that this Convention, not being called by the King's Writ, was not ſuch a Parliament, as could make the Exception: Concluding, That human Juſtice did never puniſh ſo much for Expiation as Prevention, that others might be deterred from committing ſuch Acts; that now all Things were ſettled, there could be no Danger in ſparing him, the like Caſe could never happen again.

The King's Counſel Reply.

The King's Counſel, in their Reply to this Defence ſaid, That the Priſoner miſtook his Charge, if he thought it was only for Words; it was for compaſſing and imagining the King's Death; and the Evidence of that Charge was, his meeting in an Aſſembly of the Regicides, and the Part he bore in that Aſſembly: Nor was it a General Rule, That Words were not Treaſon; for if a Man declare the Imagination of his Heart, by exhorting and perſuading Men to kill the King, there could not be a greater Overt-Act than ſuch Words, or a clearer Evidence of his traiterous Imagination: And as to his Innocence in ſimply demanding Juſtice, they were to obſerve, That the Subject-Matter, was a Charge of High-Treaſon againſt the King; he prayed that the King, as a Traitor, might be brought to Juſtice; preſſed that the Charge might be taken *pro confeſſo*: And whether Mr *Cook* could intend this, in order to the Acquittal of his Majeſty, he left the Jury to determine.

As to the Priſoner's laying hold on his Majeſty's Letter or Declaration from *Breda*, that could not amount to a Pardon, not being under the Broad Seal; neither would the Words it contained have amounted to a Pardon, if they had been under the Broad Seal: Beſides, it appeared by the King's Letter, that he intended ſuch as ſhould be excepted by that very Parliament his Letter was directed to, and the Priſoner was expreſly excepted by Name; his Majeſty therefore was not obliged even in Honour to ſpare him. 1660. 12 Car. II.

That the Jury ſhould conſider the Caſe as their own: The Priſoner had exhibited a Charge againſt his late Majeſty, in the Name of All the People of *England*, of whom they were Part, and they ought to let the World know, that the People of *England* had no Hand in that Charge: That they ſhould conſider how the Priſoner had hunted after the King's Life; how he had fiſhed for Evidence againſt him, aggravated the Charge, was afflicted at the Delays, and angry when he was interrupted.

And as to the Priſoner's ſaying, He pleaded for his Fee, *Judas* too had thirty Pieces of Silver, for which he hanged himſelf; and it was the higheſt Diſgrace he could throw upon the long Robe, to ſhelter himſelf under his Profeſſion: That indeed it was an Aggravation of his Crime, that he, who knew the Law ſo well, ſhould ſo groſly tranſgreſs it: That Mr. *Cook* in adviſing the Act, was as inſtrumental, as much a Traitor, as the Man in the Frock that did the Execution: That a Counſellor indeed was not always bound to know the Judge's Patent; but here was no Colour of a legal Proceeding, nothing but a mock Court of Juſtice, ſuch a one as Mr. *Cook* never met with in all his Reading: They knew of no Law under Heaven for putting the King to Death, though they endeavoured to ſhelter themſelves under a Colour of Juſtice, to do the moſt execrable Treaſon in the World.

The Chief Baron ſums up the Evidence.

The Lord Chief Baron in ſumming up the Evidence obſerved, that when *Cook* demanded *Juſtice* againſt the King, he had charged him as *A Tyrant, Traitor, Murderer, and common Enemy*; that thoſe, who ſpit in the King's Face, alſo demanded *Juſtice*; but every Man knew what they meant by Juſtice: That the Priſoner had alſo urged, *That it was not ſo much he, as the Blood that had been ſhed, that cried for Judgment*; and whether the Priſoner meant a Judgment for the King's Acquittal, he left to the Jury: He took Notice alſo of the Priſoner's Anſwers to *Starkey*, when he expoſtulated with him about being concerned in the King's Murder, (*viz.*) *You ſhall ſee ſtrange Things*; *you muſt wait upon God*: This, the Chief Baron obſerved, was then the canting Language of thoſe who were about to commit ſome horrid Impiety, and from that other Expreſſion, *The King muſt die, and Monarchy with him*, it appeared it was Monarchy and Government they hated: Many of thoſe who ſat upon the late King, acknowledged he was a gracious Prince; they did not hate his Perſon any more than the Priſoner, but *Monarchy was the Thing they would behead.*

That as to his having acted by the Authority in Being, and citing the 11 *Hen.* II. which provides, That he who ſerves a King for the Time being in his Wars, ſhall not be puniſhed; that Act was expreſly againſt him: For that Act was made for the Preſervation of a

King

1660. 12 Car. II. King *de facto*, much more of a King *de jure*; and the Perſon they had ſtiled their Priſoner, they had owned to be their King; they charged him as King, and ſentenced him as King. That King *Henry* VIIth's Care was to preſerve even a King *de facto*, and Kingly Government; it was not in favour of an Antimonarchical Government. The Regicides proceeded againſt their own King, as their King; calling him, in their Charge, *Charles Stuart, King of England*; and therefore there was no Colour that the Priſoner ſhould have any Benefit of the Letter, or the Equity, of 11 *Hen.* VII.

Cook's Reply to the Chief Baron.

However, Mr. *Cook*, being indulged the Liberty of replying to the Chief Baron, ſaid, Though their Lordſhips were pleaſed to lay no Weight on the Orders or Authority by which he acted; he did then act truly and conſcientiouſly, and thought that Authority would have borne him out; though the Court were pleaſed to look upon them as a parcel of People without Authority, his Judgment was not yet convinced as to that Point; and that all the Words he ſpoke were dictated to him, even thoſe, *That it was not ſo much he, as the innocent Blood, that cried for Juſtice.*

To which the Chief Baron ſaid, He made his Caſe rather worſe: That they had delivered their Opinions already; That the acting by ſuch an Authority, was ſo far from being an Extenuation, that it was an Aggravation of the Crime; That his expreſſing his Approbation of that Power, and acting under it, were the very Things with which he was charged: And the Jury, after a very ſhort Receſs, brought in the Priſoner GUILTY.

Peters's Trial.

Hugh Peters, *Cromwell*'s Chaplain, being brought next upon his Trial, made no Challenges to the Jurors; whereupon the firſt Twelve of the Pannel were ſworn, and charged with the Priſoner: Then the King's Counſel produced their Evidence. And firſt, Dr. *William Young* depoſed, That *Hugh Peters*, the Priſoner, lay ſick at his Houſe in the Year 1649, and that he remained in his Family ſix or ſeven Weeks after his Recovery, there being a great Intimacy between them; that the Priſoner, about that Time, told the Deponent, *He was ſent over from* New England *to foment a Civil War, and drive on their Reformation.*

The Evidence.

That he was afterwards ſent over to *Ireland* by the Parliament, to carry on their Deſigns there, and that he had ſpent near 3000 *l.* in that Service, for which he had only received a ſmall Pittance, in Land, out of the Lord *Worceſter*'s Eſtate; That the Priſoner uſed to ſay, while he reſided with the Deponent, *It would never be well till the Lords, the Levites, and the Lawyers, were put down*: That the Priſoner was a Colonel under *Cromwell* (as well as a Preacher), and having an Authority to raiſe Forces for the War in *Ireland*, would have had the Deponent accept a Commiſſion to ſerve under him: That the Priſoner informed the Deponent, when the late King was taken from *Holmeby-Houſe*, the Parliament had a Deſign to have ſeized *Cromwel* and himſelf; but having Notice of it, they made their Eſcape out of *London*, riding hard for it as far as *Ware*, where they conſidered how they ſhould diſpoſe of the King; and came to a Reſolution, *They would try him for his Life, and cut off his Head.* 1660. 12 Car. II.

Mr. *Starkey* depoſed, That the Head-Quarters being at *Windſor*, a little before the King's Trial, *Ireton* lay at his Father's Houſe there; and that *Cromwell* and the General Officers uſed to hold their Councils of War at his Father's; That after theſe Councils roſe, there uſed to be a private Conſultation, at which *Cromwell*, *Ireton*, the Priſoner, Colonel *Rich*, and a fifth Perſon, aſſiſted; and they generally ſat up till Two or Three in the Morning; and he believed it was this private Cabal that contrived the Buſineſs againſt the King; That the Priſoner frequently came with *Ireton*, and dined and ſupped with him, at his Father's, with the Family; and talking of the King, *Peters* uſed to ſay, *The King was a Tyrant and a Fool, and not fit to be a King; and that it was a dangerous, chargeable, and uſeleſs Office*: That *Ireton* and *Peters* being at Supper at his Father's, when News came that the King was made Priſoner in the *Iſle of Wight*, his Father, inſtead of ſaying *God ſave the King, Prince, and Realm*, as he uſually did after his Grace, (at which *Ireton* and *Peters* uſed to laugh) ſaid, *God ſave the King's moſt excellent Majeſty, and preſerve him out of the Hands of all his Enemies*: Whereupon *Peters* ſaid, *Old Gentleman, your Idol will not ſtand long.*

Walkley depoſed, That he ſaw *Peters* at the Conſultations with the Regicides, in the Painted-Chamber, before the King's Trial; That when the King was brought to *London*, he ſaw him riding in a triumphant Manner before the Coach the King was in: And at another Time, he ſaw *Peters* marſhalling the Soldiers in St. *James*'s-*Park*, and heard him ſay, *If we can but keep up our Army ſeven Years longer, we need not care for the King and all his Poſterity.*

Simpſon depoſed, That he ſaw the Priſoner at ſeveral Conſultations concerning the King; and that, at the King's Trial, he heard him bid Colonel *Stubberd* to cry out, *Juſtice, Juſtice, againſt the Traitor at the Bar*: That the Soldiers cried out as they were directed; and, as the King was going back to *Cotton-Houſe*, ſome of them ſpit in his Face, which he wiped off, and ſmiled.

Richardſon depoſed, That he ſaw the Priſoner ſtanding in the High Court of Juſtice; That he commended *Bradſhaw*'s Carriage; and holding up his Hands, ſaid, *This is a moſt glorious Beginning of the Work.* And Sir *Jeremy Whichcot* depoſed, He heard the Priſoner ſay, *I cannot but look upon this Court with great Reverence, for it doth reſemble, in ſome Meaſure, the Trials that ſhall be at the End of the World by the Saints*: That the Priſoner ſeldom ſpoke of the King, but he called him Tyrant; and ſaid, he would have preached before him (the King); *but the poor Wretch would not hear him.*

Nunnelly depoſed, That he ſaw *Peters* in the Banquetting-Houſe, about an Hour before the

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the King was beheaded; that he went out upon the Scaffold, and came off again; and whiſpering the Joiner who erected it, the Joiner immediately knocked down four Staples upon the Scaffold: That after the King's Head was cut off, the Deponent ſaw the Vizards go into a Chamber, and he thought he ſaw *Peters* come out of the ſame Chamber an Hour afterwards; but he was ſure he ſaw him go with the Hangman to take Water.

Stephen Clough depoſed, That *Peters*, in his Prayer before a Council of Officers at *Weſtminſter*, ſaid, *O Lord, What a Mercy is it to ſee this great City fall down before us! And what a Stir is there to bring this Great Man to Trial; without whoſe Blood he will turn us all into Blood if he reign again!*

Beaver depoſed, That the Priſoner preaching before the two Houſes, on a Faſt-Day, a little before the Act was made for the King's Trial, he ſaid, "It was a very ſad thing, "that it ſhould be made a Queſtion among "us, as among the old *Jews*, Whether our "Saviour Jeſus Chriſt muſt be crucified; "or that *Barabbas* ſhould be releaſed, the "Oppreſſor of the People: O Jeſus (ſaid he) "where are we, that That ſhould be a Queſtion? And becauſe you ſhould think, my "Lords and Gentlemen, that it is a Queſtion, "I tell you it is a Queſtion: I have been in "the City, which may very well be compared to *Jeruſalem*; and I profeſs theſe "fooliſh Citizens, for a little Trading and "Profit, will have Chriſt (pointing to the "Red-coats on the Pulpit-Stairs) crucified, "and that great *Barabbas*, at *Windſor*, releaſed. I do not much mind what the "Rabble ſay; but I have been with my "Brethren, the Clergy, in the Aſſembly, and "I perceive they are for crucifying Chriſt "alſo, and releaſing *Barabbas*. O Jeſus, "what ſhall we do now! Then addreſſing himſelf to the Lords and Commons, he ſaid, "You are the *Sanhedrim*, the great Council of "the Nation; therefore you muſt be ſure "to do Juſtice; it is from you we expect "it: You muſt not only be the Inheritors "of your Anceſtors; but you muſt do as "they did: They oppoſed tyrannical Kings, "and deſtroyed them. It is you that we "chiefly expect Juſtice from. Do not prefer "the great *Barabbas*, *Murderer*, *Tyrant and* "*Traitor*, before theſe poor Hearts (pointing to the Soldiers again): And that for two or three Hours he harangued his Audience, preſſing them to bring the King to a ſpeedy Trial, and to puniſh him capitally.

Mr. *Chace* depoſed, That he heard the Priſoner preach before *Cromwell* and *Bradſhaw*, on the 20th of *January*, 1648, on that Text in the Pſalms, *Bind your Kings in Chains, and your Nobles in Fetters of Iron*: And obſerved, that the next Pſalm had twelve *Hallelujahs*; which were intended, he ſaid, to expreſs their Joy, *That Kings were bound in Chains*, &c. He told them alſo the common Story of the Mayor that laid the Biſhop's Man by the Heels for being Drunk; and when the Biſhop complained of it, the Mayor anſwered, There was an Act of Parliament for it, and neither the Biſhop nor his Man were excepted out of it. And ſo (ſays *Peters*) Here is a great talk in the World; What, will you cut off the King's Head; the Head of a Proteſtant Prince? Turn to your Bibles, and you ſhall find, *Whoſoever ſheds Man's Blood, by Man ſhall his Blood be ſhed.* As the Mayor ſaid of the Biſhop and his Servant, I ſee neither King *Charles*, nor Prince *Charles*, nor Prince *Rupert*, nor Prince *Maurice*, *nor any of that Rabble*, excepted out of it; and added, *This is the Day that I, and many Saints of God, have been praying for theſe many Years*; And the Deponent obſerved, that *Cromwell* laughed heartily at theſe Flights.

Tongue depoſed, That he heard the Priſoner preach at *Whitehall*, the 21ſt of *January*, 1648, on that Paſſage, *Bind your Kings in Chains*, &c. And ſaid, He hoped to ſee ſuch another Day as the Day before (*when the King's Tryal began*): That he bleſſed God the Lower Houſe was purged; and aſſured them, the Houſe of Lords would down ſuddenly.

The Priſoner's Defence.

The Priſoner in his Defence ſaid, He was ſent from *New England*, to ſolicit the Affairs of that Country here: And indeed, at the Importunity of the *London* Miniſters, after his Arrival, he was active in the Troubles that followed; but they were much deeper engaged in that Affair than he was: He was ſorry to hear himſelf charged with that Behaviour towards the late King, and begged Pardon for his Folly and Weakneſs; but ſaid, he had no Malice or Miſchief in his Heart againſt him: That he had always acted with Honour and Reſpect towards his Majeſty, particularly when he was at *Windſor*; and had propoſed three Ways to his Majeſty to extricate himſelf out of the Difficulties he was in; but he did not approve of them: That he was none of thoſe who ſat in the High Court of Juſtice, or brought the King to that unhappy End: And laſtly, He obſerved, that there was but a ſingle Witneſs to any one Fact.

A Reply to his Defence.

To which the King's Counſel replied, That ſome Facts had been undeniably proved againſt him: That the Meeting and Conſulting together about the King's Death; or the giving Aid, Comfort, or Encouragement to thoſe Traitors, made him guilty of the whole Charge, in the Eye of the Law; though he did not ſit in that High Court, or ſentence the late King: And that, whatever Speeches he had uttered, either in the Pulpit, or out of it, tending to Sedition and Rebellion, were ſuch Overt-Act as proved the treaſonable Imagination of his Heart, with which he was charged: That though there ought to be two Witneſſes in Treaſon, there need not be two to every Fact; but in his Caſe there had been ſeveral Witneſſes produced to one Fact; ſo that this Objection carried no manner of Weight with it.

That his being in Arms, againſt his Majeſty, had not only been proved by ſeveral Witneſſes; but he had confeſſed it. It was proved alſo, that he had called the Day of his Majeſty's Trial, *A glorious Day*, and reſembled it to that Great Day, wherein the Saints ſhould judge the World; that he had

often

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often prayed for it alſo; ſo that no Man could be ſaid more juſtly to have conſpired and contrived the Death of the King, than this miſerable Prieſt had done: The Honour of the Pulpit therefore ought to be vindicated. His Death would preach better than his Life had done; it might be a Means to convert many a deluded Man, whom his Preaching had ſeduced; for ſeveral had been brought to that Bar, who averred, that what they had done, was *in the Fear of the Lord*; and now it appeared who taught them, and led them into theſe pernicious Errors: They hoped therefore the Court would make an Example of this Carnal Prophet: And the Jury being withdrawn, in a very little Time found the Priſoner guilty. Whereupon the King's Counſel moved, that *Cook* and *Peters* might receive Judgment together: And the Lord Chief Baron having made a Speech to the Priſoners, wherein he obſerved they had had a liberal Education, and therefore could not be ignorant how groſly they had offended againſt the Laws of God and Man, by being inſtrumental in the King's Murder, pronounced Sentence on them as Traitors: And then the Court adjourned.

Peters convicted.

Cook and *Peters* condemned.

On the 15th of *October*, *Daniel Axtel* was brought to the Bar; and a Jury being ſworn, and charged with the Priſoner, the King's Counſel opened the Indictment and the Evidence: After which, the Witneſſes were produced, who depoſed, That Colonel *Stubberd* and *Axtel* commanded the Guards that were drawn up in *Weſtminſter Hall*, for the Security of the pretended High Court of Juſtice, at the King's Trial: That upon exhibiting the Charge againſt the King, in the Name of all the Commons of *England*, a Lady, (ſaid to be the Lady *Fairfax*) cried out, *It was a Lie; not a Quarter of the People were concerned in it*: Oliver Cromwell *was a Rogue and a Traitor*: Whereupon the Court called to the Guard, and *Axtel* their Commander, ordered ſome of his Soldiers to preſent their Pieces at the Lady, and bid her unmask. Other Witneſſes depoſed, that *Axtel* ſaid, *Down with the Whores; ſhoot them*: That he was more active than any of the Officers, and ſtood laughing with his Soldiers, and ſcoffing aloud when the King urged to be heard; and when the King bid his pretended Judges *remember he was their lawful King*, *Axtel* ordered the Soldiers to cry out, *Juſtice, Juſtice!* and beat thoſe that refuſed; and that the laſt Day of the Trial, he made his Soldiers cry, *Execution, Execution!* A Witneſs alſo depoſed, that the Priſoner commanded a Company of Soldiers in the Banquetting-Houſe, during the King's Execution; and that he was the Man that ſent for the Executioner. Another Witneſs teſtified that *Axtel* ſaid, *Hewlet* beheaded the King: And Col. *Huncks* made Oath, that *Cromwell* bidding him (the Deponent) ſign the Order for the King's Execution, and threatening him for refuſing it, *Axtel* ſaid to the Deponent, *I am aſhamed of you; the Ship is now coming into Harbour, and will you ſtrike Sail before you come to Anchor?*

Axtel's Trial.

The Evidence.

Axtel in his Defence ſaid, that *Hunks* was a perfect Stranger to him, and that he did not remember his having ſaid any ſuch Words as he had teſtified: That the Statute of 25 *Edw.* III. on which he was indicted, concerned only private Perſons, who compaſſed the King's Death: But here a War was entered into, an Army raiſed by Authority of Parliament, who had declared the *Militia* was of Right in them: That he acted by Commiſſion from the Parliament's General; a Parliament called by the King's Writ, choſen by the People, and by an Act that could not be diſſolved, but by their own Conſent. That this Parliament was in being when the King's Trial happened, and was not yet legally diſſolved: He conceived, that their Authority was acknowledged at Home and Abroad, and the Judges, the Interpreters of the Law, acted by their Authority; and he hoped this was ſufficient to bear him out: That what he had done was as a Soldier, he derived his Power from his General, who had his from the Fountain, namely, from the Lords and Commons: If he was upon the Guard at the King's Trial, it was by the Command of his General, not voluntary: He was not a Contriver, Counſellor, Parliament-Man, or any of the Judges that ſentenced the King; nor had any Hand in his Execution; and if it was ſuch an Offence to have a Command in the Army, General *Monk* and the other Generals were as Criminal as he; and all the People, who acted by the ſame Authority in the three Nations: That if he was guilty of Treaſon, the Commons in Parliament began the Treaſon: And if the Repreſentative Body were Traitors, then were the People whom they repreſented ſo too, and there would not be found a Jury to try the Cauſe. And though it had been objected to him, that they had deſtroyed both Lords and Commons, before the Fact was committed: The Commiſſion, which authorized him to obey his General, was given him while the Lords and Commons ſat in Parliament; and he did but his Duty in being with his Regiment in the Hall: If the General had commanded him to take that Poſt, he muſt have died if he had refuſed; and it was hard he ſhould be in the ſame Danger when he obeyed.

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Axtel's Defence.

He ſtill inſiſted, that he had not adviſed, or compaſſed the King's Death; that he neither Sentenced him, nor ſigned the Warrant for his Execution; nor was he concerned in the Violence put upon the Houſe of Commons: They were his Superiors that put that Force upon the Houſe; he was then an inferior Officer: And as to what had been ſworn, concerning ſilencing the Lady, who made the Diſturbance, he ſaid, if the Lady talked impertinently, and he deſired her to hold her Tongue, he hoped this was not Treaſon; eſpecially as he was commanded on pain of Death to keep the Peace.

As to the Witneſſes depoſing he laughed and ſcoffed, while others ſighed: He believed he had as deep a Senſe of what was tranſacted that Day, as others; but if he had ſmiled, he hoped that was not Treaſon: And he

hoped

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hoped it would appear he beat his Soldiers for crying *Juſtice, Juſtice*, and not to make them cry *Juſtice*: However, if he did encourage them to demand Juſtice, and Execution, the Execution of Juſtice was a glorious Thing; Juſtice was one of the great Attributes of God, and the deſiring of it could be no Crime. The ſending for the Executioner, he abſolutely denied, and averred he was never at any Conſultation about the King's Death. This he ſaid was managed by *Ireton*, *Harriſon*, and *Cromwell*, among themſelves: Nor could he ever tell any one that *Hewlet* executed the King, being perfectly ignorant what Perſons were concerned in the Execution.

He obſerved further, That the Words *Juſtice* and *Execution*, being ſpoken without Application to any Perſon or Thing, were of an uncertain Signification, and might bear a good, as well as a bad Conſtruction; and in Favour of Life, the beſt Senſe ought to be put upon them. And laſtly, he inſiſted that his Majeſty had promiſed to pardon all that were not excepted by Parliament, which muſt be intended, he conceived, of a *legal* Parliament, called by the King's Writ, which this was not, and conſequently could not except him out of the Pardon promiſed by the King.

The Reply to Axtel's *Defence.*

The King's Counſel, in their Reply to the Priſoner's Defence, ſaid, they did not charge him with what he had done by Virtue of his Commiſſion, but with thoſe violent Acts of encouraging the Soldiers to cry for *Juſtice and Execution*; and thoſe other Acts, which manifeſted his Malice againſt the King: That he was not indicted for levying War, but for compaſſing the King's Death; and the Overt-Acts, above-mentioned, were given in Evidence to prove it: Nor could there be any Excuſe for committing Treaſon; his Commiſſion could not warrant his doing a Treaſonable Act: He was obliged to take Notice whether the Authority, by which he acted, was good or not; neither did his Commiſſion empower him to put the King to Death; but he was obliged, by the Tenor of it, to preſerve him: That thoſe very Lords and Commons, under whom he would ſhelter himſelf, made Proteſtations and Declarations, and had impoſed and taken Oaths, for the Preſervation of the King's Perſon, which he could not but take Notice of: He muſt remember alſo, that the Army came with their Swords in their Hands to the Houſe, and turned out whom they pleaſed, excluding far the greateſt Part of the Members, and laid the Lords aſide: After which, Forty-ſix of the Commons took upon them to ſit, and only Twenty-ſix voted that Ordinance, which he pretended to act in Obedience to: And laſtly, that it was impoſſible to miſtake what he meant by crying for *Juſtice and Execution*: Whereupon the Jury, after a very ſhort Receſs, brought the Priſoner in *Guilty*.

Hacker's *Trial.*

Then Colonel *Francis Hacker* was brought upon his Trial, and making no Challenges to the Jurors, the firſt twelve in the Pannel were ſworn, after which the King's Counſel opened the Indictment and produced their Witneſſes.

The Evidence.

Colonel Tomlinſon, depoſed, That Colonel *Hacker*, the Priſoner, was one of the Halberdiers that guarded the King at *Cotton-Houſe*, and from thence to his Trial, before the pretended High-Court of Juſtice in *Weſtminſter-Hall*: That the Day appointed for the King to die, the Halberdiers brought his Majeſty through the *Park* from St. *James's* to *Whitehall*; that Colonel *Hacker*, by Virtue of the Warrant for the King's Execution, led him out of *Whitehall* to the Scaffold, erected before the Banquetting-Houſe.

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Mr. Secretary *Morrice*, and the Lord *Annesley*, depoſed, That the Priſoner *Hacker* acknowledged before them, that he ſigned the Warrant to the Executioner, to behead the King; but ſaid, he did not remember the Name of the Man: Another Witneſs depoſed, that Colonel *Hacker* ſeemed to have the principal Command on the Scaffold, when the King was beheaded.

Hacker's *Defence.*

The Priſoner ſaid in his Defence, That he was a Soldier under Command, and what he had done was, by Virtue of a Warrant from the High Court of Juſtice: That he did not deliver the Warrant, or Order to the Executioner, or knew who he was; and was neither Counſellor, Abettor, or Adviſer of the Fact.

The Reply of the Court.

But the chief Baron, in his directions to the Jury, told them, If the Priſoner who brought the King to the Scaffold, and who had the Care and Management of the Buſineſs, and ſigned the Warrant to the Executioner, was not guilty of compaſſing the King's Death, no Man could be ſaid to guilty; and the Jury being withdrawn a little while, brought in their Verdict, that the Priſoner was GUILTY.

He is Convicted.

Hulet's *Trial.*

Then *William Hulet*, or *Hewlet*, was ſet to the Bar; and the Jury being ſworn, the King's Counſel took notice on opening the Evidence, that this was the Man in the Frock and Vizard, that cut off the King's Head: To prove which *Richard Gittens*, was ſworn,

The Evidence.

who depoſed, that he and *Hulet*, were Serjeants in the ſame Regiment twelve or thirteen Years: That a Day or two before the King was murdered, Colonel *Hewſon* commanded eight and thirty Serjeants (of which Number were the Deponent and the Priſoner) to take an Oath of Secrecy; which when they had done, he demanded if any of them would undertake to Execute the King, promiſing a Reward of an hundred Pounds, and Preferment in the Army, to him that ſhould do it: And every Man refuſed; however, they underſtood afterwards, that *Hulet* accepted the Office: That the Day the King was murdered, the Deponent was one of the Guards drawn up in the Banquetting-Houſe: That he got upon the Scaffold, when his Majeſty was brought thither, and heard his Majeſty ſay to one of the Executioners, *Is the Block faſt?* And *Hulet* (as the Deponent believed) was the Man who fell upon his Knees, and asked the King forgiveneſs: The Deponent thought it was *Hulet* by his Speech, and the proportion of his Body; and what confirmed him in that Opinion was, that *Hulet* was not ſeen in the Regiment that Day: But that the Executioner, whoever he was, had a pair of Freeze Trunk Breeches and a Vizard on, with a Grey Beard; and Colonel *Hewſon* uſed afterwards to call

Hulet.

Hulet's *Defence.*

1660. 12 Car. II. *Hulet Father Grey-Beard*, as did moſt of the Soldiers in the Army.

Stammers depoſed, that *Hulet* was Captain-Lieutenant of Colonel *Hewſon*'s own Troop, and that he (the Deponent) entering himſelf in the ſame Troop at *Dublin*, about nine or ten Years ſince, *Hulet* ſome little Time after, ſent for him to his Chamber, and among other Converſation told him, that he cut off the King's Head, and had an hundred Pounds for it: But *Hulet* deſiring him to name the Man he ſent for him, *Stammers* ſaid he could not remember the Man.

Captain Toogood depoſed, that in the Year 1650, being in *Dublin* Caſtle with Colonel *Hewſon*, *Hulet* the Priſoner came in, and the Deponent obſerving an extraordinary Familiarity between them, upon *Hulet's* going away, asked *Hewſon*, who he was; and the Colonel anſwered, he had made him his Lieutenant, from a Serjeant: He was a mettled Fellow; it was he that did the King's Buſineſs on the Scaffold: The Deponent added, that Colonel *Pretty* alſo told him, that *Hewſon* aſſured him, *Hulet* either cut off the King's Head, or held it up, and ſaid, *Behold the Head of a Traitor*: And that the Deponent talking with *Hulet* himſelf at *Carlow* in *Ireland*, concerning the Execution, *Hulet* ſaid, *What I did, I will not be aſhamed of; If it were to do again, I would do it*: That diſcourſing with *Hulet* at another Time, concerning the King's Death, he ſaid, it was true, he was one of the Perſons *diſguiſed* upon the Scaffold: And if the King had refuſed to ſubmit to the Block, there were Staples fixed in the Scaffold, and he had that about him, that would have compelled him to ſubmit: And at another Time *Hulet* ſaid, he ſhould not deny the Buſineſs of the King's Death, call him to an Account when they would.

Davis depoſed, that drinking at a Tavern in *Dublin* with Captain *Hulet*, and asking him, If he took up the King's Head, and ſaid *Behold the Head of a Traitor*; *Hulet* anſwered, it was a Queſtion he never reſolved any Man, though often demanded: However, it was no matter who ſaid it; *I ſay it now, It was the Head of a Traitor.*

Lieutenant Colonel Nelſon, depoſed, that diſcourſing with Colonel *Axtel*, concerning the Perſon that beheaded the King, *Axtel* ſaid, they would not employ Men of mean Spirits, they did not know; but pitched upon *Hulet* and *Walker*, two ſtout Fellows, their Serjeants: That *Walker* gave the Blow, and *Hulet* held up the Head; and they had 30 *l.* a piece, or 30 *l.* between them.

Benjamin Francis depoſed, that the Vizards were cloathed alike in woollen Frocks, cloſe to their Bodies, like Butchers: One of them had a Black Beard, and the other a Grey Beard and Peruke; and that *Grey-Beard*, who cut off the King's Head, was about the Size of *Hulet* the Priſoner; and *Burden* depoſed, that *Hulet* was not ſeen among the Soldiers, either the Day the King was murdered, or the Day after.

Hulet's Defence. The Priſoner in his Defence ſaid, He never diſcourſed with any one of the King's Death, but *Stammers*; who charging him with being one of the Vizards, he anſwered, you do me wrong; and *Stammers* ſaying it was a juſt Act, he (the Priſoner) replyed, whether it was ſo or not, he had nothing to do to juſtifie it. 1660. 12 Car II.

He ſaid further, that he could prove by a very good Token, that he was in another Place when the King died; for he and ſeven or eight Serjeants more were made Priſoners that Day, becauſe they refuſed to be upon the Scaffold; and that he would prove by Forty Witneſſes, that it was another Man that did the Fact, if they would give him Time.

The Evidence for Priſoner. Then ſeveral Witneſſes were called on behalf of the Priſoner, and particularly one of the Sheriffs Officers, who depoſed, That drinking with the common Hangman, a little after the King died, and asking him if he did the Fact, The Hangman anſwered, God forgive me, I did it; and I had forty Half-Crowns for my Pains.

Smith, a Waterman depoſed, That, as ſoon as the Blow was given, a File of Musketeers brought the Hangman to the Deponent's Boat, and the Soldiers ſaid, Waterman away with him quickly: That when he and his Mate had got the Hangman ſome Diſtance from the Shoar, they asked him, if it was he that cut off the King's Head, and he ſaid No, as I am a Sinner to God; and trembled every Joint of him. He ſaid, he was fetched to *Whitehall* indeed by a Troop of Horſe, and kept cloſe Priſoner there; and they had his Inſtruments, but he did not do it: That the Deponent thereupon ſaid, he would ſink his Boat, if he did not tell him true; but the Hangman perſiſted to deny it with ſeveral Proteſtations.

Cox depoſed, That when the Lord *Capel* was Beheaded, he asked the Hangman if he did not cut off his Maſter's Head, and the Hangman ſaid Yes; and told him, that was the Axe: Whereupon the Lord *Capel* took the Axe, and kiſſed it; and giving him five Guineas ſaid, *Sirrah, Wer't thou not afraid?* and the Hangman anſwered, they made him cut it off, and he had thirty Pounds for his Pains.

Other Witneſſes depoſed, They heard the common Hangman acknowledge, he cut off the King's Head. Then the Priſoner deſired he might have a Fortnights Time to produce the reſt of his Witneſſes; but was told, that could not be granted: And the Jury withdrawing and debating the Matter a conſiderable Time among themſelves, brought in the Priſoner *Guilty*; and then the Court adjourned. *Hulet convicted.*

Fifteen Priſoners tried before one Jury. The Court ſitting again at the *Old-Bailey* the 16th of *October*, *Edmund Harvey*, *Iſaac Pennington*, *Henry Marten*, *Gilbert Millington*, *Robert Titchburne*, *Owen Roe*, *Robert Lilburn*, *Henry Smith*, *John Downes*, *Vincent Potter*, *Auguſtine Garland*, *Simon Meyne*, *James Temple*, *Peter Temple*, and *Thomas Wayte*, were brought to the Bar, and one Jury charged with them all. Mr. *Harvey*, inſtead of making a Defence, confeſſed that he did ſit in the pretended High Court of Juſtice; but ſaid, he did not ſign the Warrant for Beheading his Majeſty. He produced two Witneſſes alſo, who depoſed, he endeavoured to prevent the Sentence, and *Harvey's Confeſſion.*

1660 12 Car II. and that he was under a great Concern when it paſſed; and tendering a Petition to the Court, that they would interceed in the Behalf of himſelf, his Wife, and thirteen Children, the Court promiſed to preſent the Petition to his Majeſty.

Pennington's *Confeſſion.* *Iſaac Pennington*, the ſeditious Alderman, alſo confeſſed, that he ſat in the pretended High-Court of Juſtice; and endeavoured to excuſe himſelf, by alledging, he was drawn in by others, and had no Malice againſt his Majeſty; and made a Merit of it, that he abſolutely refuſed to ſign the Warrant for beheading of him, though he was much importuned to do it.

Marten's *Trial.* *Henry Marten* confeſſed the Fact; but ſaid, he did not do it *maliciouſly*, *murderouſly*, and *traitorouſly*, as was laid in the Indictment: To which Mr. Solicitor replied, That *Marten* thought he might ſentence the King to Death, and ſign a Warrant for his Execution, *meekly*, *innocently*, *charitably*, *and honeſtly*; and becauſe he endeavoured to wipe off the Malice, they would prove that he did it *merrily*, and was in *great Sport* at the Time of ſigning the Warrant for the King's Execution.

The Evidence. *Ewer* depoſed, That being in the Painted-Chamber, the 29th of *January*, 1648, when the Warrant for the King's Execution was ſigned, he ſaw *Cromwell* mark *Marten*'s Face with a Pen, and *Marten* marked *Cromwell*'s Face.

Sir *Purbeck Temple* depoſed, That at a Conſult of the Regicides, in the Painted-Chamber, juſt before the King's Trial, *Cromwell* ſaid, the firſt Queſtion the King would ask, would be, *By what Authority they tried him*; and demanded, what Anſwer they ſhould give to it? And that, after ſome Pauſe, *Marten* the Priſoner ſaid, *In the Name of the Commons in Parliament aſſembled, and all the good People of* England; which was the Anſwer afterwards made to his Majeſty, in their Mock-Court in *Weſtminſter-Hall*.

Marten's *Defence.* *Marten*, in his Defence, ſaid, That according to the little Law he had, no Fact could be a Crime in itſelf, but as it was circumſtantiated; and that his being in Sport when the Warrant was ſigned, did not imply Malice: That the Commiſſion they acted by, was in the Name of the Commons aſſembled in Parliament, the then ſupreme Authority: And he that gave Obedience to the Supreme Power *de facto*, whether it was ſo *de jure*, or not, might be deemed of a peaceable Diſpoſition, and was far from being a Traitor. That the Statute of *Henry* VII. indemnified thoſe that were in Arms for a King *de facto*: And if the Supreme Officer *de facto* might juſtify a War, he preſumed the Supreme Authority of *England* might juſtify the erecting ſuch a Judicature, though it was but an Authority *de facto*. And as to the Objection, that it was but a Third Eſtate, and a ſmall Part of that; yet it was all that was extant: And he had heard Lawyers ſay, where Commons were appurtenant to a Tenement, and the Tenement burnt down, ſo that only a ſmall Stick remained, the Commons belonged to that one Stick, as if the whole Tenement was ſtanding: That the King was not then ſuch a King, whoſe Peace, Crown, and Dignity, were concerned in publick Matters; he was not then in the Execution of his Office, but a Priſoner: He, the Priſoner, had then, as now, a peaceable Diſpoſition, and Reſolution to ſubmit to the Government that God had ſet over him. He thought his preſent Majeſty's Title the beſt under Heaven; for he was called in by the Repreſentative Body of the Nation; and, whether his Life were long or ſhort, he ſhould always pay Obedience to him. He confeſſed he did adhere heartily to the Parliament's Army; and his Life was at the King's Mercy; and if the King pleaſed to give him his Life, he ſhould lie under a double Obligation to his Majeſty; and concluded with obſerving to the Jury, That it was as much the Intereſt of the Crown, that the Innocent ſhould be acquitted, as the Guilty condemned. 1660 12 Car II.

The King's Counſel's Reply. Then Mr. Solicitor having ſummed up the Evidence, ſaid, Gentlemen of the Jury, what does the Priſoner ſay, in his Defence, more than this? The Fact I have committed is ſuch, that I durſt not call it Innocent; but would have you believe it ſuch. Was it your Intention, Gentlemen, that the King ſhould be tried, as the Priſoner moved? It will concern you, therefore, to declare, that the People of *England* do abhor theſe Facts and Principles: All that the Priſoner has ſaid is, That there was an Authority of his own making, whereby he becomes Innocent; but we hope out of his own Mouth you will find him *Guilty*.

Millington's *Confeſſion.* *Gilbert Millington* confeſſed himſelf guilty; but ſaid in his Excuſe, that he was over-awed by the then Powers; and preferred a Petition for Mercy, which was accepted.

Titchburn's *Confeſſion.* *Robert Titchburn* alſo acknowledged his Offence; but ſaid he had no more Malice againſt his Majeſty, than againſt the Wife of his Boſom: That he was ignorant of the Law, *&c.* and begged for Mercy.

Roe's *Confeſſion.* *Owen Roe*, confeſſed his ſitting in the Mock-Court of Juſtice, and ſigning the Warrant for the Execution; but ſaid he was an ignorant Tradeſman, led away by others; and threw himſelf at the King's Mercy.

Lilburn's *Confeſſion.* *Robert Lilburne* acknowledged his Guilt; but urged Ignorance in the Laws as his Excuſe.

Smith's *Confeſſion.* *Henry Smith* confeſſed the Crime alſo, and ſaid he was over-awed by the Powers then in being; and begged the Court would be Mediators for him to his Majeſty.

Eight of the Regicides convicted. Then the Lord Chief Baron ſummed up the Evidence, as to *Harvey*, *Pennington*, *Marten*, *Millington*, *Titchburne*, *Roe*, *Lilburn*, and *Smith*; and the Jury found them all GUILTY.

Downes's *Confeſſion.* After which *John Downes* was brought to the Bar, who acknowledged his ſitting in the pretended High Court of Juſtice; but ſaid he was thruſt into the Number, of the King's Judges, and was never at any Conſultation about the Matter: That it was he that moved ſo paſſionately, the King might he heard before the Parliament, and cauſed the Court to be adjourned; whereupon *Cromwell* ſtormed, and ſaid, ſure *Downes* did not know, that they had to do with the moſt hard-hearted Man upon

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upon Earth: That it was not fit the Court ſhould be interrupted by one peeviſh Fellow: That the Bottom of it was, he would fain ſave his old Maſter, and threatened him ſeverely.

Upon which the Lord Chief Baron obſerved, That notwithſtanding theſe Convictions, the Priſoner proceeded to ſign the Warrant for beheading the King.

Potter's Confeſſion.

Vincent Potter confeſſed his ſitting in the pretended Court, and ſigning the Warrant; but ſaid he was not concerned in the Contrivance; and threw himſelf upon the King's Mercy.

Garland's Confeſſion.

Auguſtine Garland confeſſed his ſitting in the Court, and ſigning the Warrant for the Execution.

The Evidence againſt him.

The King's Counſel anſwered, They would not accept his Confeſſion, for they would prove that he was one of the Men that ſpit in the King's Face: Whereupon *Clench* was ſworn, and depoſed, That on the Day of the Sentence, when they were hurrying the King away, *Garland* came by, and ſpit in his Majeſty's Face; and the Witneſs being asked, if he did it on Purpoſe, anſwered, *I ſuppoſe he did it ſomewhat ſuſpiciouſly in that way: Garland* replied, He did not know he was near the King, *(which ſeems to admit he did it, whether accidentally, or not)*; and if he was guilty of that Inhumanity, deſired no Favour of God Almighty. He confeſſed, however, that he was in the Chair, when the Act paſſed for trying the King; but ſaid, he was forced into it; and what he had done was out of Fear of the Powers then in Being: That he never had any Malice againſt his Majeſty, or ſhewed any diſreſpect to him or his Friends.

His Excuſe.

Meyne's Confeſſion.

Simon Meyne alſo confeſſed his ſitting in the Court, and ſigning the Warrant for the King's Execution; but ſaid he was under a Force, and threatened in caſe he refuſed.

J. Temple's Confeſſion.

James Temple made the ſame Confeſſion; and tendered a Petition for Mercy.

P. Temple's Confeſſion.

Peter Temple made the like Confeſſion; but pretended he had no Malice in his Heart againſt the King.

Wayte's Confeſſion.

Thomas Wayte confeſſed his ſitting in the Court, and ſigning the Warrant for beheading his late Majeſty; but ſaid he was drawn in, and trepaned; and offered a Petition to the King and both Houſes of Parliament for Mercy, which was accepted.

Hevening-ham's Confeſſion.

William Haveningham confeſſed his Sitting in the pretended Court; but ſaid he was under a Force; and that he did, however, refuſe to ſign the Warrant for ſummoning the Court, and for the King's Execution; and begged the Court to intercede for him to the King and Parliament for Mercy.

Eight more convicted.

Then the Jury withdrew, and in a little time returned with their Verdict, That *John Downes*, *Vincent Potter*, *Auguſtine Garland*, *Simon Meyne*, *James Temple*, *Peter Temple*, *Thomas Wayte*, and *William Haveningham*, were all GUILTY.

Sentence paſſed in 13 Regicides.

After which, Sir *Hardreſs Waller*, *Fleetwood*, *Hacker*, *Axtel*, *Hulet*, *Pennington*, *Marten*, *Millington*, *Titchburne*, *Roe*, *Lilburn*, *Smith*, and *Harvey*, being called to Judgment, the Lord Chief Baron acquainted them, That although he was to paſs Sentence of Death upon all; yet as to all but three of them Execution was to be ſuſpended, till another Act of Parliament ſhould paſs for that Purpoſe: And as to Mr. *Heveningham*, one of the three, he thought no Order would ſuddenly be given for his Execution; but as to *Axtel* and *Hacker*, He ſaid there was no Room for them to hope for Mercy.

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The Lord Chief Baron's Speech to the convicted Regicides.

Then he put the Priſoners in mind of the Oaths of Allegiance they had taken to his late Majeſty; and that it had been declared by Act of Parliament, *That the People, neither collectively or repreſentatively, had any Coercive Power over the Perſon of the King*: That, in the Oath of Allegiance, they had acknowledged the King to be Supreme, conſequently there could be no Power co-ordinate with him, much leſs ſuperior to him: That no leſs than ten Statutes called the Crown of *England* an Imperial Crown; and that of 24 *Hen.* VIII. *cap.* 12. declared, *It was ſubject to none but God Almighty.* And ſo, 16 *R.* 2. *&c.* That the King of *Poland*, indeed, took an Oath at his Coronation, with a Condition, That if he did not govern according to certain Rules, the People ſhould be freed from their Allegiance: But the King of *England* was King before he took his Coronation-Oath; and did not take it upon any Condition, or was accountable to any but God for his Actions: That the Law declares, *The King can do no Wrong*: Not but that the King might have the Imbecilities and Infirmities of other Men; but the King, in his ſingle Perſon, could do no Wrong, ſuch as would make him obnoxious to the Laws, or accountable to any: But if the King commanded another to beat any Perſon, or diſſeize him of his Lands, there was a Remedy againſt ſuch a Perſon, though none againſt the King. The Law preſerved the *Perſon* of the King untouched; but what was done unlawfully by his Miniſters, there was a Remedy againſt his Miniſters, for: That the King was ſtiled in our Law Books, *Caput Reipublicæ*, *Salus populi*, *The Lieutenant of God*, *&c.* And the *Spencers* Treaſon, That the King might be compelled to yield to the Peoples Demands, had been condemned by two Acts of Parliament: That he did not preſs this, to inſinuate that the King might do what he would; but to ſhew them that the *Perſon* of the King was Sacred, and not to be touched: And having exhorted the Priſoners to repent of their horrid Treaſons, he pronounced Sentence on all of them, except *Haveningham*, on whom Judgment was pronounced the 19th Inſtant.

The ten Regicides executed.

Of all the Regicides, there were but ten executed about this Time, *viz.* *Harriſon*, *Carew*, *Cook*, *Peters*, *Scot*, *Clement*, *Scroop*, *Jones*, *Hacker*, and *Axtel*; as to *Hulet*, who was charged with cutting off the King's Head, the Evidence was held deficient.

Harriſon *the firſt.*

Harriſon was executed at *Charing-Croſs* on the 13th of *October*; *Carew* on the 15th of the ſame Month; *Cook* and *Peters* on the 16th; *Scot*, *Gregory*, *Clement*, *Scroop*, and *Jones* on the 17th; all at *Charing-Croſs*: But *Axtel* and *Hacker* were executed at *Tyburn* the 19th Inſtant.

Moſt

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Their Behaviour at their Execution.

Moſt of them died impenitent, and gloried in the Murder of their Sovereign. *Harriſon* cryed out as he was going to Execution, *That he went to ſuffer in the moſt Glorious Cauſe that ever was in the World; and that there was more of God in it than Men were aware of.* *Carew* declared, *That what he had done was of the Lord; and if it were to be done again, he would do it.* *Cook*, while he ſtood upon the Ladder, ſaid, *The moſt glorious Sight that ever was ſeen in the World was, Jeſus Chriſt upon the Croſs; and the moſt glorious, next to that, was, to ſee a poor Creature ſuffer in his Cauſe; and that he believed an Army of Martyrs would willingly come from Heaven to ſuffer in ſuch a Cauſe as he ſuffered for.* *Hacker* ſaid, *If he had a thouſand Lives, he would lay them all down for* the Cauſe. And Axtel *thanked the Lord, no Guilt lay upon his Conſcience.* But ſome of them, it is ſaid, had raiſed themſelves to this Pitch by Strong-Waters; and *Hugh Peters* was very drunk, when he was drawn to his Execution; which occaſioned *Cook*, who ſuffered with him, to ſay, *Here is a poor Brother, that I am afraid is not fit to die at this Time.* Only *Scroop* and *Jones* diſcovered any Remorſe, or behaved with tolerable Decency; but *Scroop*, it ſeems, prayed for the King; and the other acknowledged the Juſtice of their Sentence.

Cromwell, Bradſhaw, Ireton *and* Pride, *buried under the Gallows.*

The Bodies of ſome of the principal Regicides alſo, that died before the Reſtoration, *viz.* of *Cromwell*, *Bradſhaw*, *Ireton*, and *Pride*, were taken out of their Graves, and dragged on Hurdles to *Tyburn*, where they were hanged up, from Ten in the Morning till Sun-ſet, and then buried under the Gallows.

19 *Regicides that fled, attainted.*

An Act alſo paſſed, to attaint 19 of the Regicides that fled from Juſtice; and to confiſcate the Eſtates of thoſe that died before the Reſtoration.

Mounſon, Mildmay, *and* Wallop, *dragged to* Tyburn;

The Eſtates alſo of the Lord *Mounſon*, Sir *Henry Mildmay*, and Mr. *Wallop*, who had been pardoned, as to Life; with the Eſtates of Sir *James Harrington* and *John Phelps*, not then apprehended, were alſo confiſcated; and the Lord *Mounſon*, Sir *James Harrington*, and Sir *Henry Mildmay*, were degraded from their Honours and Titles, and drawn upon Sledges, with Ropes about their Necks, from the Tower of *London*, to the Gallows at *Tyburn*, and from thence to the Tower again, on the 27th of *January*, 1661. And it was Enacted, they ſhould remain Priſoners for Life; but they had ſuch powerful Mediators at Court, that they were not long after releaſed out of Priſon, and great Part of their Eſtates reſtored them: And ſuch was the Gratitude and Ingenuity of *Mildmay*, for all this Grace, that he became one of the moſt implacable Enemies King *Charles* II. had; which his Majeſty took Notice of, when he came to preſent him with a ſeditious Addreſs afterwards.

but pardoned in the End.

But before the laſt mentioned Act, for inflicting Pains and Penalties on theſe and the reſt of the Regicides, was made, thoſe who had been condemned and reprieved, being brought to the Bar, and ordered to ſhew Cauſe why Judgment ſhould not be executed upon them; they anſwered, that they had ſurrendered themſelves, upon his Majeſty's Gracious Declaration from *Breda*, and the Proclamation afterwards publiſhed, by the Advice of both Houſes of Parliament, to render themſelves; being adviſed that they would thereby ſave Lives; and humbly craved the Mercy of the two Houſes, and their Mediation to his Majeſty: To which, it is ſaid, that infamous Droll *Harry Marten* added, *That he had never obeyed any Proclamation before; And he hoped he ſhould not be hanged for taking the King's Word now.*

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The Bill for executing the reſt of the condemned Regicides dropped.

And they were ſo fortunate, that the Bill, that was brought in for their Execution, was dropped at the ſecond Reading, whereby their Lives were ſaved.

Corbet, Okey, *and* Berkſtead, *who had fled, apprehended.*

Three of the Regicides who had fled from Juſtice (*viz.*) *Miles Corbet*, Colonel *John Okey*, and Colonel *John Berkſtead*, were afterwards apprehended in *Holland*, at the Inſtance of Sir *George Downing*, (his Majeſty's Reſident to the States in the Year 1662.) and ſent over to *England*; and having been Out-lawed for High-Treaſon, a Rule was made by the Court of King's-Bench, for their Execution at *Tyburn*.

They die penitent.

Theſe were the laſt of the Regicides that were puniſhed Capitally; and it was obſerved they died very Penitent, exhorting the People to ſubmit to his Majeſty's Government.

Remarks on the Trials of the Regicides.

From the Conduct and Speeches of that amphibious Animal *Hugh Peters*, both *Prieſt* and *Soldier*, it is eaſy to obſerve what the REFORMATION was, the Saints drove at in thoſe Days: It was a Maxim with him, it ſeems, *That it would never be well, till the Lords, the Levites, and the Lawyers were put down.* The Monarchy was already deſtroyed, and converted into a Common-Wealth; but he was afraid the Old Conſtitution would Revive, unleſs the Levites, the Clergy of the Epiſcopal Church, and Laws of the Land were deſtroyed and eradicated, and the Peers entirely extirpated: But to conſider a little more particularly, the Principles the King's Murderers went upon.

The Reformation they drove at.

The Subſtance of their Defence conſiſts in four Articles.

The chief Part of the Regicides Defence, at their reſpective Trials, it appears, conſiſted in maintaining theſe five Propoſitions.

1. That the Commons, under whom they acted, were, from the firſt Foundation of the Government, the Supreme Power of this Nation.

2. That it was their Duty to obey the Powers *de facto*, whether they were ſo *de jure* or not.

3. That their Cauſe was approved and countenanced by Heaven, as appeared on many ſolemn Appeals to God, and a long Train of Succeſſes.

4. That ſeveral of their Judges were in Arms for the Parliament againſt the King, and were therefore as guilty of High-Treaſon as themſelves.

5. And laſtly, They were under a Force, and compelled to ſubmit to the Powers then in being: *All which I ſhall conſider in their Order.*

That the Commons were the Original of Power.

As to the Firſt, *That the Commons were Originally* (and conſequently ought always to be

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be looked upon as) *The Supreme Power of the Nation.* This is a Maxim that our Presbyterians and other Republicans have always maintained, whenever they were uppermoſt, or durſt diſcloſe their Thoughts. They pretend to derive our Conſtitution from the *Saxons* or *Germans*, who were governed, they tell us, by their *Wittena-Gemots*, or great Councils choſen by the People; and that theſe Councils elected both their Civil and Military Officers, changing them as often as they ſaw fit: That when the *Saxons* ſettled in *Britain*, their Conſtitution remained the ſame; only they allowed the Chief Magiſtrate and General (uſually the ſame Perſon) to take the Name of King upon him, reſerving ſtill the Power to themſelves of depoſing him, calling him to Account, and ſitting in Judgment upon him: By virtue of which Supreme Authority, the Regicides and their Diſciples juſtified the Trial of the King and the putting him to Death.

The firſt Article of the Regicides defence anſwered.

In Anſwer to which, It does not appear that the *Wittena-Gemots*, or great Councils of the *Germans*, conſiſted of the Repreſentatives of the Commons: Nay, it is evident, they conſiſted of the hereditary Nobility, who held their Lands of their reſpective *Konings*, or ſuperior Lords, by Military Tenures, and were obliged to attend their Superiors, with a certain Number of Troops, in all their Wars: Neither does it appear, that they had a Power of electing or depoſing their Princes; but if they had, theſe Councils conſiſted of the Nobility, and not of the Repreſentatives of the Commons, as has been obſerved already. If therefore the Power of electing, depoſing, or judging their Princes or Chief Magiſtrates, was lodged any where, it was in the Nobility, *and not in the Commons*; and conſequently, when the Commons aſſumed that Power, it was evidently an unprecedented Uſurpation. But further, whatever the *German* Governments were, it is evident, this Nation never knew any ſuch Conſtitution as our Republicans feign the *Germans* and the *Saxons* once had: There never was an Inſtance of a King tried and condemned to Death by his Subjects in *England*, till the Year 1648, and it is ſtrange, if the People had ſuch a Right, it was never exerciſed or pretended to, till then. It is true, the Barons or Nobility did ſometimes reſiſt and depoſe their Kings, under pretence of Maladminiſtration; but the Commons had nothing to do in theſe Conteſts: The Diſpute was, whether the Supreme Power, or laſt Reſort, was lodged in the Crown, or the Nobility: It was never thought to be in the Commons, during the Barons Wars; and all that ever the Barons pretended to, was, that when one King had forfeited his Right to govern them by Maladminiſtration, the Crown devolved upon the next in Succeſſion; or they ſuggeſted that ſome other Prince of the Blood Royal had a prior Title: They never had the Aſſurance to ſay the Supreme Power devolved on themſelves, or reverted to them: This was reſerved for the Saints of the laſt Age to affirm of the 3d and laſt Eſtate that was conſtituted.

But to return to the Times of the *Saxons*: When they came over to *England*, we find the ſeveral Expeditions they made, were undertaken in the Name of their Princes, or Generals; with theſe the *Britiſh* Kings treated, and not with their *Wittena-Gemots*, or Parliaments. There is no mention made, either of their Great Council's treating, or ratifying any Treaty made with the *Britons*; which is ſtrange, if the Prince was no more than their Officer.

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Rapin, the great Advocate for a Republican Form of Government, indeed maintains, that *Hengiſt*, the firſt of the *Saxon* Chiefs, whom the *Britons* invited into *England*, was no Sovereign Prince, or had any Civil Authority in his own Country, but what he derived from the *Wittena-Gemot*, or *Parliament*: That he was only elected General in this Expedition, and might have been deprived of that Command, even by the Soldiers he brought with him; from which Premiſſes he proceeds to draw this Conſequence, *That ſince* Hengiſt *was not naturally King of the* Saxons, *he could only become ſo by the Election of thoſe under his Command.*

But admitting for once, what can never be proved, that there was no ſuch Thing as a Monarch, or Sovereign Prince, among the *Saxons*, and that they were governed by their *Wittena-Gemots*, or Great Councils; will it follow from thence, that the Soldiers, led by *Hengiſt* in this Expedition to *England*, had a Power of electing, or depoſing their General? If the Soldiers, as well as *Hengiſt*, were ſubject to ſome *Saxon* State, that ſent them on this Expedition, how could they transfer their Allegiance, and elect him their King?

And indeed, *Rapin* himſelf has given ſo plain and full an Account of *Hengiſt*'s Acceſſion to the Kingdom of *Kent*, that there is no room to ſuppoſe he was elected by the *Saxons*. He acknowledges that that Crown was conferred on him by *Vortigern*, King of *Britain*; and that thereby he became Sovereign of *Kent*, and veſted with the like Prerogatives as *Vortigern* had been, who made a Ceſſion of that Kingdom to him.

But then *Rapin* objects, that this could not give *Hengiſt* Dominion of the *Saxons* he brought with him: THIS COULD NEVER BE BROUGHT ABOUT, BUT BY THEIR CHOICE OF HIM TO BE THEIR KING. And it is true, taking the Word *Choice* in its full Latitude, we may admit that the *Saxons* became *Hengiſt*'s Subjects (if they were not ſo before) by their own Choice; that is, as every Foreigner becomes a Subject of *England*, who chooſes to reſide in *England*, and ſubmit to the Government here: But it does not follow from thence, that *Hengiſt* was elected King by the *Saxons*, or that the King of *England* is elected to that Dignity by ſuch Foreigners as *chuſe* to reſide here.

Should it be admitted that *Hengiſt* was not a Sovereign Prince in *Germany*, and had no Civil Authority over thoſe he brought with him, into the Kingdom of *Kent*; yet, when *Vortigern* had reſigned that Kingdom to him, might not *Hengiſt* give his Followers the Choice of returning Home, or of remaining with him, without dividing his Authority amongſt them? In returning to *Germany*, probably,

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nothing but Rags and Poverty was to be expected; but upon their remaining in *Kent*, it is presumed, even by *Rapin* himself, that *Hengist* promised, and actually parcelled out most of the Lands of that Kingdom amongst them, to hold them of him by Military Tenures (the usual Conduct of the *Saxons*, and other Northern Nations). And what Occasion had *Hengist* then to put it to the Vote, whether he should be their King, or not? The Terms he offered to his Followers were advantagious enough, without parcelling out his Authority amongst them.

Had the *Saxon* Soldiers opposed *Hengist*'s accepting the Crown of *Kent*, and assuming the like Authority that *Vortigern* had, would he not have said of Course, *You are perfectly at Liberty to return Home; but since a great Prince has been pleased to confer a Kingdom on me, you must pardon me if I take the Liberty to accept it. I have no Favours to ask of you; but if you have any Expectations from me, it will be your Wisdom to behave yourselves as becomes my Subjects?* What could any Officer in *Hengist*'s Army reply to this? Is it to be supposed that any one of them would have refused to become his Subject, upon his conferring some fine *Roman*, or *British*, *Vill* upon him, with an Extent of Land, sufficient to maintain a great Man in Splendour; and such a Command as usually attended all Feudal Tenures. From the whole I conclude, that, since it is admitted that the *British* Kings were Supreme, and not subject to be called to an Account by their People; so neither were the *Saxon* Kings, who succeeded them in their Authority, and particularly *Hengist*, the first *Saxon* King, who received his Crown from *Vortigern*, King of *Britain*, and was not elected to that Dignity, either by the *Britons* or *Saxons*.

But let the Constitution have been, as our Republicans dream Originally; every one knows that by Custom, Common or Statute-Law, the Constitution has been very much altered, since the *Saxons* arrived amongst us; and that at the Time of the Grand Rebellion, the King, both by Common and Statute-Law, was Supreme in his Dominions, having no Equal, much less a Superior, either within his Dominions or without.

The Lord Chief Baron *Bridgman* observed, at the Trials of the Regicides, That no less than Ten Acts of Parliament stile the Crown of *England*, an Imperial Crown: That the Treason of the *Spencers*, in the Reign of *Richard* II. was their maintaining, *That Allegiance was due to the King, by Reason of his Crown; and that if the King did not demean himself as he ought, since he could not be reformed by Law, he might by sharp Imprisonment* (the very Doctrine the Presbyterians taught and practised, after they had subdued their Sovereign King *Charles* I.) But this, he told them, had been adjudged Treason by two Acts of Parliament: That our Law-Books stiled the King, *The Lieutenant of God*; and that the Crown of *England* was not subject to any human Judicature: And if this was Law, at the Time of the Grand Rebellion, to what Purpose is it to bring the old *Saxons* as Precedents for our deposing and judging Kings? If we should admit *they* had such a Power, that *they* had such Laws; it is evident we had no such Laws in the Reign of King *Charles* I. And this the Rebels seemed conscious of, by their Schemes for extirpating all Laws and Lawyers, as well as the Lords and the Levites. The Rebels had made loud Complaints, That their Religious and Civil Rights were invaded by the Crown; but they no sooner got the Power into their Hands, than they entirely subverted both the Ecclesiastical and Civil Government: Reformation was pretended, but it was Empire they fought for, and usurped a Power Ten Times more oppressive and arbitrary than that they complained of.

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And admitting that the Parliament might contend with the Crown, in Defence of their Liberties, and Properties; yet their entering into a War with their Sovereign, after every Thing, they could demand for their Security, was granted; and the King had transferred, or surrendered to them, some of the most valuable Branches of his Prerogative, can never be defended. But lastly, as the Court well observed, the Regicides could not shelter themselves, even under the Parliament; since the House of Peers, and much the greatest Part of the Commons, were excluded, before they entered upon the last Tragick Scene; and consequently, the Judgment given against the Regicides was extremely just and equitable.

2. The second Part of the Regicides Defence was, That they thought themselves obliged in Law and Conscience to obey the Powers in being; and cited the 11 *Henry* VII. which indemnifies the Subject for serving a King *de facto*; and miserable, they said, must be the Condition of the People, if they were bound to obey those that were in Possession of the Sovereign Power, and yet might be punished for obeying them. As the Statute of 11 *Henry* VII. had provided, That he who served the King for the Time being, should not be punished, that Statute ought in Equity to be extended to them, who obeyed the Supreme Power then in being: If the Supreme Officer *de facto* might justify a War, and those were indemnified, who took up Arms for him against the King *de jure*, the Supreme Power *de facto* might justify the erecting a Court for the Trial of the King and his Adherents, who had conspired the Destruction of the State, which was then settled and established: If the King's Person was sacred, and ought not to be resisted or assaulted, upon any Account, the attacking him with Sword and Pistol, and endeavouring to murder him in the Field, could never be justified: But if it was lawful to make War upon the King, in order to compel him to yield to their Demands by Force of Arms; and to take away the Lives of the King, and his Loyal Subjects, in a Military way, for encroaching on the Liberties of the People; it was lawful also to call him to an Account in a Civil Way, and to judge and condemn both him and them, for making a Breach in the Constitution: Besides, the King was not then in the Execution of his Office, but

That the Subject was obliged to obey the Power in being.

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but a Priſoner of War, and ſubject to the Power the Regicides acted under.

To this it was anſwered, That the Regicides groſly miſtook the Meaning of the Statute of 11 *Hen.* VII. for that Act was made for the Security of a King *de facto*, and his Adherents; much more for the Preſervation of a King *de jure*, and his faithful Subjects; it was not made in Favour of an antimonarchical Government: Beſides, the Regicides had owned the Perſon they proceeded againſt to be their King, and *ſentenced him to Death as their King*, without pretending there was any other King, either *de facto* or *de jure*; and therefore there was no Colour for them to claim the Benefit, either of the Letter, or the Equity, of that Act, made for the Support of Kingly Government.

That the People would be more miſerable, if every ſucceſsful Rebel might claim a Right to their Allegiance, than they could be by being under an Obligation to obey their lawful Princes; for no ambitious Man would be afraid to conſpire the Death of his Prince, or the Subverſion of any Government he happened to live under.

If that Notion prevailed, that *Poſſeſſion* alone would give him a Right to the Dominion of his fellow Subjects, then Changes of Government would probably become as frequent as the Revolutions of the Moon; for by the ſame Rule that Poſſeſſion gives one Uſurper a Right, it will give an hundred a Right to our Allegiance: There could never be ſuch a Thing as a ſettled Government; but the People muſt be for ever harraſſed by ſucceſſive Uſurpations, as we find they were during the Grand Rebellion: One Set of Men had ſcarce poſſeſſed themſelves of Sovereign Power, but they were diſpoſſeſſed by another; till the People, wearied out with perpetual Revolutions, almoſt unanimouſly agreed to reſtore their antient Form of Government.

Laſtly, It was obſerved, that none of our Princes (whether Kings *de facto* or *de jure*) from the firſt Foundation of the Government, to that Time, ever pretended that *bare Poſſeſſion* gave them a Right to Reign; but always ſet up ſome other Claim or Title; conſequently *Poſſeſſion* alone could not give any one, or any Number of Men, a Right to Sovereign Power, or to the Allegiance of the Subject. Theſe Saints were the firſt in this Nation that pretended *Dominion was founded in Grace*; or, that *Poſſeſſion* extinguiſhed all other Rights: That a ſucceſsful Rebel had nothing to do but to kill and take Poſſeſſion; and that this alone was ſufficient to conſtitute him a rightful and lawful Governor. The Judgment of High Treaſon therefore, which was pronounced againſt thoſe Men who maintained and practiſed ſuch pernicious Doctrines, muſt be acknowledged to be agreeable to the Laws of God and Man.

Succeſs an Argument of the Juſtneſs of their Cauſe.

3. The next Part of the Regicides Defence was, That their Actions were approved by Heaven, as was manifeſt, they ſaid, from that continued Train of Succeſs with which they were bleſſed for many Years.

Harriſon, one of the moſt forward and active amongſt the Regicides, ſays at his Trial, Some had felt the Terrors of that Preſence of God that was with his Servants (the Regicides) in thoſe Days, however it had ſeemed good to God to ſuffer this Turn (the Reſtoration) to come upon them: That he had earneſtly deſired of God, the Searcher of Hearts, If he had done amiſs, that he might receive of him ſome Convictions upon his Conſcience; but to that Moment he had rather received Aſſurance of the Juſtice of what he had done; and he believed, e'er long, it would be made known from Heaven, There was more of God in it than Men were aware of.

Carew, at his Trial, affirmed, *That what he had done, was in the Fear of the Lord, and in Obedience to his holy and righteous Laws: That the Matter in Queſtion had been controverted in the Face of the whole World; and the Lord had given an Anſwer, upon ſolemn Appeals, to theſe Things.*

Scot deſired it might be engraven on his Tomb-Stone, *That he adjudged the King to Death, and that he did not repent of it*; and at his Execution, ſaid, *It was the moſt Glorious Cauſe in the World.* And further, *Peters* reſembled their Mock Court of Juſtice to the Trials that ſhould be, at the End of the World, by the Saints.

From whence it appears, that they thought they were doing God good Service, when they murdered their King, plundered his Loyal Subjects, and reduced their Country to the utmoſt Miſery and Confuſion; and in this they tell us, they were abundantly confirmed by the Succeſs of their rebellious Arms. To which it was anſwered, that the Regicides might pretend Conſcience for what they had done; but they would do well to remember our Saviour's Prediction, *That the Time will come when they will perſecute you, and kill you, and think they do God good Service.* That there was ſuch a thing as Spiritual Pride: Men might be over-run with an Opinion of their own Holineſs, and act by pretended Revelations: They might ſay that they had prayed for the Direction of Heaven, when they were about to perpetrate the groſſeſt Villaines; and that they found no Remorſe for committing them, as the Man did who murdered his Father and Mother, and averred he could not underſtand there was any Sin in it: That nothing could be more deſtructive to Society, to the Peace and Happineſs of the World, than ſuch pernicious Principles. People that were prompted by an erroneous Conſcience, to commit all manner of Outrages, were more to be dreaded than thoſe whom Neceſſity, Ambition, or Avarice, ſometimes puſhed upon unwarrantable Actions; for the one retained a conſtant permanent Principle of doing Miſchief for God's Sake, while the others were miſchievous but by Accident. Men who looked upon Murder and Rebellion as the Way to Paradiſe, and believed their Holineſs entitled them to this World and the next, would undoubtedly prove more troubleſome and dangerous to Government in General, than any other Set of

An Anſwer to the third Article of the Regicides Defence.

1660. 12 Car. II.

of Men that had not the like Expectations of Happineſs in both Worlds, as a Reward of their ſeditious and treaſonable Attempts.

The chief Reaſon, no doubt, of the Rebels inſiſting ſo much on this Argument of Succeſs, was, that they found none of the reſt would bear them out: They obſerved that all the Laws of their Country were Point-blank againſt them; and therefore reſorted to God's over-ruling Providence to juſtify their Conduct. A Battle between the Rebels and their Sovereign was, in thoſe Days, called, *An Appeal to God*: And though they might before have ſome Doubts and Scruples upon their Minds, concerning the Lawfulneſs of dethroning their Prince, and aſſuming that arbitrary Dominion they exerciſed; a Victory or two made them perfectly eaſy, and imagine they were fighting the Lord's Battles: And indeed we have Inſtances of Pirates and *Banditti*, that have entertained the ſame Notions, whoſe repeated Succeſſes againſt the honeſt and induſtrious Part of the World, have induced them to think themſelves the Favourites of Heaven. Thoſe of *Algiers* pretend to as much Religion as the Heroes of Forty-eight: They declare they engage in the Cauſe of God and their Prophet, when they rob and murder their peaceable Neighbours of a different Faith: And thus it was among our Saints; they firſt reprobated all Mankind but themſelves, and then pretended that none but themſelves had a Right to enjoy any thing in this World, or the next: They had an Authority from Heaven, they would have us believe, to deſtroy all Mankind that would not ſubſcribe to their Creed; and ſo rooted and confirmed were they in theſe Opinions, that though they ſaw their great Argument of *Succeſs* turned upon them; and that, after numberleſs Victories obtained againſt their native Kings, Monarchy and the Royal Family was peaceably reſtored, and all their hopeful Schemes defeated without the leaſt Bloodſhed; yet ſuch were their Prejudices, ſuch their Infatuation, they had been ſo long uſed to look upon their deteſted Cauſe, as *the Cauſe of God*, that their own Argument of Succeſs had no Weight with them, when they ſaw it on the Side of the King and his Loyal Subjects; inſomuch, that when they came to die, and receive the due Reward of their Parricide, they went out of the World glorying in their Rebellion and Uſurpation; and inſiſting to the laſt that *Their Cauſe was approved by Heaven*; which made their Execution neceſſary, that others might be deterred from the like Attempts.

The fourth Part of their Defence, that they were as Innocent as the Parliament that began the War.

4. Another Part of the Regicides Defence was, that they were as Innocent as ſome of their Judges, who were Members of the Long Parliament, that began the War againſt the King.

Harriſon at his Trial, told the Court, that their Lordſhips knew how active many of thoſe had been in the late Rebellion, who now ſat upon the Bench as his Judges, and had juſtified their Reſiſtance, and taking up Arms againſt his late Majeſty.

Axtel alſo averred at his Trial, that General *Monk*, and the reſt of the Officers of the Uſurper's Army, were as guilty as he; and ſo were all the People, that had acted by the ſame Authority, in the Three Kingdoms. That the Lords and Commons had aſſerted their Right to the Militia, and that it was agreeable to Reaſon and Conſcience, that the Common People ſhould be directed in their Judgements by the High Court of Parliament: That if he was guilty of Teaſon, the Parliament began the Treaſon; with a great deal more to the ſame Purpoſe. 1660. 12 Car. II.

An anſwer to the 4th Part of the Regicides Defence.

To this the Court anſwered, That it did not become the Priſoners at the Bar, to make Reflections on their Judges: That they ſhould not ſuffer them to throw in Bones of Contention, and revive old Quarrels: They did not call them to an Account for what they had done by Authority of Parliament; but for their Actions ſince they had turned the Parliament out of Doors; and for the Malice they expreſſed, to the very laſt, againſt the King and Government.

And though it be true, that the two Houſes had involved themſelves in the Guilt of Rebellion, and that many of theſe Officers and Judges, who acted under them, were once guilty of High-Treaſon; yet, as they had ſhewn themſelves ſenſible of their Error, and in a manner expiated their Offence, by contributing in a very great Degree to the Reſtoration of the King, and the antient Conſtitution, it was highly reaſonable they ſhould be Indemnified for what they had formerly done; but there was not the ſame Reaſon that thoſe who ſtill perſevered obſtinately in their Rebellion, ſhould enjoy the like Indulgence. The Court juſtly obſerved, that *Pardons were for the Penitent, and not for ſuch Criminals as juſtified their Treaſons, and declared they were ready to act the ſame Tragedy over again the firſt Opportunity that offered.*

The fifth Article of their Defence that they were under a Force.

5. The laſt Part of the Regicides Defence, I ſhall mention, is, that they were under a Force: The Power of the Uſurpers was irreſiſtible, and therefore it was hard they ſhould be puniſhed for ſubmitting to it.

The fifth Article conſidered.

This was generally allowed to be a reaſonable Plea, where it was ſtrictly true. No Government would puniſh their Subjects, for ſubmitting to an Uſurpation, where they were in no Condition to reſiſt it: Neither the Common or Statute-Law looks upon thoſe Men to be guilty of Treaſon, who with *Reluctance* ſerve and obey a Rebel, or furniſh him with Proviſions for fear of Death; even thoſe who ſerve a Pyrate, and aſſiſt in the taking honeſt Merchant-Men *unwillingly*, are never puniſhed as Pyrates.

But the caſe is widely different, where it appears that ſuch Men made it their Choice to ſerve a Rebel or a Pyrate, and partook of the Spoils they made; much more, when they accepted Offices and Commands under them, and aſſiſted voluntarily in ſupporting an unlawful Power. It is ridiculous for any Man to pretend he was forced to be a Judge, or a General. Uſurpers do not uſe to employ

thoſe

1660. 12 Car. II. those in Places of Truſt, that they take to be Enemies to their Deſigns: Therefore thoſe who had poſſeſſed any Poſts, Civil or Military, during the Uſurpation, had nothing to plead in their Defence, but their Repentance for the Miſchief they had done; and the Share they had in reſtoring that Conſtitution they once contributed to deſtroy. 1660. 12 Car. II.

Proceedings againſt ARCHIBALD Marquis of ARGYLE, for High-Treaſon, in the Parliament of *Scotland*, in the Months of *January*, *February*, and *March*, 1660-1. 13 and 14 *Car.* II.

1660-1. 13 and 14 Car. II. *Argyle's Trial.*

Two Charges againſt him and his Adherents.

THERE were two Charges, or Setts of Articles, preferred by the Lord Advocate, Sir *John Fletcher*, againſt the Marquis and his Adherents, in this Parliament; the one dated the 23d of *January*, and the other the 31ſt of the ſame Month. In the firſt, they are charged with the Murders and Outrages, committed againſt the Family of the *Lamounts*, and *Mac Donalds*, who acted under the late King's Commiſſion; and in the other thoſe Facts are omitted.

The Subſtance of the firſt Charge.

The firſt Articles were exhibited in the Name of the ſaid Lord Advocate for the King: And of Sir *James Lamount*, or *Lamond*, of *Inneryne*, for himſelf, and in Behalf of the *Mac Donalds*, and the reſt of his Kindred, Friends, Vaſſals, Tenants and Servants; and charge the ſaid Marquis, *George Campbell* his Juſtice and Sheriff-Depute, *James Campbell*, and ſeveral more of the Officers, Servants, and Dependants of the ſaid Marquis, with High-Treaſon; in that they, from the Beginning of the Troubles in the Years 1639, 1640, 1641, and 1642, both ſecretly and avowedly appeared in conſtant Oppoſition to their late Sovereign King *Charles* I. That in the Year 1643, they convocated and met in a treaſonable and unlawful Aſſembly, and ordered and appointed treaſonable Levies of his Majeſty's Subjects, in Oppoſition to his Majeſty's Perſon, Authority, and expreſs Command; and afterwards actually invaded and entered his Majeſty's Kingdom of *England*, taking his Towns, killing his Subjects, and deſtroying their Eſtates, joining with the *Engliſh* Rebels and Sectaries, for the Deſtruction of his Majeſty's Perſon, Family, Authority and Government.

That they conſtantly oppoſed K. Charles I

raiſed Forces againſt him,

and invaded England;

joined the Engliſh Rebels;

delivered up the King to them;

oppoſed the King's Reſtoration;

raiſed an Army againſt him;

That the ſaid Marquis of *Argyle* and his Accomplices, in the Year 1646, in an unheard-of way of Treachery and Treaſon, delivered his Majeſty's ſacred Perſon into the Hands of the ſaid Rebels, who treacherouſly murdered him. And when the States of the Nation propoſed the raiſing an Army for delivering his Majeſty from his Captivity, the ſaid Marquis and his Accomplices oppoſed the ſame, and after the Act paſſed, declared their Diſſent: They alſo raiſed Forces without any Authority, in the Years 1648, and fell upon his Majeſty's Troops, killing his good Subjects, and waſting and deſtroying their Lands; and moſt baſely and traiterouſly invited the late Tyrant and Uſurper *Oliver* *Cromwell*, to enter *Scotland*, with an Army of Strangers, Traitors, and Sectaries; ſuſtained him, and his treaſonable Army, with all ſorts of Proviſions, feaſting and countenancing the Uſurper and his Officers, in the Metropolitan City of the Kingdom, and in his Majeſty's principal Fortreſs, the Caſtle of *Edinburgh*, which, by the Laws of all Nations, was High-Treaſon, and, in all probability, was the Ruin of that Kingdom; this Act immediately preceding the cruel Regicide and Murder of their ſacred Sovereign King *Charles* I. *invited the Uſurper to invade* Scotland.

That notwithſtanding the many Honours and Offices conferred on the Marquis, by the late King; and that his then Majeſty, King *Charles* II. had permitted the Marquis to aſſiſt at his Coronation; when the Marquis ſwore *by the Eternal God, that he would ſupport his Majeſty to the utmoſt, and be a true and faithful Subject to his Crown, and live and die in his Service, againſt all Manner of Folk whatſoever*: The ſaid Marquis had, notwithſtanding, diſloyally and baſely deſerted his Majeſty's Perſon and Army at *Sterling*, when they were on their March to *England*, in the Year 1651; and in the Year 1652, acknowledged the Uſurper's Government in a Commonwealth, without a King or Houſe of Lords, and obliged himſelf to be obedient to it: That he cauſed himſelf to be elected a Member of the Commons, in the Uſurper *Cromwell*'s Parliament; and ſat, and voted for the ſaid Tyrant in his uſurped Authority, and excluding his Majeſty, and his Royal Family, from their Right to the Crowns of theſe Kingdoms. And in the Years 1653, or 1654, ſold and delivered to the Rebels ſeventeen Pieces of Cannon, and ſeven Hundred ſmall Arms: That in the Years 1654, or 1655, they aſſiſted the Rebels with Boats, that were going to attack the Earls of *Glencairn* and *Middleton*, and his Majeſty's Loyal Subjects, that were aſſembled in the North, to vindicate his Royal Authority and revenge the late King's Death; and afterwards joined the ſaid Rebels, in order to ſuppreſs the ſaid Earls and their Adherents; countenancing, counſelling, and conveying the Rebels through divers Places in the Highlands, in their Expedition againſt the King's Forces: That on the Death of the Uſurper, *Oliver Cromwell*, they aſſiſted at the Market-Croſs of *Edinburgh*, in proclaiming the Uſurper *Richard*, his Son; and the ſaid Marquis, procuring himſelf to *Honours and Offices conferred on the Marquis.*

His Oaths to ſerve the King;

and yet deſerts him.

Acknowledges the Uſurpers.

Sits in their Parliament as a Commoner.

Voted the Expulſion of the King, and Royal Family.

Aſſiſted the Rebels in the North.

Proclaims Richard.

1660-1. 13 and 14 Car. II.

be elected a Member of the Commons, voted the Excluſion of his Majeſty, and his Royal Family.

Speeches againſt the Reſtoration.

And further to manifeſt the ill Intentions of the Marquis againſt his Majeſty, contrary to his Oaths and Duty, when ſome Miniſters were praying for his Majeſty's Happineſs, in the Years 1652, or 1653, he openly declared, *They were Fools to pray for that wicked, falſe, malignant King, whom God had caſt off, and would never reſtore again*; and boaſted, *That he was the only Man that plotted the riſing of the Forces in the Weſt*; which was the Occaſion of his Majeſty's ill Succeſs.

Receives 12000 l. of the Uſurper.

That he received Twelve Thouſand Pounds from the Uſurper, *Oliver Cromwell*, for the Service he had done him. That he correſponded, by Letters, with the Uſurper *Richard*, in the Years 1658, and 1659, and with Sir *Archibald Johnſtoun*, of *Wariſtoun*, his Fellow-Traitor, and ſat in that traiterous Meeting, or Council of the Rebels at *London*, called, *The Committee of Safety*, of which *Wariſtoun* was Preſident; and did again iſſue Declarations for excluding his Majeſty, and Family, from their Right to the Crown.

Sat in the Committee of Safety.

Outrages againſt the Lamounts and Mac-Donalds.

The reſt of the Charge conſiſts in an Enumeration of the Murders, and Outrages, committed by the Marquis, and his Adherents, on the Family of Sir *James Lamount*, and the *Mac Donalds*, ſome of whom they hanged up in cold Blood, contrary to their Capitulation; others they impriſoned, and laid in Irons, burning their Houſes, cutting down their Trees, and ſeizing their Lands and Goods, which they remained in Poſſeſſion of at the Time of this Proſecution.

2d Charge, that he attacked the King's Forces.

The ſecond Indictment, or Accuſation, charges the Marquis with gathering together, in a hoſtile Manner, his Friends, Servants, Vaſſals, and Followers, without any Authority; and that, under Pretence of oppoſing ſuch as he nick-named *Anti-covenanters*, and Oppoſers of the Reformation (but indeed his Majeſty's faithful Subjects) did march to *Lyon*, in *Athol*, in the Year 1640, and in his Tent there did publickly declare, in the Preſence of a great many Gentlemen, *That it was the Opinion of many Divines and Lawyers, That a King may be depoſed for Deſertions, Venditions and Invaſions*; meaning thereby, that the King's Majeſty might be deſtroyed; and venting theſe Treaſonable Speeches, with a Deſign to uſher in his many Treaſonable Actions, and Practices, done to his ſacred Perſon, Dignity, and Authority; which doubtleſs did occaſion, and was mainly Inſtrumental, both in his Depoſition and cruel Murder: Which wicked and treaſonable Speeches being reported by Mr. *John Stuart*, the ſaid Marquis had cauſed him to be put to Death, as a Leaſing-maker, though he was conſcious of the Truth of that Report.

Other Speeches.

Takes the Earl of Airlie's Houſe.

That he raiſed Forces, marched againſt the Earl of *Airlie*'s Houſe, then held for his Majeſty; and having obliged the Garriſon to ſurrender, deſtroyed the ſaid Earl's Tenants and Friends; and afterwards burnt and demoliſhed that, and another Houſe of the Earl's with the Furniture, to expreſs his Hatred to the ſaid Earl for his Loyalty.

That in the Year 1640, he attacked his Majeſty's Caſtle of *Dunbarton*, held by Col. *Henderſon*, and forced it to ſurrender, carrying away the Cannon and Ammunition.

1660. 13 and 14 Car. II. *Dunbarton Caſtle and burns the Counteſs of Sterling's Houſe.*

That, to ſhew his implacable Malice againſt all who had ſhewn any Affection to his Majeſty, he did, in the Year 1645, burn the Houſe of the Counteſs of *Sterling*, to whom he had great Obligations, with all the Furniture. Several Inſtances follow of his attacking his Majeſty's loyal Subjects; and hanging them in cold Blood, after they had ſurrendered on Capitulations.

Other Murders and Outrages.

He is alſo charged again as the Occaſion of his late Majeſty's being delivered up to the *Engliſh* Rebels, and oppoſing the raiſing an Army to reſcue him out of their Hands: With levying an Army to oppoſe the Royaliſts, and calling in *Cromwell* to his Aſſiſtance.

Part of the former Charge repeated.

That he did traiterouſly contrive and vote the drawing up of a Letter, directed to *Cromwell* the Uſurper, wherein he and his Accomplices did promiſe, in the Name of the Kingdom of *Scotland*, to employ his utmoſt Endeavours, that none who had been active againſt the Sectaries, or been in Arms for the King at *Sterling*, or elſewhere, ſhould be employed in any Place of Truſt, without the Conſent of *England*, as appeared by the ſaid Letter, dated the 6th of *October*, 1648. That he alſo ſent Sir *John Chieſly* to the pretended Parliament in *England*, deſiring that the Noblemen and Gentlemen, that were taken Priſoners with Duke *Hamilton*, might be kept as Pledges for the Peace of the Kingdom, endeavouring thereby to enſlave his Country and fellow-Subjects, and bring them under the Power of Strangers. And having afterwards, on the 4th of *May*, traiterouſly taken upon him the ſupreme Authority of the Kingdom, he iſſued a Proclamation, declaring the Wives, Children and Families of *Lewis*, Marquis of *Huntley*; *James*, Lord *Ogilby*, and ſeveral other loyal Lords, out of the Protection of the Laws, and for tranſporting them out of the Kingdom.

Conſederates with Cromwell againſt the Loyalty.

againſt the Hamiltons and his own Country.

Outlaws and declares the ſame with Loyalty.

That there being an Overture made for recognizing and proclaiming his Majeſty King *Charles* II. which the Marquis durſt not oppoſe directly; yet he cauſed it to be clogged with ſuch Limitations and Reſtrictions as were deſtructive to his Dignity and Authority, and inconſiſtent with Monarchical Government, as appeared by the Commiſſions, Inſtructions, and Addreſſes ſent to his Majeſty: And to deter his Majeſty from coming over, cauſed that brave and loyal Lord, the Marquis of *Montroſe*, who acted by his Majeſty's Commiſſion, to be cruelly murdered at that very Time, with all the Circumſtances of Diſgrace and Diſhonour.

Puts him Conditions on King Charles II.

murders Montroſe.

That his Majeſty, however, coming over to *Scotland*, and the Uſurper *Cromwell* invading that Kingdom, the Marquis held a Correſpondence with him; and to advance the Deſigns of that Regicide, procured his Majeſty to be removed from the Army; and by his Influence on the Commiſſioners of the General Aſſembly, met at St. *Cuthbert's* Church, uſually called *The Weſt Church*, he procured a clandeſtine and ſurreptitious Act

from

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from them; wherein, beſides many ſlanderous and reproachful Expreſſions of his Majeſty and his Anceſtors, It was declared, that they diſclaimed, and would not own his Majeſty's Intereſt, becauſe he refuſed to ſubſcribe a Declaration drawn up by the Marquis, containing many ſcandalous, ſeditious, imperious, reproachful, and treaſonable Expreſſions, not only againſt his Majeſty's Authority and Government, but againſt his Father and Mother, and others his Royal Anceſtors; and that his Majeſty was forced to ſign the ſame, though the worthieſt and greateſt Part of the Kingdom did then deteſt and abhor the ill Uſage of his Majeſty in that Particular, when that Act of Tyranny was exerciſed by the Marquis, and a few ill Men of his Accomplices.

Compels the King to ſign a Seditious and Scandalous Paper.

And to manifeſt to the World, that it was always his Intention to deſtroy his Majeſty's Authority and Government, and oppoſe his Reſtoration, (beſides the traiterous Expreſſions already mentioned) he boaſted before ſeveral Noblemen and Gentlemen, *That he would own any thing he had done; and if it were to do, would do it again, although he had known what would have been the Event of it*; preſumptuouſly taking upon him, by outward Succeſs to give Judgment upon the ſudden and ſecret Councils and Determinations of God, thereby to alienate the Affections, Duties and Allegiance of his Majeſty's good Subjects, and harden and confirm others in their Treaſon and Rebellion againſt his Majeſty.

Boaſts of what he had done.

Makes Succeſs an Argument of the Juſtice of the Rebels Cauſe.

And laſtly, in a Conference betwixt the Marquis, *Oliver Cromwell*, and Colonel *Ireton*, The Marquiſs obſerved, that then the Danger was great, and they were all ruined if any of his Majeſty's Deſigns ſhould take Effect; and thereupon gave his poſitive Advice, that they ſhould proceed to the queſtioning of the King for his Life; declaring, *They ſhould never be Safe, till they had taken away his Majeſty's Life.* At leaſt he knew of the ſaid Treaſonable Deſign, and did not reveal it, as appeared by a Speech he made in that pretended Parliament, *Anno* 1649. Wherein he declared, the Uſurper *Oliver* told him, *That* England *and* Scotland *could never be at Peace, untill the King were put to death.*

Adviſes the proceeding Capitally againſt the King.

Biſhop *Burnet*, has given us a pretty juſt Abſtract of the Priſoner's Defence, in his Poſthumous Hiſtory: He ſays the Marquis chiefly inſiſted, that during the late Wars, he was but one among a great many more: He had always acted by Authority of Parliament, and according to the Inſtructions that were given him, as often as he was ſent on any Expedition or Negotiation. As to all Things done before the Year 1641, the late King had buried them in an Act of Oblivion, as his preſent Majeſty *Charles* II. had all thoſe done before the Year 1651. So that he had no Occaſion to make any Defence as to what had been done before that Time: That he was in *London* when moſt of the barbarities he was charged with were committed; nor did it appear he gave any Orders for them. It was well known that great Outrages had been committed by the *Mac Donalds*; and he believed his People, when they had the better of them, had taken cruel Revenges: This was to be imputed to the Heat of the Times and the Tempers of the People, who had been much provoked by the burning of the whole Country, and by much Blood that was ſhed. And as to many Stories laid to the Charge of his Men, he knew ſome them were mere Forgeries, and others agravated much beyond the Truth. But, what Truth ſoever there might be in them, he could only be anſwerable for what was done by himſelf, or by his Orders. As to his Compliance with the Uſurpation, he had ſtood out till the Nation was quite conquered; and in that Caſe, it was the received Opinion of Divines and Lawyers, that Men might lawfully ſubmit to an Uſurpation, when forced to it by inevitable Neceſſity. It was the Epidemical Sin of the Nation. *His Circumſtances were ſuch, that more than a bare Compliance was required of him.* What he did that way, was only to preſerve himſelf and Family, and was not done with a Deſign to oppoſe the King's Intereſt: Nor did his Majeſty's Service ſuffer, by any Thing he had done.

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They did but retaliate the Injuries done them.

Some of the Facts falſe.

He was under a neceſſity of complying with the Uſurpers.

Had no Deſign againſt the King.

The Subſtance of his Defence.

Inſiſts on the Acts of Oblivion.

That he gave no Orders for the Barbarities he is charged with

During the Trial, the Lord *Lorn*, Son to the Marquis, obtained a Letter from his Majeſty to the Earl of *Middleton*, requiring him to order his Majeſty's Advocate, not to inſiſt on any Facts before the Indemnity paſſed in the Year 1651. And accordingly all the Part of the Charge, relating to what was done before that, was waved, and declared to be out of the Caſe: And the ſole Queſtion almoſt, that was debated in Parliament, was, *Whether the Marquis's Compliance with the Uſurpation after the Year* 1651, *was forced; or wilful and malicious?* Which it was impoſſible his Judges, who were moſt of them upon the Spot, and engaged, on one Side or the other, in the very Facts in Diſpute, could be ignorant of: Though the Biſhop affirms it was doubtful, till General *Monk* ſent down the Letters, wrote by *Argyle* to himſelf, *which put the matter beyond Diſpute.* Whereupon his Friends withdrew, and the Marquis was found *Guilty of High-Treaſon*, without one diſſenting Voice; and Sentence paſſed upon him as a Traitor: However the Parliament was ſo Indulgent to the Priſoner, as to give him all the Time he could ask, to apply to his Majeſty, and ſet ſuch Facts right as might have been miſrepreſented; and it was the 27th of *May* 1661, before he was brought to the Scaffold: When he made the following Speech to the People, which I chuſe to recite *verbatim*, in as much as it contains Proteſtations of his Innocence, which were the principal Part of his Defence, and in a great Meaſure diſcovers the Principles this Nobleman went upon, in oppoſing both King *Charles* I. and King *Charles* II.

Acquitted of all the Charge before the Acts of Indemnity.

The ſole Point in Debate.

Carried, that his Compliance was wilful and malicious,

on the Evidence of his own Letters

Convicted of High-Treaſon, by the whole Parliament.

Time given him to apply for Mercy.

His Speech on the Scaffold.

" Many will expect that I ſpeak many " Things, and according to their ſeveral O- " pinions and Diſpoſitions, ſo will their Ex- " pectations be from me, and Conſtructions of " me: But I reſolve to diſappoint many, for I " come not hither to juſtify myſelf, but the " Lord, who is Holy in all his Ways; and Right-

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" Righteous in all his Works, holy and bleſſed is his Name; neither come I to condemn others. I know many will expect that I ſpeak againſt the hardneſs of the Sentence pronounced againſt me; but I will ſay nothing to it. I bleſs the Lord, I pardon all Men, as I deſire to be pardoned of the Lord myſelf: Let the Will of the Lord be done; That is all that I deſire.

" I hope ye will have more Charity to me now, than ye would have had at another Time, ſeeing I ſpeak before the Lord, to whom I muſt give an Account very ſhortly. I know very well my Words have had but very little Weight with many: And that many have miſtaken my Words and Actings both: Many have thought me to be an Enemy to theſe great Works that have of late been brought to paſs. But do not miſtake me, good People: I ſpeak it in the Preſence of the Lord, I *entered not upon the Work of Reformation, with any Deſign of Advantage to myſelf, or Prejudice to the King and his Government.* As my latter Will which was Written 1655, and thereafter delivered to a Friend (in whoſe Hands it ſtill remaineth) can ſhow. As for theſe Calumnies that have gone abroad of me, I bleſs God, I know them to be no more: And as I go to make a Reckoning to my God, I am as free to any of theſe, concerning the King's Perſon and Government. *I was Real and Cordial in my Deſires to bring the King Home, and in my Endeavours for him when he was at Home, and I had no Correſpondence with the Adverſaries Army, nor any of them, at the Time when his Majeſty was in* Scotland: *Nor had I any Acceſſion to his late Majeſty's horrid and execrable Murder, by Counſel or Knowledge of it, or any other manner of way.* This is a Truth, as I ſhall Anſwer to my Judge. *And all the Time his Majeſty was in* Scotland, *I was ſtill endeavouring his Advantage, my Conſcience beareth me Witneſs in it.* So much to that Particular; and I hope Gentlemen you will all remember theſe.

" I confeſs, many look on my Condition, as a ſuffering Condition; but I bleſs the Lord, that he that hath gone before me hath trod the Wine-preſs of the Father's Wrath, by whoſe Sufferings I hope that my Sufferings ſhall not be eternal. I bleſs him that hath taken away the Sting of my Sufferings: I may ſay, *That my Charter was ſealed to-Day; for the Lord hath ſaid to me, Son, be of good Cheer, thy Sins are freely forgiven thee*; and ſo I hope my Sufferings ſhall be very eaſy. And ye know the Scripture ſaith, The Captain of our Salvation was made perfect by Sufferings.

" I ſhall not ſpeak much to theſe Things, for which I am condemned, leſt I ſeem to condemn others: *It is well known, it is only for Compliance, which was the Epidemical Fault of the Nation.* I wiſh the Lord to pardon them: I ſay no more.

" There was an Expreſſion in thoſe Papers, preſented by me to the Parliament, of the *Contagion of theſe Times*, which may by ſome be miſconſtructed, *as if I intended to lay an Imputation on the Work of Reformation; but I declare that I intend no ſuch Thing*; but only related to the Corruptions and Failings of Men, occaſioned by the prevailing of the uſurping Powers. 1660-1. 13 and 14 Car. II.

" Now, Gentlemen, concerning the Nation: I think there are three ſorts of People that take up much of the World, and of this Nation. There is, 1. The openly Prophane: And truly I may ſay, though I have been a Priſoner, I have not had my Ears ſhut: I hear aſſuredly that Drinking, Swearing, Whoring, were never more common, never more countenanced, than now they are. Truly, if Magiſtrates were here, I would ſay to them, if they lay forth their Power for glorifying God, by reſtraining this, they ſhould fare the better: If they continue in not reſtraining, they ſhall fare the worſe. I ſay no more, but either let People ſhun Prophanity, and Magiſtrates reſtrain it, or aſſuredly the Wrath of God ſhall follow on it. 2. Others are not openly prophane (every one will not allow that) but yet they are *Gallio*'s in the Matter: If Matters go well, as to their private Intereſt, they care not whether the Church of God ſink or ſwim. But whatever they think, God hath laid Engagements upon *Scotland: We are tied by Covenants to Religion, and Reformation: Theſe that were then unborn, are yet engaged; and in our Baptiſm we are engaged to it. And it paſſeth the Power of all the Magiſtrates under Heaven to abſolve them from the Oath of God.* They deceive themſelves, and it may be would deceive others that think otherwiſe: But I would caveat this: People would be ready to think this a kind of Inſtigation to Rebellion in me; but they are far wrong that think Religion and Loyalty are not well conſiſtent: Whoever they be that ſeparate them, Religion is not to be blamed, but they. *It is true; it is the Duty of every Chriſtian to be Loyal; yet I think the Orders of Things are to be obſerved, as well as their Natures; the Order of Religion, as well as the Nature of it. Religion muſt not be the Cock-boat; it muſt be the Ship. God muſt have what is his, as well as* Cæſar *what is his:* And thoſe are the beſt Subjects that are the beſt Chriſtians. And *that I am looked as a Friend to Reformation, is my glory.*

" 3. There is another ſort that are truly Godly; and to them I muſt ſay what I fear, and every one hath Reaſon to fear; (it is good to fear Evil). It is true, the Lord may prevent it; but if he do not (and truly I cannot ſee any probability of it) *Times are like to be either very Sinning, or very Suffering Times:* And let Chriſtians make their Choice: There is a ſad *Dilemma* in the Buſineſs *Sin, or Suffer*; and ſurely he that would chuſe the better Part, would chuſe to ſuffer: Others that will chuſe to ſin, ſhall not eſcape ſuffering: *They ſhall ſuffer, but it may be not as I do, but worſe: Mine is but Temporal, theirs ſhall be Eternal; when I ſhall be ſinging, they ſhall be howling.* Beware therefore of Sin whatever you are aware of, *eſpecially in ſuch Times.*

Yet

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" Yet, I cannot ſay of my own Condition, " but that the Lord, in his Providence, hath " Mind of Mercy to me, even in this World: " For, if I had been more favourably dealt " with, I fear, I might have been overcome " with Temptations, as many others are, and " many more, I fear, will be; and ſo ſhould " have gone out of the World, with a more " polluted Conſcience, than, through the Mercy " of God, now I have. And hence my Con- " dition is ſuch now as, when I am gone, will " be ſeen not to have been ſuch as many " imagined. It is fit God take me away, be- " fore I fall into theſe Temptations that I ſee " others are falling into, and many others, I " fear, will fall: I wiſh the Lord may prevent " it: Yet bleſſed be his Name, that I am kept " both from preſent Evils, and Evils to come. " Some may expect I will regrate my own Con- " dition; but truly, I neither grudge nor re- " pine, nor deſire any Revenge. And, I de- " clare, I do not repent my laſt going up to " *London*; for I had always rather have ſuffered " any thing, than lie under Reproaches as I " did. I deſire not that the Lord ſhould " judge any Man; nor do I judge any but my- " ſelf: I wiſh, as the Lord hath pardoned me, " ſo he may pardon them, for this and other " Things; and what they have done to me " may never meet them in their Accounts. " I have no more to ſay, but to beg the Lord, " that, when I go away, he would bleſs every " one that ſtayeth behind.

After he was undreſſed for the Block, he ſaid, " I deſire you, Gentlemen, all that hear " me this Day, to take Notice (and I wiſh that " all that ſee me, might hear me) that now, " when I am entring into Eternity, and am to " appear before my Judge; and as I deſire Sal- " vation and Happineſs from him, from my " Birth to my Scaffold, I am free from any " Acceſſion, by my Knowledge, concerning " Council, or any other way to his late Ma- " jeſty's Death: And I pray the Lord to pre- " ſerve his preſent Majeſty, and to pour his " beſt Bleſſings on his Perſon and Government; " and the Lord give him good and faithful " Counſellors —— Many Chriſtians may ſtum- " ble at this, and my Friends may be diſcon- " tented; but when Things are rightly con- " ſidered, my Friends have no Diſcredit of me, " nor Chriſtians no Stumbling-block; rather an " Engagement."

He is beheaded

After which, having taken leave of his Friends, and finiſhed his private Devotions, his Head was cut off by the Maiden, *an Engine that goes with a Pulley, and lets down a ſharp Ax with ſuch a Force, that it never fails to ſever the Head from the Body at one Blow. His Head was ſet on the Tolbooth, in the Room of that of the Marquis of* Montroſe, *whoſe Funeral Obſequies were ſolemnized the eleventh of* May (*while* Argyle *lay under Sentence of Death*) *at the Expence of the Government, with uncommon Magnificence; a Debt juſtly due to the braveſt and moſt loyal of the King's Subjects, who had been ignominiouſly and barbarouſly treated by the Priſoner and his Party, for adhering ſo ſtrenuouſly to the Royal Cauſe.*

Montroſe's Funeral.

Remarks on Argyle's Trial and Dying Speech.

The Priſoner, in his Defence, it is obſervable, denies almoſt every Article with which he is charged; inſiſting, that his Compliance with the Uſurpation was forced, and conſequently, he ought not to be proſecuted for it. In his Speech, on the Scaffold, he ſays, *He deſigned no Prejudice to the King and Government; that he was real and cordial in his Deſigns to bring the King home, and in his Endeavours for him, when he was at home; and had no Correſpondence with his Adverſaries at that Time, or had any Acceſſion to, or Knowledge of, the late King's Murder*; and all the Time King *Charles* II. was in *Scotland, he was ſtill endeavouring his Advantage, his Conſcience bore him Witneſs*: And yet we find the whole Parliament of *Scotland* declaring (without one diſſenting Voice) *That his Compliance with the Uſurpation was wilful and malicious*, and the Hiſtorians of all Parties are of the ſame Opinion. Not to inſiſt on the Evidence of *Echard, that he received* thirty thouſand Pounds, *as a Reward for delivering up the King to the* Engliſh *Rebels at* Newcaſtle; or of the Earl of *Clarendon*, who ſays, *That all Men complained of the Marquis of* Argyle, *who proſecuted the King's Friends with the utmoſt Malice*; or what Biſhop *Burnet* affirms, *That the Letters written by* Argyle *himſelf put the Matter beyond Diſpute.*

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Rapin (who was a *French Hugonot*, and an avowed Advocate for the Presbyterians and their Leaders) has admitted *Argyle* to be the moſt dangerous and implacable Enemy King *Charles* I. or King *Charles* II. had in *Scotland*: For Proof whereof, I ſhall ſelect ſome few Paſſages, out of many others we meet with, in that admired Author. He ſays, Vol. xii. p. 468, of the 8*vo* Edition (*Tindal*'s Tranſlation) " That it " had been reſolved at *Edinburgh*, that the " Committee of Eſtates ſhould meet the 5th of " *February*, and the Parliament, the 10th of " *March*; which Reſolution was taken, *notwith-* " *ſtanding the Marquis of* Argyle's *Oppoſition*, who " (though a Presbyterian as to Religion) *was* " *of the ſame Principles with the Independants, as* " *to the Government of the State, and had made* " *a faſt Friendſhip with* Cromwell *and* Vane.

Rapin's Conceſſions relating to Argyle.

Page 469. The Committee found it neceſſary to raiſe an Army of 40000 Men. *It was not poſſible for the Marquis of* Argyle, *who was of the Committee, to prevent this Reſolution; but he found Means, however, to ſtir up the Commiſſioners of the General Aſſembly of the Kirk, who ſome Days after preſented to the Parliament certain Demands proper to ſpin out the Affair.*

One of which Demands was, *That if the Popiſh, Prelatical, or Malignant Party, ſhall again riſe in Arms, this Nation and their Armies, may be ſo far from joining or aſſociating with them, that on the contrary, they may oppoſe them, and endeavour to ſuppreſs them, as Enemies to this Cauſe and Government.*

Another Demand was, *That his Majeſty ſhall, for Himſelf and Succeſſors, agree to Acts of Parliament, enjoining the League and Covenant, and fully eſtabliſhing Presbyterian Government, Directory of Government, and Confeſſion of Faith, in all his Majeſty's Dominions.*

Vol. xii. p. 476. it is ſaid, *That the Marquis of* Argyle, *and the rigid Presbyterians, ſtrongly repreſented, both in publick and private, that under Colour of acting againſt the Independants in* England, *the Royaliſts, the Mortal Enemies to* Scotland *and the Presbyterians, were going to be ſet*

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up again. These Repreſentations made ſuch Impreſſions on the People, that the Parliament could not help ordering, that thoſe who had not taken, or ſhould refuſe to take, the Covenant, ſhould not be received into the Army, or joined with it, at their Entrance into *England.* Theſe, and other Obſtacles, *daily ſtarted by the Marquis of* Argyle *and the rigid Clergy*, were the Reaſon the Parliament could not be ſo ſpeedy as the Authors of the Project expected. P. 533, he ſays, *The Marquis of* Argyle, *who had not been able to prevent the raiſing an Army, got uppermoſt again, being ſupported by all who were againſt the War* (with the Uſurpers) and being ſure of the Approbation of the People, levied 3 or 4000 Men, to oppoſe *Monroe* (the King's General) whom *Lanerick* (Lord *Hamilton*'s Brother) had joined with ſome Troops, and hindred the Marquis of *Argyle* from making any Progreſs: But *Cromwell* broke all their Meaſures by making directly to *Edinburgh.* The Committee of Eſtates were forced to fly from thence, and ſhift for themſelves, for fear of being hemmed in *between the* Engliſh *Army, and the Marquis of* Argyle's *Forces*; and *Lanerick* and *Monroe*, finding it not in their Power to continue the War, came to an Agreement, *&c.*

P. 534. The Scene of Affairs being thus altered, and the King's Party diſperſed, *Cromwell* repaired to *Edinburgh*, where he was received with great Reſpect: He obtained the Reſtitution of *Berwick* and *Carliſle, and having concerted all proper Meaſures with the Marquis of* Argyle, returned in Triumph into *England.*

And we find Vol. xiii. p. 37. one of *Argyle*'s modeſt Demands, on admitting King *Charles* II. to come to *Scotland*, was, that he would conſent, *that all Matters Civil might be determined by the then preſent, and ſubſequent Parliament of* Scotland; *and all Matters Eccleſiaſtical, by the General Aſſemblies of the Kirk:* And he compelled the King to grant this, and to ſign the Solemn League and Covenant, before he ſuffered him to ſet his Foot on Shore. 1660-1. 13 & 14 Car. II.

That he ſat in *Oliver*'s and *Richard*'s Parliaments as a Commoner, (by both of which the King and the Royal Family were excluded and proſcribed) he did not deny at his Trial: And that he accepted Commands and Employments under the Uſurpers in *Scotland*; ſat in the Committee of Safety in *England*, and perſecuted the King's Friends with the greateſt Malice of any Man of the *Scotiſh* Nation, is evident from the concurrent Teſtimonies of all his Contemporaries; for which he is, to this Day, applauded by the Sectaries, and deteſted by the Royaliſts, and the Friends of the Conſtitution. *The Conclusion.*

And yet this is the Man that affirms with his laſt Breath, That *he had never any Deſign againſt the King or Government; that he was real and cordial in his Deſires to bring the King home, and in his Endeavours for him, when he was at home; and denies his holding any Correſpondence with his Adverſaries; declaring, that his Compliance with the Uſurpers was altogether forced. This his Conſcience bore Witneſs to,* he tells us from the Scaffold: From whence it will not be difficult to collect, what Credit is to be given to the dying Words of this Nobleman, or to frame an Opinion of the Juſtice of his Sentence.

1662. 14 Car. II.

Vane's *Tryal.*

The Trial of Sir HENRY VANE, Knt. for *High-Treaſon*, in the Court of *King's-Bench*, the 2d and 6th of *June*, 1662. 14 *Car.* II.

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The Charge.

THE Indictment charges the Priſoner with compaſſing the Death of his Majeſty King *Charles* II, and the Overt-Acts laid to prove it, were the keeping him from the Exerciſe of his Regal Authority, ſitting in the Uſurper's Councils, the accepting Civil and Military Poſts under them, and levying War againſt his Majeſty.

Sir *Henry*, at his Requeſt, had the Favour of hearing the Indictment read twice in *Engliſh*, but could not prevail on the Court, to let him hear it read in *Latin*; being told that, though the Records were in *Latin*, yet the Agitation of Cauſes ought always to be in *Engliſh.*

Exceptions to the Indictment over-ruled.

Then he excepted to the Indictment, that the Places and Perſons mentioned in it, were not ſufficiently aſcertained; and that the particular Acts of levying War were not ſet forth: He alſo queſtioned the Juriſdiction of the Court, for that the Facts, he was indicted for, were done by Authority of Parliament; and added, that it did not appear he was that Sir *Henry Vane* that was excepted in the Act of Indemnity: But not thinking fit to abide by his laſt Plea, and his Exceptions being over ruled, he pleaded *Not guilty*; and then the Court adjourned.

The Priſoner being brought to the *King's-Bench Bar* again, the 6th of *June*, challenged thirty two of the Pannel; after which the Jury was ſworn, and charged with him; and the King's Counſel, opening the Indictment, obſerved, that though the Priſoner might be charged with many notorious Treaſons, committed during the late Civil Wars, they ſhould confine themſelves to ſuch Facts as were committed within the Reign of his preſent Majeſty: And then the Witneſſes were produced, who proved the Priſoner's Hand to a Warrant, dated the 30th of *January* 1648, directed to the Officers of the Navy, to iſſue out Stores for a Summer's Guard of the narrow Seas. It was proved alſo, that the Priſoner was one of the Uſurper's Council of State, and acted as a Member of that Council, in *February* 1648, the Month after the late King was beheaded: that, by the Order of Parliament for erecting that Council, *they were authorized to ſuppreſs all Perſons pretending Title to the Kingly Goverment of this Nation, from or by the late King,* Charles Stuart *his Son, or any claiming from or by them, or any other ſingle Perſon whatſoever*; and they were empowered to command the Forces of the Common-wealth for

He is not charged with any Treaſons committed in the former Reign.

The Evidence.

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for that End, and to raiſe more Forces, if they ſaw fit. Several Orders alſo, ſigned by Sir *Henry Vane*, the Preſident of that Council, for delivering out Arms to the Soldiers, for fitting out Ships, *&c.* were produced in Court: Other Witneſſes depoſed, that they ſaw Sir *Henry Vane* at the Head of the Soldiers, when they were muſtered in *Southwark*, and that he gave them five Pounds to drink. It was alſo ſworn, that he propoſed a new Model of Government; in which he aſſerted, *It was deſtructive to the People's Liberties to admit any earthly King or ſingle Perſon, to the Legiſlative, or Executive Power in this Nation.*

Vane's Defence.

The Priſoner in his Defence ſaid, that by King, in the Statute of 25 *Ed.* III. was to be underſtood a King *regnant*, in actual Poſſeſſion, and not a King *de jure*, out of Poſſeſſion: That an *Interregnum* was admitted by the Indictment, and all Enſigns of Authority, and Badges of Government, were viſibly in another Name and Stile; and the King's beſt Friends proſecuted their Suits in the Name, and by the Authority, of the Powers then in being.

He objected alſo to the Incompetency of the Evidence, becauſe the Witneſſes did not ſee him ſet his Hand to the Warrant produced in Court; and thought it was not fully proved, that he ſat in the Council of State; and if there were any ſuch Acts of Council, as had been read in Evidence, the Council acted by Authority of Parliament, and of ſuch a Parliament as was conſtituted in an extraordinary Manner, and made indiſſolvable but by its own Act: That this Parliament was a Power *co-ordinate* with the King, and whatſoever he had done by their Authority, could not amount to High-Treaſon, within the Statute of 25 *Ed* III. for which he cited an Ordinance of Parliament, made in the Year 1642, in which it was declared to be Treaſon, to lay any Imputation of Treaſon on either, or both Houſes.

That it was ſuch a Caſe as never happened before; that the Government being truſted to three Eſtates, they ſhould ſo fall out among themſelves, that the People could not tell which to obey. On ſuch Emergencies, it was impoſſible to act according to the ſtrict Rules of Law; and the Parliament being by the 17 *Car.* I. made a Power *co-ordinate* with the King, no Court inferior to the Parliament, by whoſe Authority theſe things were tranſacted, ought to be Judges in the Caſe: That the three Eſtates being disjoined, he thought it beſt Policy to preſerve the Government in its Root, the Commons, by whom it was preſerved, and at length reſtored to its former Courſe.

He urged alſo (as the Regicides had done before him) that by the 11 *Hen.* VII. whoever ſerved a King *de facto*, ought not to be queſtioned for it by a King *de jure*; and that thoſe who had the Power and Exerciſe of the Royal Juriſdiction, as to Peace and War, coining Money, Life and Death, *&c.* muſt be admitted to be the Power *regnant*, though they wanted the Name of King, and were as well within the Statute of 25 *Ed* III. as a Queen *regnant*, though not named, had been adjudged to be. If the Powers *regnant* had the Thing, though they wanted the Title, the Statute in Reaſon and Equity ought to be extended to them: *Where the Reaſon is the ſame, there is the ſame Law,* was a known Rule; and there was the ſame Reaſon the Subject ſhould be indemnified, when he acted under a Sovereign Authority, which had not the Name of King, as if it had: That the Statute of the 11 *Hen.* VII, was made, that the Subject might ſafely pay Allegience where he received Protection, and might not be in Danger of being deſtroyed by two Powers at the ſame Time: For the Power *de facto* will be obeyed, and make it Treaſon to do otherwiſe, be it Right or Wrong; and if the Subject was at the ſame time in Danger of committing Treaſon againſt a Power *de jure*, he was in a miſerable Condition. 1662. 14 Car. II

That, had the Protector taken the Name and Stile of King, no Treaſon could have been committed againſt the King *de jure:* And he hoped they would not take away his Life upon ſuch a Nicety; becauſe an uſurping Protector was not clothed with the Title, as well as Power, of King. The Uſurper's taking, or not taking, the Title of King, could not alter the State of his Crime, admitting he had the Power of a King.

The Reply to Vane's Defence.

To this Defence of the Priſoner's, the King's Counſel replied, That they admitted the Council of State, of which he was Preſident, acted by the Authority of what he called a Parliament, and of which he himſelf was a Member; but that the Houſe Lords, nor an eighth Part of the Commons, were permitted to ſit when theſe Treaſons were committed; and that the acting in, and under ſuch an End of a Parliament, was rather an Aggravation of his Offence, than an Excuſe; and further, that the Parliament was diſſolved by the Death of the late King: That as to the Co-ordination of a Parliament with the King, there was no Colour for ſuch a co-ordinate Power in our Law: The King was ever declared to be Supreme in his Dominions, both by Common and Statute Law: And as to the King's being out of Poſſeſſion, *Watſon* was indicted for High Treaſon, againſt King *James* I. before his Majeſty ſet his Foot in *England*; nor did it avail him to ſay, the King was never in Poſſeſſion of the Crown.

That the Statute of the 17 *Car.* I. did not give the Long Parliament a greater Authority than another Parliament, though it made them more durable; and if it had, that Parliament was diſſolved by the King's Death: that the Queſtion was not, whether a Parliament could commit Treaſon, but whether a few of the Commons, ſhaking off their Fellow-Members, and uſurping the Government, were not Traitors; and that Privilege of Parliament, even where a Parliament was lawfully conſtituted, was no Shelter for a Breach of Peace, or Felony, and much leſs for Treaſon: And the King's Council produced another Witneſs, that proved Sir *Harry* was a Member of the *Committee of Safety*, that pretended to Sovereign Authority in their Turn, and ſent down Arms after *Lambert*, againſt General *Monk*, who declared in Behalf of that Aſſembly, the Priſoner called a Parliament; and therefore the Priſoner had no Pretence in that Caſe to ſhelter himſelf under the Name or Authority of a Parliament. That the Priſoner was one of the Principal Actors in

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in deſtroying the antient Form of Government, and keeping the King out of Poſſeſſion; one of the Chiefs of the Uſurper's, and put that Force upon others, which he pretended to be under; and therefore had no manner of Colour to claim the Benefit of the Statute of the 11 *Hen.* VII.

Convicted. The reſt of the Arguments of the King's Counſel were the ſame with thoſe contained in the Trials of the Regicides; to which therefore I refer the Reader, and ſhall only add, that the Jury found the Priſoner *Guilty*.

Sir *Henry Vane*, being brought a third Time to the Court of *King's-Bench*, on the 11th of *June*, to hear Judgment, preſented a Bill of Exceptions to the Jndges to ſeal, but was informed, this was never done in Capital Caſes: Then he produced a Petition that the Parliament had preferred to the King, for *remitting his Execution*, with his Majeſty's Anſwer, which were read; but he was told, *that Pardons were only for the Penitent*; whatever his Majeſty or the Houſes might deſign once in his Favour, his Behaviour ſince, in juſtifying what he had done, and reviling the Adminiſtration, had made a great Alteration in his Caſe, and he had little Room to hope for Mercy.

He juſtifies the late Rebellion. Whereupon Sir *Henry*, after having repeated the Subſtance of his Defence, proceeded to extol the *Covenant*, juſtify the late Uſurpation, and reflect upon King *Charles* I. and thoſe who adhered to him; adding, that he found nothing would ſatisfy the preſent Government, but in his Perſon to condemn all who adhered to the Parliament, that they might be rendered Murderers and Rebels to Poſterity, upon Record: And this he ſaid muſt inevitably have followed, if he had voluntarily given up this Cauſe without aſſerting their and his Innocence; by which he ſhould have pulled that Blood upon his own Head, which now he was ſure muſt lie at the Door of others, and particularly of thoſe that knowingly and precipitately ſhould embrue their Hands in his innocent Blood, under whatever Form or Pretext of Juſtice.

He begged Pardon indeed for this Freedom; but ſaid, not only his Eſtate and Life were at Stake, but, what was more to him than Life, the Concerns of Thouſands that were in their Graves, and of all Poſterity in Time to come.

He is condemned. After which Sentence was pronounced againſt the Priſoner, as a *Traitor*: But the King pardoning all the Sentence but the beheading, he was drawn from the *Tower*, on a Sledge, to a Scaffold erected on *Tower-Hill*, on the 14th of *June* 1662, in order to his Execution.

His Speech on the Scaffold. When the Priſoner had mounted the Scaffold, he began a Speech to the People; wherein he ſaid, the Sheriff came to him that Morning, and told him, he had received a Command from the King that he ſhould ſay nothing reflecting on the Government; and that he anſwered, he ſhould order his Speech, as near as he could, ſo as to be leaſt offenſive, ſaving his Faithfulneſs to the Truſt repoſed in him, which he muſt ever diſcharge with a good Conſcience, unto Death.

Then he proceeded to harangue the Crowd, and tell them, he was not brought thither according to any known Law of the Land: He had indeed been before a Court of Juſtice, under whoſe Sentence he ſtood there; but that he had not the Liberty of laying before them the Grounds and Reaſons of thoſe Actions with which he was charged: That he preſſed the Judges to ſet their Seals to his Bill of Exceptions as his Right, and the Right of every free-born *Engliſhman*, by the Law of the Land; but was finally denied it—

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Whereupon Sir *John Robinſon*, the Governor of the *Tower*, who was upon the Scaffold, ſaid, he muſt not be ſuffered to go on thus, railing at the Judges; and that what he affirmed was falſe: But Sir *Harry* ſtill continuing to rail at the Adminiſtration, the Trumpets were ordered to ſound, and drown the ſeditious Harangue; and the Priſoner, finding they would not ſuffer him to proceed on that Subject, turned to another Part of his Speech, which he held in his Hand, and gave an Account of his Converſion at fourteen or fifteen Years of Age, aſſuring the People that he had from that Time preſerved a good Conſcience towards God and Man, and for this he ſhould at laſt ſit down in Glory with Chriſt at his right Hand: He was ready to reſign his Spirit into the Hands of that God that gave it him. Then he returned to State Affairs again, and ſaid, that in whatever he had been engaged as to the Publick, his Deſigns had been for the Good of theſe Nations; appealing to the great God of Heaven, and to the Audience, if he had defiled his Hands with any Man's Blood or Eſtate, or ſought himſelf, in any publick Capacity or Place he had been in.

The CAUSE, he ſaid, had been three times ſtated. 1ſt, *In the Remonſtrance of the Houſe of Commons.* 2*dly*, *In the ſolemn League and Covenant* ——— Then the Trumpets ſounded again, and the Officer endeavoured to take the Paper from him, telling him he treated of Rebellion: Whereupon he tore the Paper in Pieces, and in a very diſcompoſed Manner ſubmitting to the Block, his Head was ſevered from his Body. *He is executed.*

A Copy of the entire Speech, being left with a Friend, was afterwards printed; but had little more in it, than a farther Juſtification of the *Good old Cauſe*, which he ſaid, was *the Cauſe of God, and for the promoting the Kingdom of his dear Son Jeſus Chriſt:* Concluding, *that the preſent Storm, and the dark Clouds that yet hung over the Reformed Churches, were not unforeſeen by him, for many Years paſſed: So that the Coming of Chriſt in theſe Clouds, in order to a ſudden and ſpeedy Revival of his Cauſe, and ſpreading his Kingdom over the whole Earth, was moſt clear to the Eye of his Faith, even that Faith in which he died; whereby the Kingdoms of this World ſhould become the Kingdom of our Lord and of his Chriſt:* Juſt before the Stroke was given, he ſaid, *I bleſs the Lord, who hath accounted me worthy to ſuffer for his Name: Bleſſed be the Lord, that I have kept a Conſcience void of Offence to this Day: I bleſs the Lord I have not deſerted the Righteous Cauſe for which I ſuffer.* No Men more maliciouſly, more treacherouſly, or more indefatigably fomented and carried on the Grand Rebellion againſt King *Charles* I. or contributed more to bring that Prince to the Block, than the two *Vanes*, Father and Son; which is ſaid to be occaſioned principally by that King's beſtowing his Favours ſo liberally on the Earl of *Strafford*, their Countryman, and Rival at Court; and no one Thing piqued them more, than that Earl's, taking the Title of *Raby* from a Caſtle or Seat which belonged to the *Vanes*, which Title *His entire Speech publiſhed after his Death.*

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Title the Father himſelf expected, and pretended his Majeſty had promiſed to confer on him: Nor did any Man act more vigorouſly, in keeping King *Charles* II. out of the Poſſeſſion of his Throne, than Sir *Harry Vane* the younger, whoſe Trial we have juſt reviewed: No Man was more intimate with *Cromwell* and *Argyle*, or more conſcious to their blackeſt Deſigns; though he had the Addreſs to excuſe himſelf from acting as one of the late King's Judges; nor was any Man more zealous or inſtrumental in ſubverting the Conſtitution in Church and State.

The Subſtance of his Defence ſeems to be no more than this, *I acknowledge I did with others uſurp the Government of theſe Nations, and having killed our King, and taken Poſſeſſion of his Dominions, I apprehend we thereby became rightful and lawful Sovereigns; and being thus poſſeſſed of the ſupreme Power, I held it was then High Treaſon in the ſucceeding King and his loyal Subjects, to oppoſe us, and attempt his Reſtoration.* But ſurely this was the weakeſt, as well as the moſt impudent Defence that ever was made by a Rebel in a Court of Juſtice: He did not pretend the King had oppreſſed his Subjects, or forfeited his Right to the Crown; but that by Murder, Robbery, and a ſucceſsful Rebellion, they had acquired a Right to tyrannize over the Nation, and treat both Prince and People as their Slaves; a Defence more criminal than the Rebellion itſelf, and which deſerved only to be anſwered by the Ax or the Halter.

His Character by Burnet.

Biſhop *Burnet*, ſpeaking of this Gentleman, ſays, that he had a Head as darkened in his Notions of Religion, as his Mind was clouded with Fear; and though he ſet up a Form of Religion, it conſiſted rather in withdrawing from all other Forms, than in advancing any Opinions or Forms of his own: That he was of the Sect called *Seekers*, and ſeemed to wait for ſome new and clearer Revelations; and that though he had diligently ſtudied Sir *Harry*'s Works, he ſaid, he could never diſcern what he aimed at. However, the Biſhop ſays, his Execution was mightily blamed, becauſe the King's Declaration from *Breda*, was a full Indemnity to all, except the Regicides: Beſides, he ſays Sir *Harry* did not approve of putting the King to Death, or of the Force put upon the Parliament; but for ſome Time withdrew from the Scene of Action, to ſhew his Diſlike of the Uſurpers Proceedings. But ſurely this Right Reverend Father was under a very groſs Miſtake; for, if we examine the Facts he aſſerts, we ſhall find in the firſt Place, that in the Declaration from *Breda*, all thoſe were excepted out of the Indemnity; and that Sir *Harry Vane* was excepted *by Name*. It is true, that upon Sir *Harry*'s expreſſing ſome Abhorrence of his Treaſons, the Parliament, did Petition his Majeſty to reſpit his Execution, (not to pardon him, as his Friends ſuggeſt); and his Majeſty did return a general Anſwer, from whence it was ſuppoſed he would be favourably dealt with: But Sir *Harry*'s Conduct afterwards, was ſo very provoking, juſtifying all that he had done, and ſhewing a Diſpoſition to act the ſame Tragedy over again, that he himſelf obſerves, that thoſe very Members who had been the forwardeſt to ſave, were afterwards the readieſt to abſolve the King from his Promiſe, as he calls it; though it is certain, his Majeſty made no other Promiſe, if he made any, than to reſpit his Execution, till it appeared how he would behave himſelf, for the Parliament asked no more. It is ridiculous alſo to think that the ſame Men who had ſolicited his Pardon, and obtained a Promiſe of it from the Crown, ſhould afterwards addreſs the King for his Execution. And the Biſhop himſelf acknowledges, that the principal Reaſon of ſuffering Juſtice to take Place on this Occaſion, was, the Apprehenſion the Government was under, that he would one Day embroil the Nation in a Civil War again, towards which it appeared he did not want Talents, Intereſt, or good Will.

Burnet miſtaken in ſome Facts.

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Vane's Character by another Hand.

A celebrated Writer in giving a Character of Sir *Harry Vane*, ſays, he was a Man of great Natural Parts, and of a very profound Diſſimulation, of a quick Conception, and very ready, ſharp, and weighty Expreſſion; that he had an unuſual Aſpect, which, though it might naturally proceed from his Father and Mother, neither of which were beautiful Perſons; yet made them think there was ſomething in him extraordinary, and his whole Life made good that Imagination. He went from School to *Magdalen College* in *Oxford*, where his Life was not very regular, from the Univerſity he went to travel, firſt in *France*; but ſpent moſt of his Time at *Geneva*, and at his Return to *England*, appeared to have contracted great Prejudices and Bitterneſs againſt the Church, both as to her Government and Liturgy; which ſeemed at firſt to diſpleaſe his Father, who was hitherto conformable, and exceeding ſharp againſt thoſe who were not: After ſome ſhort ſtay in *England*, he thought fit to make a Voyage to *New England* where the Sectaries abounded, and had withdrawn themſelves from the Juriſdiction of their Eccleſiaſtical Governors: This Gentleman was no ſooner landed in *New England*, but his Parts and Quality, being the Son of a Privy Counſellor, but above all, his Principles gave him ſuch an Intereſt in that People, that they appeared infinitely fond of him, and in ſome ſhort Time elected him their Governor: But it ſeems he would have *reformed* even the *Puritan Reformation*, about which, the People and our Governor diſagreeing, and growing heartily weary of each other, he returned to *Old England*, where by his Fathers Intereſt, he obtained the Office of Treaſurer of the Navy, jointly with Sir *William Ruſſel*; and ſeemed well ſatisfied with the Government, till his Father appeared diſguſted, on the Earl of *Strafford*'s having the Title of *Raby* (the Seat of the *Vanes* in *Yorkſhire*) conferred on him by his Majeſty. But afterwards aſſociating himſelf with *Pym*, the great Incendiary, in the Houſe of Commons, and all other diſaffected and ſeditious Perſons, he became one of the moſt violent Enemies againſt the Government, and with his Father communicated thoſe Secrets to the Commons, and made ſuch malicious Gloſſes on them, as at length proved the Ruin of the Earl.

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The Trial of JOHN JAMES for *High-Treaſon*, in the Court of *King's-Bench*, the 14th of *November*, 1662. 14 Car. II.

James's Tryal.

The Charge.

THE Priſoner, being arraigned, held up his Hand with his Glove on, which the Court ordered to be taken off. The Indictment charged him with Compaſſing the King's Death, and the Subverſion of the Government, and the Overt Act, laid in the Indictment, to prove the Treaſon of his Heart, was his preaching at a Meeting-Houſe in *White-Chapel*, and declaring, (1.) "That the King was a bloody Ty-"rant, a Blood-ſucker and Blood-thirſty Man, "and his Nobles the ſame. (2.) That the King "and his Nobles had ſhed the Blood of the Saints "at *Charing-Croſs*, and the Blood of the Cove-"nanters in *Scotland*. (3.) That the King was "brought in to this End, to fill up the Meaſure of "his Iniquity; and that the King's Cup of Ini-"quity had filled more within this laſt Year, than "in many Years before. (4.) That he bemoaned "they had not improved their Opportunity, "when they had the Power in their Hands: That "it would not be long before they had Power "again, and then they would improve it bet-"ter: And he bewailed the Apoſtacy of the "People of God, and ſaid, *They had not fought* "*the Lord's Battels thoroughly; but when the* "*Lord ſhould give his Work into their Hands a-*"*gain, they would do it better.* (5.) *That the* "*Death and Deſtruction of the King drew very* "*near.*

The King's Counſel, having opened the Indictment, and obſerved that the late Rebellion was incited and fomented by ſuch ſeditious Diſcourſes as theſe, produced their Witneſſes.

The Evidence.

John Tipler depoſed, that being in a Yard adjoining to the Meeting-Houſe, he did, through a Window, ſee the Priſoner *John James* in the Pulpit, and heard him ſpeak the Words laid in the Indictment; adding, that he mightily applauded *Oliver Cromwell*, ſaying, that every Finger of his was a Champion: And that the Deponent informing Alderman *Chard*, a Juſtice of Peace, what he had heard, the Alderman came and apprehended the Priſoner in the Pulpit, and took all the Men that were at the Conventicle, committing ſuch of them as refuſed the Oath of Allegiance; but ſet the Women and the reſt at Liberty: And the Alderman made Oath of his ſeizing the Priſoner, *&c.* as the firſt Witneſs had depoſed. *Osborne*, another Witneſs, depoſed he was within the Meeting-Houſe, and heard the Priſoner ſpeak the words laid in the Indictment, or to that Effect: And another Witneſs depoſed, that, being in *Tipler's* Houſe, and hearing a Perſon ſpeaking very loud, he went out and heard the Speaker ſay, *That the Lord had a great Work for his People to do; and that they were the People that muſt do it*: But could not be poſitive that the Preacher was the Perſon that ſpoke them.

The Priſoner's Witneſſes.

On the other Hand, the Priſoner produced four Witneſſes that were at the ſaid Meeting, who depoſed, that the Words laid in the Indictment, were not ſpoken by the Priſoner; but they would not declare who they were ſpoken by.

He produced another Witneſs alſo, who depoſed, that *Osborne* ſaid he was frightened to give Evidence againſt the Priſoner; but *Osborne* averred upon his Oath, in open Court, that he ſaid no ſuch Thing.

His Defence.

The Priſoner ſaid in his Defence, That he had no Malice againſt the King, but prayed for his Soul; that he had never been in any Office or publick Employment againſt his preſent Majeſty or his Father, and denied he ſpoke the Words laid in the Indictment, or any others to that Effect; that he had always declared againſt *Cromwell's* Uſurpation, and ſuffered under it; and bid the Jury take Care therefore of ſhedding his Innocent Blood; for the Lord Jeſus Chriſt was King of Nations, as well as King of Saints; and that the Government of Right belonged to him. (*Intimating that the Saints ought to have the Adminiſtration under him.*) Whereupon the Chief Juſtice interrupted him and demanded; if he thought he was in his Conventicle at *White-Chapel?* He alſo ordered a Paragraph in the Act for the Preſervation of the King's Perſon, to be read, wherein it was declared, *That whoever ſhould by Printing, Preaching, or Writing, endeavour to levy War againſt the King, or compaſs the King's Death, ſhould be judged a Traitor*: And the Court informed the Priſoner that it was the Imagination of his Heart that was the Treaſon; his Preaching was but the Overt Act or Manifeſtation of the Treaſon: And whereas he objected, that the very Words laid in the Indictment were not proved, it was anſwered, that if Words to that Effect, which diſcovered the Treaſon of his Heart, were proved againſt him, that was ſufficient; it was not neceſſary to prove the very Words. It was obſerved alſo, that though the Priſoner and his Witneſſes denied his ſpeaking the Words; they had not ſhewn who ſpoke them, or what he did ſay: And that no Criminal would ever receive his Deſert, if his Denial, or the Denial of his Accomplices, on their bare Words, would acquit him: Whereupon the Jury, after a Quarter of an Hours Receſs, brought the Priſoner in GUILTY, and Judgment was pronounced on him as a Traitor.

He is convicted, and condemned.

John James being drawn on a Sledge, from *Newgate* to the Gallows at *Tyburn*, on the 26th of *November* 1662, obtained leave of the Sheriff to make a Speech to the People; wherein he firſt endeavoured to clear himſelf from being a Jeſuit (with which he was charged by ſome) by ſhewing he was born of mean Parents, and wanted that learned Education that Jeſuits uſually have: On the other Hand, he declared, he held the *ſeventh* Day ought to be the Chriſtian as well as the Jewiſh Sabbath; and ſaid, *he did expect the viſible Kingdom of* Jeſus Chriſt *upon Earth, and that* Jeſus Chriſt *the Son of God was*

His Speech at the Gallows.

King

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King of all the Nations of the World; and according to Rev. xi. 15. *the Kingdoms of this World were become the Kingdoms of the Lord and of his Chriſt, and he ſhould reign for ever and ever; which he ſaid could not be meant of a Spiritual Kingdom; for the Text ſaid expreſly the Kingdoms of this World:* But maintained to the laſt, that what he was charged with was falſe, though ſeveral Witneſſes had ſworn it in Court, for which he hoped God would forgive them: And concluded, as Criminals uſually do, with pious Exhortations to the Multitude. After which he was turned off, and hanging till he was quite dead, he was embowelled and quartered as a Traitor; his Quarters ſet upon the City Gates, and his Head upon the Bridge: But his Head was afterwards taken from the Bridge, and ſet up near his Meeting-Houſe in *White-Chappel*.

He is executed.

Remarks on James's Trial.

This *James* appears to have been a *Fifth-Monarchy-Man*, whoſe Principles were indeed deſtructive of all Government: They raiſed a Rebellion in the City the very Year of the Reſtoration, and were with Difficulty ſuppreſſed, being thoroughly perſuaded *they fought the Lord's Battels, and ſhould be ſupported by a Supernatural Power.* The Govermnent therefore will be juſtified by all conſidering Men, in proceeding with Rigour againſt a Broacher of ſuch Doctrines; nor do I think he had any Reaſon to complain of Hardſhip on his Tryal: He inſiſted indeed, that the very Words laid in the Indictment, ought by Law to have been proved, but it appears from numerous Inſtances in the *State Trials*, that where any one is indicted for compaſſing the Death of the King, other Words of the like Tenor may be proved, as an Evidence of it, beſides thoſe laid in the Indictment. It is true, in an Indictment for a *Libel*, the very Words ought to be ſpecified, (and thoſe Words proved); but in an Indictment for *High-Treaſon*, in compaſſing the King's Death, and where Diſcourſes or Writings are laid as Overt Acts; There it is ſufficient to prove the Effect or Tenor of the Words laid in the Indictment; it is not neceſſary to prove the very Words.

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The Trials of THOMAS TONGE, GEORGE PHILLIPS, FRANCIS STUBBS, JAMES HIND, JOHN SELLERS, and NATHANIEL GIBBS, for *High-Treaſon*, at the *Old-Bailey*, *London*, the 11th of *December*, 1662. 14 Car. II.

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Tryal of Tonge, &c.

The Charge.

THE Indictment charges the Priſoners with compaſſing the Death of the King: And the Overt Acts, laid as an Evidence of it, were, their conſulting and agreeing, on the 31ſt of *October* then laſt paſſed, to depoſe his Majeſty, to alter the Government, to ſeize the King's Perſon in his Palace of *Whitehall*, ſurprize the *Tower* of *London*, *Windſor Caſtle*, &c.

The Evidence.

William Hill, the firſt Witneſs, depoſed, that he was at a Conſultation with the Priſoner *Hind*, and ſome others, at the *Ship-Tavern*; and that all, or moſt, of the Sects of Diſſenters, appeared to be concerned in this Plot againſt the Government (*viz.*) *Fifth-Monarchy-Men*, *Anabaptiſts*, *Independents*, *Fighting Quakers*, and the *Congregational Churches*; that they reſolved to endeavour a Deliverance from their Adverſaries at *Whitehall*, and had much Diſcourſe to that Effect: That at another Meeting with the Priſoners, *Stubbs Hind Tonge* and others, Mention was made of a Council of Six that conducted the Deſign; that he underſtood *Ludlow* was to be Commander in chief, that Horſes and Arms were ready for an Inſurrection on *All-hallows Eve*; that *Windſor-Caſtle* was to be ſurprized, and they expected a Riſing in the Weſt: That a Declaration was read among the Conſpirators, ſetting forth the Danger of Popery, and complaining of Monopolies; declaring for Liberty of Conſcience, and a free Common-wealth: And five thouſand Letters were prepared to be diſperſed in Town and Country, affirming that the Papiſts deſigned a general Maſſacre of the Proteſtants on *All-hallows Eve*, and inciting the People to take up Arms, and ſtand upon their Defence; and this was to ſerve for a Pretence for the intended Inſurrection of the Malcontents. He depoſed alſo, that there was a Deſign to ſeize the King's Perſon in *Whitehall*, together with the Duke of *Albemarle*, and the Lord Mayor; and they diſcourſed of extirpating all Kings, Princes and Dukes, that they might have a free State, and no more be troubled with ſuch Perſons, or with Lawn Sleeves or Surcingles: And this Witneſs heard that a Party of Horſe was to come to Town the Night before the intended Inſurrection. *Riggs*, another of the Conſpirators, depoſed, that on the 24th of *October*, the Day before they were taken, they had a Meeting, and diſcourſed concerning the taking *Whitehall*, and the *Tower*, *Tonge*, *Stubbs* and *Hind*, the Priſoners being preſent; that *Gibbs* told the Deponent, *Ludlow* was in Town, and that the Council of Six was broken up, and they had ſent Meſſengers into the Country to give Notice and make their Intereſts; that he had ſeen a Letter alſo, intimating that there would be a Maſſacre, and a Riſing of the Papiſts: And that, being with *Phillips Tonge* and *Stubbs*, *Phillips* propoſed the ſurprizing the King at *Camberwell*, as he came from *Hampton-Court* to ſee the Queen Mother at *Greenwich*; and *Tongue* ſaid, they might have ſuch an Opportunity twice every Week.

Bradley depoſed, that he was with the Priſoners *Tonge* and *Stubbs*, at *Tonge*'s Houſe, and that they diſcourſed how *Whitehall* might be ſurprized; that he had at ſeveral other Times diſcourſed with the Priſoner *Hind* and others, about

ſurprizing

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furprizing the King, the Duke, the General, and as many more of the Council as they could ſeize: That the Priſoner, *Gibbs*, informing them the Scheme was ready to be put in Execution; their Council broke up, and Meſſengers were ſent into the Country to give Notice; and that *Ludlow* was in Town, and to be their General.

Tyler depoſed, That he had heard *Tonge*, and others, diſcourſe of ſurprizing *Whitehall*, and diſmounting the great Guns there, and of the Service it would be to ſeize the King, the Duke, and the Lord *Albemarle*: That *Tonge* ſaid he ſerved the Suttlers in the *Tower*, and was ſo well acquainted there, that he would undertake, at Ten or Eleven at Night, to ſurprize that whole Fortreſs, with forty Men: That he alſo ſerved the Suttlers at *Windſor*, and was ſo well acquainted with the Soldiers, and one of the Gunners there, that the Caſtle might eaſily be ſurprized: That the Conſpirators propoſed to convert the Government into a Common-wealth; to which End all Intereſts would unite, *(viz.) Quakers*, *Fifth-Monarchy-Men*, *Anabaptiſts*, *Independents*, *Presbyterians*, and *Levellers*; and, at their laſt Conſultation, they all obliged themſelves to ſee what Intereſt they could make among the *Presbyterians*; becauſe they looked upon them as the Perſons who had moſt Strength and Money: That the ſeveral Counties of *England* were ripe, and forward for Action; being in Dread of a Maſſacre by the Papiſts, on *Allhallows Eve*.

The Examination of Phillips read.

Then *Phillips*'s Examination was read in Evidence, wherein he confeſſed, That *Riggs*, late Chaplain to Admiral *Blake*, (but at that Time a Brewer's Clerk) aſſured him, there would be a Riſing of divers godly People, in Arms, for Preſervation of Religion; and, that they intended to ſeize the King's Perſon at *Camberwell*. And the Examinant demanding of *Riggs* why they had not yet ſeized the King, he ſaid, they were not then ready; becauſe the Congregational Churches and they were not fully agreed; but that things were now near ready, both in Town and Country: That *Riggs* afterwards carried the Examinant to *Tonge*'s Houſe, who had been formerly a Captain in the Rebels Army, but then ſold Tobacco and Brandy on *Tower-Hill*; and, that *Tonge* told *Riggs*, he had prevailed on ſome of the Soldiers at *Windſor*, to deliver up that Caſtle: That *Riggs* ſaid he was going to aſſiſt in the ſurpriſing two Caſtles in *Kent*: That *Ludlow* was to command, and that there was a Council of Six that conducted the Deſign, and ſat but one Day in a Place; nor were they to be ſpoken with by any, but the Agitators of each County, who were employed in preparing all Parties in the ſeveral Counties; and that the Six were of ſeveral Opinions, (Perſuaſions or Denominations of Diſſenters,) that all Parties might be united: That the Examinant, being a Serjeant of the Artillery, did promiſe to give them the Word, when the general Riſing ſhould be; and that all the ſeveral Churches (Sects) promiſed to join, and the *Fifth-Monarchy-Men* were to lead the Van.

That after the King ſhould be ſeized, they had a Declaration ready to diſperſe, againſt Biſhops and the Common-Prayer, and for Liberty of Conſcience. That one *Baker* alſo informed the Examinant, that there were Arms and Powder diſtributed in ſeveral Places; and their Friends were ready in all Counties, only waiting for the Day: That *Riggs* alſo acquainted the Examinant with their Deſign of ſurprizing the *Tower*, when Sir *John Robinſon* the Governor ſhould come Home late in the Evening.

Sir *William Morrice* and Sir *Henry Bennet*, Principal Secretaries of State, alſo depoſed, That they had received Letters from ſeveral Counties, of a Report that was ſpread about, That the Proteſtants were to have their Throats cut by the Papiſts, on a certain Day; and that theſe Rumours were propagated, in order to induce the People to join the Malcontents.

Sir *John Talbot* depoſed, That theſe Reports occaſioned great Diſturbances in *Warwickſhire* and *Worceſterſhire*. Sir *John Weld*, and Mr. *Hodges*, depoſed the like, as to *Dorſetſhire* and *Shropſhire*; adding, that ſeveral Perſons had been taken up on theſe Reports.

The Priſoners ſaid little in their Defence; but, that they had not engaged in any *formed* Deſign againſt the Government; though they could not deny, but they had heard ſome ſuch Diſcourſes as the Witneſſes teſtified. They obſerved alſo, that *Hill* and *Riggs*, two of the Witneſſes, had acknowledged themſelves Accomplices in the Treaſon they accuſed them of; and, therefore, were not legal Witneſſes: To which the Court replied, That Accomplices were lawful Witneſſes, till convicted; and, beſides, there were ſeveral corroborating Circumſtances to ſupport their Teſtimony. That the being preſent where Treaſon was ſpoken, and ſhewing an Approbation of it, was Treaſon in the Hearer, as well as the Speaker: Then the Jury withdrew, and within an Hour returned into Court with their Verdict, that *Tonge*, *Phillips*, *Stubbs*, *Sellers*, and *Gibbs*, were GUILTY. As to *Hind*, he confeſſed the Fact, and would not abide his Trial.

The Priſoners convicted.

The Priſoners being afterwards called to Judgment, and asked what they had to ſay why Sentence ſhould not be pronounced againſt them, threw themſelves on the King's Mercy, and were condemned as Traitors.

And condemned.

Of theſe ſix Priſoners, two were pardoned, *(viz.) Hind* and *Sellers*; but the other four, *(viz.) Tonge*, *Phillips*, *Gibbs*, and *Stubbs*, were drawn on Hurdles to *Tyburn*, on the 22d of *December*: Where, being permitted to ſpeak by the Sheriff, *Tonge* confeſſed he had been in Company where he had heard Men contrive the Buſineſs, for which he was condemned to die: *And, that he was led to join with them, having been ſome Time in the Army, and held the Cauſe to be good.*

Two pardoned.

Four ordered to be executed.

They confeſs their Guilt at the Gallows.

Phillips ſaid he had not any murderous Thought againſt the King; that he had ventured his Life for his Majeſty, and was far from any ſuch Thought: That he never acted againſt him in any Thing, but this; and it was his Ignorance in the Laws, that he did not diſcover the Plot; *acknowledging, he was juſtly found Guilty.*

Gibbs made a long Speech, or rather Sermon, under the Gallows, in the fanatick Strain; but all he ſaid to the Purpoſe, was, *That he had*

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had heard treaſonable Diſcourſes, and, was ſo far guilty, through his Ignorance in the Laws, that he did not reveal it.

Stubbs alſo, after having made a Recapitulation of his whole Trial, *confeſſed his being in Company with the Conſpirators, and his hearing treaſonable Words*, which he did not diſcover, being ignorant of the Law, he ſaid, in that Caſe; and begged his Majeſties Pardon.

The Four Executed.

After which the Priſoners were executed as Traitors, and their Quarters delivered to their Friends to be buried; but their Heads were ſet up either on or near *Tower-hill*.

Remarks on Tonge's Trial, &c.

The Continuers of *Rapin* pretend to queſtion the Truth of this Conſpiracy, though the Criminals confeſſed it at the Gallows; and they have made two Miſtakes in their Relation of it, which ſhews they took but little Care to enquire into the Matter, or elſe deſignedly impoſed upon their Readers. For, firſt there were but Four of the Conſpirators executed, whereas they make them to be Six: And, ſecondly, there were ſeveral more of the Conſpirators diſcovered, beſides thoſe that were executed; and, particularly ſome that were made Witneſſes againſt the Priſoners; and yet theſe accurate Writers affirm, That there were *none* diſcovered but the Six that were *executed*: (they ſhould have ſaid *tried*) and even with this Correction, what they aſſerted was far from being true.

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Moder's her Trial.

The Trial of MARY MODERS, *alias* STEDMAN, (uſually called the *German Princeſs*,) for *Bigamy*, at the *Old-Bailey*, the 4th of *June*, 1663. 15 *Car.* II.

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The Evidence.

THE Indictment charged the Priſoner with Felony, in marrying one *John Carleton*, her firſt Hubsand, *Thomas Stedman*, being alive.

Knot, the principal Witneſs, depoſed, That, about nine Years before, he gave the Priſoner in Marriage to *Thomas Stedman*, at St. *Mildred*'s in *Canterbury*, ſhe being then about nineteen; That they were married by one Parſon *Man*; and that *Stedman* and his Wife lived together about four Years, in *Canterbury*, and had two Children; and, that he ſaw *Stedman* alive at *Dover*, the laſt Week: But, he could not tell whether they were married according to the Rites of the Church of *England*, or not; only he remembred the Marriage was ſome little Time before the Ordinance was made, that gave Juſtices of Peace an Authority to marry People. Other Witneſſes depoſed, That they ſaw *Stedman*, the firſt Husband, at *Dover*, the preceding Week; that he acknowledged he married *Mary Moders*, of *Canterbury*; that *Knot* gave her in Marriage, and, that he would have come up as an Evidence againſt her, if he had not wanted Money for his Journey.

Another Witneſs depoſed, That the Priſoner was on board her Husband's Ship in the *Downs*, bound for *Barbadoes*; and, that *Thomas Stedman*, her Husband, came with an Order, and fetched his Wife, the Priſoner, on Shore.

And Witneſſes being called to prove the Second Marriage, the Priſoner acknowledged that, but denied the Firſt.

The Priſoner's Defence.

The Priſoner ſaid, in her Defence, that this Proſecution was promoted by her Husband *Carleton*'s Father, becauſe ſhe refuſed to make over what ſhe had to his Son. That ſhe was, indeed, a Foreigner, and Mr. *Carleton* underſtanding ſhe was a Woman of Subſtance, by a Letter he intercepted, ſolicited her with the greateſt Importunity, till he obtained her Conſent to marry him; and was ſo much in Haſte to ſecure her Fortune, that he married her firſt without a Licence, and, ſome few Days after, with a Licence: That upon her refuſing to comply with the Demands of the Father and Son, they had forged this Story of her being married to a Man at *Canterbury*. That ſeveral People of that City, had been brought to the Priſon, in Order to make them Witneſſes againſt her, but none of them knew her; and it was ſtrange no Regiſter or Certificate of her Marriage appeared, if ſhe was married at *Canterbury*; and no other Teſtimony, but the Evidence of this paltry Fellow *Knot*; and though they had depoſed ſhe was nineteen Years of Age, nine Years ago, ſhe was not one and twenty at this Time.

Obſervations of the Court on the Evidence.

The Court ſeemed diſſatisfied, the firſt Husband did not appear, and ſaid, they muſt not condemn a Perſon upon Hear-ſay, obſerving to the Jury, that the Evidence of the firſt Marriage, depended on the ſingle Teſtimony of *Knot*, and it was ſtrange if they lived together four Years, and had Children, that no Body elſe was brought to prove it: And that, if they did find her Guilty, ſhe muſt die, for that a Woman could not have the Benefit of Clergy; whereupon the Jury acquitted her.

Remarks on the Trial of Moders.

There ſeems to be very little Room for Remarks on this Trial, except it be, that unleſs both Marriages appear to have been celebrated by a Miniſter of the Church of *England*, or ſome Roman Catholick Prieſt, the ſecond Marriage is not Felony. And, though a Woman could not have the Benefit of Clergy then, ſhe may now, by a Statute made ſince the Revolution; or, at leaſt, what is equivalent to it.

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The Trials of Colonel JAMES TURNER, and of JOHN TURNER, and ELY TURNER, his Sons, and MARY TURNER, his Wife, and of WILLIAM TURNER, an Accomplice, for *Felony and Burglary*, at the *Old-Bailey*, *London*, the 15th, 16th, and 19th of *January*, 1663. 15. *Car.* II.

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The Charge.

THE Indictment charges the Priſoners, *James*, *John*, and *William Turner*, with Felony and Burglary, in breaking open the Houſe of *Francis Tryon*, Merchant, and robbing him of Jewels and Money, to the Value of thirteen or fourteen hundred Pounds. And the ſaid *Mary Turner*, and *Ely Turner*, were charged with receiving, comforting, aiding, and maintaining the ſaid *John Turner*, knowing him to have committed the ſaid Felony and Burglary.

To which Indictment the Priſoners having ſeverally pleaded not Guilty, *James Turner*, the Father, complained to the Court, that the Sheriffs had taken Poſſeſſion of his Houſe, and ſeized his Goods; and, upon this Occaſion, the Lord Chief Juſtice *Hyde* obſerved, that though the Goods of a Man, accuſed of Felony, were not forfeited till Conviction, yet it was prudent in the Sheriffs, and agreeable to Law, to take Care the Goods were not embezzled. However, he ſaid, the Priſoner might have what Part of them he would, for his preſent Supply; and, if any of his Friends would give ſecurity, they ſhould be forth coming, if he happened to be convicted, they might have the keeping of them.

The She-ſecure the Priſoners Goods, before Conviction.

The Evidence.

A Jury being ſworn, and charged with the Priſoners, the Witneſſes appeared; and firſt Sir *Thomas Aleyn*, who took the Priſoners Examination, depoſed, That hearing Mr. *Tryon* had been robbed, he went to viſit him, and took the Examination of Mr *Tryon's* Man and Maid, who ſaid they ſupped abroad, at a dancing School, that Evening their Maſter was robbed, and uſed frequently to go out to Supper, at Colonel *Turner's*, an intimate Acquaintance of their Maſter's, after their Maſter was in Bed, which gave the Deponent ſome Suſpicion that the Colonel might be concerned in the Robbery. He proceeded, therefore, to examine him, and his Wife and the Colonel; not making ſatisfactory Anſwers, he ordered his Houſe to be ſearched; but finding nothing there, he ſuffered him to go about his Buſineſs. That, the next Morning, Alderman *Love* informing the Deponent the Money was carried to a Houſe in the Minories, he went thither, and found Colonel *Turner* putting ſeveral hundred Pound Bags into a Cheſt, which confirmed him in his Suſpicions, and the Colonel deſiring to go to Mr. *Tryon's*, the Deponent went with him thither, and the Colonel acknowledged he knew the Thief that took the Money and Jewels, and promiſed Mr. *Tryon* he ſhould have them again, and afterwards produced moſt of them, except a Carkanet of Diamonds and Jewels, of the Value of 200 *l.* and ſaid, if they would not proſecute him, he would bring that, and whatever elſe was loſt; but the Deponent committed both him and his Wife to *Newgate*, they appearing to be acquainted with the Robbery.

Mr. *Tryon* depoſed, that about Eleven at Night, two Men came to his Bed-ſide, and one of them, who had a Lanthorn, waked him; and demanding who they were, they made him no Anſwer, but bound and gagged him, and uſed him barbarouſly. That about an Hour after they were gone, he rolled himſelf off the Bed, and, getting to the Window, cried out, *Thieves!* whereupon the Neighbours came to his Aſſiſtance; and going into his Warehouſe, he found the Money and Jewels gone, and obſerved it muſt be ſomebody that knew where he laid them, as *James Turner* the Priſoner did, with whom he was very intimate.

Hill, Mr. *Tryon's* Man, depoſed, That when he went out that Evening, he left his Maſter's Door double-locked, and the Jewels ſafe; but when he returned, all the beſt were gone. That queſtioning the Colonel, when he was in Cuſtody, how the Thieves got in, he anſwered, one of them got into the Houſe in the Day-time, and concealed himſelf there till Night, when he let the others in: And that, about a Year before, the Colonel would have had him got a Will forged for old Mr. *Tryon*, and made himſelf, and ſome Friends, Executors: That he was at Mr. *Starkey's* at Supper, when the Robbery was committed; and hearing of it, he ran Home, found the Doors open, and the Neighbours there.

Elizabeth Fry depoſed, That Mrs *Turner* treated with her, concerning lodging ſeveral Sums of Money at the Deponent's Houſe, and that the Colonel, and his Son *Ely*, brought as many Bags thither, as ſhe underſtood amounted to eleven hundred Pounds. Several other Witneſſes were examined, and confirmed the Teſtimony of theſe, particularly Mr. *Vanden-Anchor*, and the Neighbours, who came in on Mr. *Tryon's* crying out Thieves; and they obſerved that all Places had been opened with Keys, or Pick-Locks, to come at the Treaſure, and that nothing was broken.

Colonel James Turner's Defence.

Colonel *Turner*, in his Defence, averred, That he and his Family were in Bed and aſleep when the Robbery was committed, and that the Conſtable coming to his Houſe, and acquainting him with it, he immediately went to his Friend Mr. *Tryon*, to give him what Aſſiſtance he could; and that he afterwards went in ſearch of one *Wild*, that he ſuſpected had done it, and having found *Wild*, he promiſed to return the Money and Jewels again, on Condition he ſhould not

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not be proſecuted, which the Priſoner promiſed he ſhould not, by Mr. *Tryons*'s Directions; and that the Money was indeed brought to the Priſoner's Houſe, and afterwards carried to a Houſe in the Minories, and then *Wild* and his Confederates, promiſed to bring the reſt of the Things, but his, (the Priſoner's) being taken into Cuſtody prevented it.

The Evidence for the Priſoner.

Then *Moſely* the Conſtable was examined, on the Priſoner's Behalf, who depoſed, That he came to Mr. *Tryon*'s on the *Thurſday* Night, hearing he was robbed, and found him bound. That the Deponent afterwards went to Colonel *Turner*'s, and asked where his Sons were, and he ſaid, they were in Bed, and deſired him to go up and ſee.

A Servant of the Marquis of *Dorcheſter*, depoſed, That Colonel *Turner*'s Sons were at his Lord's Houſe that Night the Robbery was committed, from Seven till Three a-Clock.

Colonel *Turner*'s Maid depoſed, That her Maſter and his Sons were at Home all that Night the Robbery was committed, and the next: *But it appeared that no Credit was to be given to her Teſtimony.*

Mr. *Cook* depoſed, that he had known Colonel *Turner* twenty Years, dealt with him for ſeveral hundred Pounds, and truſted him, and found him very faithful. That he had ſeen Jewels in his Poſſeſſion, of the Value of eight or ten thouſand Pounds; and if he had been ſuch a Perſon as he was accuſed to be, he might have broke very advantageouſly. ——— *Jefferies* depoſed, That Mr. *Tryon* uſed to truſt the Colonel with Jewels of a conſiderable Value, and had a good Opinion of him: But the Witneſſes ſaid, It was generally reported the Colonel lived too high.

It being demanded of Mr. *Turner*, a Companion of the Colonel's, and taken with him, what he had to ſay in his Defence, he anſwered, he was never at Mr. *Tryon*'s in his Life, till he was there with Sir *Thomas Aleyn*.

John Turner, the Colonel's Son, confeſſed he carried two Bags to the Houſe in the Minories, and that he ran away when Sir *Thomas Aleyn* came thither.

The Court direct the Jury.

The Court, in their Directions to the Jury, informed them, That as to *Mary Turner*, the Wife, though ſhe ſeemed to have a Hand in the Buſineſs all along, yet it appearing to be by the Direction of her Husband, ſhe could not be made an Acceſſary. And, as to *Ely Turner*, the Evidence could not affect him, for it appeared that *John* carried the Money, and not *Ely*; and obſerved, that where ſeveral Men came to break open and rob a Houſe, and ſome entered, and others of the Gang ſtood without, to prevent a Surprize, they were all guilty of the Burglary and Robbery: That if the Door was not broke open, but opened by Keys or Pick-locks, it was, nevertheleſs, Burglary. And that, if one of the Thieves came in in the Day-time, and let the others in in the Night-time, it was, nevertheleſs, a Burglary in them all.

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Then the Jury withdrawing for about an Hour, brought in the Priſoner, Colonel *James Turner*, GUILTY, but the reſt were acquitted. And Sentence of Death being paſſed on the ſaid *James*, he was executedt the 21ſt of *January*, 1663-4, in *Leadenhall-ſtreet*, near the End of *Lime-ſtreet*, where Mr. *Tryon*'s Houſe ſtood.

James Turner *convicted. the reſt acquitted.* James *is executed.*

His Confeſſion.

The Priſoner, before his Execution, confeſſed, that he, with the ſaid *William Turner*, one *White*, a Solicitor, and a Friend of *White*'s, were the four Perſons that committed the Robbery; but, that neither his Wife, or Sons, knew any Thing of it. And he reſtored to Mr. *Tryon*, the Carkanet of Rubies and Diamonds, that was wanting, before he died.

Remarks on the Trial of Turner.

What is moſt remarkable in this Proceeding, is, that a Man, who lived in Credit and Reputation in the City, as Colonel *Turner* had done for a conſiderable Time, ſhould deſcend ſo low as to become a Felon and Houſe-breaker, and rob and abuſe his moſt intimate Friend: But, his having lived beyond his Income, and affecting to make a grand Appearance, it ſeems put him upon ſuch infamous Projects to ſupport his Extravagancies, and ſhews how difficult it is for a Man to retain either Honour or Honeſty, when he has waſted his Fortune in a profuſe Way of living.

But it may be obſerved further, that *Mary Turner*, and *Ely Turner*, the Son, were indicted as Acceſſaries in the Robbery, for receiving, aiding, and comforting *John Turner*, the Son, and not as acceſſary to the Felony and Burglary of *James Turner*, the Father; for a Woman is not puniſhable for receiving or harbouring her Husband, though ſhe knows him to be a Felon; and it would be hard to proſecute a Son for harbouring his Father, though he knew him to have committed a Robbery. But, in Strictneſs of Law, a Son, who receives and harbours his Father, knowing him to have committed Felony, is acceſſary to the Felony, after the Fact.

The

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The Trial of JOHN TWYNE, *Printer*, for *High-Treason*, the 20th and 22d of *February*, 1663-4, 15 Car. II.

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Twyne's Tryal.

The Charge.

THE Indictment charged the Priſoner with compaſſing the Death of the King: And the Overt Act, laid as an Evidence of it, was, his Printing a Treaſonable Pamplet, entitled, *A Treatiſe of the Execution of Juſtice, wherein is clearly proved, That the Execution of Juſtice and Judgment, is as well the Peoples as the Magiſtrates Duty; and if the Magiſtrates pervert Judgment, the People are bound by the Law of God to execute Judgment without them, and upon them:* But the treaſonable Paſſages laid in the Indictment, and taken out of the Body of the Book, were ſo ſcandalous, that the Government did not think fit to print them with the reſt of the Trial, which makes it an imperfect Piece.

The Evidence.

The Witneſſes produced to prove the Priſoner's printing the book were, firſt, *John Walker*, his Apprentice, who depoſed, that he (the Witneſs) compoſed (or ſet the preſs for) the firſt four Pages of the Book, and that his Maſter *Twyne*, the Priſoner at the Bar, delivered him the Manuſcript Copy: That he (the Witneſs) alſo compoſed the Title, and Part of the ſecond, third, and fourth Sheets; and his Maſter, he thought, compoſed the reſt, and corrected the Sheets; and was poſitive, that his Maſter worked off ſome of the Sheets.

Mr. L'Eſtrange *was Licenſer of the Preſs.*

That they uſually worked at the Preſs from two in the Morning till five: And that Mr. *L'Eſtrange* came and knocked at the Door while they were at work, and the Deponent looking out at the Window, and telling his Maſter, Mr. *L'Eſtrange* was there, his Maſter anſwered, he was undone: Whereupon he broke the Form (diſperſed the Letters) by his Maſters Direction.

Mr. *L'Eſtrange* depoſed, that, having Notice of a Preſs that had been at Work ſeveral Nights, in *Cloth-Fair*, he took a Printer and a Conſtable with him, and went to *Twyne*'s Houſe, where he heard them at work; and when he knocked at the Door, they put out the Lights, and made him wait a Quarter of an Hour, before they let him in; but having got a Candle, he went up Stairs, and found a Form broken, only one Corner ſtanding entire, which the Printer that went with him, comparing with the Corner of a Page newly printed, they appeared to be the ſame; and at laſt they found the whole Impreſſion, thrown down a Pair of back Stairs: And that *Twyne* told him he had the Copy (the Manuſcript) of Mrs. *Calvert*'s Maid, to whom he alſo delivered the Sheets he had printed; and that ſhe paid him forty Shillings in Part for his Work.

Dickenſon, another Witneſs, who attended Mr. *L'Eſtrange* to *Twyne*'s Houſe, confirmed his Teſtimony, as did *Thomas Mabb*, another Witneſs.

Wickham the King's Meſſenger alſo depoſed, that he attended Mr. *L'Eſtrange* to *Twyne*'s Houſe, and that there were two or three hundred Sheets thrown into the next Houſe wet, newly come off the Preſs; and that when he had the Priſoner in Cuſtody at his Houſe, he owned it was a very bitter Thing, and ſaid, it was his unhappy Fortune to meet with it: There were ſeveral other Witneſſes alſo examined, that corroborated the Evidence of the Former.

The Priſoner's Defence.

The Priſoner made no other Defence, than by a flat and poſitive Denial of the whole: He ſaid he neither read the Book, or heard it read; nor did he ſet his Men to work upon it, or know the Author, or from whence it came.

Then the Lord Chief Juſtice *Hyde* ſummed up the Evidence, and obſerved to the Jury, that there was as much Villany and Slander in this Libel, as could be invented; and that the Deſign of it was, to deſtroy the King's Perſon and Family, to rob him of the Affection of his People, and ſubvert all Government, Eccleſiaſtical and Civil.

The Priſoner convicted and condemned.

That it was one of the blackeſt Treaſons that could be committed, and that the Priſoner's Defence conſiſted only in a bare Denial of the Fact: Whereupon the Jury, after a ſhort Receſs, brought him in GUILTY, and Judgment was pronounced on him as a Traitor.

He is executed.

The Priſoner refuſing to diſcover who was the Author of this Treaſonable Libel, was executed ſome few Days after at *Tyburn*, in purſuance of his Sentence.

Remarks on Twyne's Trial.

Indeed the Printer and Publiſher of Treaſon are as guilty, in the Eye of the Law, as the Author; though it is very rare, that either Printer or Bookſeller ſuffer, where they diſcover who ſet them on work. I have not, I confeſs, ſeen the Libel, the Priſoner was proſecuted for; but the very Title ſeems to be High-Treaſon againſt every Form of Government on the Face of the Earth, declaring it tobe the Peoples Duty to execute Judgment on their Governors, whenever their Adminiſtration is not agreeable to their Notions of Juſtice and Judgment: And no Doubt but it muſt be a virulent Libel, when the Priſoner never attempted to defend one Paſſage in it.

The

The Trial of THOMAS BREWSTER, for a Misdemeanor, the 22d of *February*, 1663-4. 15 Car. II.

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Brewster's Tryal.

The Charge.

HE was charged in the Indictment, only with a Misdemeanor, in Printing a Libel entitled, *The Speeches and Prayers of the late King's Judges*, and selling and uttering the same: Part of the Words laid in the Indictment being taken out of a Letter, from *Cook* the Regicide to his Friend, a little before his Execution, wherein he says, *The Cause for which I am in Bonds, is as good as ever it was: And I believe there is not a Saint that hath engaged with us, but will wish at the last Day, that he had sealed to the Truth of it with his Blood: I am satisfied, it is the most Noble and Glorious Cause, that has been agitated since the Apostolical Times; being for Truth, Holiness, and Righteousness; for our Liberties as Men and as Christians; for removing all Yokes and Oppressions: It is such a Cause, that the Martyrs would come from Heaven again to suffer for it, if they might:* I LOOK UPON IT AS THE MOST HIGH ACT OF JUSTICE (THE MURDER OF THE LATE KING) *that our Story can parallel*, &c.

The Evidence.

Thomas Creek, a Printer, deposed, that *Brewster*, the Prisoner, delivered him Part of the Copy of the said Speeches to print, and that he Printed as far as Folio 36: That the first Impression was 3000; and he printed Part of a Second, and delivered the Books to such Bookbinders as *Brewster* directed him.

George Thresher deposed, that *Brewster* employed him to fold and stitch Part of the Books, and that he delivered them again to *Brewster*, who paid him for them: And other Witnesses confirmed the Testimony of these.

Brewster's Defence.

Brewster, in his Defence, observed, That the Witnesses did not testify that he had published the Speeches *maliciously*, or with any Design against the Government; and that it was not usual with Booksellers to read what they sold: Selling Books was his Trade; it was only a bare exercising his Trade, and he knew no Evil in it: That the Book also came out at a Time when there were no Licensers of the Press, no settled Rules for their Direction, and he did not think himself accountable for what was in it: That it was more than three Years since the Book was printed, and it was sold publickly, not clandestinely; and lastly, he offered to bring Evidence, that he was not a seditious or disaffected Person.

The Reply to the Prisoner's Defence.

To this the Court replied, That Malice was always implied where the Act was unlawful: Even where a private Person was slandered, Malice was implied; much more where the King and State were traduced: That it was also done *seditiously* and *factiously*; for what could tend more to Sedition, and to incite and encourage the People to murder their King, than the publishing those vile Expressions of a Wretch who had murdered his Prince (viz.) *That he rejoyced in his Bonds: And that the Martyrs would willingly come from Heaven to die in such a Cause: And that all the Saints that engaged in it would wish they had sealed it with their Blood.* The Drift of the Libel, the Chief Justice observed, was, to make the King's Subjects believe, that the horrid Murder of his Father was justifiable: But he would be bold to affirm, *That so horrid a Villany had not been done upon the Face of the Earth, since the Crucifying of our Saviour*; and that the Prisoner must not think to justify all manner of Sedition against the King and State, by saying that selling Books was his Trade: That it was justifiable, indeed, for a Counsel to plead for his Client; but if he uttered Sedition, under Pretence of defending his Client, he was punishable for it: So if a Bookseller would print and publish seditious and factious Books, he must suffer for it: He might be indicted and punished, for publishing a Libel against a private Man, or a Magistrate; much more, for one against the King and State: Nor was it any Excuse, to say, they were the Speeches or Words of dying Men; for if a Man would be as wicked at his Death, as he had been in his Life-time, and justify his Villany, the Publisher of it was punishable: So where a Highwayman at the Gallows should arraign the Justice of the Law, and the Judges that condemned him, the Publisher of such Speeches would suffer for it: And directed the Jury therefore, that if they found the Defendant had caused these Speeches to be printed or published, they should find him guilty of the Misdemeanor, of which he stood indicted; and observed, that the Government was very merciful to the Prisoner, that he was not proceeded against Capitally.

A second Indictment of Brewster.

Brewster was a second Time indicted for printing and publishing a Libel called the *Phœnix*; *or, the Solemn League and Covenant*; in which it was declared, That *a King abusing his Power to the Overthrow of Religion, Laws, and Liberties, which are the very Fundamentals of this Contract and Covenant, may be controuled and opposed: And if he set himself to overthrow all these by Arms, then they who have the Power, as the Estates of a Land, may, and ought to resist by Arms; because he doth by that Opposition break the very Bonds, and overthrow the Essential of this Contract and Covenant: This may justify the Proceedings of this Kingdom, against the late King, who, in an hostile Way, set himself to overthrow Religion, Parliaments, Laws, and Liberties; and that the breaking this Covenant, was greater Sin than the breaking a Commandment.*

It was fully proved, that the Prisoner, with some other Booksellers, his Partners, caused the said Libel to be printed, sold, and dispersed, privately about, three Years before; and it appeared to be taken chiefly out of Mr. *Calamy*'s and Mr. *Douglas*'s Sermons, which were in Print.

His Defence.

Brewster, in a Manner, confessed the Fact; but observed in his Defence, that he did but put together, what had been before printed separately with Licence; and brought Witnesses to prove he was conformable to the Church, and lived peaceably.

The Court direct the Jury.

Then the Chief Justice summed up the Evidence, and informed the Jury, that the asserting people might resist their Prince, and take up

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Arms againſt him, was direct Treaſon, though the Priſoner was indicted but for a Miſdemeanor: And as for the Libel's being licenſed, it appeared, that Part of it was licenſed at *Edinburgh*, and Part of it here, during the Rebellion; and now to tell the People, after the King was happily returned, that they might do the ſame Thing again, was not to borne: *Then* Simon Dover *was brought to his Trial.*

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The Trial of Simon Dover, a Printer, for a Miſdemeanor, the 15th of *February*, 1663-4. 15 Car. II.

1663-4. 15 Car. II.

Dover's *Trial.*

THE Priſoner deſiring he might have Counſel aſſigned him, and a Copy of his Indictment, it was granted him.

The Charge. The Indictment charges him with a Miſdemeanor, in Printing and Publiſhing the ſaid *Speeches and Prayers*: And the Fact being fully proved, the Priſoner did not deny it; but ſaid in his Defence, that there was no Law againſt Printing: That he did it for a Livelihood; and the Scripture ſaid, he was worſe than an Infidel, that did not provide for his Family: If he had tranſgreſſed, it was through Ignorance, and he was ſorry for it.

The Fact confeſſed; but excuſed.

The Reply. To this the Chief Juſtice replied, that though every Man ought to maintain his Family, yet he ought not to do it by abuſing the King and Government: That could be no Part of his Trade: A Thief might as well ſay, he ſtole to maintain his Wife and Children.

Brooks's *Trial.* Then *Nathan Brooks*, a Bookbinder, was brought to his Trial, for diſperſing and publiſhing the ſaid Libel, entitled, *The Dying Speeches*, &c. which was fully proved againſt him: And one Jury having been charged with all the three Priſoners, after an Hour's Receſs brought in their Verdict. (*Viz.*)

Brewſter *convicted on both Indictments.* That *Brewſter* was guilty of ſelling and writing the Libel entitled, *The Dying Speeches*, &c.

That *Brewſter* was alſo guilty of publiſhing the Libel entitled, *The Phœnix*; *or, the Solemn League and Covenant.*

Dover *convicted.* That *Dover* was guilty of printing and publiſhing that Libel entitled, *The Speeches, &c.*

Brooks *convicted.* And that *Nathan Brooks* alſo was guilty of ſelling the ſaid Speeches.

The Judgment paſſed on all three. Whereupon *Brewſter* was ſentenced to pay a Fine of an hundred Marks, and to ſtand in the Pillory.

Brooks and *Dover*, were each of them ſentenced to pay a Fine of forty Marks, to be ſet two ſeveral Days in the Pillory, and to be committed, without Bail, till the next Seſſions, when and where they ſhould all make an open Confeſſion of their Offences, in ſuch Words as ſhould be preſcribed by Authority, and afterwards be impriſoned, during the King's Pleaſure; and on their Diſcharge, ſhould enter into Recognizances of 400 Pound each, with two Sureties in 200 Pound each, not to print or publiſh any unlicenſed Books.

Remarks on the Trials of Brewſter, the Bookſeller, &c. It appears from theſe three laſt Trials, that it will not avail a Printer or Bookſeller, who prints or publiſhes a Libel, to ſay, he did not know what was in it; or that he did but exerciſe his Trade without any Malice or ill Deſign againſt the Government: But ſtill, where a Man appears to be well-affected to the Government, and that it was a meer Overſight, he is ſeldom dealt with rigorouſly; eſpecially if he declares who was his Author.

We may obſerve from hence alſo, that it is in the Power of the Proſecutor, to call the Offence what he pleaſes: Though the Fact be really an Overt Act of High-Treaſon, he may charge the Priſoner only with a Miſdemeanor; nor can the Jury find it to be any Thing elſe, though the Treaſon be never ſo evident: On the other Hand, where the Priſoner is charged with High-Treaſon, and it appears upon the Evidence, that the Offence amounts to no more than a Miſdemeanor, the Jury muſt acquit the Priſoner, and cannot find him guilty either of Treaſon or Miſdemeanor: It appears alſo, that in a Trial for a Miſdemeanor, a Man might have had Counſel formerly, but not where he was charged with High-Treaſon; though at this Day, by a late Act, he may have Counſel in Treaſon: However in Murder, and other Capital Offences, he is ſtill denied Counſel; unleſs where Matter of Law ariſes on the Frame of the Indictment, or on the Facts that are given in Evidence.

The

1664. 16Car. II. Keach *his Trial.*

The Trial of BENJAMIN KEACH, for a *Miſdemeanor*, at the Aſſizes held at *Aylesbury*, the 8th and 9th of *October*, 1664. 16 *Car.* II.

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The Charge.

THE Indictment charges, that the ſaid *Keach*, being a Seditious, Heretical, and Schiſmatical Perſon, did write, print, and publiſh a ſeditious Book, or Libel, entitled, *The Child's Inſtructor; or, a new and eaſy Primmer.* Wherein were ſeveral damnable Poſitions, contrary to the Doctrine and Liturgy of the Church of *England*: And ſeveral Paſſages of the Libel were recited, wherein he aſſerted, *That* Chriſt *ſhould reign upon Earth a thouſand Years*; cenſured Infant Baptiſm, *&c.*

Confeſſed.

It was not only proved by Witneſſes, but the Priſoner confeſſed his writing and diſperſing the ſaid Book: But the Jury obſerving that one of the Paſſages in the Indictment did not agree with the Book, they were directed to find him guilty of all but that Clauſe; and they found him guilty accordingly.

His Sentence.

After which he was ſentenced to ſtand twice in the Pillory, to pay a Fine of twenty Pounds, to find Sureties for his good Behaviour and Appearance at the next Aſſizes; where he was to renounce his Errors, and make his Submiſſion; and the Book was ordered to be burnt by the Hangman. But after the reſt of the Sentence was executed upon him, he was ſet at Liberty, without making a Recantation.

A Remark upon it.

From this Proceeding, it ſeems, the publiſhing heretical Doctrines, contrary to thoſe of the eſtabliſhed Church, was puniſhable in the Courts of common Law formerly: But the Act of Toleration put an End to ſuch Proſecutions.

With this Proceeding ended the firſt Volume of State Trials. Firſt Edition.

1666. 18Car. II. *Lord* Morley, *his Trial.*

The Trial of THOMAS Lord MORLEY, for *Murder*, in *Weſtminſter-Hall*, before EDWARD Earl of *Clarendon*, Lord Chancellor of *England*, Lord High Steward (*pro hac vice*); JOHN Lord ROBERTS, Keeper of the Privy-Seal, EDWARD Earl of *Manchester*, Lord *Chamberlain*; HENRY Lord ARLINGTON, Principal Secretary of State; the Earls of *Oxford*, *Bedford*, *Suffolk*, *Dorſet*, and twenty other Peers, the 30th of *April*, 1666. 18 *Car.* II.

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Reſolutions of the Judges, previous to the Trial.

ALL the Judges of *England*, met at Serjeant's-Inn, in *Fleet-ſtreet*, on the 28th of *April*, to conſider of ſuch Things, as might, in point of Law, ariſe at the Trial of the Lord *Morley*; and unanimouſly reſolved, 1. That, upon a Letter of the Lord High Steward, directed to them, they were to attend at the Trial, in their ſcarlet Robes, and the chief Judges in their Collars of *SS*.

2. That in Caſe the Peers, who are Triers, after Evidence given, and the Priſoner withdrawn, and they were retired to conſult of their Verdict, ſhould deſire to ſpeak with any of the Judges, to have their Opinion upon any Point of Law: Then, if the Lord Steward directed ſuch Judges to go, they ſhould go to the Lords: But they ſhould acquaint the Lords, that they were not to deliver any private Opinion, without Conference with the reſt of the Judges, and that only in open Court.

3. That, if the Lord Steward ſhould, in open Court, demand any of their Opinions, though in the Abſence of the Priſoner, they were to anſwer the Queſtion.

4. That, if any of the Witneſſes, which were examined before the Coroner, were dead, or unable to travel, and Oath made thereof, the Examinations of ſuch Witneſſes might be read, the Coroner making Oath, that ſuch Examinations were the ſame which he took, without Addition or Alteration.

5. That, in Caſe any Witneſs, who had been examined by the Coroner, was detained from appearing, by the Means or Procurement of the Priſoner, his Examination might be read.

6. That if a Witneſs, examined by the Coroner, was abſent, and Oath made that the Proſecutors had uſed all their Endeavours to find him, and he could not be found; this was not ſufficient to authorize the reading of ſuch Examination.

7. That no Words were, in Law, ſuch a Provocation as would leſſen the Offence of killing

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killing a Man, and reduce it from Murder to Manſlaughter: But if, upon ill Words both Parties ſuddenly fight, and one kill the other, this is but Manſlaughter; for it is a Combat betwixt two, upon a ſudden Heat, which is the legal Deſcription of Manſlaughter.

8. If, upon Words, two Men grow angry, and afterwards ſuppreſs their Anger, and fall into other Diſcourſe, or have other Diverſions for ſuch a Space of Time, as in reaſonable Intendment their Heat might be cooled; and ſome Time after they draw upon one another, and fight, and one is killed; This is Murder: Becauſe, being attended with ſuch Circumſtances, it is reaſonably ſuppoſed to be a deliberate Act, and a premeditated Revenge upon the firſt Quarrel; but the Circumſtances being Matters of Fact, the Jury are Judges of them.

Neither the Charge or Evidence given by the Editors of this Trial.

The Editors of this Trial have neither given us the Indictment, or Evidence, or the Defence the Priſoner made; but it ſeems to have been a common Indictment, for the Murder of Mr. *Haſtings*: They tell us only that one Witneſs depoſed, there was a former Grudge, and that another ſwore when the Lord *Morley*, the Priſoner, had run Mr. *Haſtings* through the Head, his Lordſhip ſaid, *God damme, I promiſed thee this, and now I have given it thee.* And that the Quarrel began at the *Fleece*-Tavern, about an half Crown the Lord *Morley* ſaid he had laid down.

The Evidence ſummed up by the Solicitor General, with his Obſervations upon it.

We learn more of the Circumſtances of this Caſe, from a Speech aſcribed to Sir *Heneage Finch*, the Solicitor General, than from any Thing elſe. This Gentleman, in ſumming up the Evidence for the King, obſerved, that there were but three Caſes in Law, which were capable of excuſing the Death of a Man. 1. When a Man kills another in his own Defence: 2. When he does it by Miſadventure, or mere Accident. And, 3. When he does it in Heat of Paſſion. The two firſt of theſe excuſe *a toto*, and are not ſo much as Felony: The laſt, *a tanto*: It is Felony, but within Clergy. But by the ancient Law, whoever killed a Man by the moſt caſual Misfortune in the World, muſt have died for it as a Murderer. And, even now, he that kills a Man, *ſe defendendo*, muſt not plead that he did it in his own Defence, but he muſt plead *Not guilty*; It being a Maxim in Law, that the Death of a Man connot be juſtified. Nay, the Jury cannot find him to be *ſe defendendo*, but they muſt find the ſpecial Fact, and leave it to the Court to find whether it were *ſe defendendo*, on the Circumſtances. For, if the Fact be ſo, That the Man did not fly to the Wall, or his laſt Refuge, before he gave the mortal Wound, he is a Felon ſtill. And, he that kills a Man by Accident, or Miſadventure, muſt take Care that the Action he was about, was abſolutely lawful and neceſſary; for if there, were an unneceſſary medling with edge-Tools or Fire-Arms; if there were unneceſſary Recreation in the Act which produced this Event, he is reſponſible to the Law for the utmoſt Conſequence. And, at this Day, if a Man that kills another in the City, eſcapes out of the City, the City is to be amerced for letting a notorious Malefactor eſcape.

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If a Man meet another in the Street, and kill him without any viſible Provocation, the Law ſuppoſes there was Malice precedent, and judges this Act, Murder. And as it is Murder to kill a Man without Provocation, ſo is it, if the Provocation be ſlight and trivial.

A Caſe was tried before the Lord Chief Juſtice *Popham*, wherein it appeared, that a *Kentiſh* Gentleman, paſſing by another, made wry Mouths, and laughed, whereupon the other fell upon him, and killed him. The Chief Juſtice therefore and his Brethren were of Opinion, this was Murder, and the Man was hanged, this not being a competent Provocation. But, admitting the Provocation be great, yet, if the Man be not killed in the heat of Paſſion; if there be any Interval of Time, that the Law ſuppoſes the Blood might, and ought to have been cooled, and the Perſon then falls upon him that gave the Provocation; that which was Paſſion at firſt, is Malice at laſt; and that which would have been Manſlaughter then, is Murder now.

To come to the Point: There appears to be ſo little Provocation in this Caſe, that the poor Gentleman that was murdered, offered any Man five Pounds to tell him what the Quarrel was. His Lordſhip, indeed, ſays in his Defence, he hopes his Peers will conſider, that there was no other Provocation than the half Crown. I am ſorry for it: I am ſure the Laws of *England* allow no Man to take away another's Life, for half a Crown, without being guilty of Murder. Mr. *Haſtings* hears my Lord quarrel about half a Crown, and ſays, *I wonder a Perſon of Honour ſhould make ſuch ado about an half Crown*; and then throws down four half Crowns upon the Table, to make Satisfaction: Preſently Swords are drawn: Mr. *Bromidge* draws firſt, and hectors for my Lord. Then they are put up again; there is one Interval, and Time for Recollection. My Lord proceeds to quarrel with Mr. *Haſtings*, and calls his Sins to Remembrance, and knowing that Mr. *Haſtings* had been guilty of killing a Man not long before, tells him, *We come not here to ſtab Folks.* Mr. *Haſtings*, piqued to ſee himſelf ſo openly reproached, anſwered, he was a Gentleman, and as good a Gentleman as my Lord. I beſeech your Lordſhips to obſerve how Mr. *Haſtings* was treated: He was four Times drawn upon, twice by *Bromidge* in the Houſe, then in the Street; and a fourth Time under the Arch in *Lincoln's-Inn-Fields.* Mr. *Haſtings* ſays, I have no Quarrel to you, Captain: If there be any, it muſt be diſputed between me and my Lord. Some Witneſſes indeed, have been produced by my Lord *Morley*, (not upon Oath) who ſay, that Mr. *Haſtings* preſſed my Lord to fight, and ſaw him draw and attack, with the Three on the other Side. *Street* depoſed, that Mr. *Haſtings* reſolved to fight my Lord; and another depoſed, that my Lord ſaid, he would not fight; but this is not at all probable. It is plain, Mr. *Haſtings* ſaid, he would give any Man five Pounds, that would tell him what the Quarrel was: And why ſhould he, that knew of no Quarrel, deſire the Blood of my Lord *Morley?* Compare this with the Witneſſes that ſwear for the King; all three of whom expreſly ſay, they ſaw the Fight,

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Fight, and the Beginning of it, though it cannot properly be called a Fight. It was a direct Aſſaſſination; for three of the Witneſſes ſwore, there were two upon *Haſtings* all the while. Mr. *Haſtings* being thus preſſed, ſteps back, to get a little Ground; then my Lord takes him at the Advantage, ſhortens his Sword, and runs him into the Head; for which, as there was no Provocation, Malice was by Law implied, and it was Murder in his Lordſhip.

Nor was there only Malice implied by Law, but Malice apparent confeſſed, and moſt evident; for, as ſoon as Mr. *Haſtings* was killed, my Lord *Morley*, with a moſt deſperate Imprecation, throws his Sword upon him, ſaying, *God damn me, there you lie.* Another Witneſs ſwears his Lordſhip ſaid, *I have promiſed it you, and now you have it.* Can your Lordſhips doubt now, whether my Lord killed Mr. *Haſtings* with a deliberate Hatred? You ſee he confeſſed it was in Diſcharge of his Promiſe; and my Lord is to be believed againſt himſelf. The Brother of Mr. *Haſtings* ſays, the Deceaſed told him, that he had the unhappineſs to have a Quarrel with my Lord almoſt ten Years before; and that, fighting with my Lord, he had the Misfortune to give him a Hurt. The Brother ſwears further, that my Lord *Morley* coming by, and the Deceaſed paying his Lordſhip due Reſpect, his Lordſhip received it with ſuch Contempt, that the Deceaſed ſaid he knew not what it meant; *I doubt he bears me a Grudge.* This was a Year and half before his Death; but within a quarter of a Year before, the Witneſſes depoſe, That the Deceaſed, his Father, Brother, and my Lord, being at an Alehouſe, the Brother went down Stairs, and when he came up again, he found my Lord with his Sword drawn; and the Brother ſwears that the Deceaſed then told him, that my Lord was always urging him to drink, and then ſought all Occaſions he could to give and take Offence. Thus, it ſeems, it was his Lordſhip's Cuſtom to urge Mr. *Haſtings*, and to give him frequent Provocations, as if he had ſought an Occaſion for Manſlaughter, and to kill him within the Protection of the Law.

I confeſs, an Affront offered to a Peer, is much more heinous than one offered to a private Gentleman; but then the Law has provided another Manner of Reparation for a Peer. The ſame Words that, being ſpoken of a Gentleman, will bear no kind of Action, when ſpoken of a Peer, become *Scandalum Magnatum*. The Peer recovers great Damages, and the King inflicts a Fine and Impriſonment; ſo that upon the Matter, the Offender is bound in Chains, and laid at my Lord's Feet. Now for his Lordſhip, whoſe Honour is thus guarded by Law, to avenge himſelf by his Sword, is moſt unpardonable. I do not preſume to ſay, that the killing of a Man is more capital in the Caſe of a Peer, than of a private Gentleman; but I affirm, that no Provocation in the World can make that to be but Manſlaughter in a Peer, which would be Murder in a Gentleman. The Quality of the Offender, may ſerve to inhance the Crime; but, ſince the World ſtood, it was never counted a Diminution of it, or an Apology for committing it. The ſame Duty to the King, the ſame Obedience to the Laws, the ſame Reverence for human Nature, the ſame Caution to avoid the Effuſion of Chriſtian Blood, is expected from a Lord, as from the meaneſt Commoner in *England*. It is the Caſe of all the People of *England*, who are highly concerned in the preſent Example: If they put their Truſt in the Law, as the greateſt Avenger of Blood in the World, and once find themſelves deceived, who knows what Conſequences may follow? What Feuds in Families; what Maſſacres it may produce? No doubt, but all the World will obſerve and mark the Iſſue of this Day; they will be curious to know what became of a Lord, in whoſe Eyes the Blood of a Gentleman was ſo vile and inconſiderable. If it were poſſible ſo great a Tribunal as this could either miſtake the Fact, or miſunderſtand the Law, what Judicature is there left on this Side Heaven, for Mankind to rely on? In this Place no Deteſtation of the Crime; no Paſſion of the Proſecutor; no Compaſſion of your Lordſhips towards a Peer of the Realm, is to have any Ingredient in the Verdict: And therefore, having obſerved to your Lordſhips, that there is Malice implied by the Law, and in a Manner confeſſed by the Party, beſides the direct and formal Malice which hath been proved, I now ſubmit all to the Judgment which the Law hath wiſely placed in your Lordſhips moſt noble Breaſts, with this only Obſervation; That it is the Voice of Blood that crieth; and I know your Lordſhips will give it ſuch an Audience as it ought to have; ſuch an Audience as may quiet it, and keep it from crying any more; ſuch an Audience as may cleanſe the Land from Blood, and be a Means to continue that due Veneration, which all Men have to your Lordſhips moſt righteous and impartial Proceedings.

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The Solicitor-General having finiſhed his Speech, the Lord Steward directed the Lords Triers to withdraw, and conſider of the Evidence; but did not ſum it up.

The Lords and the Priſoner being withdrawn, Wine and Biskets were brought in for the Lord Steward, and the great Men preſent; and the Lords Triers having ſtaid out about three Hours, returned into Court, and took their Places; and, being called over, the Lord High Steward, demanded of my Lord *Frechevile*, (the loweſt of the Peers) *If my Lord* Morley *was Guilty, or not Guilty?* To which his Lordſhip anſwered (laying his Hand on his Breaſt) *Not guilty of Murder; but guilty of Manſlaughter.*

The Priſoner convicted of Manſlaughter.

In the ſame Manner the Lord-Steward putting the like Queſtion to the reſt, ſeverally, in their Order, they all returned the ſame Anſwer, except the Lord *Wharton*, and Lord *Aſhley*, who anſwered, *Guilty of Murder.*

Then the Lord *Morley*, the Priſoner, being brought in, the Lord Steward acquainted him, that his Peers had found him *Guilty of Manſlaughter*, and demanded what he had to ſay for himſelf: To which his Lordſhip anſwered, He deſired the Benefit of his Clergy, and the Benefit of the Statute; and the Lord Steward replied, He muſt have the Benefit of his Clergy; he conceived the Statute was clear in that Point; and asking the Opinion of the Judges, they all bowed, as a Mark of their Aſſent. Then the Lord Steward told the Priſoner, he

Has the Benefit of the Statute.

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was discharged, paying his Fees. After which the Court was dismissed, and the Lord Steward broke his Staff.

Remarks on Lord Morley's Trial.

Since the Editor hath omitted the Charge, the Evidence, and Defence, it is impossible to make any just Remarks on this Trial. Indeed, if we are to relie on the Observations made by the Solicitor-General, the Malice was pretty notorious: For it seems this Lord and Mr. *Hastings*, had fought a Duel ten Years before, and his Lordship was then wounded by him. Several other Quarrels had happened between them afterwards, and his Lordship had threatened the Deceased: And, as I apprehend the Case, this was a Duel of Four of a Side, who agreed to go from the Tavern where the Quarrel began, and fight in the Fields. And the Solicitor informs us, that the Witnesses deposed, That my Lord and another fell upon *Hastings* at once; and his Lordship shortned his Sword, and run the Deceased through the Head, saying, *God damn me, I have promised it you, and now you have it*; which, one would think, sufficiently discovered the Malice of his Heart; and, had he been tried by a common Jury, would have gone a great Way to have convicted the Prisoner of Murder. But whether there might not be something in that Suggestion of the Solicitor's, That Peers, being a superior Class of Men, are apt to imagine that nothing less than the Blood of the Offender can attone for an Affront given them by a private Gentleman, may require some Consideration.

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I shall only observe further, that the Editor is mistaken in the Title of this Trial, where he makes it to be before *The House of Lords:* Whereas it was before a certain Number of Lords specially appointed for this Purpose.

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Lord Clarendon's Impeachment.

Proceedings on the Impeachment of EDWARD Earl of *Clarendon*, late Lord High Chancellor of *England*, 1667. 19 *Car.* II.

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A Debate on the Manner of it.

THE Earl being charged with several Crimes by Mr. *Edward Seymour*, in the House of Commons, the 26th of *October*, 1667. It was debated, whether they should impeach the Earl of High-Treason, in General Terms, or exhibit Articles against him: And a Committee being appointed to search Precedents, Sir *Thomas Littleton* reported, That in capital Cases, there was no Instance of a General Impeachment, till the Earl of *Strafford*'s and Archbishop *Laud*'s Impeachments.

Then a Committee was appointed to reduce the Accusation under certain Heads; which being reported, and read a second Time, it was moved, That it might be referred to a Committee, to see how far they were true, common Fame being too slender a Ground to form an Impeachment upon: But this was resolved in the Negative; and the several Heads for Articles were read again, to see if those Members that introduced them, could offer sufficient Reasons to induce the House to impeach the Earl: And, after the Articles were thus gone through, Sir *Robert Atkyns* observed, That the Inducements for their Belief, proceeded from a third Hand; and Mr. *Colman* shewed, That even in the Earl of *Strafford*'s Case, the House would not proceed on any Article, till one Member spoke of his own Knowledge, and another engaged to make it good. However, the Question being put, That the House had sufficient Inducements to impeach the Earl, it was carried in the Affirmative.

The Heads for an Impeachment.

The principal Part of the Charge against the Earl, was, that he had advised the King to lay aside Parliaments, and govern arbitrarily by a Military Power: That he had got a greater Estate, under the Crown, than could be lawfully gained in so short a Time: That he had been guilty of Bribery and Corruption: That he had advised and effected the Sale of *Dunkirk*: That he had corresponded with *Cromwell*, and the King's Enemies, when he was beyond Sea: That he had betrayed the Nation in all Negotiations relating to the *Dutch* War; and betrayed and discovered his Majesty's secret Councils to his Enemies; and that he was the Author of that fatal Council of dividing the Fleet in the Year 1666: And they resolved, that the betraying his Majesty's Councils to his Enemies, was High-Treason; and therefore determined to impeach him of High-Treason. Accordingly, on the 12th of *November*, Mr. *Edward Seymour* impeached the Earl of High-Treason, and other Crimes and Misdemeanors, at the Bar of the House of Lords, in general Terms, desiring he might be sequestred from Parliament, and committed to safe Custody, and in convenient Time the Commons would exhibit Articles against him: But the Lords declared, at a Conference with the Commons, they had not committed the Earl of *Clarendon*, because their Accusation for High-Treason, was in General Terms.

Impeached of High-Treason generally.

A Debate between the two Houses concerning committing the Earl.

The Commons, on the other Hand, gave their Reasons at a second Conference, why a Peer ought to be committed on a general Impeachment; with which, the Lords, however, were not satisfied: But while the two Houses were disputing this Point, the Lords received an Intimation, that the Earl was withdrawn; together with a Petition from his Lordship, directed to the Lords Spiritual and Temporal, which that House, on the 3d of *December*, communicated to the Commons; and in this he answers, Part of the Charge he found the lower House was framing against him, and says, If his Estate had been answerable to what was reported, it might reasonably have caused his Integrity to be suspected; but that he had never received or taken a Penny, but what had been the lawful Perquisites of his Office, in the best Times; and that it had been worth double to others, what it had been

The Earl withdraws, and leaves a Petition to the Lords behind him.

to

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to him: That all the Favours he had obtained from the King for others had not been worth five Pounds to him; ſo that he was as far from Corruption as from a diſloyal Thought, which after thirty Years Service of the Crown, in ſome Difficulties and Diſtreſſes, he never expected would have been objected to him in his Age: That what his Majeſty had beſtowed on him in Lands, was worth more than all he had beſides; and, though this exceeded his Merit, yet others had been as fortunate in the like Bounty, who had as ſmall Pretences to it.

And as to the attributing all Misfortunes and Miſcarriages to his Councils, as he was Prime Miniſter: He ſaid he ſerved a Maſter of great Underſtanding, who always joined other Perſons with him of great Ability and Experience, without whoſe Advice and Concurrence nothing was done.

That, for two Years after the Reſtoration, there was no Difference in the Councils, or any Complaints in the Kingdom; but from the Time Mr. Secretary *Nicholas* was removed (and ——*Bennet*, *Earl* of *Arlington*, *ſucceeded*) there had been great Alterations: The Petitioner's Credit at Court, and in the Council, had been much diminiſhed, ſince that Time; not above two Perſons having been brought into the Council, or preferred at Court, who could be ſuſpected of having any Kindneſs for him; and moſt of them of different Principles, both in Church and State, and who had taken all Opportunities of leſſening the Petitioner's Credit with the King, and others, by miſrepreſenting all he ſaid and did; though his Majeſty's Juſtice and Goodneſs was ſuch, that it made little Impreſſion on him.

That it was his Opinion, the Misfortunes of the Kingdom proceeded from the *Dutch* War, to which he was always averſe; no Alliances being formed, at the Commencement of it, with the neighbouring Princes: That after we entred into War with the *Hollander*, neither *France* or *Spain* had much Regard for us; and as he abhorred the entring into it, ſo he never gave any Advice towards the Management of it; ſave that he oppoſed the Payment of the Seamen by Tickets, and ſome other Particulars, that added to the Expence.

That he was not conſcious of having given Advice that had proved miſchievous or inconvenient to his Majeſty, or had been the ſole Manager of Affairs; for he had not been twice alone with his Majeſty the laſt Year; and very ſeldom, the three preceding Years; and very few Things had of late been hearkened to that he had propoſed.

That ſince the Diſtempers of the Times, and the Differences between the two Houſes were ſo great, and his Enemies had given out, that he would prevail with his Majeſty to diſſolve the Parliament, thereby to expoſe him to the Rage and Fury of the People; that he might not be looked upon to obſtruct his Majeſty's Service, or the Unity and Peace of the Kingdom, he humbly beſought their Lordſhips that he might not forfeit their Favour and Protection, by withdrawing himſelf from ſo powerful a Perſecution, in Hopes that he might be able hereafter to appear and make his Defence; when his Majeſty's Juſtice ſhould not be obſtructed by the Power and Malice of thoſe who had ſworn his Deſtruction.

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The Commons propoſe a Bill of Attainder.

This Petition being read in the Houſe of Commous, they reſolved it to be Scandalous and Seditious, and a Reproach to the King, and the publick Juſtice of the Nation; and it was propoſed to bring in a Bill of Attainder againſt the Earl: But the Lords ſending them down a Bill for his Baniſhment, on the 13th of *December*, after ſome warm Debates, they reſolved to be contented with that; Yea's 65, No's 42.

An Act paſſed for his Baniſhment.

The Earl proſecuted by the Earl of Briſtol.

We meet with another Proſecution of the Earl of *Clarendon* in the State Trials alſo, ſome Years before, *viz. Anno* 1663, when the Earl of *Briſtol* preferred Articles of High-Treaſon againſt him in the Houſe of Peers; the moſt material whereof were, That the Earl of *Clarendon* had traiterouſly endeavoured to alienate the the Hearts of his Majeſties Subjects from him, by giving out, his Majeſty was enclined to Popery, and intended to alter the eſtabliſhed Religion.

That he had perſuaded his Majeſty, contrary to the Intereſt of the Nation, and againſt the Advice of the General, to withdraw the *Engliſh* Garriſons out of *Scotland*, and demoliſh the Forts built there at a vaſt Expence to this Kingdom; and that he had alſo adviſed and effected the Sale of *Dunkirk*: But the Lords having demanded the Opinions of the Judges, whether this Charge was legally brought before their Houſe, and whether there was any Treaſon contained in it;

Reſolved, that one Peer could not impeach another.

The Judges unanimouſly agreed, that a Charge of High-Treaſon could not, according to the Laws of this Realm, be exhibited by one Peer againſt another, in the Houſe of Peers; and that, admitting the Matters alledged in the Charge by the Earl of *Briſtol* were true, and though they were alledged to be traiterouſly done, there was no Treaſon in them; and the Lords concurring with the Judges in their Opinion, that Proſecution was dropped.

Remarks on the Earl of Clarendon's *Diſgrace.*

The Earl's Friends generally aſcribe his Diſgrace to his Zeal for the Church of *England*, in Oppoſition both to apiſts and Diſſenters; and it is obſervable, that he ſays in his Apology, he had little Intereſt at Court, ſince Secretary *Nicholas* was diſcharged (and *Bennet* Earl of *Arlington* ſucceeded him); That is, ſince the Papiſts influenced the Court, and joined their Intereſts with the Diſſenters to obtain a Toleration: They acknowledge alſo that many of the Cavaliers, who had been ruined in the late Rebellion, were become his Enemies, becauſe he neglected to make a ſuitable Proviſion for them, after the Reſtoration: His very grave and ſolemn Behaviour, rendered him diſagreeable alſo to the gay Part of the Court; for it is ſaid, he did not only reprove his Equals, when he thought they deſerved it, but ſometimes offered his Advice to the King, in ſuch a Manner, that the Wits about the Court would frequently ſay to his Majeſty, as the Chancellor paſſed by, *There goes your School-maſter*: And the Duke of *Bucks*, it is ſaid, would mimick the Chancellor, carrying a Pair of Bellows before him for the Purſe, while Colonel *Titus* carried the Fire-ſhovel as a Mace; and the King would laugh at the Buffoonery. Theſe, with more ſerious Applications of the Popiſh Party, and the Solicitations

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tations of the Ladies of Pleaſure, who dreaded his grave Lectures, were, in the Opinion of his Friends, the principal Occaſions of the Chancellor's Diſgrace.

But ſtill, it is thought, there was ſomething more than the Drollery of the Duke of *Bucks*, the Malice of the Papiſts and Diſſenters, or the Solicitations of the Ladies, to accompliſh this Great Man's Ruin: Particularly he is charged with neglecting, or rather preventing, the Settling a greater Revenue on the Crown at the Reſtoration, when the People were ready to grant whatever the King could demand: This, it is ſaid, made his Majeſty very cool towards him, when he came to feel the ill Effects of it: Neither was his Suffering the Vintners to build him a fine Palace, when the Nation was labouring under thoſe terrible Calamities of Fire, War, and Peſtilence; and ſcarce a Family of Diſtinction, but was mourning the Death of ſome near Relation, agreeable to the Prudence which this Miniſter was ſaid to be ſo eminent for; eſpecially ſince it was ſuggeſted to be built in Conſideration of his conſenting to the Monopoly of Wines: But whatever was the Occaſion of his Fall, one would have thought his paſſed Services, and his Alliance with the Royal Family, ſhould have procured him a milder Fate; and it is reaſonable to believe, that if the Duke of *York*, his Son-in-Law, had not had ſome Ends to ſerve in his Baniſhment, he might have ſupported him: Perhaps the Duke found him too good a Proteſtant, and might look upon him as an Obſtacle to his Deſign of introducing Popery; and particularly, that he hindred his Dutcheſs from being reconciled to the Church of *Rome:* And if both the King and the Duke had their private Views in ſending him on the other Side the Water; if the one thought the Diſtreſſes of the Crown proceeded from his Advice, and propoſed the enjoying a more unreſtrained Liberty in his Abſence; and the other hoped it would facilitate the Introducing his Religion, we need look no farther for Reaſons for the Baniſhment of the Earl. 1667. 19 Car. II.

But perhaps both the King, and the Duke, and the Nation in general, were in the End greater Sufferers by the Earl's Baniſhment, than himſelf: While he enjoyed an elegant Retirement, at *Rouen* in *France*, and wrote that admirable *Hiſtory of the Civil Wars*, the Court was reduced to the greateſt Diſtreſs, and the People, by the Artifices of deſigning Men, almoſt worked up into another Rebellion, occaſioned chiefly by the Weakneſs, or Wickedneſs, of thoſe Miniſters that ſucceeded the Earl. However defective his Adminiſtration had been, it is certain, his Majeſty changed much for the worſe; and poſſibly, had the Earl continued ſtill at Court, a great deal of that Diſtraction might have been prevented that happened afterwards. We had not been frighted out of our Senſes by a pretended Popiſh Plot: There might have been no Struggles for a Bill of Excluſion: He might, by his Wiſdom and long Experience, have found a Way to have ſecured our Religious and civil Rights, without breaking into the Line of Succeſſion, and driving the Succeſſor into a ſecond Exile: However the Duke might encourage or rejoice therefore, at the Baniſhment of the Earl, his Father-in-Law, had he been governed by his Councils, he might never have been driven from his Throne: But this is not the firſt Time that Families have ruined themſelves, by deſtroying thoſe Relations, who were beſt enclined, and beſt qualified, to ſupport them.

1668. 20 Car. II. *Trial of* Meſſenger, &c.

The Trials of PETER MESSENGER, RICHARD BEASLEY, WILLIAM GREEN, THOMAS APPLETREE, EDWARD COTTON, JOHN EARLES, WILLIAM WILKS, RICHARD FARREL, WILLIAM FORD, EDWARD BEDLE, RICHARD LATIMER, THOMAS LIMERICK, RICHARD WOODWARD, JOHN RICHARDSON, and JOHN SHARPLESS, for *High-Treaſon*, at the *Old-Bailey*, the 4th of *April*, 1668. 20 *Car.* II. 1668. 20 Car. II.

The Charge.

THEY were indicted for High-Treaſon, in levying War againſt the King, by aſſembling with other Perſons, to the Number of 500, in *Eaſt-Smithfield* and *Moor-Fields*, in the County of *Middleſex*, armed with divers Weapons, offenſive and defenſive, pulling down Bawdy Houſes, breaking open Priſons, *&c.*

Four Indictments.

There were four Indictments preferred againſt the Priſoners. The Firſt, againſt *Peter Meſſenger*, *Richard Beaſley*, *William Green*, and *Thomas Appletree*. A Second, againſt *Edward Cotton*, *John Earl*, *William Wilks*, *Richard Farrel*, and *William Ford*. A Third, againſt *Edward Bedle*, and *Richard Latimer*. And a Fourth, againſt *Thomas Limerick*, *John Richardſon*, *Richard Woodward*, and *John Sharpleſs*.

The Evidence on the Firſt.

The Witneſſes againſt *Meſſenger* and thoſe in the firſt Indictment, depoſed, that on the 24th of *March* laſt, a great Number of Perſons aſſembled in *Eaſt-Smithfield* and *Moor-Fields*, on Pretence of pulling down Bawdy-Houſes: That *Beaſley* marched before them as their Captain, with a naked Sword in his Hand, which he brandiſhed over his head; and that *Meſſenger* had a green

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green Apron upon a Staff, which he flouriſhed as Colours: That the next Day, the 25th of *March*, they did the like: That ſome Houſes were pulled down, and *Peverell* the Conſtable, coming with his Staff in his Hand, charged them to depart, and keep the Peace; and that thereupon *Beaſley* wounded him with his Sword, and ſome of the Mob knocked him down, and took away his Conſtable's Staff: That *William Green* was amongſt them with his Staff in his Hand, and threw up his Hat and hallooed, and was taken by the King's Soldiers, who came to ſuppreſs them: That *Appletree* was amongſt them, and ſtruck firſt at *Peverell* the Conſtable, and aſſiſted in pulling down ſome Houſes.

The Evidence on the 2d Indictment.

The Witneſſes depoſed againſt *Cotton*, and the reſt of the Priſoners mentioned in the 2d Indictment, That the People being aſſembled in great Numbers, Sir *Philip Howard* came with a Troop of the King's Guards, and commanded them to diſperſe; and that, ſuppoſing it had been the Duke of *York* that commanded the Guards, they threw Stones at him; and ſome ſaid, unleſs the King gave them Liberty of Conſcience, it ſhould be a bloody *May*-Day: Others ſaid, they would kill the Guards, and pull down *Whitehall*; and continued together in a tumultuous Manner, till they were diſperſed by the Guards.

That the Priſoners were amongſt them both Days; and that *Cotton* aſſiſted in pulling down a Houſe in *Shoreditch*.

The Evidence on the 3d Indictment.

On the third Indictment, againſt *Bedle* and *Latimer*, it was proved, That great Numbers of People being aſſembled in a tumultuous Manner, at *Clerkenwell*, they broke open *New-Priſon* there, and releaſed four Priſoners, two whereof were committed for Felony: That they refuſed to diſperſe, ſaying, they had been Servants long enough, and now they would be Maſters, crying out, *One die, and all die.* That *Latimer* was very active in breaking the Priſon; and *Bedle* being purſued by one of the Soldiers, called to his Comrades to face about, and not leave him.

The Evidence on the 4th Indictment.

Upon the fourth Indictment, it was proved, that *Limerick* marched at the Head of one Company of the Mob, as their Captain, with a Club in his Hand: That he brought them to the Houſe of one *Peter Burlingham*, which they pulled down, and took away ſeveral of his Goods, to the Value of 30 *l.* and, that the reſt of the Priſoners, mentioned in this Indictment, were among the Multitude.

Special Verdicts found, as to ſome of the Priſoners.

The Jury found ſpecial Verdicts on the four Indictments, (the Facts being agreed to be according to the Evidence) againſt *Meſſenger*, *Beaſley*, *Green*, and *Appletree*, in the firſt Indictment; againſt *Cotton* in the ſecond Indictment; againſt *Bedle* and *Latimer* in the third Indictment; and, againſt *Limerick* in the fourth Indictment; and ſubmitted the Matter of Law to the Judges. But, as to the other Six, *(viz.)* *Earls*, *Wilks*, *Woodward*, *Farrel*, *Richardſon*, and *Ford*, the Jury acquitted them.

The reſt acquitted.

The Judges Opinions that the Facts were treaſonable.

The Judges being aſſembled at the Lord Chief Juſtice's Chamber, to conſider of theſe Verdicts, in *Eaſter* Term following, the Lord Chief Baron *Hales* was of Opinion, that theſe Facts did not amount to Treaſon, becauſe the *Stat.* of 1 *M.* c. 12. ſays, *If any Perſons, to the Number of Twelve or more, aſſemble with Intent to pull down Encloſures*, &c. *and continue together an Hour after Proclamation made for them to depart, it ſhall be Felony.* If ſuch Actions therefore had been Treaſon at Common Law, it had been to no Purpoſe, he obſerved, to make them Felony by Statute.

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To which the reſt of the Judges, who were of another Opinion, anſwered, That this Objection had been made in the Caſe of *Bradſhaw* and *Burton*, in *Popham*'s Reports; but there it was reſolved, That if People aſſembled to alter the Laws, or to ſet a Price on Victuals, or to lay violent Hands on a Magiſtrate, or the like; and with Force attempted to put the ſame in Execution, this was Rebellion and Treaſon at Common Law: And reſolved, that the Statute of 1. *M.* intended only, that if ſuch Perſons, as pretended to have received any *particular* Injury as to their common or other Intereſts in Lands encloſed, ſhould aſſemble to pull down the Encloſures, it ſhould be Felony; and indeed this was not Treaſon; But where the Deſign is general to pull down *all* Encloſures, in which none of them are particularly concerned, and they put this Deſign in Execution, this was Treaſon at Common Law. And it was held by all the Judges, that the 13. *Eliz.* which makes the Intention, in many Caſes, Treaſon, extends to nothing but where, if the Act had been done, it had been Treaſon at Common Law.

The Judges alſo reſolved, that this Inſurrection, with Intent to pull down Bawdy-Houſes *in general*, and to break open Priſons *in general*, and putting ſuch Deſigns in Execution by Force; either of them was a levying War againſt the King, and High Treaſon within the 25. *Ed.* III. And, as to the particular Caſes on the ſpecial Verdicts, all the Judges agreed, (except the Chief Baron) that as to *Meſſenger* and *Beaſley*, in the firſt Verdict, *Cotton* in the ſecond Verdict, and *Limerick* in the fourth; the Matter found againſt theſe four, was High-Treaſon; and they received Judgment, and were executed thereupon, as Traitors. But, as to *Appletree* in the firſt Verdict, and *Latimer* in the Third, there was a Difference in Opinion; for (beſides the Chief Baron) *Atkyns*, *Tyrrell*, *Wyndham*, and *Wylde*, held that the Verdicts were not ſufficient; becauſe it was not expreſly found, that they were *aiding and aſſiſting*. On the contrary, the Chief Juſtice, with *Turner*, *Twiſden*, *Archer*, *Raynsford*, and *Morton*, were of Opinion, that the Verdicts were full and plain: For, there being ſeveral Acts of Force found, to be committed by them, in Purſuance of their Deſign, there was no Neceſſity to find them *aiding and aſſiſting*. However, there being this Difference in Opinion as to theſe two, the Chief Juſtice recommended them to his Majeſty's Mercy, which was extended to them. And as to *Green*, in the firſt ſpecial Verdict, and *Bedle* in the Third, the Judges all agreed that the Verdicts were not ſufficient to denominate the Offence High-Treaſon; becauſe, they only found that they were preſent, but that no particular Acts of Force were committed by them, and it was not found they were *aiding and aſſiſting*. It was ſaid, they might

Four of the Priſoners condemned and executed.

Difference of Opinions as to ſome others.

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might be preſent out of Curioſity: Whether they were *aiding and aſſiſting*, was a Matter of Fact which ought to be expreſly found by the Jury, and not left to the Court to judge upon any colourable Implication; and accordingly theſe two were diſcharged.

Remarks on the Trials of Meſſenger, *&c.*

Ever ſince theſe Trials, the aſſembling in a tumultuous Manner, with Arms, or Weapons of any kind, in order to reform the State, to procure an Alteration of the Laws, or to redreſs any Abuſes, Nuſances, or Grievances, of a Publick Nature, and actually endeavouring to put ſuch Deſigns in Execution by Force, has been adjudged High-Treaſon.

And it appears a little unaccountable, that *Green*, in the firſt ſpecial Verdict, who was found to be among the Mob, with his Staff in his Hand, to throw up his Cap, halloo, to encourage the Inſurrection; and *Bedle*, who was alſo with them at breaking open the Priſon, and called to his Companions to face about, and fight the Guards who came to ſuppreſs them, ſhould be deemed innocent in the Eye of the Law. If the Words, *aiding and aſſiſting*, were wanting in theſe Verdicts, there were certainly Words that amounted to as much; and, indeed, there are too many Inſtances in our Law, where Matter of Form is more conſidered, than the Merits of the Cauſe. 1668. 20 Car. II.

1668-9. 20 Car. II. Hawkins's Trial.

The Trial of ROBERT HAWKINS, *Clerk*, for *Felony*, at the Aſſizes held at *Aylesbury*, for the County of *Bucks*, the 11th of *March*, 1668-9. 20 *Car.* II.

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The Charge.

THE Priſoner was indicted for Felony, in ſtealing Rings, Money, and other Goods, out of the Houſe of *Henry Larrimore*.

The Evidence againſt the Priſoner.

The principal Witneſs againſt Mr. *Hawkins*, was *Larrimore*, the Proſecutor, who depoſed, That on the 18th of *September*, being gone from Home with all his Family, to a Hemp-Plot, a little Diſtance from his Houſe, to pull Hemp; and, coming Home half an Hour before Sun-ſet, he found his Doors open; and, running up Stairs, he ſaw the Priſoner through the Chinks of the Boards, rifling a Box; in which, among other Goods, was a Holland Apron, a Purſe with two Gold Rings, two Ten-Shilling Pieces of Gold, and nineteen Shillings in Silver; all which he ſaw the Priſoner turn out of the Purſe, run out of the Houſe with them, and hide himſelf in a Cloſe of Beans.

That the next Day he got a Warrant from Sir *Richard Piggot*, and went with the Conſtable to ſearch the Priſoner's Houſe, which they broke open, on his refuſing them Entrance; and found, in a Basket filled with Rags, one of the Rings, and a Five-Shilling Piece of Silver, which he was poſitive the Priſoner took out of his Purſe the Day before.

Larrimore the Son, depoſed, that coming Home a little after his Father, he ſaw the Priſoner run out of the Houſe, down the Yard, and hide himſelf in a Cloſe of Beans; and asking his Father, if Mr. *Hawkins* had been there, his Father anſwered, he had robbed him.

Joan Beamſly alſo depoſed, that going Home with young *Larrimore*, ſhe ſaw the Priſoner run out of the Houſe, and hide himſelf in a Cloſe of Beans; and heard *Larrimore*, the Father, tell his Son, Mr. *Hawkins* had robbed him.

Richard Mayne the Conſtable depoſed, That *Henry Larrimore*, the Elder, bringing him a Warrant from Sir *Richard Piggot*, to ſearch the Priſoner's Houſe for ſtolen Goods, and the Priſoner refuſing them Entrance, they broke open his Doors; and *Larrimore*, the Elder, found in a Basket the gold Ring and Five-Shilling Piece; and thereupon he carried the Priſoner before Sir *John Croke*, who committed him; and the Deponent carried the Priſoner to *Aylesbury* Gaol.

Larrimore's Wife alſo depoſed, That when ſhe was his Servant, ſhe ſaw the Priſoner lurking about their Houſe in the Night-time. *Richard Mantill*, Son-in-law to *Larrimore*, alſo depoſed, he had ſeen him lurking about his Father's Houſe in the Night-time.

Dodſworth Croke, Eſq; depoſed, that he was poſitive the Ring, produced in Court, was ſtolen from *Larrimore*; for that he, the Deponent, pawned it to him.

Good depoſed, that he pawned the Five-Shilling Piece, produced in Court, and found in the Priſoner's Houſe, to *Larrimore*, at the Time of the Seſſions, held in *July*, 1668.

This Evidence againſt the Priſoner, appeared ſo ſtrong and concluſive, that the Lord Chief Baron *Hales*, who tried him, ſaid, there was Evidence enough to hang twenty Men: However, Mr. *Hawkins* ſhewed, that it was all a malicious Proſecution.

The Priſoner's Defence.

And firſt he obſerved, That, if the Priſoner had ſeen him rob his Houſe, it was ſtrange he did not call to his Neighbours to aſſiſt in apprehending him; and demanded why he ſearched other Houſes for the Goods he ſaw him ſteal: He obſerved alſo, that, when the Proſecutor went to Sir *Richard Piggot* for the Warrant, he did not charge him poſitively with the Felony: To which *Larrimore* gave no ſatisfactory Anſwer; and, the Priſoner, croſs-examining the Conſtable, he acknowledged that *Larrimore* deſired him to ſearch other Houſes, and did not tell him he ſaw Mr. *Hawkins* rob him. He acknowledged alſo, that it was *Larrimore* the Elder himſelf, that found the Ring and the Five-Shilling Piece; and another of the Priſoner's Witneſſes depoſed, that the reſt of the Company was in the Hall, when *Larrimore* pre-

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tended to find the Money in a Basket in the Buttery: The Goaler deposed, that the Constable told him, the Parson was a notorious Picklock, and advised him to watch him narrowly, and load him with Irons.

The Prisoner's Evidence.

Then the Prisoner examined one *Chilton*, a Shoe-maker, whom the Prosecutor had *sub-pœna'd* as a Witness; and *Chilton* deposed, that, having a Pair of Boots of the Prisoner's to mend, and telling him he would lay them in his Shop-Window when they were done, where the Prisoner might take them (for he should be abroad) the Prisoner accordingly took the Boots out of his Shop-Window: But when the Prisoner came afterwards to demand his Tythes, this *Larrimore*, *Dodsworth*, *Croke*, *Richard Mayne* the Constable, and others, advised him to indict the Parson for stealing the Boots; and threatned, if the Deponent would not fetch a Warrant for the Parson, Sir *John Croke* would indict him as accessary to the stealing of them: And *Larrimore* said, he would make the Deponent swear Mr. *Hawkins* had stolen the Boots, and actually *sub-pœna'd* him to the Assizes for that Purpose: That *Croxton* told him the *Monday* before, if he would swear Mr. *Hawkins* stole the Boots, he would bear him out as far as an hundred Pounds would go; and if that would not do, as far as five hundred Pounds would go; and would give him Bond to make it good: And two other Witnesses appeared, and attested the Truth of *Chilton*'s Evidence.

Then the Lord Chief Baron ordering the Constable to produce the Search-Warrant, it appeared, that the Warrant was dated the Day before the Prosecutor pretended the Robbery was committed; whereupon his Lordship observed, that the Prosecutor was very cunning to know, on the 17th Day, that he should be robbed on the 18th, and that the Prisoner should rob him; and demanding of Mr. *Hawkins*, Why he refused to open his Doors, and suffer his House to be searched, he answered, that most of the Persons present were his inveterate Enemies: That Sir *John Croke* and *Larrimore* had often threatned to pull down his House, and hired People to force it open: That they hired one *Jaires* to get down his Chimney, and open his Doors, when the Family was abroad, and contracted with one *Tyler* for the same Purpose; and besides, they had an Execution against him, which *Larrimore*'s Son had executed in Part a few Days before: And that he did offer, that Mr. *Sanders*, the other Constable, who lived next Door, might search as narrowly as he pleased: All which he proved by unexceptionable Witnesses: Whereupon the Chief Baron observed, that the Business appeared very foul on Sir *John Croke*'s Part (who was then in Court.)

The Prisoner's Defence continued.

Mr. *Hawkins* observed further in his Defence, That this Prosecution of *Larrimore*'s was commenced on his being sued for Tythes, and it would be easy, he said, for the Fanaticks to avoid the Payment of Tythes; if they could do it by hanging up the Clergy: That this *Larrimore* was an Anabaptist, and a notorious Enemy to the Church of *England*, and her Clergy in general; but particularly to himself, he having been obliged to sue him for his Tythes; and having indicted him for not coming to Church, and not baptizing his Children: That *Larrimore*'s Malice also appeared in dissuading those that owed him Money, from paying him, and persuading others he owed Money to, to arrest him, and by dissuading those he had sued for Tythes, from agreeing with him, and telling them, Sir *John Croke* would force him to run his Country; all which he was ready to prove, and produced a Certificate under the Hands of an hundred of his Neighbours, attesting the Truth of what he asserted: *But this Certificate, not being deemed Legal Evidence, was not read in Court.*

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Mr. *Hawkins* said further in his Defence, that it could not be supposed he should commit a Robbery in his own Parish in the Day-Time, where every body knew him: That he had Time enough to make his Escape, if he had been guilty of it; and it was strange he should find no other Place to hide the Ring and Five-Shilling Piece, than a Basket that hung up publickly.

Other Witnesses of the Prisoner.

Then the Prisoner called some other Witnesses, and particularly Mr. *Wilcox*, who deposed, that on *Friday* the 18th of *September*, when it was pretended the Robbery was committed, the Deponent was at *Larrimore* the Prosecutor's House, from Noon till near Night, driving a Bargain with *Larrimore* for Tiles and other Things; and that Mr. *Hawkins* was not there all that Afternoon, nor did the Deponent hear before his coming away (which was after Sunset) that *Larrimore* was robbed.

Sir *Richard Piggot* also deposed, that *Larrimore* and the Constable were with him for the Search-Warrant on the 17th, being the Day before the pretended Robbery (as the Warrant bore Date;) and that the Date was not mistaken.

A full Proof of the Conspiracy of Larrimore, *Sir* John Croke, *&c. against the Prisoner.*

Then *Brown* deposed, that he was entrusted by Sir *John Lenthall*, the Marshal of the *King's-Bench*, to be Sir *John Croke*'s Keeper, who was his Prisoner; and that being with Sir *John* at his House at *Chilton* in *Buckinghamshire*, on *Wednesday* the 16th of *Semptember*, he heard a great Noise in the Night-Time, as he lay in his Bed, and fearing that Sir *John* was contriving an Escape, he started out of Bed in his Shirt, and stood at the Dining-Room Door, behind the Hangings, and there he heard *Larrimore* the Prosecutor tell Sir *John Croke*, that he had undone him by causing him to contend with the Parson, for he had entred him in most of the Courts in *England*, summoned him into the *Crown-Office* and *Chancery*, and he could not maintain so many Suits: Sir *John* answered, Is that all? Come Brother *Larrimore*, be contented; we will have one Trick more for *Hawkins* yet, which shall do his Work. *Larrimore* replied, You have put me on too many Tricks already, more than I can manage; and the Parson is too hard for us still: Sir *John* said, if thou wilt but act, I will hatch enough to hang *Hawkins*: Canst thou not convey Gold or Silver into his House, and have a Warrant ready to search it? and then our Work is done: Do but go to Sir *John Piggot*, and inform him you have lost Money and Goods, and desire his Warrant to search for them; and then take *Dick Mayne* the Constable, who is one of us, and will do what we desire him, and search the House; and when you find the Things, charge him with flat Felony, and force him before me;

I'll

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I'll ſend him to Goal without Bail, and we will hang him the next Aſſizes.

That the *Saturday* following, being the 19th of *September*, as the Deponent was coming home, he heard Mr. *Hawkins* had robbed *Larrimore*, and when he came into Sir *John*'s Houſe, he ſaw a written Paper lie upon the Table; and ſoon after *Larrimore*, with the Conſtable and others, brought *Hawkins* to Sir *John*'s, who took up the Paper, and read it to the Conſtable, and ſaid it was Mr. *Hawkins*'s *Mittimus*; and the Deponent averred, that it was written, and lay on the Table before *Hawkins* was brought to Sir *John Croke*'s: That, on *Sunday* Morning, he went to the Ale-houſe, where they had kept Mr. *Hawkins* all Night, and ſaw them carrying him to Goal: That ſaying to, Sir *John*, when he came home, *They have carried the poor Parſon to Goal*, he anſwered, Let him go, and the Devil go with him: Have I not often told you that, if my Brother *Larrimore* and I laid our Heads together, no Body could ſtand before us? And he (the Deponent) replied, *I have often heard you ſay ſo; but never believed it till now.*

But before *Brown* gave this Evidence, he declared in Court, that both Sir *John Croke* and *Larrimore*, had threatned him, if he came down to the Aſſizes to teſtify what he had heard of this Conſpiracy, they would ruin him and his Family; and for that Reaſon he was afraid to ſpeak, till the Court promiſed him Protection: And he had no ſooner given his Evidence, but Sir *John Croke* ſtole off the Bench unperceived.

Then ſaid the Lord Chief Baron, Larrimore, *thou art a Villain; nay, I think thou art a Devil.* ——*Where is this Sir* John Croke? and it being anſwered, he was gone, the Chief Baron ſaid, Gentlemen, Sir *John Croke* ſent me this Morning two Sugar-Loaves to excuſe his Abſence Yeſterday, but I ſent them back again: I did not ſo well know what he meant by them then, as I do now; ſure Sir *John* does not think the King's Juſtices will take Bribes? Mr. *Hawkins* have you any more to ſay?

To which he anſwered, I hope your Lordſhip and the Jury are fully ſatisfied of my Innocence; and his Lordſhip demanding of the Jury, what they thought, They ſaid, it was a very plain Caſe; and without going from the Bar, gave their Verdict that the Priſoner was *Not Guilty*.

Mr. Hawkins *acquitted.*

Mr. *Hawkins* moved, he might be diſcharged without paying his Fees, for that he was very poor, having been put to great Charges by this and other Troubles, the Proſecutors had brought upon him; but the Chief Baron anſwered, he could not give away other Peoples Rights; he muſt pay the Fees, if they inſiſted on them.

It ſeems before the Trial was well over, Sir John Croke, Larrimore *the Proſecutor, and the reſt of the Conſpirators, fled out of Town,*

Remarks on Mr. Hawkins's *Tryal.*

Whether Mr. *Hawkins* brought his Action againſt Sir *John Croke*, *Larrimore*, and the reſt of the Conſpirators, does not appear; but there is no Doubt, he would have recovered conſiderable Damages, if he had: They might have been indicted, and fined alſo, for ſo foul a Crime: And ſurely that Law was very equitable, which inflicted the ſame puniſhment on a falſe Accuſer, that he would have brought upon his innocent Neighbour. 1668-9. 20Car. II.

Mr. *Hawkins* tells us, the Proſecutors were Enemies to him on a double Account: 1ſt, Becauſe he was a Clergyman, and they were Diſſenters: And 2dly, Becauſe he would have his Dues; but it is ſurprizing their Malice ſhould extend ſo far as to take away his Life: And if the furious Zeal of *Larrimore*, an Anabaptiſt, with his Family and Friends of that Sect, ſhould put them upon ſuch vile Practices; yet nothing ſurely can excuſe Sir *John Croke*, a Gentleman of Quality, who contrived and executed ſo Infamous a Scheme. We have not, indeed, wanted Inſtances of Knights and Eſquires, who have ſupported and encouraged their Tenants and Dependants, in defrauding their Parſon of his Dues, and going to Law with him, till they have ruined him; but their Malice has ended uſually in throwing their unhapy Paſtor into a Goal, and ſeizing his Goods. Sir *John Croke* is the only Man upon Record, that ever deſcended ſo low as to become a Devil incarnate, falſly to accuſe his Miniſter of Capital Crimes, and take away his Life by Forms of Law, becauſe he inſiſted on his Tythes. This ſhould be a Caution to Gentlemen, when they contend with the defenceleſs Clergy, how they ſuffer their Paſſion to get the better of their Reaſon and Conſcience, and hurry them into Meaſures that muſt render them infamous to all Poſterity.

Is it not a glorious Action for a Gentleman of Quality and Fortune, to oppreſs and ruin a poor Prieſt of his own Religion! They have Enemies enough among the Sectaries, and the loweſt Claſs of Men. How mean a Part is it in a Gentleman then, who ſhould be a Patron and Protector of the Church and Clergy, to join with the Dregs, and Refuſe of Mankind, in diſtreſſing them; eſpecially when we ſee every other Perſuaſion and Denomination of Chriſtians, and even Infidels, treating their Prieſts with the higheſt Veneration! A certain Baronet, now living, who had encouraged his Tenants to go to Law with their Parſon, till they had ſeized his Goods in Execution, became afterwards ſo much aſhamed of his Victory, that he reconciled himſelf to the unhappy Man, proved one of his beſt Friends, and is ſtill every Day doing ſome ſubſtantial Kindneſs to the Perſon he was once zealous to deſtroy. May other Gentlemen make the like Reflections, and entertain a more friendly Correſpondence with the Clergy of their ſeveral Pariſhes, than they uſually do; and not make a ſervile Submiſſion the only Condition of their Friendſhip: And, on the other Hand, may the Clergy always behave themſelves with that Goodneſs and Prudence, as to merit the Eſteem and Friendſhip of the Gentry; and eſpecially of their Patrons and Pariſhioners, whoſe Welfare ought to be their principal Study.

The

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The Trial of WILLIAM PENN, and WILLIAM MEAD, for a *Riot* and *Conſpiracy*, at the *Old-Bailey*, the 1ſt, 3d, 4th, and 5th of *September*, 1670. 22 *Car.* II.

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Penn and Mead, their Trial.

The Charge.

THE Priſoners were indicted for a Riot and Conſpiracy; for, that they, with divers other Perſons, to the Number of three hundred, did, on the 14th of *Auguſt*, then laſt paſt, unlawfully and tumultuouſly aſſemble themſelves in *Gracechurch-Street*, to the Diſturbance of the Peace: And, that the ſaid *William Penn* (by Agreement between him and the ſaid *William Mead*, and abetted by him) did there ſpeak and preach to the ſaid *William Mead*, and the reſt of the People ſo aſſembled; whereby a great Concourſe and Tumult was made, and continued, to the great Terror and Diſturbance of his Majeſty's Subjects.

This Trial being collected only from ſome partial Minutes of the Priſoners is very imperfect.

The Priſoners fined for not pulling off their Hats.

The Priſoners relate, that as they were brought into Court, a Perſon took off their Hats; but an Officer was ordered to put their Hats on again, and they ſtood with their Hats on.

Whereupon the Recorder demanded, if they did not know it was the King's Court; and why they did not pull off their Hats, and pay that Reſpect to it they ought?

Penn anſwered, he knew it to be a Court, and he ſuppoſed it to be the King's; but he did not think pulling off his Hat ſhewed any Reſpect; and they were find forty Marks a-piece for their Contempt: Whereupon *Penn* obſerved, That they came in with their Hats off, and the Court had ordered them to be put on, and therefore the Bench ought rather to be fined than they.

The Evidence againſt them.

A Jury being ſworn, and charged with the Priſoners, the Witneſſes appeared; and firſt, *James Cook*, a Lieutenant of the *Militia*, depoſed, That, being ſent for to diſperſe a Meeting in *Gracechurch-Street*, he found *Penn* ſpeaking to the People; and that *Mead* came to the Deponent, and deſired him to let *Penn* go on, and when he had done, he would bring him to the Deponent: Other Witneſſes depoſed, that there were three or four Hundred People aſſembled in *Gracechurch-Street*: That *Penn* was preaching to them, and that *Cook*, an Officer of the *Militia*, and the Conſtables, came to diſperſe them, but they could not.

Then the Recorder demanding of *Mead*, if he was there? *Mead* anſwered, It is a Maxim in your Law, *Nemo tenetur ſeipſum accuſare*. Why doſt thou endeavour to enſnare me? Is this like a Judge, who ought to be of Counſel for the Priſoner?

Their Defence.

Penn added, We declare to all the World we believe it to be our indiſpenſible Duty, to meet inceſſantly upon ſo good an Account: Nor ſhall all the Powers on Earth divert us from adoring our God who made us.

To which the Court anſwered, you are not brought here for worſhipping God, but for breaking the Law.

Penn replied, they had broken no Law, and deſired to know on what Law the Indictment was founded; and talking very pertly to the Court, *Penn* was ordered to be put into the Bail-Dock, (a little Room near the Court, where Priſoners are ſecured till they are brought to the Bar.)

Then *Mead* ſaid, You, Men of the Jury, I ſtand here to anſwer an Indictment, a Bundle of Stuff, full of Lyes and Falſhood: They charge, that we met *Vi & armis illicite & tumultuoſe*: Time was, indeed, when I had the Freedom to uſe a carnal Weapon; (he had been a Captain) and then I thought I feared no Man. But now I fear the living God, and dare not make Uſe thereof, or hurt any Man; nor do I know I demeaned myſelf as a tumultuous Perſon; and therefore, *William Penn* properly demanded on what Law the Indictment was founded: *Coke* tells us, *a Riot is, where three, or more, are met together, to beat a Man, to enter forcibly into his Land, or to cut down his Graſs, Wood, or Pales.* — The Recorder added, *Or to do any other unlawful Act*: But, I thank you Mr. *Mead*, for telling me what the Law is, (pulling off his Hat) *Mead* anſwered, *Thee may'ſt put on thy Hat; I have never a Fee for thee now.*

The Lord Mayor replied, you profeſs yourſelf a meek Man, but deſerve to have your Tongue cut out for affronting the Court: And *Mead* continuing to revile and reproach the Judges, he was ſent after *Penn* into the Bail-Dock; and the Recorder proceeded to ſum up the Evidence: Whereupon *Penn* and *Mead* cried out, it was illegal to direct the Jury in their Abſence: To which the Recorder anſwered, You are preſent, you do hear; and continued his Directions to the Jury; who, being withdrawn, and returning into Court, ſaid, that *Penn* was Guilty of ſpeaking in *Gracechurch-Street*.

The Court thereupon obſerved, they might as well have ſaid nothing, if they did not find there was a Tumult, or unlawful Aſſembly there: And the Jury withdrawing again, returned the following Paper, ſigned by all of them.

The Jury give an imperfect Verdict.

We, the Jurors hereafter named, do find William Penn *to be Guilty of Speaking or Preaching to an Aſſembly, met together in* Gracechurch-Street, *the* 14th *of* Auguſt *laſt*, 1670. *And that* William Mead *is Not guilty of the ſaid Indictment.*

The Lord Mayor thereupon ſaid, you have heard that he preached, that he thereby created a Tumult, and that *Mead* abetted him; and they not only diſobeyed the Martial, but the Civil Power.

Penn anſwered, we did not make the Tumult, but they that interrupted us: We were, by Force and Arms, kept out of our lawful Houſe, and met together, in a peaceable Manner, as near to it as the Soldiers would give us Leave.

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They are kept two Days without Meat, &c.

Then an Officer was ſworn to keep the Jury without Meat, Drink, Fire, or Candle, till next Morning: When, returning into Court, they refuſed to give any other Verdict than they had done the Night before.

The Recorder told them, he would have a poſitive Verdict, or they ſhould ſtarve for it.

To which *Penn* ſaid, They had found *William Mead*, *Not Guilty*, and that was a Verdict.

The Recorder anſwered, You are indicted for a Conſpiracy; and one being found *Not Guilty*, and not the other, it cannot be a Verdict.

Fined 40 Marks for refuſing to give any other Verdict.

Penn replied, the Conſent of the Jury is a Verdict: And, if *William Mead* be not Guilty, I am acquitted of Courſe; I could not conſpire alone: And, the Jury being kept another Night without Meat and Drink, Fire or Candle; and, refuſing to give any other Verdict, were fined forty Marks a-piece, and committed to *Newgate* till their Fines were paid, for going contrary to plain Evidence.

The Priſoners alſo were remanded to *Newgate* again, till their Fines, for their Contempt of the Court, were paid.

Remarks on Penn *and* Mead's *Trial.*

The fining theſe Quakers for not pulling off their Hats, and inſulting the Court, was certainly lawful. The Priſoners ſeem to admit it, when they affirmed, The pulling off their Hats was not a Mark of Diſreſpect: But, ſurely, the Cuſtom of every Nation muſt determine what is, and what is not, a Mark of Diſreſpect. In the Eaſt, whoever enters a Temple, or appears in the Houſe of a great Man, pulls off his Shoes at the Door, and keeps on his Cap or Turbant: It would there be deemed a Piece of Rudeneſs to uncover the Head, or appear with Shoes on, before our Superiors. On the coutrary, here we look upon it as a Piece of Inſolence, to come into a Church, or before a Magiſtrate, with our Heads covered; and, a Court of Juſtice may reſent the Affront, and fine any Man who ſhall appear in Court with his Hat on. But, the Lord Chief Juſtice *Holt*, ſeems to have carried the Matter too far, when he would not ſuffer a Woman to come before him with a Hat on: Unleſs it was, that he thought her Hat contributed to diſguiſe her, and the Witneſſes would not know her ſo well as when it was off: For neither in Churches, or Palaces, was it ever expected, that a Woman ſhould appear bare-headed among us. 1670. 20Car. II.

But to proceed to the Quakers Defence: They pretended all Men, and parricularly *Engliſhmen*, were at Liberty to worſhip God in their own Way; and, therefore, their meeting at a Conventicle, could not be illegal, or ſuch an Aſſembly deemed riotous or tumultuous.

But, where is the Nation or People, that will ſuffer the eſtabliſhed Religion to be reviled and derided; or, which is much worſe, ſuffer ſuch Doctrines to be broached and encouraged, as ſap the very Foundation of the Religion of their Country, as the Quakers do that of the Chriſtian Religion; reſolving all the Hiſtory of the Goſpel into Fable and Allegory, and looking upon themſelves as much the Sons of God, as *Jeſus Chriſt*, who died for the Salvation of Mankind? And, as to the particular Laws of this Kingdom, every one knows that the Laws of Uniformity were then in full Force; and there were ſeveral Acts of Parliament for ſuppreſſing Conventicles; and, conſequently, ſuch People as ſet up other Forms of Worſhip, and aſſembled to propagate new and unheard-of Doctrines, inconſiſtent with the Religion eſtabliſhed, were Criminal in the Eye of the Law; and the Priſoners were, nevertheleſs, Guilty, though there happened to be ſome Fanaticks upon the Jury, that were reſolved to acquit them. On the other hand, it muſt be acknowledged, that the threatening and fining the Jurors, for giving a Verdict contrary to Evidence, was illegal: If the Jury would perjure themſelves, and go contrary to Evidence, there was no Remedy; for ſuch Facts can be tried only by a Jury. Had the Court a Power of compelling the Jury to alter their Verdict, then the Court would be Triers of the Fact, and we ſhould loſe the great Barrier of our Liberties. Much better two or three Quakers ſhould eſcape unpuniſhed, than ſuch a fatal Breach be made in our Conſtitution.

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Barnardiſton *and* Soame.

The Trial between Sir SAMUEL BARNARDISTON, *Bart.* Plaintiff, and Sir WILLIAM SOAME, *Knt.* Sheriff of *Suffolk*, Defendant, upon an Action of the Caſe brought by the Plaintiff againſt the Defendant, for Damages he ſuſtained, againſt the Defendant's makeing a double Return at an Election for a Knight of the Shire for *Suffolk*, before the Court of *King's-Bench*, in *Trinity-Term*, 1674. 26 *Car.* II.

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The Declaration.

THE Declaration ſets forth, that whereas the King, the 8th of *February*, in the 25th Year of his Reign, by a Writ out of *Chancery*, directed to the Defendant, then Sheriff of *Suffolk*, commanded the Sheriff to cauſe an Election to be made of Knight of the Shire for the ſaid County, in the Room of Sir *Henry North*, then lately deceaſed; and the Plaintiff being

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being duly elected Knight for that County by the greater Number of Freeholders, and the Writ returned by the Defendant into *Chancery*, together with an Indenture between him, the ſaid Sheriff, and the Electors of the aforeſaid Election of the Plaintiff; yet the Defendant, the Sheriff, *Officii ſui debitum minime ponderans, ſed machinans & malitioſe intendens ipſum Samuelem in hac parte minus rite prægravare*, and to deprive the Plaintiff of the Truſt and Office of one of the Knights of the Shire for for the ſaid County, and to cauſe the Plaintiff to ſpend great Sums of Money; *falſely, maliciouſly, and deceitfully*, returned into *Chancery*, together the aforeſaid Indenture, another Indenture annexed to the ſaid Writ, purporting the ſame to be made between him the ſaid Defendant, then Sheriff, of the one Part, and divers other Perſons, declaring that the ſaid other Perſons, as the greater Part of the Freeholders of the ſaid County, did chuſe one Sir *Lionel Talmach*, Bart. otherwiſe called Lord *Huntingtowre*, Knight of the Shire for the ſaid County; whereas in Truth the ſaid *Lionel* was not choſen by the greater Part: By Reaſon of which falſe Return of the ſaid other Indenture, the Plaintiff could not be admitted into the lower Houſe at the Return of the ſaid Writ, nor till a long Time after; when he had petitioned the Commons, and ſpent divers great Sums of Money, proving his ſaid Election, and ſuſtained great Pains and Labour in that Behalf: But on the 20th of *February*, 26 *Car.* II. he was admitted into the Houſe, and his Election declared good; and avers his Damages amounted to 3000 *l.*

Notguilty pleaded.

To this Declaration, the Defendant pleaded *Not guilty*; but a Verdict was given for the Plaintiff, and 800 Pound Damages.

A Verdict.

Judgment for the the Plaintiff.

Whereupon Judgment was obtained in the *King's-Bench* for the 800 Pound Damages, and 98 Pounds Coſts of Suit.

A Writ of Error.

The Defendant, Sir *William Soame*, thereupon brought a Writ of Error, before the Juſtices of the *Common-Pleas*, and the Barons of the *Exchequer* in the *Exchequer-Chamber*, to reverſe the ſaid Judgment; and it was reverſed by the Opinion of two of the Juſtices of the *Common-Pleas*, and the four Barons of the *Exchequer*, who held it to be erroneous. Sir *Robert Atkyns* and Sir *William Ellys*, Juſtices of the *Common-Pleas*, however, were of Opinion, That the ſaid Judgment was good.

The Judgment reverſed.

The Reverſal confirmed by the Houſe of Lords.

After the Revolution, Sir *Samuel Barnardiſton* brought his Writ of Error in the Houſe of Peers, to reverſe the Reverſal of the Judgment given in the *Exchequer*; but the Houſe affirmed in the Reverſal of the ſaid Judgment. The Editor of this Trial hath not given us any of the Arguments of the Counſel in the Court of *King's-Bench*, or in the *Exchequer-Chamber*, either for the Plaintiff or Defendant. All the Arguments we meet with are thoſe of Sir *Robert Atkyns* and Sir *William Ellys*, Juſtices of the *Common-Pleas* (in the *Exchequer-Chamber*) for affirming the the Judgment given in the *King's-Bench*; and the Arguments of the Lord Chief Juſtice *North* for reverſing the ſaid Judgment.

Arguments for confirming the Judgment.

The two Judges that argued for confirming the Judgment given againſt the Defendant, in the Court of *King's-Bench*, held, 1ſt, That the Matter, ſet forth in the Plaintiff's Declaration, was Actionable: 2dly, That the Wrong and Injury complained of, was ſuch as the Law gave him a Remedy for: And 3dly, That he had taken his proper Remedy, by bringing his Action on the Caſe.

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They inſiſted that, where a Wrong or Injury was done, and a particular Damage ſuſtained, there the Common Law gave a Remedy by Action.

1. From the Nature and Quality of the Law, which was to do Right to all: For, ſhould there be any Caſe where a Perſon might receive an Injury and Damage, and yet have no Remedy or Redreſs, the Law would be defective.

2. From the Nature and Definition of an Action in our Law Books, which is declared to be nothing elſe but a *Means or Remedy for a Man to have Right done him, that has received Wrong and Injury.*

Then they proceeded to ſhew, that there was a Wrong or Injury done to the Plaintiff, and a particular Damage ſuſtained by him: He had, they obſerved, the Honour to be choſen to that great Truſt and Employment of a Knight of the Shire, by which he was entitled to ſeveral great Privileges, and to Wages for the Time he ſerved. And the Defendant having the Office of Sheriff, and being bound by his Office and Oath to do juſtly and truly, and well knowing the Plaintiff had the only Right to be returned; yet falſely, maliciouſly, and deceitfully, to deprive him of his Truſt and Office, and on Purpoſe to put him to great Charges, had returned another Perſon with him; by Means whereof the Plaintiff was hindered from ſitting in the Houſe, put to great Expence, and underwent great Trouble and Labour; after which, they thought it could not be made a Queſtion, whether the Plaintiff had received a particular Damage. Should a Man have an Action for a Penny Treſpaſs, for an Aſſault and Battery, where one only lift up his Hand to ſtrike, or for a few ill Words? and ſhould he have no Action for ſo notorious an Injury as this?

Then they proceeded to anſwer the Objections of thoſe that agreed for the Defendant Sir *William Soame*, which Sir *Robert Atkyns* obſerved, had more Wit than Weight in them: The Difficulty, he ſaid, lay rather in the great Power and Intereſt of the Parties to the Action, and of thoſe that concerned themſelves in the Example and Conſequence of it, upon a politick Account, than from any Uncertainty in the Law: There was a Deſign, he feared, to model the Parliament to the Humour of the Court; and cited Sir *Edward Coke*, 10 *Rep. fol.* 6. where he affirmed, That he never ſaw any Caſe of great Value proceed quietly, without many Exceptions in Arreſt of Judgment.

Objections anſwered.

1. To the firſt Objection, *That this was a Matter of a publick Nature, and therefore the Action ought not to be brought by a private Man, or the Satisfaction made to any one Man.*

Anſw. It was anſwered, that publick Injuries indeed, where all or very many were concerned, were proper for a publick Proſecution, as in the Name of the King; or by a Preſentment at a Leet or Quarter-Seſſions, *&c.* But if a particular Man receive a particular Damage, by the publick

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publick Offence or Injury, he ſhall have his Action, which is conſiſtent with the Proſecution for the Publick, as if a Man make a Ditch in the King's High-way: This is a publick Wrong, and preſentable at the Leet: But if a Man and his Horſe fall into that Ditch, and receive a particular Damage, he may have his Action upon the Caſe, againſt him that made the Ditch: So in this Caſe, this falſe and double Return was an Injury to the King and Kingdom: But it was more particularly an Injury to the Plaintiff, in that he was for ſome Time deprived of the Honour done him by his Country; hindered of diſcharging the Truſt committed to him by his Country; of doing Service to the King and Kingdom; and hindred of his Wages. And ſince it ſo nearly concerned the Government, they that were Judges ſhould be the more careful to diſcourage ſuch Abuſes committed by Sheriffs in Elections: It was of vaſt Concern to the King and Kingdom, that Elections ſhould be fair, and Returns duly made, without Partiality and indirect Means uſed; and they ought to encourage all Remedies againſt ſuch Abuſes and Practices: Beſides, the Plaintiff had been put to great Expences, and undergone great Labour and Trouble, which was a private and particular Damage, and therefore entitled him to his particular Action.

The Statute of 7 *Hen.* IV. *Cap.* 1. recites, that the Commons made Complaint to the King of the undue Election of Knights of the Counties, which, the Preamble ſays, were ſometimes made by the Affection of the Sheriffs; and that Statute, to prevent ſuch Abuſes, appoints the Return of Indentures under the Seal of the Sheriff, and the Seals of the Electors.

The Statute of 11 *Hen.* IV. *cap.* 1. recites, that no ſpecial Pain is ſet upon the Sheriff, if he makes a Return contrary to the former Statute; and therefore authorizes the Judges of Aſſize to inflict a Penalty of 100 Pound upon the Sheriff; and the Knights unduly returned were to loſe their Wages.

The Statute of 23 *Hen.* VI. *cap.* 15. ſets forth the great Abuſes committed in Elections, reciting, that of late divers Sheriffs, *for their ſingular Avail and Lucre*, had not made due Elections of Knights; and enacts, that ſuch Sheriff ſhould not only incur the Pains inflicted by the 8 *Hen.* VI. *cap.* 7. (*viz.* forfeit 100 Pounds to the King, and ſuffer a Year's Impriſonment without Bail,) but he ſhould forfeit to the Perſon duly choſen and not returned, an 100 Pound more; the Party grieved commencing his Action within three Months after the Beginning of the Parliament; and the Perſon unduly returned, was to forfeit likewiſe an 100 Pound to the King and 100 Pound to the Party wrongfully kept out.

So that a Perſon elected a Knight, and not returned, is by this Act declared to be agrieved and wronged: And if he have a particular Wrong done him, it follows, that he ought to have a particular Remedy and Satisfaction by the Common Law, if theſe Statutes had never been made; for theſe Statutes do not make him a Party grieved, but mention him as being ſo before; and, if he were ſo, the Law gave him a Remedy.

2. The ſecond Objection was, *That this Action, concerning the Election of a Knight to ſerve in Parliament, belonged to the Juriſdiction of the Parliament only, and ought not to be determined by any inferior Court.* 1674. 26 Car. II.

To this it was anſwered, That the Right of Election was not called in Queſtion: That was determined by the Houſe of Commons: This Action was in Purſuance of that Deciſion, and grounded upon it; and there are ſeveral Caſes that concern the Parliament, that the Judges of *Weſtminſter-Hall* have not at all Times taken Cognizance of; as what is a good Seſſion of Parliament, and what makes a Seſſion; whether Acts of Parliament are in Force, or not; and when the Members are entitled to Privilege.

And here, taking an Opportunity to enquire into their Juriſdiction, Sir *Robert Atkyns* mentioned the Opinion of Sir *Robert Cotton*, who affirms, That Writs of Summons for Knights of the Shire to ſerve in Parliament began in the 49th Year of *Hen.* III. and that the admitting Commoners into Parliament was done with a Deſign of leſſening and curbing the Power of the Lords, after the Defeat of the Earl of *Leiceſter*, and the Barons, at the Battle of *Eveſham*. To confirm which Opinion, it was obſerved, That the firſt Writ to the Sheriffs to ſummon Knights from every Shire, was found upon Record in the Cloſe Roll, 49 *Hen.* III. the very ſame Year: And Mr. *Prynne*, in his Preface to Sir *Robert Cotton*'s Abridgment of the Records, ſays, *The King and Lords were antiently Judges of the Legality of Elections of Members of the Houſe of Commons, even till the Time King* Henry VII.

But (adds Sir *Robert Atkyns*,) We know that the Houſe of Commons is now poſſeſſed of the Juriſdiction of determining all Queſtions, concerning the Election of their own Members, ſo far, at leaſt, as concerned their being admitted or excluded from ſitting there: And here the Plaintiff ſhews the Determination of the Commons to be on his Side; and not only alledges that he was duly elected, but ſo returned by the Defendant himſelf: And that, though he were ſome time hindered from ſitting, on Occaſion of the falſe Return, and the Election brought into Queſtion by it, yet had he proved it clearly to the Houſe, and was admitted; and, taking it for granted that he was duly elected, he ſued in the *King's Bench* by this Action, to recover Damages for the Injury done him by the Defendant; for which the Houſe of Commons could not help him, having no Juriſdiction for that Purpoſe: They are not empowered to adminiſter an Oath, or give Damages.

3. It is objected, in the third Place, *That this is an Action of a new Invention:* Never any ſuch was brought before, unleſs that of *Nevil* againſt *Stroud*, which never received any Determination.

To which it was anſwered, That this was new indeed in the particular Circumſtances, as being brought for a malicious, double Return; but it was not new in the general Nature of the Action: For nothing was more common than Actions upon the Caſe where an Injury was done, and Damages ſuſtained; and Actions on the

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the Caſe had been brought even againſt Sheriffs, for falſe Returns, in leſſer Matters; and that, where there was no Malice, or any of the aggravating Circumſtances that were in this Caſe particularly: Actions have been brought againſt Sheriffs for returning Juries inſufficient to pay Iſſues, and for not warning a Man in due Time, upon a Writ of *Præmunire*, or Attachment, whereby he ſuſtained Damage: Though this was but a bare Neglect, or Omiſſion, the loweſt of all Injuries; and yet, being accompanied with a particular Damage to the Party, and there was no Malice on the Sheriff's Part, it was held the Action would lie; much more ſhall the Action lie againſt the Sheriff in this Caſe, where the Return is not only falſe, but he knew it to be falſe; and did it maliciouſly, with a Purpoſe to hinder the Plaintiff from ſitting, and to put him to Expence; and the Plaintiff had actually received conſiderable Damages.

Caſes omitted and new, do often preſent themſelves; but every new Caſe does not require a new Law; for then the Legiſlative Power muſt be exerciſed continually: Though it differs from former Caſes in Circumſtances, it may fall under a general Rule, and be proceeded upon by Parity of Reaſon. Till of late Years Sheriffs have given no Occaſion for the like Action: We find no double Returns in antient Times: The Common Law complies with, and conforms to, the general Opinion and Genius of the Kingdom, and values what they generally eſteem and value, and diſeſteems what they value not.

Heretofore an Election to ſerve in Parliament was not ſo deſirable, and ſo much ſought after as it is now. A Patent of Exemption was granted, 42 *Ed.* I. to the Town of *Torrington*, on the Petition of the Inhabitants; reciting, that the Men of that Town never uſed to ſend Burgeſſes to Parliament, till the Sheriff, 21 *Ed.* I. *ſummonitos fuiſſe malitioſe retornavit:* So that (ſays Sir *Robert Atkyns*) a malicious Return to Parliament was no new Thing; and, as the Plaintiff in this Action had well ſued the Sheriff, for returning another with him, ſo he made no Doubt, as the Caſe then ſtood with the general Humour and Opinion of the People, thoſe of *Torrington* might have had their Remedy againſt the then Sheriff, for returning them ſummoned: The Law was ſtill the ſame, in that it ſtill ſet a Price and Eſteem upon that which the People generally eſteemed and valued.

4. The fourth Objection was, *That there was not one Caſe in Law parallel to this*, for a Sheriff to be ſued for returning the whole Truth, and ſomething more than the Truth; though Actions for falſe Returns were frequent.

To this it was anſwered, That this Action was for a falſe Return, and ſomething more. The Plaintiff alledges, That he did make a falſe Return, and the Jury having found it ſo, it muſt be believed. Though the Sheriff returned the whole Truth; yet, with that Truth he returned a Falſhood, and, till it was examined, it could not appear which was the Truth; and, in the mean Time, the Plaintiff ſuſtained all his Damage.

5. It was objected, *That the Sheriff herein acted as a Judge*; and therefore, if he erred, he was not to be ſued for it.

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The Anſwer to which was, That this was true, where one was a Judge of Record; but here, the Sheriff was no more than an Officer appointed to take the Poll.

Object. 6. *The Statute*, 23 Hen. VI. Cap. 15. *hath provided a Remedy againſt the Sheriff for Abuſes committed by him at Elections*; and particularly, gives 100 *l.* to the Knight injured: And the Preamble of that Act, reciting, that a convenient Remedy for the Party grieved, was not ordained in the former Statutes, it was inferred from thence, that there was no Remedy for the Party grieved, at Common Law, before that Statute. To this it was anſwered, that they had already ſhewn that there was a Remedy at Common Law, before that Statute; and this Statute, being in the Affirmative, did not take it away, only gave another Remedy: And they put ſome Caſes, where Acts of Parliament had given Remedies; and yet there were other Remedies before, at Common Law, and the Party might ſue for either. *Roll. Abr.* 1 *Part*, *Fol.* 93. *Caſe* 20.

Arguments for reverſing the Judgment.

The Lord Chief Juſtice *North*, who argued for the reverſing the Judgment given againſt the Sheriff, took the following Method.

1. He endeavoured to remove the Prejudices the Caſe lay under:

2. Gave his Reaſons againſt the Action: And,

3. He conſidered what had been ſaid on the other Side, to maintain the Action.

1. He endeavoured to remove that Prejudice, That, becauſe an Action lay for the falſe Returns of Sheriffs, therefore it ought to lie in this Caſe; for, he obſerved, there were ſeveral material Differences between ordinary Returns, and this Caſe: In ordinary Returns, the Party is concluded, and without Remedy: In ordinary Caſes, the Sheriff may, and often does, take Security of the Plaintiff; or the Sheriff hath Means to ſecure himſelf by Law.

But, in this Caſe the Party is not concluded; for, upon a Petition to the Parliament, they may cauſe the Return to be altered: Nor may the Sheriff take Security of the Parties: This would be criminal in him: Nor can the Sheriff make a fruitleſs Return, or obtain the leaſt Delay to conſult his Safety. Theſe Differences are of that Nature, that they change the Caſe; and no Man can infer, becauſe an Action lies for falſe Returns in ordinary Caſes, therefore it lies in Caſe of a Return to Parliament.

2. He gave his Reaſons againſt this Action.

1. Becauſe the Sheriff, as to the declaring the Majority, was Judge; and no Action would lie againſt a Judge, for what he did judicially. There are many Qualifications, of which the Sheriff is Judge in this Caſe; as 1. Whether the Elector have forty Shillings *per Annum*. 2. Whether it be Freehold. 3. Whether he have it by a fraudulent Gift, only to get a Vote. 4. Whether the Candidate be reſident. And, 5. of many Incapacities, ſuch as Bribery, Force, *&c.* Such Queſtions frequently ariſe, and are of ſuch Difficulty ſometimes, that a Committee determines one Way, and the Houſe another: And, though it be objected, that the Sheriff

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may give an Oath concerning all Qualifications, and is to look no further; he anſwered, the Statute had, indeed, given the Sheriff Power to adminiſter an Oath; but, the Statute did not ſay, that whoever took that Oath, ſhould have a Voice; neither did the Statute of 23 *Hen.* VI. ſay, that the Sheriff ſhall not be charged with a falſe Return, that purſues this Way: If it ſhould be known to the Sheriff, that the Man, taking ſuch an Oath, ſwears falſe, the Sheriff muſt determine, according to his own Judgment, and not by what is ſworn: Concluding, that the Sheriff, therefore, as to declaring the Majority, was Judge; and, that there was the ſame Reaſon he ſhould be free from ſuch Actions, as any Judge in *Weſtminſter-Hall.*

It ought to be conſidered, alſo, what Diſadvantages a Sheriff lies under; what a Noiſe and Crowd there uſually is at ſuch Elections; what Importunity; nay, what Violence he ſuffers ſometimes, from the contending Parties: No other Judge had more need of Courage and Reſolution to determine uprightly: No other Judge determined in Caſes of greater Conſequence to the Publick, or greater Difficulty; and, ſhould he be expoſed to ſuch Actions, he would have Trouble enough. Let him return never ſo uprightly, the Party that is rejected will revenge it by a Suit, eſpecially if he may ſue at Common Law, to have boundleſs Damages, without running any Hazard to himſelf, but the Loſs of his Coſts.

2. His ſecond Reaſon againſt the Action, was, That it belonged to the Houſe of Commons, to examine both the Right of Election, and the Behaviour of the Sheriff: That theſe were incident; and, indeed, the only Conſiderations that could guide them in the Trial of ſuch Cauſes, if they were allowed: As it was admitted, that the Parliament was the only proper Judicature to determine the Right of Election, and cenſure the Behaviour of the Sheriff: How could the Common Law try a Cauſe, that could not determine thoſe Things, without which the Cauſe could not be tried?

No Action upon the Caſe will lie for a Breach of Truſt, becauſe the Determination of the principal Thing, *The Truſt*, does not belong to the Common Law, but to the Court of Chancery; and the Reaſon of this Caſe is as much ſtronger, as the Parliament ought to have more Regard paid to it, than the Court of Chancery.

They objected, indeed, that this Caſe might be tried after the Parliament had decided the Election; for then, what the Common Law could not try, was determined; and, as the Parliament could not give the Plaintiff the Coſts he was put to, theſe were to be recovered at Common Law.

Thus they would have the Determination of the Parliament, binding to the Sheriff, which could not be; for that Diſpute was between other Parties, and the Sheriff was not called to anſwer for himſelf; and it was againſt Law that any Judgment or Proceeding betwixt other Parties, ſhould bind the Intereſt of a third Perſon, or any Way conclude him. It was not fit that the Sheriff, who was not admitted to controvert their Determination, ſhould be concluded by it, and an Action brought upon it to make him pay the Reckoning: Had the Parliament believed, when they determined this Election, that they paſſed Sentence againſt the Sheriff to pay 800 *l.* they would, and ought in Juſtice, to have heard his Defence, before they determined it: For, had he been allowed to defend himſelf, he might have ſhewn a Majority, or an Equality of Voices; but, as he was not heard, ſo was he not ſo much as cenſured in that Diſpute. 1674. 26Car. II.

Nor does it follow that, becauſe the Parliament cannot give Coſts, therefore this new deviſed Action muſt lie, to help the Party to them; for then ſuch an Action muſt lie wherever a Wrong is to be remedied by Courſe of Law, and no Coſts are given for it.

At Common Law, no Coſts were given in any Caſe; and many Caſes remain at this Day, where the Statutes have given no Coſts; and yet no Actions will lie to recover thoſe Coſts. Beſides, the Parliament have had this Matter under Conſideration, as appears by the Statute 23 *Hen.* VI. and have appointed what ſhall be paid by the Sheriff that offends, *(viz)* 100 *l.* to the Party, and 100 *l.* to the King, beſides a Year's Impriſonment. The Parliament have ſtated what ſhall be paid for Compenſation, and what for Puniſhment; and would have provided for Coſts if they had thought fit.

3. His third Reaſon againſt this Action, was, becauſe a double Return was a lawful Means for the Sheriff to perform his Duty in doubtful Caſes; and, if ſo, all the Aggravations of *falſo malitioſe & ſcienter*, will not make the Thing actionable; for, whatever a Man may do for his Safety, cannot be the Ground of an Action.

If the Parliament did not allow a double Return, in doubtful Caſes, they ought never to accept a double Return; but this muſt of Neceſſity be the Courſe in doubtful Caſes: For, ſuppoſe the Election to be equal, or that the Election is void for Force, if the Sheriff doubts of the Validity of ſome Voices, ſhall he tranſmit his Doubts *ſpecially* to the Parliament? Was there ever any ſuch Thing done? Was there ever any other Way but to make a double Return, and fairly leave it to the Deciſion of the Parliament?

The Practice has been hitherto, to receive double Returns; and in this very Caſe the double Return was accepted, and the Sheriff no Way puniſhed for it, as he would, and ought to have been, if he had been blameable: And, as double Returns are accepted, and allowed by Parliament, they muſt be lawful; and, if ſo, this Action is not maintainable.

4. A fourth Reaſon againſt this Action, was, that there were no legal Damages occaſioned by the Sheriff: The Damages laid in the Declaration, are, 1. *The being kept out of the Houſe.* 2. *The Pains and Charges the Plaintiff was put to, to get Admittance into the Houſe.* But his being kept out of the Houſe is as much every Man's Damage, as the Plaintiff's; and, conſequently, neither he nor any particular Man can have an Action for it, except where a ſpecial Loſs is occaſioned by it, and here is no Loſs to the Plaintiff: For to ſit in Parliament is a *Service* in the Member, for the Benefit of the King and Kingdom, *and not for the particular Profit of the Member*: For which Reaſon the Statute of

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of 23 *Hen.* VI. does not give the Action to the Party for his particular Damage; but the Action given is a popular Action, only the Party grieved hath a Preference for six Months: But, if he does not sue within that Time, every Man else is at Liberty to recover the same Sum. 2. And as to the Pains and Charges he was put to, this was not occasioned by the Sheriff, but by the Deliberation of the House; and why should the Sheriff pay for that? It was a Course taken by the Parliament, for their own Satisfaction, and they found no Fault with the Sheriff for putting them to that Trouble. Had Sir *Samuel Barnardiston* been returned alone, and the Lord *Huntingtowre* had petitioned against that Return, there had been the same Charge to have defended that Return; so that it was the Contest of the opposite Party that occasioned the Charge, the Deliberation of the Parliament that occasioned the Delay; but neither of them can be imputed to the Sheriff.

There is no Difference between this Case, and that of bringing an Action against a Jury, for maliciously, knowingly, and on Purpose to put the Party to Charges, finding a Matter specially, whereby great Delay, and great Expences happened, before the Party could obtain Judgment; and yet no Man will affirm that an Action lies in that Case.

Besides, in this Case the Damages are found entire; and if both Parts, (*viz.*) the not sitting in the House, and the Pains and Charges, are not both actionable Causes, the Judgment is for that Cause erroneous. It is to be presumed, the Wages of Parliament will not be mentioned for Damages; for, in most Places, they are only imaginary; but if there were to be any Consideration of them that would not alter the Case, for they were due as from the first Day, and so no Damage can be pretended on that Score.

5. A fifth Reason against this Action, is drawn from the Statute of 23 *Hen.* VI. It is admitted that, if an Action lay at Common Law, this Statute hath not taken it away, there being no Negative Words in it; but it is not likely the Parliament would have made that Law, if there had been a Remedy for the Party before: If the Courts of Justice had by the Common Law, Jurisdiction to examine Misdemeanors concerning Returns, what needed the Parliament to have provided Law after Law, to give them Power therein; and, at last, to give the Party grieved an Action? Can any Man imagine, but that the Parliament took the Law to be, that the Party was without Remedy before? It is objected, that in those Times it was reckoned a Damage to be retained to serve in Parliament, which is the Reason that no Man then did bring his Action against the Sheriff for a false Return: But this cannot be true, for the Statute calls him the Party grieved, and provides a Remedy for him; and we see by the many Statutes about those Times, that it was a Mischief very frequent, and there wanted no Occasion for such Actions; which extremely strengthens the Argument, that no such Actions could be brought by the Common Law: By *Littleton*'s Rule it may be concluded, therefore, the Action will not lie, for if it could have lain, it would have been brought before now:

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Where a Sheriff mistakes the Person in his Return, he incurrs the Penalty of 23 *Hen.* VI. though it be without Malice; but the Course of the Parliament prevents his Suffering for this, by sending for the Sheriff, and causing him to amend his Return; and from thenceforth the amended Return is the Sheriff's Return; and there is no Record that can warrant any Action to be brought for a false Return. The Sheriff is secure from any Action that can be brought upon that Occasion; for which Reason there has of late Years been no Recovery upon the Statute, because all Persons chuse rather to compel the Sheriff to amend his Return, that they may be admitted to sit in the House, than to take their Remedy upon the Statute; for no Man can recover on the Statute first, and afterwards have the Return amended: Upon that Statute a Man cannot have a Remedy at Law, and also in Parliament; which seems to be wisely provided, to prevent any Contrariety of Determinations.

6. The sixth Reason against this Action, was, That the Sheriff is not permitted to take Security to save himself harmless in such Cases: And no Case can be put in our Law, where a Man is compelled to judge without Deliberation, and cannot take Security; and yet shall be liable to an Action.

It is objected by the other Side, that here is Malice found by the Verdict, and there can be no Danger or Inconvenience in punishing Malice: But Malice, upon which they would have the Scales turn in this Place, is not a Thing demonstrative, but interpretative, and lies in Opinion, and may give a Handle to any Man, to punish another by: This very Case shews that a good Man may reasonably be afraid of the Event of his Defence in such a Case; for, though the Matter went through a strict Examination in Parliament, it was, at last, decided but by a few Voices, and no Observation made of the Sheriff's Miscarriage there, though it appeared upon the Trial, that the Sheriff was guided by the Advice of his Friends, of Counsel, and of Parliament Men, who told him the only safe Course was to make a double Return; yet the Jury condemned him to pay 800 *l.* against the Expectation of the Court of *King's-Bench*. The Judges declaring publickly, that they could not have given such a Verdict, they bould not concur with the Jury in their Opinion: The Words *falso & malitiose*, were grown Words of Course, and put into every Action; Juries many Times had no Regard to them; and if they should make the Words *falso & malitiose* support an Action without a fit Subject Matter, all the Actions of Mankind would be liable to Suit and Vexation.

As to what is urged on the other Side, *That where Falsity, Malice, and Damage do concur, there must be a Remedy at Law*: This is generally true, but not universally; it does not hold in the Case of a Judge, of an Indictor, or a Witness, nor of Words that import no legal Slander, though they may bring Damage; and the Reasons that exempt those Cases from the general Rule, have the same Force in this.

The Judges have sometimes permitted a new kind of Action: But it has ever been upon great Deliberation, and where a general Convenience required it: *The Common Law* (it has been said)

complies

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complies with the Genius of the Nation. I do not underſtand the Argument: Does the Common Law change? Are we to judge of the Changes of the Genius of the Nation? Whither may general Notions carry us at this Rate? For my Part, I think, though the Common Law be not written, yet it is certain, and not arbitrary: We are ſworn to obſerve the Laws as they are, and I ſee not how we can change them by our Judgments. As to the Genius of the Nation, that is moſt proper to be conſidered of by the Parliament, who have the Power of altering the Laws.

In the Caſe at Bar, I look upon the Sheriff as a particular Officer of the Parliament, for the managing Elections, and as if he were not Sheriff: I look upon the Writ, as if it were an Order of Parliament, and had not the Name of a Writ: I look upon the Courſe of Parliament, which we pretend not to know, to be incident to the Conſideration of it: So that it ſtands not upon the general Notion of Remedy in the common Courſe of Juſtice. My Brother *Maynard* indeed tells us, We are not to think the Caſe too hard for us, becauſe of the Name of *Courſe of Parliament:* For Judges have puniſhed Abſentees from Parliament; they have determined what is a Parliament, what is an Act of Parliament, how long an Ordinance of Parliament ſhall continue, and may puniſh Treſpaſſes done in the very Parliament; which I ſhall not diſpute: But ſince I cannot find, that Courts of Juſtice have, at any Time, meddled with Caſes of this Nature, but upon expreſs Power given them by Acts of Parliament, I cannot conſent to this Precedent: I am confident, when there is Occaſion, the Parliament will diſcern it, and make Laws to enlarge our Power; and I ſee no Harm in the mean Time, if Sheriffs ſhould be ſafe from this new deviſed Action, which they call the Common Law: If they miſdemean themſelves, they are anſwerable to the Parliament, whoſe Officers they be; or may be puniſhed by the Statutes made for regulating Elections: I conclude therefore, that the Judgment was not warranted by the Rules of Law; that it introduced Novelties of dangerous Conſequence, and therefore ought to be reverſed.

The Judgment of the *King's-Bench*, as has been intimated already, was accordingly reverſed in the *Exchequer-Chamber*; and when Sir *Samuel Barnardiſton* brought his Writ of Error in the Houſe of Peers, *Anno* 1689, to reverſe the Reverſal of the Judgment given in the *Exchequer*, the Houſe of Peers confirmed the Reverſal of the ſaid Judgment.

Five Lords only entred their Diſſent, for the following Reaſons.

Proteſt of ſome Lords, on the confirming the Judgment by the Peers.

1. Becauſe they apprehended it was a denying Sir *Samuel Barnardiſton* the Benefit of Law, which gives Relief in all Wrong and Injury: And though this be an Action of the firſt Impreſſion, yet there being a Damage to the Plaintiff, the Common Law gives him this Action to repair himſelf; and if it were not ſo, there would be a Failure of Juſtice, which cannot be admitted.

2. Becauſe the allowing this Reverſal tends to the giving Power and Encouragement to Sheriffs to make falſe and double Returns, by which Means the Right of Elections will be avoided, which tends to the packing of a Houſe of Commons, and may overturn the whole Frame of Government, and eſtabliſh what Religion and Government a packed Parliament think fit. 1674. 26 Car. II

Bolton. *S. Stamford.*
Macclesfield. *Herbert.*
P. Wharton.

This Action was promoted by the whole Poſſe of Whigs, who had ſuch an Influence on Jurymen, in and about the City of *London*, in thoſe Days, that they could get what Verdicts they pleaſed; and if they had carried this Point, they apprehended, no Sheriff would have dared, for the future, to refuſe returning their Friends, where the Election was doubtful: And though, as the Laws then ſtood, it was the Opinion of the Judges, and of the Houſe of Peers afterwards, that the Sheriff was not liable to an Action on the Caſe for Damages, on making a falſe or double Return; yet the Statute of 7 and 8 *W.* III. *cap.* 7. hath ſince given the Party wronged double Damages, with Coſts of Suit, to be recovered in the Courts of Law, where a Sheriff, or other returning Officers, ſhall make a falſe or double Return. *Remarks on the Trial between Barnardiſton and Soame.*

Double Damages given on a falſe or double Return.

This Statute declares, That all falſe Returns made of a Member to ſerve in Parliament, are againſt Law; and if any Perſon ſhall return a Member to ſerve in Parliament, contrary to the Determination in the Houſe of Commons of the Right of Election, ſuch Return ſhall be adjudged a falſe Return, and the Party grieved (*viz.*) The Party duly elected) by ſuch falſe Return, may ſue the Officers and Perſons making or procuring the ſame or any of them, at his Election, in any Court of Record, at *Weſtminſter-Hall*, and ſhall recover double Damages, with Coſts of Suit.

If any Officer ſhall wilfully, falſly, and maliciouſly return more Perſons than are required to be choſen by the Writ or Precept, the like Remedy may be had againſt him, and the Party or Parties that procure the ſame, or any of them, by the Party grieved.

All Contracts, Promiſes, Bonds, and Securities, to be given to procure the Return of any Member to ſerve in Parliament, ſhall be adjudged void: And whoever makes ſuch Contract, or gives any Gift or Reward to procure ſuch falſe or double Return, ſhall forfeit 300 *l.* one third to the King, another to the Poor of the Place, and the other to the Informer, with Coſts of Suit.

All Actions upon this Statute to be brought within two Years after Cauſe.

The Copy of the Clerk of the Crown's Book to be Evidence of a falſe or double Return.

An Action brought by a Member for Damages; miſlaid.

In the fifth Year of Queen *Anne*, one brought an Action on the Caſe, and declared he was elected Member of Parliament for a certain Borough, purſuant to the Queen's Writ, *&c.* and that the Defendant returned two other Perſons to be elected: And that he, the Plaintiff, petitioned the Houſe, and was adjudged by them to be duly elected, and his Name ordered to be inſerted in the Return, and the Name of another to be raſed. After Verdict for the Plaintiff on *Not Guilty*, the Defendant moved in Arreſt of Judgment

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Judgment, That there was no Cauſe of Action, for it appeared, the Plaintiff had the Effect of his Election: He was returned and had his Place; there was nothing wanting, wherein he could pretend himſelf injured, but the Coſts he had been at; and as to them, it ought to be ſuppoſed, the Houſe conſidered them: And as the Plaintiff endeavoured to ſupport his Action by the aforeſaid Statute of 7 and 8 *William* III. Sir *Thomas Parker* argued for the Defendant, That the Declaration could not be taken to be founded on that Statute, becauſe the Fact was not laid agreeable to it, nor was it ſuch an Action as was intended by the Statute; for Firſt, an Action grounded on a general Prohibition of a Statute, ought not to be for the Party only, but for the Crown and the Party, a Fine being due to the Queen for the Breach of the Statute, as well as Satisfaction to the Party injured. 1674. 26 Car II.

Per Curiam, Where a Statute introduces a new Law, by giving an Action where there was none before, or by giving a new Action in an old Caſe, the Plaintiff need not conclude, *contra formam Statuti*; but if a Statute gives the ſaid Action, with the Difference of ſome Circumſtances, as double Damages, (as this Statute does) the Plaintiff muſt either conclude, *contra formam Statuti*, or make his Caſe ſo particularly within the Statute, that it may appear to be ſo; and becauſe he had not done it in this Caſe, Judgment was given for the Defendant. *Coudell v. John Hill*, 5 *Annæ B. R.* 2 *Salk.* 504. 505.

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Debates and Reſolutions of the Houſe of Lords and Commons, concerning their reſpective Privileges, in the Caſe of SHIRLEY and FAGG, &c. 1675. 27 *Car.* II. 1675 27 Car II.

THE Editor of theſe Proceedings has given us a Tranſcript of the Votes of the Houſe of Commons and their Journals, in relation to this Affair, with which he has filled a dozen Folio Pages. I ſhall not tire my Readers with Matters of Form, but give them ſuch a State of the Caſe, as I apprehend moſt acceptable to them.

The Caſe, a Conteſt between the two Houſes concerning their Privileges.

Doctor *Thomas Shirley* having brought an Appeal in the Houſe of Peers, againſt a Decree of the Court of Chancery, in Favour of Sir *John Fagg*, a Member of the Houſe of Commons; the Commons ordered Doctor *Shirley* to be taken into the Cuſtody of their Serjeant at Arms, for Breach of Privilege; with which the Deputy Serjeant acquainted the Doctor in the Inner Lobby of the Houſe of Lords: This occaſioning ſome Diſturbance at the Door of the Houſe of Peers, the Lord *Mohun*, being acquainted with the Matter, forcibly took the Warrant from the Deputy Serjeant, and Doctor *Shirley* made his Eſcape.

The Commons, being acquainted with this Tranſaction, ſent to demand Juſtice of the Houſe of Peers againſt the Lord *Mohun*; but were anſwered, That that Lord had done nothing but his Duty: Whereupon the Commons reſolved, That whoever ſhould appear at the Bar of the Houſe of Lords, to proſecute a Suit againſt any Member of the Lower Houſe, ſhould be deemed an Infringer of the Privileges of Parliament. On the other Hand the Houſe of Peers reſolved, That it was the undoubted Right of the Lords in Judicature, to determine, in Time of Parliament, Appeals from inferiour Courts, though the Members of either Houſe were concerned, that there might not be a Failure of Juſtice.

The Commons perſiſted, That it was an undoubted Right of their Houſe, that none of their Members be ſummoned to attend the Lords; and afterwards proceeded to that unprecedented Reſolution, *That there lay no Appeal to the Juriſdiction of the Lords in Parliament, from Courts of Equity*; and took into Cuſtody Serjeant *Pemberton*, and the reſt of the Lawyers, who were Counſel in the Cauſe, and ſent them to the *Tower*, with their own Member Sir *John Fagg*, for ſubmitting to the Orders of the Houſe of Peers. *The Counſel impriſoned by the Commons.*

At a Conference of both Houſes on this Difference, the Lords inſiſted, That the Order of the Commons for impriſoning the Lawyers, was illegal and arbitrary, and an Indignity offered to the King, in that his higheſt Court of Juſtice, the laſt Reſort in all Cauſes; that it was an Uſurpation, and a Breach of the Privileges of the Peers, to have their Orders controverted and obſtructed by the Lower Houſe, who were no Court, and had not Authority to adminiſter an Oath: That it was an Invaſion of the Subjects Liberties, and a Breach of *Magna Charta*, to impriſon, or reſtrain any Perſon of his Liberty, but by due Proceſs of Law: That their Lordſhips therefore had ſet at Liberty the ſaid Counſellors, and prohibited the Lieutenant of the *Tower*, and other Keepers of Priſons, and all other Perſons, to detain and moleſt them. *Set at Liberty by the Lords.*

The Commons anſwered, That it was no Indignity to his Majeſty, for the Commons to puniſh a Commoner by Impriſonment, who violated their Privileges; that their Lordſhips claiming to be the ſupreme Court, and aſſerting his Majeſty to be higheſt in that Court of Judicature, was a Diminution of the King's Dignity, who was higheſt in his Royal Eſtate, in full Parliament: That their Lordſhips alſo did highly intrench on the Rights and Pri-

1675. 27 Car II. vileges of the Houſe of Commons, by denying them to be a Court, or to have any Authority or Power of Judicature, which, if admitted, would leave them without any Power or Authority to preſerve themſelves: And as to their having violated *Magna Charta*, &c. neither the great Charter, or any other Law, took away the Laws and Cuſtoms of either Houſe of Parliament; nor could the Commons find by *Magna Charta*, or any other Law, or antient Cuſtoms of Parliament, that their Lordſhips had any Juriſdiction, in Caſes of Appeals from the Courts of Equity; and that the Enlargement of thoſe Perſons, impriſoned by the Order of the Houſe of Commons, and the threatning all Officers and other Perſons, who ſhould impriſon or detain them, was a Breach of the Privileges of the Houſe of Commons; and therefore they had cauſed the ſaid Counſellors, &c. to be retaken by their Serjeant at Arms, and committed to the *Tower*.

The Counſel recommitted by the Commons.

The King finding theſe Diſputes run very high, ordered both Houſes to attend him at *Whitehall*, and in his Speech told them, He was ſorry their Enemies had found Means to create theſe Diviſions among them: That he thought the beſt Means of compoſing theſe Differences, would be by free Conferences, where they might convince each other by their Reaſons, or enable him to judge rightly of their Differences; but he was determined not to ſuffer theſe Diſputes to grow to Diſorders; nor, *while they were debating* about their Priviledges, permit his own to be invaded.

The King's Speech to the Houſes on this Conteſt.

The Lords afterwards ſent the Uſher of the Black Rod to the *Tower*, to demand the four Lawyers; and Sir *John Robinſon* the Governour refuſing to releaſe them, they addreſſed the King to remove him from that Poſt; but his Majeſty anſwered, He had conſidered the Circumſtances of the Matter, and was not ſatisfied how he could with Juſtice remove him.

The Governor of the Tower refuſes to releaſe the Counſel

The Lieutenant of the *Tower* was afterwards ſerved with Writs of *Habeas Corpus*, to bring the four Lawyers before the King and Parliament: On the contrary, the Commons promiſed the Lieutenant their Protection; and reſolved, That no Commoner, commited by them for Breach of Privilege, ought by *Habeas Corpus*, or any Authority whatſoever, to be brought before the Houſe of Peers; and that the Order of the Peers, for iſſuing out the Writs of *Habeas Corpus*, was illegal. Whereupon his Majeſty, finding there was no Probability of ſeeing the Diſpute ended amicably, came to the Houſe the 9th of *June*, and prorogued the Parliament to the 13th of *October*; and then the Priſoners were releaſed of Courſe.

Diſobeys a Habeas Corpus.

The Commons protect him in it.

The Parliament prorogued.

The Parliament meeting again, in purſuance of their Prorogation, the 13th of *October*, the King made a Speech to both Houſes, wherein he ſaid, He was more than uſually concerned for the Event of that Seſſions; he did not deſire to remember the Cauſes of the late Prorogation, and hoped nobody elſe would, unleſs to learn from thence, how to avoid the like Occaſions of Debate; deſired they would conſider how fatal the Conſequence might be, and how little Benefit was like to redound to the People by it. 1675. 27 Car II.

Another Speech of the King's on this Occaſion.

However the Diſpute between the two Houſes, in the Caſe of *Shirley* and *Fagg*, was again revived this Seſſion; for *Shirley* having continued his Proceſs, the Commons again voted it a Breach of Privilege, and ordered *Fagg* to make no Defence at the Lord's Bar; and having agreed to a Conference with the Lords on this Subject; the 19th of *November* they delivered their Lordſhips a Paper to the following Tenor (*viz.*) That the King having recommended to them the avoiding this Difference, and if that could not be prevented, to defer the Debate till the publick Bills, for the Good and Safety of the Kingdom, were perfected; the Commons thought it a great Misfortune, that, contrary to that excellent Advice, a Day had been appointed by the Lords, for hearing the Cauſe between *Shirley* and *Fagg*, and propoſed the putting off that Matter for a ſhort Time; to which their Lordſhips ſhewing no Inclination, the Commons the next Day reſolved, That whoever ſhould proſecute an Appeal before the Lords, againſt any Commoner, from any Court of Equity, ſhould be deemed a Betrayer of the Rights and Privileges of the Commons of *England*, and be proceeded againſt accordingly; and ordered this Reſolution to be poſted up in the Lobby, *Weſtminſter-Hall*, and other publick Places: Whereupon the Lords reſolved, That the Paper poſted up againſt the Judicature of the Houſe of Peers, was illegal, unparliamentary, and tending to the Diſſolution of the Government; and ſeveral violent Speeches were made in the Houſe of Lords, particularly by the Earl of *Shaftesbury*, who declared, "That THEIR ALL WAS AT STAKE; that though he had all the Duty imaginable for his Majeſty, and ſhould give Way to any Thing almoſt, that he ſhould think of Importance to his Affairs; yet, in this Caſe, it being to alter the Conſtitution of the Government, which was not only their Lordſhip's Concern, but the Concern of the pooreſt Man in the Kingdom, he would be bold to ſay, The King could give none of them a Recompence for it.

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The Diſpute reviewed.

The Earl of Shaftesbury's Speech on this Occaſion.

"*What are empty Titles? What is preſent Power, to a great Eſtate, wherein I have no Property fixed? It is the maintaining the Conſtitution of the Government, that ſecures your Lordſhips, and every Man elſe, in what he hath.* The greateſt Title, with the greateſt preſent Power and Riches, is but a mean Creature, and maintains thoſe in abſolute Monarchies, no otherwiſe than by ſervile or low Flatteries, and upon uncertain Terms. My Lords, would you be in Favour with the King? It is a very ill Way to it, to put yourſelves out of a Capacity to be conſiderable in his Service. I do not find in Story, or in modern Experience, but that it is better, and a Man is much more regarded, that is ſtill in a Capacity to ſerve his Prince and Country, than he that hath wholly deprived himſelf of All, for his Prince's Service: I do therefore

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" fore declare, that I will ſerve my Prince " as a Peer, and will not deſtroy my Peerage " to ſerve him.

This Speech inflamed the Houſe of Peers to that Degree, that it was moved on the ſudden to addreſs his Majeſty to diſſolve the Parliament, and call another (the very point Lord *Shaftesbury* aimed at); and being put to the Vote, it was carried in the Negative, only by two Voices (50 againſt 48): However the King, finding it impoſſible to accommodate the Differences between the two Houſes, pro-

Another long Prorogation.

rogued the Parliament on the twenty ſecond of *November*, to the fifteenth of *February* come twelve Months, that they might have time to cool before another Seſſion.

I ſhall conclude this Affair with the Proteſt of thoſe Lords who were for addreſſing the King to diſſolve the Parliament; for which they gave theſe Reaſons:

Proteſt of the Lords, who were for diſſolving the Parliament.

1. We conceive that it is according to the antient Laws and Statutes of this Realm, that there ſhould be frequent and *New Parliaments*.

2. It ſeems not reaſonable that any particular Number of Men ſhould, for many Years, engroſs ſo great a Truſt of the People as to be their Repreſentatives in the Houſe of Commons; and all the other Gentry and Members of Corporations of the ſame Degree and Quality, ſhould be ſo long excluded. Neither is it advantageous to the Government, that the Counties, Cities and Boroughs, ſhould be confined for ſo long a Time to ſuch Members; the mutual Correſpondence and Intereſts of thoſe who chuſe and are choſen, admitting of great Variations in length of Time.

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3. The long Continuance of ſuch as are entruſted for others, and who have ſo great a Power over the Purſe of the Nation, muſt naturally endanger the producing Factions and Parties, and the carrying on of particular Intereſts and Deſigns, rather than the Publick Good.

And we are the more deſirous of ſuch an Addreſs, on account of this unhappy Breach between the two Houſes, for which the Houſe of Peers have not given the leaſt Occaſion, having done nothing but what their Anceſtors and Predeceſſors have done, and what is according to their Duty, and for the Intereſt of the People: And it is in our Opinion become altogether impracticable for the two Houſes, as the Caſe ſtands, jointly to purſue thoſe great and good Ends for which they were called.

Signed by *Buckingham*, *Shaftesbury*, and twenty more.

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The Caſe of FRANCIS JENKES, committed to the *Gatehouſe* by the Privy Council, for ſeditious Words, 28 *June*, 1676. 27 *Car.* II.

1676. 27 Car. II.

Jenkes's Caſe.

THIS is no more than the Complaint of Francis Jenkes, *and his Friends, for his being committed by the Privy Council, for Words the Bretheren apprehended to be innocent, and his not being admitted to Bail ſo ſoon as he expected; in which Relation (told by themſelves) no doubt, they have been partial enough. The Fact for which he was committed appears by the following Warrant* (as recited by them.)

The Warrant for his Commitment.

" Whereas it appears to his Majeſty in " Council, by the Examination of Sir *Thomas Gold* and Sir *John Shorter*, Knights, " Sheriffs of the City of *London*; *John Wells*, " Common-Crier of the ſaid City, and *John Green*, one of the Attornies of the Lord-" Mayor's Court, taken upon Oath before " the Lord Chief Juſtice *Rainsford*, That " *Francis Jenkes*, of the ſaid City, Linnen-" Draper, did, on the 24th of this inſtant " *June*, at a Common Hall then aſſembled " at the *Guild-hall* of the ſaid City, for " chuſing Officers for the enſuing Year, in " a moſt ſeditious and mutinous manner, " openly move and ſtir the Perſons then " preſent, that before they did go on to " the Choice of new Officers (which was the " only occaſion of that Aſſembly) they " ſhould go to the Lord Mayor, and deſire " him to call a Common Council that might " make an Addreſs to his Majeſty, in the " Name of the City, to call a new Parliament. And whereas the ſaid *Francis Jenkes* " being now called in, and heard before his " Majeſty in Council, was ſo far from denying, or extenuating his Offence, that he " did, in a preſumptuous and arrogant Manner, endeavour to juſtify the ſame:

" Theſe are therefore to command you, " to take into your Cuſtody the Body of the " ſaid *Francis Jenkes*, herewith ſent you, and " him to keep ſafely, until he ſhall be " delivered by due Courſe of Law, for which " this ſhall be your Warrant.

Dated at the Council-Chamber at *Whitehall* the 28th Day of *June*, 1676, and ſigned by twenty of the Lords of the Privy Council.

Bail deferred.

Mr. *Jenkes* and his Friends relate, that they attended Mr. Secretary *Williamſon* with ſufficient Bail the next Day after the Commitment, as they did, afterwards, the Lord Chief Juſtice *Rainsford* and the Lord Chancellor; but they all gave them dilatory Anſwers.

Then they applied themſelves to the Juſtices of Peace of *Weſtminſter*, at their Seſſions; who told them there was no Precedent of a Perſon's being bailed by Juſtices of Peace, who were committed by the Privy Council.

They

1676. 27 Car. II.

They applied again to the Lord Chancellor, who told them, A little Submiſſion, in a proper Place, would do, (*viz.* a Petition to the Council): But they found he had a Mind to come out with a high Hand.

He is, after 2 Months, admitted to bail.

After the Priſoner had lain about two Months in the *Gatehouſe*, the Council voluntarily admitted him to Bail. I cannot learn there was any further Proſecution againſt him for theſe Miſdemeanors, of ſeditiouſly ſtirring up the Citizens to petition for a Parliament, and his Inſolence to the Privy Council. The Man appears to have been one of Lord *Shaftesbury*'s Faction, and was afterwards tried for a Riot in *Guildhall*, in the Year 1683, as will appear in a future Trial.

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And though it be looked upon by the Brethren, to be ſo great a Piece of Oppreſſion not to bail one immediately, who has been committed for Sedition, and a Contempt of the Privy Council; yet we find no Court or Magiſtrate will bail one committed for a Contempt by the Houſe of Commons: And whether the Privy Council have not as much Law, for committing and detaining ſuch a Perſon in Priſon, as the Commons, may be a Moot-Point.

1677. 29 Car II. *Lord Shaftesbury's Caſe.*

The Caſe of ANTHONY Earl of SHAFTESBURY, on a Writ of *Habeas Corpus*, argued in the Court of *King's-Bench*, the 27th and 29th of *June*, 1677. *Trin.* 29 *Car.* II.

1677. 29 Car. II.

Habeas Corpus, the Return.

THE Earl was brought into Court on the Return of an *Alias Habeas Corpus*; the Tenor whereof was, That the ſaid *Anthony* Earl of *Shaftesbury* was committed to the *Tower* on the 16th of *February*, 1676, by Order of the Houſe of Lords, *for High Contempts committed againſt that Houſe*; to remain in Cuſtody during his Majeſty's Pleaſure, and the Pleaſure of that Houſe.

The Return being filed on the Motion of the Earl's Counſel, they were ordered to attend the Judges and the Attorney-General, with their Exceptions to it; and then the Earl was remanded: And on the 29th the Exceptions to the Return were argued.

Arguments for diſcharging or bailing the Earl.

The Earl's Counſel inſiſted, That the Cauſe of Commitment was inſufficient, becauſe it was too general and uncertain; and cited *More* 893, *Vaughan* 140, and 1 *Rolls* 218. And that the Commitment of the Jurors for acquitting *Penn* and *Mead*, *contra plenam & manifeſtam evidentiam*, was reſolved to be too general; becauſe the Evidence ought to have appeared as certainly to the Judge of the Return, as it appeared before the Judge authorized to commit; and that the Commitment being by the Houſe of Lords made no Difference: This Court had often determined concerning Privilege of Parliament: That if the Parliament was diſſolved, there was no Queſtion but the Priſoner might be diſcharged on a *Habeas Corpus*; and yet then the Court muſt examine the Cauſe of Commitment, and conſequently might examine a Parliamentary Matter: That the Commitment during the King's Pleaſure, and the Pleaſure of the Houſe alſo, was illegal; becauſe the Priſoner could not apply himſelf in ſuch a Manner as to obtain his Diſcharge.

That though the Houſe of Lords was the Supreme Court, yet their Juriſdiction was limited by Common and Statute Law: That at a Conference held between the Lords and Commons, 3 *April*, 4 *Car.* it was agreed, That no Freeman ought to be committed by the King, or Privy Council, *or any other* (in which the Houſe of Lords were included), unleſs ſome Cauſe of the Commitment were ſet forth; and ſo the Law was declared to be in the Petition of Right.

That where a Subject was reſtrained of his Liberty, this was the proper Court to apply to; and this Court had a Supreme Power, as to this Purpoſe, over all Courts: On a *Habeas Corpus* iſſuing from hence, the King ought to have an Account of his Subject; and if the Commitment by the Houſe of Lords was illegal, this Court was obliged to diſcharge the Priſoner, as well as if he had been illegally impriſoned by another Court: That the Earl had been impriſoned five Months already; and it was falſe Impriſonment, not only where the Commitment was unjuſt, but where it was of too long a Duration. The Parliament was adjourned; and as the Law was now taken to be, might continue adjourned ten or twenty Years, and make the Impriſonment perpetual: And that this was not an ordinary Adjournment, it being entered on their Journal, that they ſhould not meet at the Day of Adjournment; but be adjourned or prorogued to another Day, if the King did not ſignify his Pleaſure to the contrary by a Proclamation.

Arguments againſt diſcharging or bailing the Earl.

The King's Counſel on the other Side admitted, That if this Commitment had been by an inferior Court, it could not have been maintained; but it being by a Court that was not under the Controul of the *King's-Bench*, and that Court ſitting at this Time, it was otherwiſe: That this Caſe differed from all others that had been mentioned, in two Circumſtances, 1. The Perſon was a Member of the Houſe by which he was committed. 2. That Court being ſuperior to this, although the Contempt had been particularly expreſſed: And of what Opinion ſoever this Court had been as to the Nature of it, they could

1677. 29 Car. II.

could not have diſcharged the Earl, and have taken upon them a Juriſdiction over the Houſe of Peers: That the Words *during Pleaſure* were no more than what the Law would have ſupplied; and if Judgment was given that one be impriſoned during the King's Pleaſure, his Pleaſure ought to be determined by a Pardon. They urged further, That it would be very inconvenient, if the *King*'s-*Bench* could, during a Seſſion of Parliament, take Cognizance of the Matter; for then this Court might judge one Way, and the Houſe of Peers another. It had been reſolved by the whole Court, in the the Caſe of *Barnardiſton* and *Soame*, that an Action of a double Return could not be brought in the Court of *King*'s-*Bench* 'till the Commons had determined the Right of Election, leſt there ſhould be different Judgments given in the ſame Caſe: That when a Judgment of the Houſe of Lords came down to that Court, they were obliged to execute it, and could never examine or correct their Judgments: That though Impriſonments for Contempts had been frequent by the one and the other Houſe, no Perſon ſo committed ever ſought his Enlargement in the *King*'s-*Bench* before. This Court, indeed, was obliged to grant an *Habeas Corpus*; but it appearing upon the Return, that the Cauſe belonged *ad aliud examen*, they ought to remand the Party.

The Judges declare they have no Power to bail or diſcharge him, on a Commitment by the Lords, during the Seſſion.

Then Mr. Juſtice *Jones* delivered his Opinion *ſeriatim*, That ſuch a Commitment by another Court, would have been ill; but that the Courts of *Weſtminſter* had never taken Cognizance of Privilege of Parliament, unleſs where it was an Incident to the Caſe before them, which was of their Cognizance: But the direct Point now before them, was a Judgment of the Houſe of Lords, and this Court could not judge of any Law, Cuſtom, or Uſage of Parliament. And as to the Continuance of the Impriſonment, the King might pardon the Contempt under the Great Seal; or diſcharge the Impriſonment under his Privy Seal: He would not ſay what might have been done, if the Seſſions had been determined; but this Court, as the Caſe was, could neither diſcharge or bail the Earl.

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Mr. Juſtice *Wild* alſo delivered his Opinion, That they could not meddle with the Tranſactions of the Houſe of Peers during a Seſſion of Parliament, which was not determined; and therefore the Certainty or Uncertainty of the Return was not material; but if the Seſſion had been determined, his Opinion would have been, the Earl ought to be diſcharged.

Sir *Richard Rainsford* declared, That this Commitment was an Execution of a Judgment given by the Lords for a Contempt; and that, if he ſhould be bailed, he would be delivered out of Execution; and that for a Contempt in the Face of the Court, there was no other Judgment or Execution: That this Court had no Juriſdiction, as the Caſe ſtood, and therefore the Earl ought to be remanded; but waived giving his Opinion, Whether it would not have been otherwiſe, in Caſe of a Prorogation.

Mr. Juſtice *Twiſden* alſo was of Opinion, That the Earl ought to be remanded; and he was accordingly ſent back to the *Tower*, where he remained ſeven Months longer, and then was diſcharged on making his Submiſſion in the Houſe of Peers. His Offence was, his affirming, That the Houſe was diſſolved by having been prorogued for above a Year; in which Notion the Duke of *Bucks*, the Earl of *Salisbury*, and the Lord *Wharton*, concurred, and were all ſent to the *Tower* for aſſerting it; but the reſt acknowledging their Error, were ſoon diſmiſſed; while *Shaftesbury*, for perſevering in that Notion, drew upon himſelf the Reſentment of the Court, as well as of the Houſe, and was continued a Year in Priſon.

Remarks on the Lord Shaftesbury*'s Caſe.*

This Caſe of Commitments by either Houſe, ſeems now to be fully ſettled: Where either Houſe commits any of their reſpective Members, the *King*'s-*Bench* will neither diſcharge or bail them during the Seſſion; but on a Prorogation, or Diſſolution, the Perſons ſo committed are diſcharged of courſe.

1678. 30 Car. II.

Lord Pembroke*'s Trial.*

The Trial of PHILIP Earl of PEMBROKE and MONTGOMERY, for *Murder*, before the whole Houſe of Peers (it being during a Seſſion of Parliament) in *Weſtminſter-Hall*, the 4th of *April*, 1678. 30 *Car.* II.

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The Charge

THE Indictment charges this Noble Lord with aſſaulting, and knocking down, *Nathanael Cony*, Gent. on the 4th of *February* (then laſt paſt) and with ſtriking, bruiſing, and kicking him after he was down, of which Blows and Bruiſes he languiſhed until the Tenth of the ſame Month, and then died: And ſo the ſaid *Philip* Earl of *Pembroke*, &c. did felonioufly, wilfully, and of his Malice afore-thought, kill and murder the ſaid *Nathanael Cony*.

The Evidence for the King.

The King's Counſel having opened the Indictment, the Witneſſes were produced; and firſt Mr. *Goring*, who depoſed, that on *Sunday*, the 3d of *February* laſt, he had been drinking with Mr. *Cony*, the Deceaſed, in the City, where they ſtaid very late; however, in their way Home they called at *Long*'s Tavern in the *Hay-Market*, to take another Bottle; and, as they were ſtanding at the Bar, the Lord *Pembroke* came out of a lower Room, and invited Mr. *Cony* (whom he knew)

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and the Deponent to come in: That, after ſome Time, there aroſe a Diſpute between the Lord *Pembroke* and the Deponent, about their Families and Play, wherein the Noble Lord, thinking himſelf injured, threw a Glaſs of Wine in the Deponent's Face; and then my Lord roſe up and drew his Sword, and the Deponent laid his Hand upon his Sword; but Captain *Savage* ſtepped between them, and with the Drawer, ſhoved the Deponent out of the Room, at which Time he heard a Noiſe behind him, and ſaw my Lord making towards Mr. *Cony*: That the Deponent, after he was out, miſſing his Friend, and having left his Sword, Hat and Wig, in the Room, made a Noiſe at the Door to get in again, and the Landlord riſing out of his Bed, and coming down, the Deponent deſired he might have his Things again, and go in and ſee what they had done, with Mr. *Cony*; for he feared he was in Danger: But the People of the Houſe perſuaded him to go into another Room, and they would bring Mr. *Cony* to him; and after he had waited half an Hour, they came and told the Deponent he might go in now if he pleaſed, and going in he found Mr. *Cony* lying upon the Chairs, and no Body elſe in the Room: That he took a Candle to ſee if he was wounded, endeavouring to awake him, but could not; and the Drawer ſaid he was only dead-drunk, and would come to himſelf: That thereupon he directed the Drawer to get ſome Blankets and Pillows, and ſet ſome Chairs, to make the Place broader, and watch with him 'till he waked, which the Drawer promiſed to do: That going to viſit Mr *Cony* on *Tueſday*, he told the Deponent he had been very much abuſed in my Lord's Company; my Lord *Pembroke* threw him down, and ſomebody trod upon him, and kicked him, and he expected Satisfaction of my Lord: He hoped the Deponent would carry his Lordſhip a Challenge: That asking the Deceaſed who trod upon him, he anſwered, he knew not, for he was in a Swoon; it was either my Lord *Pembroke*, or ſome of his Creatures for him: That he complained of his Belly, Sides, and Shoulders, and ſaid my Lord *Pembroke* had done him the Injury in throwing him down.

Mr. *Richard Savage* depoſed, he was with my Lord *Pembroke*, at *Long*'s Tavern in the *Hay-Market*; and his Lordſhip, hearing Mr. *Cony* make a great Noiſe at the Bar, went out, and invited him and his Friend, Mr. *Goring*, into his Room: That after ſome Time Mr. *Goring* uſed impertinent Language, and told his Lordſhip he was as good, or a better Gentleman than himſelf; whereupon his Lordſhip threw a Glaſs of Wine in *Goring*'s Face, and drew his Sword, and *Goring* being about to draw his, the Deponent took it from him, and broke it, and perſuaded his Lordſhip to put up his Sword; but, to prevent more Words, the Deponent ſhoved Mr. *Goring* out of the Room: That while he was thruſting *Goring* out, he heard a Buſtle behind him, and turning about, ſaw the Lord *Pembroke* ſtrike the Deceaſed, who immediately fell down, and then my Lord gave him a Kick: That finding the Deceaſed did not ſtir, my Lord and the Deponent took him off the Ground, and laid him on the Chairs, and covered him up warm; that they chafed his Temples, and he opened his Eyes, but did not ſpeak: He did not ſee his Lordſhip kick the Deceaſed more than once, and that with no great Force.— That he went two Days after to ſee Mr *Cony*, and he asked the Deponent if my Lord ſtruck him, for he did not know; but finding himſelf much in Pain, he thought he had fallen, partly through Drink, and partly through Fits he uſed to have.

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Mr. *Shelly* depoſed, he was in the Room when Mr. *Cony* and Mr. *Goring* came in, and they were both in Drink: That *Goring* propoſed Play, and my Lord ſaid he would throw with him for 500 *l.* and was ſending for the Money; but then *Goring* would not play; and his Lordſhip ſaying he believed he was an idle Fellow, *Goring* replied, his Name was a better Name than his Lordſhip's, and himſelf a better Gentleman: Whereupon my Lord threw a Glaſs of Wine in his Face, and they both drew their Swords; but *Savage* ſtepped between, and put *Goring* out of the Room; and my Lord deſiring *Cony* to go out with his Friend, *Cony* ſaid, he did not know why his Friend was put out; whereupon my Lord knocked him down, and lifted up his Leg pretty high, as if he would have kicked him; but he could not ſay he kicked him: He ſaw them afterwards lay *Cony* upon the Chairs, and he was ſenſeleſs; and he believed his being in Drink, as well as the Blow, was the Occaſion of his Fall; for he ſaw the Deceaſed twice afterwards, and he ſaid he had a Fit, and did not impute any Thing to the Lord *Pembroke*. Captain *Fitz-Patrick* gave the ſame Evidence, concerning the Deceaſed's being knocked down by the Lord *Pembroke*, and left ſenſeleſs upon the Chairs, as the former Witneſſes had done; but was not certain his Lordſhip kicked the Deceaſed.

Doctor *Bruce* depoſed, That coming to viſit Mr. *Cony*, the Day after the Accident, he found him in ſuch extreme Pain between his Shoulders, that he could not bear to be touched: That the *Wedneſday* following he complained of Pains in his Belly; but they could ſee no Blemiſh, either by diſcolouring or bruiſing, and ſo left him then in a hopeful way of Recovery.

Mr. *Hemes* depoſed, That he was ſent for to Mr. *Cony*, the Day after the Accident, and he complained of Pains all over his Body, but eſpecially on his Shoulders and Buttocks; and the Doctor applying Plaiſters, and ordering him to be anointed, he could hardly bear they ſhould touch him; but they ſaw no Swelling or Bruiſe: He complained of an inward Soreneſs in his Belly from firſt to laſt, and being opened after he was dead, they found a great deal of Blood gathered together in the lower Part of his Belly, of a blackiſh livid Colour.

Mr. *Jackſon* depoſed, That the Deceaſed was of a ſtrong, healthful Conſtitution, and not ſubject to any dangerous Diſtemper: That he went to viſit him the *Wedneſday* after

The Priſoner's Witneſſes produced in his Defence.

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ter the Accident, and he told the Deponent he had been troubled with very unuſual Swoonings, and at that Time fell into a Fit: That he complained of great Pain in his Belly, and ſaid it was occaſioned by ſome ill Uſage he had lately received: He had been drinking with my Lord *Pembroke*.

Alice Avery (Mr. *Cony*'s Nurſe) depoſed, That he came Home about Eight o'Clock on the *Monday* Morning, and was very ill, he could ſcarce ſtand; ſaid he was very ſore, and full of Pain, and had been in ſome Company, where he had received a great deal of Wrong: That he had been beaten and kicked more than ordinary, and was never ſo abuſed in his Life: And about two Hours before he died, he wiſhed to God he had never been in my Lord *Pembroke*'s Company; for he did think in his Conſcience my Lord had been the Death of him.

Mr. *William Brown* depoſed, He was upon the Coroner's Inqueſt the Day after Mr. *Cony* died: That his Body was prodigiouſly ſwelled: On his right Breaſt there was a great black Bruiſe, and on the left Side a great black Spot: That they deſired to ſee his inward Parts, and found the Caul waſted away, and in the Bottom of his Belly a great Quantity of ill-looked Blood.

Richard Wheeler alſo depoſed, He was of the Inqueſt, and obſerved a great Bruiſe on the right Breaſt of the Deceaſed, and another on the left Side of his Belly: That the whole Body was very much ſwelled, and Blood ſettled in the Bottom of his Belly.

Charles Cony (Brother to the Deceaſed) depoſed, That, viſiting his Brother the Day after the Accident, and underſtanding the Lord *Pembroke* knocked him down, they both concluded how the Misfortune came, though his Brother (the Deceaſed) could not remember what was done; and therefore, to know the Truth, they ſent for the Drawer, who aſſured them my Lord never ſtruck him: That his Brother was in ſuch Pain, he could not bear to be touched; but on ſome Applications on *Tueſday*, he was pretty much at Eaſe: He roſe on *Wedneſday*, and on *Thurſday* was ſo well, that he dined with ſome Friends in his Chamber, and on *Saturday* was ſo well, that he would have gone Abroad; and the Deponent did not think he would have died, till about two Hours before he expired; and when the Report of my Lord's having abuſed him was mentioned, he was diſpleaſed at it.

Mr. *Jackſon*, the Surgeon, depoſed further, That they found an extraordinary Quantity of extravaſated Blood at the Bottom of his Belly when it was opened; and he believed it to be occaſioned by ſome Violence that was done him.

The Priſoner's Witneſſes produced in his Defence.

Then the Priſoner's Witneſſes being called, Doctor *Conqueſt* depoſed, That the firſt Time he attended the Deceaſed, as a Phyſician, was about three Months before this Accident, and then he was ſent for to him at a Tavern, where the Deceaſed had a fainting Fit, and lay dead for half an Hour: That the next Day he attended the Deceaſed at his Lodgings, and found him very ill, and melancholy, inſomuch that he weeped, and ſaid that he found ſo great an Oppreſſion at his Heart, that he could not ſpeak; however, the Deponent could not diſſuade him from going Abroad that Day, and he went out, and drank very hard: That the Deponent had been ſent for twenty Times to recover him out of his Fits; but he would take no Advice: That he acknowledged he had been a hard Drinker of Wine, and ſtrong Waters upon it, which the Deponent believed cauſed the Stagnation of Blood in his Body, and might occaſion the fainting Fits; and he believed his Entrails had received no Prejudice by Kicks or Bruiſes, becauſe he ſaw him take two or three Clyſters after this Accident: That the very *Saturday* Night before he died he drank three whole Tankards of cold ſmall Beer, which gave him a violent Fit of the Gripes; and the Deponent being ſent for again, he found the Deceaſed had vomited all Night, and was dying away, and having brought him to himſelf again, he ſtill ſwore he would have more ſmall Beer: That the Deponent ſaw him opened, and there was clotted Blood among the Bowels, the breaking out of which he aſcribed to the great Quantity of ſmall Beer the Deceaſed had drunk, and the Gripings that followed; and the Bowels were none of them touched.

Doctor *Lower* depoſed, That he attended the Deceaſed with Dr. *Conqueſt* after this Accident; and Mr. *Cony* told him, his Fits came upon him ſuddenly, by Sickneſs upon his Stomach, and ſaid nothing of any Bruiſe or Hurt: Nor had the Deponent any Reaſon to ſuſpect that any ſuch Thing was the Cauſe of his Illneſs; for he had no Symptom of a Fever, either in Tongue, Pulſe, or Urine; which would have been, if the Diſtemper had been owing to any Thing of that kind.

Mr. *Raven*, the Surgeon, depoſed, That he viewed the Body carefully, and found no Blackneſs, or Blueneſs, or Marks of Bruiſes: That when the Body was opened, there iſſued ſome clotted Blood: The Caul was conſumed; the Heart as looſe as a Rag, and the Lungs ſtuck to each Side of his Ribs: That in all natural Deaths there is extravaſated Blood in the lower Belly; and the great Quantity that was there, he imputed to his drinking ſmall Beer after ſtrong Liquors, which ſet him a vomiting, by the Violence whereof the Blood was thrown down into the Belly.

Viner, *Long's* Drawer, depoſed, That he came into the Room when my Lord *Pembroke* ſtruck the Deceaſed (though he denied, when he was ſent for by the Deceaſed, and his Brother, that my Lord ſtruck him): That afterwards they laid the Deceaſed upon Chairs, and he fell off ſeveral Times, and the Deponent helped him up again: That, when he came to himſelf, he ſaid he was very ſick, and had ſeveral fainting Fits; and that at Seven in the Morning they ſent him to his Lodgings in a Chair.

The King's Counſel's Obſervations on the Evidence.

The King's Counſel, in their Obſervations on the Evidence, ſaid, There were two ſorts of Malice, the one expreſs, *i. e.* When a Man can be proved to have had an ill Will before-hand to the Perſon killed (which they did

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did not pretend to be in this Caſe): The other ſort of Malice, which alſo in Law gives the Denomination of Murder to the killing of a Man, is Malice implied; which is, when a Man, without any Provocation given by the Party ſlain, ſhall bring another by Violence to his Death: For the Law ſuppoſes, that no Man, without Provocation, would kill his Brother, unleſs he had Malice to him beforehand; and this was the Malice they charged the Priſoner with, *That he killed the Deceaſed without Provocation.*

This Noble Lord ſeems to reſt his Defence on the Evidence that had been given for him; I do not perceive he made any Remarks on it: Whereupon the Lords withdrew to their Houſe above, and after two Hours Debate among themſelves, coming down into the Hall again, the Lord High Steward numbered the Voices, and declared, That Six of their Lordſhips had found the Priſoner Guilty of Murder, Eighteen had found him Not guilty, and Forty had found him Guilty of *Manſlaughter*: And it being demanded what he could ſay why Judgment ſhould not paſs upon him, to die according to Law? He claimed the Privilege of his Peerage (which is equivalent to a Commoner's Claim of Clergy): Whereupon the Lord High Steward told him, That as Clergy was allowed to a Commoner in ſuch Caſes, on his reading, and being burnt in the Hand; ſo a Peer, convicted of ſuch Felony, was to be delivered without either: But his Lordſhip would do well to take Notice, That no Man could have the Benefit of that Law more than once.

Convicted of Manſlaughter.

Has the Benefit of his Peerage.

1678. 30 Car. II. Clergy diſcloſed but once.

Here we ſee different Evidence given by different Witneſſes: Some of the Coroner's Inqueſt declare, that the Body had ſeveral Bruiſes upon it; on the other Hand, a Phyſician and a Surgeon aver, there were none: One Surgeon declares that his Death was occaſioned by ſome Violence; another Surgeon and a Phyſician depoſe, he died a natural Death: But a Majority of the Lords, it ſeems, were of Opinion, that the Deceaſed died of the Kicks and Bruiſes he received from Lord *Pembroke*; otherwiſe they could not have found this Noble Lord guilty of Manſlaughter. Had he been tried by a Jury of Commoners, he might poſſibly have been found guilty of Murder; for I do not find the Deceaſed gave him any Provocation; unleſs his demanding, Why his Friend was turned out of the Room, be deemed ſuch a Provocation, as will juſtify one Man's knocking another on the Head: But this may ſerve to ſhew us what Advantage a Noble Peer has, when he contends with a Plebeian; the former is ſure to meet with moſt indulgent Judges, who will infallibly look upon his Cauſe as their own, and aſſert their Privileges over the lower Claſs of Men.

Remarks on the Earl of Pembroke's Trial.

1678. 30 Car. II. Staley's Trial.

The Trial of WILLIAM STALEY, Goldſmith, for *High-Treaſon*, at the *King*'s-*Bench* Bar, the 21ſt of *November*, 1678. 30 Car. II.

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The Charge.

THE Indictment charges the Priſoner with High-Treaſon, in compaſſing the Death of the King: And the Overt-Act laid to prove it, was certain treaſonable Words, ſaid to be ſpoken by him, the 14th Inſtant, in *French*, importing, *That the King was a great Heretick, and the greateſt Rogue in the World*: Adding, *Here is the Heart, and here is the Hand that would kill him: The King and Parliament think all is over; but the Rogues are miſtaken.*

The Evidence.

The Priſoner making no Challenges to the Panel, a Jury was ſworn, and the Witneſſes produced: And firſt, Captain *William Carſtairs* depoſed, That the Priſoner, and one *Fromante*, a *Frenchman*, being at the *Black-Lion* Ale-houſe in *King-ſtreet*, the 14th of that Month, *Fromante* ſaid in *French*, *That the King of* England *was a Tormentor of the People of God*; and the Priſoner anſwered again in *French*, *He is a great Heretick, and the greateſt Rogue in the World*; and ſtriking his Hand on his Breaſt, and ſtamping five or ſix Times, added, *Here is the Heart, and here is the Hand that would kill him: The King and Parliament think all is over; but the* Rogues *are miſtaken.* That the Deponent was in a Room oppoſite to the Priſoner, and both Doors being open, he ſaw him, and heard him ſpeak theſe Words, and the next Day he cauſed the Priſoner to be apprehended.

Alexander Southerland depoſed, That he was with Captain *Carſtairs*, at the *Black-Lion*, and heard the Priſoner ſpeak thoſe Words, and that he immediately wrote them down in *French*, as they were ſpoken.

Philip Garret depoſed, That he was with his Captain *William Carſtairs*, at the *Black Lion*; but not underſtanding *French*, his Captain told him the Priſoner ſaid he would kill the King; and bid the Deponent enquire the Priſoner's Name, and where he lived, which he did.

The Priſoner's Defence.

The Priſoner, in his Defence, acknowledged he was at the *Black-Lion* Alehouſe, but denied he ſpoke the Words; and obſerved, that the *French* might be tranſlated *I will kill myſelf*, rather than *I will kill him myſelf*: That their Diſcourſe was very innocent; they were ſpeaking of the Happineſs of this Government compared with that of *France*: That he abhorred the Words he was charged with, having always behaved himſelf as a Loyal Subject; and he muſt be a Madman to ſpeak ſuch Words in a Publick Houſe, with the Doors open, as the Witneſſes depoſed.

Then

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A Witneſs for the Priſoner.

Then he called a Witneſs to his Character, who depoſed, He had often heard the Priſoner ſpeak very dutifully and loyally of the King; and that he deteſted the Principles of the Jeſuits, though he was a Papiſt.

The partial Directions of the Chief Juſtice.

The Chief Juſtice, however, in his Directions to the Jury, told them, The Words were fully proved, that they would bear no other Conſtruction than had been put upon them, That the Government was daily expoſed by the dangerous Plots of the Papiſts, and deſired that they would begin with this Man, and make him an Example to deter others from the like Practices: Accordingly the Jury found the Priſoner guilty without going from the Bar; and he was condemned to die as a Traitor, and executed at *Tyburn*.

The Priſoner convicted, and executed.

Remarks on Staley's Trial.

This poor Man had the Misfortune to be accuſed of theſe treaſonable Words at the Time the Nation was firſt alarmed by the Popiſh Plot; and every thing was believed that tended to blacken the Papiſts: But even Biſhop *Burnet*, one of the Whig Chiefs, was of Opinion he was innocent: He tells us, that the Proſecution of *Staley* the Goldſmith, for the Popiſh Plot, was very hard; for that *Carſtairs*, the principal Evidence againſt him, was a profligate Villain, and did it only to get a little Money out of *Staley*, as he (Doctor *Burnet*) then aſſured the Earl of *Shaftesbury*; but that Earl would hear nothing againſt the Witneſs, and ſaid, *They muſt ſupport the Evidence: And all thoſe who undermine the Credit of the Witneſſes, were to be looked upon as publick Enemies.*

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Biſhop *Burnet* adds, That Doctor *Lloyd*, who viſited *Staley* a little before his Execution, told him, That the Priſoner proteſted he knew of no Plot, nor ever ſpoke the Words charged upon him, or any thing to that Purpoſe; but he was a *Roman Catholick*, and entruſted with the Caſh of a great many Noblemen and Gentlemen of that Perſuaſion, and therefore thought a very fit Man, by the People who hatched this pretended Plot, to open the bloody Scene with: Theſe were Circumſtances they concluded would not fail to induce the credulous Jury to find him guilty, and their Expectations were unhappily anſwered.

The Trial of EDWARD COLEMAN, Eſq; for *High-Treaſon* in the Court of *King*'s-*Bench*, the 27th of *November*, 1678. *Mich.* 30 *Car.* II.

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Coleman's Trial.

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THE Priſoner making no Challenges to the Pannel, the Jury was ſworn.

The Charge againſt him.

The Indictment charged him with High Treaſon, in compaſſing the Death of the King: And the Overt-Acts laid to prove it were, two Letters he ſent to Father *Le Chaiſe*, the *French* King's Confeſſor, in which he deſired *Le Chaiſe* to procure the Aſſiſtance of the *French* King againſt his Sovereign, in order to alter the Eſtabliſhed Religion, introduce the *Romiſh* Superſtition, and ſubvert the Government; and his receiving a Letter from *Le Chaiſe*, in Anſwer to one of the ſaid Letters, wherein Aid and Aſſiſtance was promiſed from the *French* King: The revealing his ſaid Treaſons to Monſieur *Rouvigni*, the *French* Envoy, and moving him to be an Accomplice with him in the ſaid Treaſons; and his ſending three Letters to Sir *Nicholas Throckmorton*, then reſiding in *France*, to ſolicit *Le Chaiſe* to procure Aid of the *French* King for the Purpoſes aforeſaid, were laid alſo as Overt-Acts of the Treaſon of his Heart.

He complains of ſome Hardſhips.

The King's Counſel diſplaying their Oratory, and highly aggravating the Charge againſt the Priſoner while they opened the Indictment, Mr. *Coleman* ſaid, It was hard he might not be allowed Counſel, when Crimes were charged againſt him with ſuch Skill and Advantage: The Premiſſes indeed were ſtrong and artificial; but he muſt deny the Concluſion, for he could ſafely and honeſtly ſay, he was not a Traitor.

Another thing that ſeemed moſt dreadful to him was, The violent Prejudices, at that Time, againſt every Man in *England* who was a Roman Catholick: If one of that Perſuaſion, though never ſo innocent, ſhould appear at that Bar, Prejudice would ſo bias human Nature, he ſaid, that unleſs the Court leaned extremely on the other Side, Juſtice would hardly ſtand upright. Then the Witneſſes appeared: And firſt *Oates*, the Jeſuit, depoſed, That he carried Letters over to *France* to the Fathers at St. *Omers*, and to *Le Chaiſe*, the *French* King's Confeſſor, which he believed were written by Mr. *Coleman*, but they were ſubſcribed by no Body; and that in one of them, the Writer thanked *Le Chaiſe* for ſending the *Engliſh* Catholicks ten thouſand Pounds, which he aſſured him ſhould be employed in cutting off the King of *England*, and rooting out the Proteſtant Religion, as it was intended.

The Evidence.

Then *Oates* gave an Account of a Conſultation, held by the Jeſuits, at the *White Horſe* in the *Strand*, in *Auguſt* laſt, wherein it was reſolved to cut off the King by Aſſaſſins, or by his Phyſicians adminiſtring Poiſon to him: That four Ruffians were ſent to *Windſor* to murder his Majeſty, and the Sum of foreſcore Pounds ſent thither to encourage them; and that *Coleman* gave the Meſſenger who carried it a Guinea to make haſte; that *Grove* and *Pickering* were employed to ſhoot the King, and *Coleman* privy to it; and that Sir *George Wakeman* being offered ten thouſand Pounds to poiſon the King, *Coleman* adviſed

1678. 30 Car. II. advised the giving him fifteen thousand Pounds: And lastly, that Mr. *Coleman* had a Commission from the Pope to be Secretary of State on the expected Change of Government.

Bedloe was the next Witness, a Person who had been employed by some *English* Catholicks, as a Letter-Carrier to foreign Courts: He deposed, That he brought a Commission from *Rome* for Mr. *Coleman* to be Secretary of State; (for, according to the Witnesses of this pretended Plot, the Pope was to have the Sovereign Dominion of *England*, and whoever had the Name of King, he was to act as Viceroy to his Holiness). He deposed also, that he carried over a large Packet of Letters from *Coleman* to Father *Le Chaise*, and brought Answers from that Father, and the *English* Monks at *Paris*, about a Plot for destroying the King, and subverting the Government and the Protestant Religion: That when he delivered the Letters to Mr. *Coleman*, at his House near *Westminster-Abbey*, *Harcourt* the Jesuit was with him; and the Deponent heard Mr. *Coleman* say, If he had a hundred Lives, and a Sea of Blood, he would spend all to establish the Church of *Rome* in *England*; and if there were an hundred Heretical Kings, he would see them all destroyed.

Coleman's Letters. But the principal Evidence produced against the Prisoner, were the Copies of some Letters found in his House, which he acknowledged he wrote to Father *Le Chaise*, and the Answer of Father *Le Chaise* to the first of them.

In the first Letter, *Coleman* informs *Le Chaise* of the Correspondence he held with Father *Ferryer*, the *French* King's former Confessor, by Means of Sir *William Throckmorton*, who belonged to an *English* Troop in the *French* King's Service; and moves *Le Chaise*, as he had formerly done his Predecessor, to prevail on the *French* King to afford them Money and Assistance, to bring about the Change of Religion in *England*.

In answer to which, *Le Chaise* tells him, he read his Letter with great Satisfaction, and should be very glad, on his Part, to assist in seconding his good Intentions.

A second Letter was produced, which Mr. *Coleman* had prepared in the Name of the Duke of *York*, his Master, and was intended for Mons. *Le Chaise*; but he confessed before a Committee of Lords, he prepared it without the Duke's Privity; and that, when he shewed it the Duke, he was angry, and rejected it. In this he acknowledges the *French* King's Kindness in offering his Purse and Assistance against the Designs of the Duke's Enemies; and tells that Monarch, He has the same Opinion of the Parliament, and of the Lord *Arlington*, he had, (*viz.*) That they were not in the Interest of the King his Brother, of his most Christian Majesty, or of himself; and that it was necessary they should make use of their joint Credit to prevent their ill Designs: That the Lord *Arlington*, and several more, endeavoured, by a thousand Deceits, to break the good Intelligence that was between the King his Brother, his most Christian Majesty, and himself, and to abuse them all three; of which he thought fit to advertise him, and desire his Friendship and Assistance to prevent their ill Designs. 16-8. 30 Car. II.

In the third Letter which *Coleman* actually sent to *Le Chaise* he says, We have here a mighty Work upon our Hands; no less than the Conversion of three Kingdoms, and by that, perhaps, the utter subduing of a pestilent Heresy which hath domineered over a great Part of this Northern World a long Time; there never was such hopes of Success since the Death of our Queen *Mary*, as in our Days, when God has given us a Prince who is become (may I say a Miracle) zealous of being the Author and Instrument of so glorious a Work: And that which we rely on next to Providence, and the Favour of my Master the Duke, is the mighty Mind of his most Christian Majesty, whose generous Soul inclines him to great Undertakings: That they were a little unhappy in having Monsieur *Rouvigny* his Majesty's Minister at the *English* Court (because he was a Protestant): Had he been a Minister who would have taken their Case to Heart, and represented it justly to his most Christian Majesty, he did not doubt but he would have assisted them with such a Supply of Money, as would have put their mutual Interests out of danger; but, wanting those Advantages, he was afraid they should lose Ground the next Session, rather than gain any.

Mr. Coleman's Defence. Mr. *Coleman*, in his Defence, said, That notwithstanding the two first Witnesses pretended such an Acquaintance and Familiarity with him, he did not know either of them; and that *Oates*, when he was before the Council, told the King, he never saw him (Mr. *Coleman*) before, nor could say any thing positively against him: *To which* Oates *gave no better Answer, than that he could not see well by Candle-light; and when Mr.* Coleman *appealed to* Bedloe *himself, whether he had ever seen him in his Life*, Bedloe *answered, He saw him in the Gallery at* Somerset-House, *when he came from a Consult there.*

As to the Letters, wherein he desired the *French* King's Assistance to bring about an Alteration of Religion, He said, it evidently appeared he desired no other Assistance than that of Money, whereby they proposed to obtain Liberty of Conscience, and some better Terms for those of their Persuasion; and that it was natural for all Men to endeavour to promote the Religion they were of, which he hoped was not Treason, if they did not endeavour to introduce it by Force.

That there was nothing in the Letters that intimated any Design against the King's Life or Government, with which he was charged: On the contrary, it appeared, that his Aim was to make both his Majesty and the Duke as great as possible; and that he proposed a strict Alliance with *France* for that very End: it could not therefore be said, that his Correspondence with *Le Chaise* tended to the Death or Destruction of the King. Besides, It was now four Years since these Letters were written, and could not be brought as Evidence of a Plot that was pretended to be upon the Anvil at this Juncture.

Mr.

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The Court direct the Jury.

Mr. *Coleman* having ended his Defence, the Lord Chief Juſtice ſummed up the Evidence, and told the Jury, That it was plain from Mr. *Coleman*'s Letters, he intended to bring in the *Roman* Catholick, and to ſubvert the Proteſtant Religion; and by Conſequence they intended to kill the King, as the likelieſt Means to effect their Deſign: That his Letters plainly convicted him of endeavouring to bring in Popery by a foreign Power: And though he pretended they deſigned to introduce their Religion by procuring Liberty of Conſcience, he knew this was very unlikely to produce that Effect; for, though ſome had ſo little Wit as to turn Fanaticks, very few, when they were left to themſelves, would turn Papiſts: That Mr. *Coleman*, indeed, was bred a Proteſtant, his Father a Clergyman of *Suffolk*; and for him to turn Papiſt, being a Man of Parts, he looked upon this Circumſtance to be an Argument againſt him: He believed he muſt be moved by ſome By-Ends and Secular Motives; his Penſion was his Conſcience, and his Secretary's Place probably the Bait; and inveighed bitterly againſt the bloody Principles of thoſe of the Priſoner's Religion; but barely repeated the Evidence that had been given by *Oates* and *Bedloe*, giving little Credit to it probably.

He is convicted.

The Jury being withdrawn, after a very ſhort Receſs, brought the Priſoner in GUILTY; and the next Day he was brought to the Bar to receive Sentence; when the Lord Chief

The Speech of the Chief Juſtice, on pronouncing Sentence.

Juſtice made a Speech, and told him, he would not have him go out of the World under a Miſtake, and think himſelf innocent for waiving the Teſtimony of the two Witneſſes: It was apparent from his own Letters, he was guilty of contriving and conſpiring the Deſtruction of the Proteſtant Religion, and to bring in Popery by the Aid and Aſſiſtance of a Foreign Power: That he who ſubverted the Proteſtant Religion here, by Conſequence brought in a Foreign Authority, and did an Act in Derogation of the Crown, and in Diminution of the King's Supremacy, and endeavoured to bring us under a Foreign Dominion (the Pope). And though he might intend to bring in Popery by procuring a Diſſolution of the Parliament, and obtaining Liberty of Conſcience, and ſuch innocent Means, it was greatly to be feared other Methods would have been taken (at leaſt by his Confederates) if thoſe had failed; and he that enters upon an unlawful Act, is guilty of all the Conſequences that attended it, though he did not deſign them. Then he exhorted him to repent, and diſcover the whole Plot, and not be deluded with vain Hopes of having his Sentence reſpited: They might flatter him, to ſtop his Mouth, 'till they had ſtopped his Breath, and he doubted he would find that to be the Event. He bid him again not be deceived with the Expectation of a Pardon; for the Nation was, at that Time, in ſuch Diſorder, and the People ſo alarmed with ſecret

Godfrey ſaid to be murdered about this Time.

Murders, or daily Outrages, that though the King, who was merciful to a Fault, ſhould be inclined that way, he verily believed both Houſes of Parliament would interpoſe between that and him: There was nothing could ſave him; he muſt ſurely die, and that ſuddenly. After which, he was ſentenced to die the Death of a Traitor.

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Condemned. His Speech on this occaſion.

Mr. *Coleman* thanked his Lordſhip for his charitable Advice: He acknowledged, Confeſſion was extremely neceſſary to a dying Man; but the Confeſſion he ſuppoſed his Lordſhip meant, was of the Crimes he was condemned for; namely, *A malicious contriving the Deſtruction of the King and Government*: But he renounced all the Mercy God could ſhew him, if he had not already diſcovered all he knew: That he never made, or received, or ever heard of, any Propoſition towards invading the King's Life, his Crown or Dignity; or to make any Invaſion or Diſturbance to introduce any new Government, or to bring in Popery by Violence or Force: That it was poſſible he might be miſtaken in his Opinion, that Popery would come in with Liberty of Conſcience; but that he thought Chriſtians ought to wiſh all People of the Religion they profeſs themſelves, if they were in earneſt: That he ſhould not now diſpute the evil Principles with which his Lordſhip charged thoſe of the Church of *Rome*; but if he thought them guilty of ſuch Things, he ſhould not be of them: And as to his endeavouring to bring in the Religion of the Church of *Rome* by the Aid and Aſſiſtance of the King of *France*, he never intended or meant by that Aid and Aſſiſtance, any Force in the World, but ſuch Aids and Aſſiſtances as might procure them Liberty of Conſcience.

The Priſoner was executed at *Tyburn* the third of *December* following, and died profeſſing his Innocence to the laſt.

Remarks on Coleman's Trial.

As to the Evidence of *Oates* and *Bedloe* againſt Mr. *Coleman*, it appeared highly improbable at that time; but, ſince the Conviction of *Oates* of Perjury, by ſuch Numbers of Witneſſes, muſt be looked upon as a notorious Forgery, to ſupport the Credit of the pretended Popiſh Plot.

The ſole Queſtion is therefore, Whether *Coleman*'s Letters contained High-Treaſon in them? There is no doubt but he had attempted to introduce Popery; but then it as evidently appears that he intended to do it by promoting a ſtrict Union between the King of *England*, the Duke of *York*, and the *French* King: There is not any thing that looks like a Deſign of depoſing his Majeſty, or of putting a Force upon him: He hoped by Money, and the Influence of the Courts of *Great Britain* and *France*, to get the Parliament to conſent to a Toleration, or Liberty of Conſcience in that Reign; and in the Reign of his Maſter the Succeſſor, he certainly hoped the *Roman* Catholick Religion would be re-eſtabliſhed: But both in the Lord *Strafford*'s Caſe, and Biſhop *Laud*'s, an *Endeavour* to alter Religion or Government (with which they were charged) by any other Means than by *Force*, was held not to be Treaſon; though here, the Lord Chief Juſtice ſeems to maintain, that a bare *Endeavour* to change the Religion or Government of this Realm, *by any Means whatever*, was

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was Treaſon. It muſt be admitted, that Mr. *Coleman*'s Correſpondence with the Court of *France*, was highly Criminal, if it tended only to corrupt the Members of the Commons by *French* Money: But ſhould all People be deemed guilty of High-Treaſon who endeavour to procure a Repeal, or Alteration of our Laws by an undue Influence on the Members of Parliament, we ſhould involve a great many in the Guilt of Treaſon, that do not think themſelves in Danger of it.

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The Trials of WILLIAM IRELAND, THOMAS PICKERING, JOHN GROVE, THOMAS WHITE, *alias* WHITEBREAD, and JOHN FENWICKE, for *High-Treaſon*, at the *Old-Baily*, *London*, the 17th of *December*, 1678. 30 *Car.* II.

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The Charge THE Indictment charged the Priſoners with compaſſing and imagining the Death of the King: The Overt-Acts laid to prove which, were their aſſembling on the 24th of *April* then laſt paſt, in the Pariſh of St. *Giles*'s *in the Fields*, in the County of *Middleſex*, and there conſulting and agreeing to put the King to Death, to alter the Eſtabliſhed Religion, and introduce Popery: Their agreeing that *Pickering* and *Grove*, two of the Priſoners, ſhould kill the King; and that *White*, *Pickering*, *Grove*, and the reſt of their Accomplices, ſhould ſay a certain Number of Maſſes for the Soul of *Pickering*, and pay *Grove* a Sum of Money; and plighting their Faith to each other not to divulge the ſaid Treaſons: *Pickering* and *Grove*'s providing Arms, and lying in wait at ſeveral Times and Places to murder the King; and the Conſpirators employing four other Perſons unknown, to murder the King at *Windſor*.

The Priſoners making no Challenges to the Jurors, the firſt Twelve in the Pannel were ſworn, and charged with them; after which the Evidence was given.

Oates's Evidence. And firſt, *Titus Oates* depoſed, That in *December* laſt, the Priſoner *Whitebread* was appointed Provincial of the Jeſuits by their General at *Rome*; and that *Whitebread*, being afterwards at *London*, ſummoned ſeveral Jeſuits to appear at a Conſultation there on the 24th of *April* laſt; and that upon this Summons nine Jeſuits went from St. *Omers* to *London*; among whom were, the Rector of *Liege*, Sir *Thomas Preſton*, *Marſh* Rector of *Ghent*, *Williams* Rector of *Wotton*, Sir *John Warner*, and the Deponent (*Oates*); and that accordingly they appeared at the *White-Horſe* in the *Strand*, where the Conſult began on the ſaid 24th of *April*; but they divided themſelves, and had Meetings in ſeveral other Places afterwards, at ſome of which a Reſolution was ſigned, *That* Pickering *and* Grove *ſhould perſevere in their Attempts to kill the King*; *and that* Grove *ſhould have* 1500 l. *and* Pickering 30,000 *Maſſes ſaid, as a Reward for that Service*: And that he ſaw *Whitebread*, *Ireland*, and *Fenwicke*, and about forty more, ſign this Reſolve: That ſoon after the Conſult, the Deponent went over to St. *Omers*, and in *May* was followed thither by *Whitebread*, who ordered him (*Oates*) to return to *England* and kill Dr. *Tongue*, who had tranſlated *The Jeſuits Morals*: That accordingly he came to *London* about the middle of *June*; and ſome Days after, *Aſhby* came thither after him from St. *Omers*, and brought Inſtructions from *Whitebread*. Firſt, That 10,000 *l.* ſhould be offered Sir *George Wakeman* to poiſon the King. Secondly, That the Biſhop of *Hereford* and Dr. *Stillingfleet* ſhould be murdered: And Thirdly, That *Pickering* and *Grove* ſhould go on with the Deſign of murdering his Majeſty. That in *Auguſt* following there was a Conſult of the Jeſuits and Benedictins at *Wild-houſe*, where was preſent *Fenwicke* the Priſoner, and one *Harcourt*; and four Ruffians being ſent to *Windſor* to kill the King, they ſent fourſcore Pounds to them the next Day, and *Coleman* gave the Meſſenger a Guinea to make Haſte.

The Priſoners Defence. That the ſame Month of *Auguſt*, *Whitebread* ſent further Inſtructions to *Harcourt*, Rector of *London*, to foment a Rebellion among the Malcontents in *Scotland*, and directed him to ſend ſome to preach among the Presbyterians in their Field Conventicles, and inſinuate the Danger they were in from Epiſcopal Tyranny.

That in the Months of *May* and *June*, he ſaw *Pickering* and *Grove* waiting in St. *James*'s *Park*, with their ſcrewed Piſtols, to kill the King; That in *March* before, *Pickering* followed the King, and had a fair Opportunity of killing him; but durſt not fire, becauſe his Flint was looſe; for which he did Penance, having thirty Laſhes given him by way of Diſcipline.

That *Bedingfield* writing *Whitebread* Word that the Deponent (*Oates*) had diſcovered their Plot in *September* laſt, *Whitebread* beat and reviled the Deponent for it at his Chamber, and commanded him to go beyond Sea; and he was afraid of ſomething worſe, for they aſſaulted him in his own Lodgings.

The Chief Juſtice's Directions to the Jury. That *Whitebread* had an Authority to grant Military Commiſſions, and actually iſſued ſome hundreds; particularly, that he ſealed one for Sir *John Gage*, of *Suſſex*, which the Deponent delivered himſelf; but that the Commiſſions to the General Officers were ſigned by *Joannes Paulus de Oliva*, General of

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of the Jeſuits: And the Deponent cloſed his Evidence with a Declaration, That he (*Oates*) always gave it as his Judgment, that it was ſafer to poiſon the King, than to piſtol or ſtab him. It being demanded of *Oates*, if he could produce any two Witneſſes that ſaw him at *London* in *April*, when he pretended the firſt Conſult was held? He anſwered, he lay at *Groves*'s Houſe, but did not bring one Witneſs to prove it; and the Maid of the Houſe depoſed he never lay there.

Bedloe's Evidence.

Bedloe depoſed, That he was formerly a Lieutenant in *Flanders*; but of late employed by the Society of Jeſuits, and the *Engliſh* Monks at *Paris*, in carrying Letters to and from *England*, *France*, *Spain*, and *Flanders*; and that he was employed by *Harcourt* and *Coleman* to communicate the Letters he brought over to the Popiſh Party in *England*: That in the beginning of *Auguſt* there was a cloſe Conſult at *Harcourt*'s Chamber, where he underſtood by one *Pritchard*, There was a Deſign to kill the King; and that, *Grove* and *Pickering* having failed, four Ruffians were hired to kill the King at *Windſor*.

That the latter End of *Auguſt* he (*Bedloe*) was at *Harcourt*'s Chamber with *Ireland*, *Pickering*, *Grove*, *Harcourt*, *Pritchard*, and *Fegarthy*: And it was reſolved, that ſince the Ruffians had been diſappointed, *Pickering* and *Grove* ſhould go on, and *Conyers* ſhould be joined with them, and they ſhould aſſaſſinate the King in his Morning-Walks at *New-market*. That *Grove* ſaid, If they could not do it privately, they would openly; and that thoſe that fell, would have the Glory of dying in a good Cauſe; and both *Oates* and *Bedloe* depoſed, That the Duke of *Ormonde* was to have been aſſaſſinated, and an Inſurrection raiſed in *Ireland* at the ſame time.

The Priſoners Defence.

The Jeſuits, in their Defence, denied the whole Charge; they did acknowledge, indeed, that *Oates* was of their Society, and that being very poor, they often lent him Money; but as for the Conſultation at the *White-Horſe* in *April*, at *London*, they ſaid they could prove by many Witneſſes, if they had been permitted to ſend for them, that *Oates* was at that time at St. *Omers*: And *Ireland* actually produced ſeveral Witneſſes to prove that he was in *Staffordſhire* in *Auguſt*, when *Oates* made Oath he was at a treaſonable Conſult in *London*: But the Priſoners lamented they had not been allowed Pen, Ink, or Paper; or any Opportunity of ſummoning the reſt of their Witneſſes, which the Court did not ſeem to regard; though *Ireland* urged by way of Merit, that he had an Uncle killed in the King's Service; and that the *Pendrels* and *Giffords*, who were ſo inſtrumental in ſaving the King's Life after the Battle of *Worceſter*, were his near Relations; and *Pickering* ſaid, his Father was killed in the King's Service.

The Chief Juſtice's Directions to the Jury

The Chief Juſtice, in his Directions to the Jury, ſeems to admit, that *Ireland* was not in *London* in *Auguſt*, when *Oates* and *Bedloe* had ſworn he was there at a treaſonable Conſult; but tells the Jury, though the Witneſſes were miſtaken in Point of Time, their Evidence might be true in the main; adding, That he thought it impoſſible for any Men to feign ſuch a Story as the King's Witneſſes had told, or for any one to disbelieve it when it was told: Nor was it difficult, he ſaid, to believe that theſe Prieſts, who had debauched Men's Underſtandings, overturned all Morals, and deſtroyed all Divinity, were engaged in a Deſign to murder the King; whoſe Humility was ſuch, that they trod upon the Necks of Emperors; their Charity ſuch, as to kill Princes; and their Vow of Poverty ſuch, as to covet Kingdoms: That they had rendered all Converſe with them impracticable, for they knew no Sin but what might be indulged; no Offence too big for a Pardon; and the blackeſt often accounted meritorious; and if Sacraments could not bind them, no Obligations or Covenants between Man and Man could, with a great deal more to the ſame Purpoſe; concluding, that the Matter was as plain and notorious as could be, That there was an Intention to bring in Popery by a cruel and bloody Way; and he thought Mr. *Oates* rather juſtified by the Teſtimony offered againſt him, than diſcredited: But obſerving that there was but one Witneſs againſt *Whitebread* and *Fenwicke*, he diſcharged the Jury of them, and directed them only to bring in a Verdict in relation to the other three Priſoners, whom they found GUILTY upon a very little Conſideration; and afterwards Sentence was paſſed on them as Traitors by the Recorder *Jeffries*; who was no leſs ſevere in his Reflections on them in the Speech he made when he pronounced Judgment, than the Chief Juſtice had been; and among others, uſed this Expreſſion, *That the Priſoners Deſign was ſo horrid, that nothing but a Conclave of Devils in Hell, or a College of ſuch Jeſuits as theirs upon Earth, could have thought of it.*

Whitebread and Fenwick reſerved for another Trial.

The other three convicted; and condemned;

But, however the Evidence might be believed by the Court and Jury, the King ſeems to have ſuſpected the Truth of it; for he ſuſpended the Execution of the three condemned Jeſuits, 'till the Houſe of Commons ordered the Recorder to attend them, and demanded why he had not iſſued his Warrant for their Executions? To which he anſwered, he had not yet received any Orders concerning them from the King: And they were afterwards reprieved till the 24th of *January*, when *Ireland* and *Grove* ſuffered; but *Pickering* was reprieved from Time to Time, 'till the ninth of *May* following, when he alſo was executed. The King ſeemed enclined to have pardoned them, if the Parliament had not inſiſted on their Execution; and ome Courtiers repreſented, that, as they were condemned by due Courſe of Law, it might hazard the Peace of the Nation, if the King ſhould pardon them, when the People were ſo generally perſuaded of their Guilt: But, whatever other People might think of them, they died profeſſing their Innocence to the laſt.

but reprieved from Time to Time,

and executed at laſt,

at the Inſtance of the Parliament.

Remarks on the Trial of Ireland, &c.

The People were ſo alarmed at this pretended Diſcovery of a Popiſh Plot, being made to believe, that a general Maſſacre was intended, of all ſuch Proteſtants as refuſed to be reconciled to *Rome*, that almoſt any Evidence was ſufficient, at that Time of Day, to

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convict a Papiſt; and nothing was thought a Hardſhip on thoſe who were accuſed of the Plot: The denying them all Opportunities of making their Defence, or of ſummoning their Witneſſes, was now held extremely equitable by our Whig Patriots; and the People were almoſt worked up into an Opinion, that it was lawful to knock any one on the Head, that was called a Papiſt: The infamous Characters of the principal Witneſſes, *Oates* and *Bedloe*, were not ſuffered to be touched upon: And though *Oates* himſelf declared he had turned Jeſuit, and taken Oaths and Sacraments without Number, only to betray his Brethren, yet was his Teſtimony looked upon as unqueſtionable; nay, the proving one of the Priſoners to be in another Place, when *Oates* and *Bedloe* ſwore he was in *London*, was very little regarded: And ſo artfully did Lord *Shaftesbury*, and his Whig Brethren, manage this pretended Diſcovery, that even a Majority of the Parliament and the Tories believed it, till they found it loaded with ſo many improbable Circumſtances, that the Forgery became too groſs to be ſwallowed any longer: Even the Chief Juſtice and the Recorder *Jeffries*, who tried them, ſeemed at that Time to be fully ſatisfied, and to applaud the Verdict given againſt the three Jeſuits; though they lived to alter their Minds, and ſhew their Deteſtation of the numerous Perjuries that thoſe unhappy Men were condemned upon.

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The Impeachment of THOMAS Earl of DANBY, Lord High Treaſurer of *England*, for *High-Treaſon*, and other *High Crimes* and *Miſdemeanors*, the 23d of *December*, 1678. 30 *Car.* II.

1678. 30 Car. II. *Earl of* Danby's *Impeachment.*

The Tenor of it.

THE Articles, which were carried up by Sir *Henry Capel*, Brother to the Earl of *Eſſex*, on the ſaid 23d of *December*, charged him with traitorouſly aſſuming Regal Power, in treating of Peace and War, and giving Inſtructions to Ambaſſadors abroad, without communicating the ſame to the Secretaries of State, or the Council: That in order to ſubvert the Conſtitution, and introduce Arbitrary Power, he procured an Army to be raiſed; and continued it, contrary to an Act of Parliament for disbanding it: That he negotiated a Peace with the *French* King upon diſadvantageous Terms, and endeavoured to procure a Sum of Money of his moſt Chriſtian Majeſty for conſenting to it: That he was Popiſhly affected, endeavoured to ſtifle the Plot, and diſcountenanced the Witneſſes: That he had waſted the Publick Treaſure, and procured Grants to himſelf of the Revenues of the Crown.

The Commons therefore prayed that the Earl might be put to anſwer, and brought to Trial, and Judgment thereupon; and that he might be ſequeſtred from Parliament, and forthwith committed to ſafe Cuſtody.

The Earl's Defence.

Upon reading the Articles in the Houſe of Peers, the Earl made a Speech in his Defence; wherein he obſerved, That, as to his aſſuming Regal Power, he had never tranſacted any thing of Moment, for which he had not his Majeſty's ſpecial Command: That the Army was no more raiſed by him, than by every Lord in that Houſe: That he had been ſo far from concealing the Plot, that it had been owned at the Bar of the Houſe of Commons, the Witneſſes had received all manner of Encouragement and Diſpatch from him; and that, if he had not ſeized *Coleman*'s Papers, none of them had appeared; and they had wanted the moſt material Evidence of the Plot: That, as to his being Popiſhly affected, ſome of thoſe who voted the Impeachment, had acknowledged the Falſity of that Allegation: And as to waſting the Publick Treaſure, he knew of none in his Time to waſte; all the Money that had been given had fallen ſhort; and the King had laid out more than he had received, in building Ships, or paying off the Debts that had been ſtopped in the *Exchequer* before his Time; inſomuch, that his Conduct would appear rather meritorious than criminal. And laſtly, that his Gains were not what they had been repreſented: They might rather arraign his Prudence, in not having done for his Family what he juſtly ought: And if his Obedience to the King was not his Crime, he thought nothing elſe would affect him which the Articles contained. That if he had been either a Papiſt, or a Friend to the *French*, he had not been now accuſed: He had Reaſon to believe the principal Informer, Mr. *Montague*, had been aſſiſted with *French* Advice in this Accuſation: That no Man could vindicate him more than *Montague*, who had ſhewn how great an Enemy he (the Earl) was to *France*, under his Hand; and how much he might have had to have been otherwiſe; and what *Montague* might have had for getting him to take it: That *Montague* knew it would appear under his Hand, that the greateſt Invitations to his Majeſty to take Money of *France*, were made by himſelf; and that, if his Majeſty would have been tempted for Money, he might have ſold Towns there for as much as if they had been his own; but that he always ſcorned to yield the meaneſt Village, that was not agreed to by the *Spaniard* and *Hollander*; concluding, That ever ſince he had the Honour to ſerve his Majeſty, he had delivered it as his conſtant Opinion, That *France* was the worſt Intereſt he could embrace; they were

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were the Nation in the World from whom he ought to apprehend the greateſt Danger; and who had both his Perſon and Government under the laſt degree of Contempt.

The Earl remains at Liberty, after the Charge exhibited.

Whether the Lords were ſatisfied of the Earl's Innocence, or were influenced by the Court, they did not think fit to order him into Cuſtody; and the 30th of the ſame Month the King prorogued the Parliament, and on the 12th of *January* diſſolved it, calling another to meet the 6th of *March* following.

The next Houſe of Commons deſire he may be committed.

On *Thurſday*, *March* the 20th, the new Houſe of Commons reſolved, *Nemine contradicente*, to ſend a Meſſage to the Lords, to remind them of the Impeachment againſt the Earl of *Danby*, and to deſire he might be forthwith committed to ſafe Cuſtody, and appointed a Committee to draw up further Articles againſt him; and finding the Earl was not yet taken into Cuſtody, they ſent another Meſſage to the Lords the 22d of *March*, of the ſame Tenor as the former: And on the 25th of *March*, 1679, received a Meſſage from the Lords, that they had ſent to apprehend the Earl of *Danby*, both to his Houſe in Town, and at *Wimbleton*; and that the Uſher of the Black Rod had returned, that he could not be found. Whereupon the Commons, on the 4th of *April*, 1679, Reſolved, That his Majeſty be addreſſed to iſſue his Proclamation to apprehend the Earl of *Danby*, with the uſual Penalties on ſuch as ſhould conceal him; and that the Officers of his Majeſty's Palaces might have Orders that he ſhould not be harboured in any of them.

He withdraws.

An Addreſs for apprehending him.

He gets a Pardon;

In the mean time, the Earl having obtained the King's Pardon, the Commons reſolved to addreſs the King, and repreſent the Irregularity and Illegality of it; and the dangerous Conſequences of granting Pardons to Perſons impeached. They alſo ordered a Bill of Attainder to be brought in againſt the Earl, in which, after ſeveral Conferences, having prevailed with the Lords to agree with them in it, if he did not appear, the Earl of *Danby* thought fit to ſurrender himſelf on the 13th of *April*, and was committed to the *Tower*; and being brought before the Lords the 25th of the ſame Month, he pleaded his Pardon. Whereupon the Lords acquainted the Commons, that they had appointed *Saturday*, the 10th of *May*, to hear the Earl of *Danby* by his Counſel, to make good his Plea; but the Commons prevented its being argued, by Reſolving, That no Commoner preſume to maintain the Validity of the Pardon pleaded by the Earl of *Danby*: And that the Pardon pleaded by the Earl to their Impeachment, was illegal and void, and proceeded to demand Judgment of the Lords againſt him, which occaſioned a Conference between the two Houſes, on the 26th of *May*, 1679. When the Commons reminded their Lordſhips, that upon the Impeachment of the Earl, the common Juſtice of ſequeſtring him from Parliament, and committing him to ſafe Cuſtody, was denied them, of which their Lordſhips had been ſo ſenſible, that they had ſince declared, *That upon the Impeachment of a Peer for High-Treaſon (where*

and pleads it.

Articles were exhibited againſt him) he ought of Right to be ordered to withdraw, and then be committed: And if this Juſtice had been done them, he had not had an Opportunity of obtaining that illegal Pardon which he had pleaded. 1678. 30 Car. II.

They ſaid they were ſurpriſed when they received a Meſſage from their Lordſhips, the 7th of *May*, That as well the *Lords Spiritual* as Temporal, had ordered, That the 10th of *May*, inſtant, ſhould be the Day for hearing the Earl of *Danby* make good his Plea of Pardon; and that their Lordſhips had addreſſed his Majeſty for naming a Lord High Steward.

That the Commons apprehended the admitting the Lords Spiritual to exerciſe Juriſdiction in theſe Caſes, was an Alteration of the Judicature of Parliament; and that if a Lord High Steward was neceſſary on Impeachments, ſuch Impeachments might be defeated, by ſuſpending or denying a Commiſſion to conſtitute a High Steward.

The Commons inſiſt, the Lords Spiritual ought not to ſit in the Houſe in Criminal Caſes.

That the Commons having communicated their Vote, *That the Lords Spiritual ought not to have any Vote in any Proceeding againſt the five Popiſh Lords in the* Tower, to their Lordſhips; and declared, that when that Matter ſhould be ſettled, and the Methods of Proceeding adjuſted, the Commons would then be ready to proceed upon the Trial of the Pardon of the Earl of *Danby*; their Lordſhips, without giving the Commons any ſatisfactory Anſwer, ſent them a Meſſage on the 22d of *May*, That the Lords *Spiritual*, as well as Temporal, had ordered the 27th of that inſtant *May* for the Trial of the ſaid five Lords; leaving them to conclude, that the Lords *Spiritual* have a Right to ſit and vote, 'till the Court proceeds to the Vote of Guilty, or Not guilty; and conſequently that they might be allowed to judge upon the Earl of *Danby*'s Plea of Pardon.

The Commons therefore thought themſelves obliged not to proceed to the Trial of the five Lords on the 27th, but to adhere to their ſaid Vote; for which they alſo offered theſe further Reaſons:

1. Becauſe their Lordſhips had received the Earl's Plea of Pardon with a Proteſtation, wherein he had aſperſed his Majeſty by falſe Suggeſtions, as though his Majeſty had commanded, or countenanced the Crimes he ſtood charged with.

The Commons deny a Pardon can be pleaded in Bar to an Impeachment.

2. The ſetting up a Pardon to be a Bar to an Impeachment, defeated the whole Uſe and Effect of Impeachments; and therefore the Caſe of the ſaid Earl (which in Conſequence concerned all Impeachments) ought to be determined before that of the five Lords, which was but their particular Caſe.

3. Until the Commons have Right done them againſt this Plea of Pardon, they ſhould apprehend that the Juſtice of the Kingdom would be defeated, by Pardons of the like Nature, in the Caſe of the five Lords.

4. That an Impeachment was virtually the Voice of the whole Kingdom; and it would be dangerous if the whole Nation ſhould have Occaſion miniſtred to them to be apprehenſive of

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of the utmoſt Danger from the Crown, from whence they of Right expect Protection.

5. That Articles were firſt exhibited againſt the ſaid Earl, and the Trial appointed by their Lordſhips to be before that of the five Lords; but their Lordſhips, having ſince inverted that Order, had given them Cauſe to doubt, if they ſhould proceed firſt to the Trial of the five Lords, not only that Juſtice would be obſtructed in their Caſe, but that they ſhould never have Right done them in this Plea of Pardon.

The Lords inſiſt, the Lords Spiritual ought to vote, in Matters previous to the Trial.

The Commons Reaſons being read in the Houſe of Lords the 27th, and their Lordſhips continuing in their Reſolution, that the Lords Spiritual ought to ſit and vote in the Houſe, in Matters previous to the Trial; neither the Earl of *Danby*, or the five Popiſh Lords, were brought to their Trials at this Time; but moſt of them remained Priſoners in the *Tower* ſeveral Years: Whereupon the Earl of *Danby* brought an *Habeas Corpus* in *Eaſter* Term, 1681, and another in 1682, in order to be admitted to bail by the Court of *King's-Bench.*

An Habeas Corpus brought by the Earl, to be admitted to bail.

His Arguments.

The Arguments he uſed to induce this Court to bail him, were, 1. That he had been both accuſed and committed, without any Oath made againſt him.

2. That there was no particular Treaſon mentioned in the Articles; only the Word *traitorouſly* had been applied to Things that were not Treaſon, if they had been true; whereas in the Impeachments of the Popiſh Lords, they were charged with the higheſt Treaſons, and upon Oaths made againſt them.

3. That when a Day was ſet by the Lords for his being heard, and He appeared, his Council were threatned, if they durſt ſpeak to the Matter of Law.

4. That he had his Majeſty's Pardon, and yet the Pardon and he had been Priſoners together above three Years, of which he thought this was the firſt Precedent ſince the Conqueſt.

5. That he had not only his Majeſty's Pardon, but his Majeſty's Declaration of his Innocence, in his Speech to both Houſes of Parliament; wherein his Majeſty alſo declared, that he would give him his Pardon ten Times over, if that he had already was defective either in Matter or Form.

6. That he had been Priſoner above forty Months, without any Proſecution for the greateſt Part of that Time, which was another Reaſon in Law for bailing of him; for that, inſtead of a Reſtraint *ad Cuſtodiam*, he had undergone a Puniſhment greater than the Crimes alledged againſt him could have deſerved, if they had been true: That his Majeſty had alſo given his Directions to Mr. Attorney, to give his Conſent to his being bailed; and he ſaid, there was hardly a Precedent of a King's Priſoner, and at the King's Suit, refuſed to be bailed, when the King's Conſent had been obtained for it: And the Precedent would have been no leſs ſtrange and new againſt the King, than againſt himſelf, if he was not permitted to be bailed under ſuch Circumſtances; and that it muſt be very dangerous to the Subject, and a plain Failure of Juſtice, if he could be ſo reſtrained of his Liberty, that he might not be bailed without the Leave of the Houſe of Lords. He took it for granted there would have been no Diſpute in this Matter, but for a Declaration of the Houſe of Lords, made the 19th of *March*, 1678 (*viz.*) *That the Diſſolution of the laſt Parliament, doth not alter the State of Impeachments brought up by the Commons in that Parliament:* But, had the Lords actually made an Order againſt bailing him, it would have been illegal, and contrary to *Magna Charta*; as whatever ſubjected a Man to an indefinite Impriſonment was.

That it had been admitted in the worſt of Times, even during the Uſurpation, that an Order of Parliament was not of Force after a Diſſolution of the Parliament; and he hoped that the Liberty of the Subject was not more precarious now than it was then: That one of the chief Grounds of the late War between the King and Parliament, was, That an Ordinance of Parliament ſhould not be held equal to an Act of Parliament, and yet thoſe were Orders of both Houſes: And here, an Order of one Houſe was held equivalent to a Law; and that againſt our greateſt and moſt ſacred Laws of Liberty, which had been ſo often confirmed.

The Earl juſtly obſerved alſo, that the Diſtempers of the Times, had given more Weight to that Order, than any Thing elſe: There had been ſeveral Inſtances, where the Court of *King's-Bench* had allowed the Pardon of a Peer when pleaded there, though they had no Power to proceed to the Trial of him: That Men had been diſcharged by that Court upon the King's Writ, without any other Reaſon given in the Writ, but becauſe the King held the Parties to be innocent; as in the Caſes of *Melton* Archbiſhop of *York*, and *Graveſend* Biſhop of *London*. 7 *Ed.* 3.

That the King had aboliſhed Accuſations of Treaſon, as in the Caſe of *Talbot* and *Ormonde*, in *Hen.* VI. and where one pleaded an inſufficient Pardon, the Court had ſuch a Regard to the King's Intention of pardoning, that the Party was ordered to procure a better Pardon, 26 *Aſſ.* p. 46, and the King's Intention of pardoning him had been ſufficiently declared to the whole Kingdom; adding, that he had now no Proſpect when a Parliament would ſit; and, if they did, it was a Queſtion whether he ſhould meet with Relief there; for that his Petition had been read the firſt Day of the laſt Parliament; but publick Buſineſs intervening, they had not Time to conſider his private Caſe: That this had been his Misfortune in three Parliaments ſucceſſively; which made it but too plain, that he lay under an indefinite Impriſonment, unleſs he could find Relief in that Court, for that there was no other to appeal to.

He concluded, that as the King had ſufficiently declared there was no Danger in letting him have his Liberty, ſo he had ſuch Bail to offer the Court, as would ſufficiently ſatisfy the World, that he ſhould be forth-coming.

To

1678. 30 Car. II. *The Judges refuse to bail him.*

To this the Lord Chief Juſtice anſwered, They were not inſenſible of the Hardſhips of his Lordſhip's Caſe, or of the King's Deſire that he ſhould be no longer impriſoned; the King had done as much as lay in his Power to relieve him, but the Miſery of it was, the Court could only compaſſionate him, his Lordſhip having been impriſoned by a higher Hand, and where they had no Power to intermeddle; and that all the Judges had delivered their Opinions, that he could not be bailed: Nor was his Lordſhip indefinitely impriſoned; for whenever his Majeſty was pleaſed to call a Parliament, he would have a Remedy: (*This Motion for Bail was made by the Earl in* Eaſter *Term*, 1682, *after he had been in Priſon three Years, and there was no Parliament in Being.*)

Mr. Juſtice *Jones* ſaid, That the Earl had been charged with Treaſon by an Impeachment, and had pleaded a Pardon before the Lords (*The Validity of which had not been allowed or argued*) which Plea he took to be a tacit Confeſſion of Guilt in Law, though the Party were never ſo innocent, inſomuch that a ſecond Plea could not be admitted; and in that Caſe he did not ſee how that Court could have any Thing to do with his Lordſhip.

Mr. Juſtice *Dolben* ſaid, That he muſt confeſs the Caſe to be very hard; and he was not of the Opinion of his Brother *Jones*, that his Lordſhip would be debarred of another Plea, if the Pardon ſhould be over-ruled; but if he was put to give a preſent Anſwer, he muſt declare his preſent Opinion to be, That his Lordſhip could not be bailed; though he thought it might well deſerve another Conſideration.

Mr. Juſtice *Raymond* ſaid, that his Lordſhip's Caſe was attended with ſo many weighty Circumſtances, that it ought to be well conſidered, and by more of the Judges, betwixt that and the next Term; and therefore he would deliver no Opinion then.

And it ſeems the Judges were ſo much afraid of being called to an Account by ſome future Parliament, that his Lordſhip lay in Priſon till the 12th of *Feb.* 1683-4, being between five and ſix Years from the Time of his Commitment; and then the Court of *King's-Bench* ventured to bail him, together with the Earl of *Powis* and the reſt of the Popiſh Lords that ſurvived, who had been committed to the *Tower* for the Popiſh Plot, much about the ſame Time.

1678. 30 Car. II. *Remarks on the Earl of* Danby's *Impeachment.*

It is very much to be queſtioned, whether the Earl was guilty of any of the Articles he was charged with; but happening to be Prime Miniſter at this Time, and having incurred the Diſpleaſure both of Papiſts and Whigs, they took this Opportunity of charging him with all the Maladminiſtration that had happened for ſome Years: And when the King had granted him a Pardon, not only queſtioned the Validity of it, but arbitrarily commanded his Counſel not to plead for him, which was certainly an uncommon Stretch of Privilege, and can never be deemed juſt or legal.

The Lords indeed might have declared the Pardon valid, and thereupon diſcharged the Earl, on hearing what he had to ſay to it himſelf; but whether it was not thought fit to carry Things to this Extremity, and break abſolutely with the Houſe of Commons, or for what other Reaſon does not appear: The Earl was ſuffered to remain in Priſon ſeveral Years with the King's Pardon in his Pocket, as he obſerves.

The Judges who refuſed to bail him, no doubt, knew what the Law was in theſe Caſes, as well as the Judges that afterwards bailed him; but they had ſeen ſo many Inſtances of the implacable Rage and Malice of the Whig Leaders, who ſat in the Houſe of Commons about that Time, that they knew their Ruin would certainly have been the Conſequence of bailing him then: But when it was found the King was determined not to call a Parliament in Haſte; and that, if he had called one, they would have been Men of a different Stamp; the Judges made no Scruple of giving him his Liberty, as well as the Popiſh Lords that remained in the *Tower*; which we find ſo far approved by the next Parliament that was called, that their Bail was then actually diſcharged; and though the Court of *King's-Bench* have ever ſince refuſed to bail the Members of the reſpective Houſes, that have been committed by either, during the Seſſions; yet upon a Diſſolution, and ſometimes upon a Prorogation, they have been admitted to Bail: And it his held, That the Court of *King's-Bench* may admit to Bail, even a Lord impeached of High Treaſon, when the Parliament is not ſitting. *Hawkins* B. 2. p. 111.

1677-8. 29 Car. II. Mitchel's *Trial.*

The Trial of JAMES MITCHEL, for an *Attempt to commit Murder* at *Edinburgh*, before the Lord Juſtice General, and the reſt of the Lords Commiſſioners of Juſticiary, the 7th of *January*, 1677-8. 29 *Car.* II.

1677-8. 29 Car. II.

The Charge THE Indictment charges the Priſoner, That having conceived a deadly Malice and Hatred againſt the Right Rev. *James*, Archbiſhop of St. *Andrews*, on Account of his being promoted to that Archbiſhoprick, and made one of his Majeſty's Privy Council, he did contrive the Murder and Aſſaſſination of his Grace; and in order thereto, having provided himſelf with a Pair of Piſtols, did, on the 9th of *July*, 1668, proceed to execute his Purpoſe, when the Archbiſhop came down Stairs, and was going into his Coach with the Biſhop of *Orkney*: That he did diſcharge one of his Piſtols loaden with Powder and Ball at them, when they were got into the Coach, and thereby dangerouſly wounded the Biſhop of *Orkney* in the joyning of the Hand and Arm, ſo that he was mutilate and diſmembred, and never perfectly recovered his Health, but languiſhed thereof untill he died: From which Premiſes it was evident he was guilty of Murder and Aſſaſſination, by way of Forethought, Felony, *&c.* and therefore ought to ſuffer the Pains of Death, inflicted on ſuch Offenders, by the Laws of *Scotland*.

His Counſel's Objections to the Indictment. The Priſoner denied the Charge in the Indictment, or that he ever made any Confeſſion of it; and his Counſel obſerved, That he could not be charged with Murder; for a bare Endeavour, where the Thing was not effected, they ſaid, could not be puniſhed as if it was actually committed, unleſs in Treaſon and Parricide.

And though the Priſoner might be indicted for Aſſaſſination by their Law, yet it was not laid in the Indictment, That he was hired to commit the Fact, without which he was no Aſſaſſin: And as to the Mutilation of the Biſhop of *Orkney*, their Law did not extend to Mutilation, but to diſmembering only; and diſmembering was not ſo much as laid in the Indictment: And although it was inſinuated, the Biſhop died of the Wound, it not being laid, that the Wound was of its own Nature mortal, the Indictment in that Point was inſufficient: And beſides, it might be proved that the Biſhop went about and exerciſed his Function afterwards.

That it was not laid, he invaded (or aſſaulted) the Archbiſhop while he was engaged in his Majeſty's Service, which rendered it inſufficient in that Point; and the Act which made it Capital, was paſſed ſince the Fact committed.

That his Confeſſion, if he made any, was not before proper Judges, and was on a Promiſe of Pardon and Indemnity, and therefore ought not to be urged againſt him.

The Objections anſwered by the King's Counſel. To this the Lord Advocate and the King's Counſel anſwered, That they ſtill inſiſted, the invading and attempting the Life of a Privy Counſellor, was Capital; that in this Caſe the Priſoner proceeded to Action, and did all that lay in his Power to accompliſh the Murder: And whereas it was ſaid, it ought to be proved, that the Attempt was made on the Archbiſhop for doing his Majeſty's Service, that was always to be preſumed, where one attempted the Life of a Privy Counſellor; His Intentions were no otherwiſe to be manifeſted but by his Actions; and the Priſoner, being unknown to his Grace, could have no other Quarrel againſt him than for doing his Duty; the Law would interpret it to be ſo, unleſs he could ſhew ſome other private View he had in committing of it: And beſides theſe Preſumptions of Law, the Priſoner had acknowledged himſelf to be of a Sect that abhorred all Biſhops; and one of his Brethren had, in Print, declared it to be lawful to kill one of that Character: Nay, the Priſoner himſelf had declared it lawful to kill a Biſhop; had endeavoured to make Proſelites to his Opinion, and acknowledged the Reaſon he ſhot at the Archbiſhop to be, becauſe he was a Perſecutor, or Proſecutor, of the Rebels at *Pentland-Hills*; and though the laſt Act, which made it Capital to attempt the Life of a Biſhop, was made after the Fact, that was only explanatory of a former Act: And whereas it was ſaid, he was no Aſſaſſin that did not take Money: Indeed an *Attempt* to revenge a private Injury, was not Capital, becauſe Nature might plead ſome Excuſe for our Reſentment; but where a Perſon, after mature Deliberation, ſhould, by lying in wait, attempt to kill a Perſon that never offended him, the Law made it Capital; the Circumſtance of taking Money, was only demonſtrative and not reſtrictive, ſince theſe Criminals are much more dangerous than thoſe who do it for Hire, who chuſe Darkneſs and Privacy to tranſact their Villany, and never attempt it but with a Proſpect of eſcaping; but the Noon-day Sun, and the greateſt Concourſe of People, cannot ſecure a Man againſt theſe Murderers, who act upon Principle, and perſuade themſelves their Crimes will purchaſe them Seats in Paradiſe, or that the Multitude will protect them againſt their lawful Governors. As their Laws puniſhed Capitally an Attempt to rob or raviſh, much more, Attempts to commit ſuch execrable Crimes.

That he had no Promiſe of Life from any one who had Authority to make it; and if he made his Confeſſion ſpontaneouſly, it would not avail.

The Priſoner's Confeſſion produced as Evidence.

Mitchel convicted.

The

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The Opinion of the Court on the Instructions.

The Court having considered the Indictment, and the Arguments on both Sides, found that the Article in the Indictment, founded on the fourth Act of the 16th Parl. *Jac.* 6. importing the Prisoner's assaulting the Archbishop, who was a Privy Counsellor, by firing a Pistol at him for doing his Majesty's Service, was sufficiently supported; it being proved that the Prisoner said, he made that Assault upon the Archbishop for persecuting those who were in Rebellion against his Majesty at *Pentland-Hills*.

But as to the Article concerning the assaulting Bishops and Ministers, they found it only inferred arbitrary Punishment: As to the other Article, concerning the mutilating the Bishop of *Orkney*, it only inferred arbitrary Punishment.

And as to the Promise of Life made before the Privy Council, they thought it sufficient to secure the Prisoner's Life, *provided it was proved.*

The Court having thus settled Matters of Law (as is usual in *Scotland*, previous to the Trial) a Jury, consisting of fifteen Persons, was sworn, and the Evidence produced. And

The Prisoner's Confession produced as Evidence.

first, The Prisoner's Confession before the Lord Chancellor, Lord Register, Lord Advocate, and Lord Treasurer, was read, wherein he freely confessed, he was the Person who shot the Pistol at the Archbishop of St. *Andrew*'s, when the Bishop of *Orkney* was hurt, in the Year 1668. and that no living Creature persuaded him to do it, or knew of it.

Then several other Persons deposed, That, since his being in Prison, he had confessed his firing the Pistol at the Archbishop; and the Reason he gave for it was, That his Grace was an Enemy to the Godly; and they could not be in Security as long as he lived. Some Surgeons also deposed, That the Bones of the Bishop of *Orkney*'s Hand were fractured by the Ball; but that he was afterwards able to lift it to his Head.

The Lord Chancellor and Treasurer deposed, That they saw the Prisoner sign his Confession; but there was no Assurance given him of Life.

However, the Prisoner procured a Writing to be read, which he called, An Act of Council (but the Members denied there was any such Act) importing, that the Prisoner, retiring with one of the Committee of Council, confessed the Fact, on Promise made him of his Life; and that he afterwards renewed his Confession before the Council: But that, being brought before the Lords of Justiciary, he refused to acknowledge his Confession, though his Majesty's Advocate told him, he should have the Benefit of the Indemnity promised him, if he adhered to his Confession; but otherwise he would lose the Benefit of it; and that thereupon the Lords of the Council declared the said Promise void.

Mitchel convicted.

This pretended Act being rejected, the Jury were ordered to withdraw, and on the 10th of *January* gave their Verdict, as to the first Part of the Libel or Indictment, founded on Act 4. 16 Parl. *Jac.* 6 concerning the assaulting, or attempting, any of the Lords of Session, Privy Council, *&c.* unanimously, That they found it proved.

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As to the invading of Bishops and Ministers, and wounding the Bishop of *Orkney*, they likewise find it proved with one Voice. As to his Confessions, they likewise find them proved with one Voice. Lastly, As to the Prisoner's Exculpation (in relation to the Assurances given him of Life) they unanimously find it no ways proved.

Sentence passed on him.

Whereupon the Court adjudged, That the Prisoner be taken to the *Grass-market* in *Edinburgh*, on *Friday* the 18th of *January*, and there be hanged on a Gibbet till he was dead, and his moveable Goods and Gear to be Escheat to his Majesty's Use.

His Speech under the Gallows.

The Prisoner was accordingly executed at the *Market-Cross* in *Edinburgh*, on the 18th of *January*, and being a zealous Field-Conventicler, entertained his Audience with a Discourse that suited very well with the Principles of those Men, wherein he told the People, he owned and adhered, with all his Heart and Soul, to the Work of Reformation, as it was begun and carried on in that Kingdom, according to the Word of God, the National Covenant; and the solemn League and Covenant, as it was settled amongst them by General Assemblies, Synods, Presbyteries, Kirk-Sessions, and the People's just Power to chuse and call their own lawful Pastors; declaring that Patronage was a Popish Right, and an Usurpation in the House of God.

That the lawful Magistrate (the King) ought to be qualified according to God's Appointment: He must not make himself strong by Horses, to the end he may compel the Lord's People to rebel against the Lord's express Command; nor, *Jeroboam* like, compel the People to Apostacy: *He must not multiply Wives to himself, much less Whores, and marry an Idolatrous Wife like* Jezebel, *(as he insinuates the King had)*; but he must be a diligent Student of the Law of the Lord, and judge the People accordingly; and if he should overturn the Covenant-Work of God, and by a Parliament, packed according to his own Mind, rescind the Acts of former Parliaments, Committees of States and Councils, he divested himself of all legal Right over his People; and it necessarily followed to be the Duty of such People, *or any Part of them*, to take up Arms in Defence of their Religion, Laws and Liberties, or they would be guilty of bringing God's Wrath upon the whole Land: Adding, I protest before God, Angels, and Men, against all those Acts of Parliament, or Council, which are against the Word of God and Reformation, and carrying on the same, according as we are engaged and sworn in these Holy Bands of the National Covenant, and of the Solemn League and Covenant. I hope the Time is drawing nigh, when the Man shall be accursed who keepeth back his Sword from Blood, and who doth the Work of the Lord deceitfully: *Yea, happy shall he be, that taketh this Cursed, Malignant, and Prelatical Brood, and dasheth them against the Stones:* For this Honour have all his Saints, the high Praises of God in their Mouth, and

a two-

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a two-edged Sword in their Hand, to execute Juſtice upon the Heathen.

It is obſervable from this Trial, That, by the Laws of *Scotland*, the Priſoner is allowed Counſel in Capital Caſes, and a Copy of his Indictment, which he is not in *England*; and that, before the Jury is ſworn, his Counſel are allowed to make their Objections to the Indictment; and if it be found defective, either in Form or Subſtance, by the Judges, the Priſoner is diſcharged: The Jury only try the Facts, and cannot convict or acquit the Priſoner by a general Verdict, as with us: They conſiſt of fifteen, ſeventeen, or ſome odd Number; nor can the Priſoner challenge any of them; and a Majority determines the Fact; but with us, All the Jury muſt agree in their Verdict in Capital Caſes.

We find alſo, That, by the Laws of *Scotland*, an *Attempt* to rob or Murder, is Capital, though it be not effected; which ſeems highly reaſonable, eſpecially where the Criminal fires a Piſtol, or offers to kill an innocent Man, with a Sword, or other Weapon; though, by the Laws of *England*, this is looked upon as no more than an Aſſault, and fineable.

As to this particular Caſe, it appears, That the Priſoner and his Brethren held it lawful, and even meritorious, to kill a Biſhop; that he once actually ſhot at the Archbiſhop of St. *Andrews*, and wounded the Biſhop of *Orkney* in Purſuance of this Principle; and having fled for it, and lived in Exile eight or ten Years, returned to *Edinburgh* again, when he thought the Matter was forgot, and took Lodgings again near the Archbiſhop's, where he was apprehended, with the ſame Piſtols loaded, with which he had attempted to aſſaſſinate his Grace before; from whence it was conjectured, he deſigned to attempt to murder him again; however, this was prevented by the Villain's being taken up. He ſeems to inſiſt, That his Life was promiſed him by ſome of the Privy Council, if he would make a full Confeſſion, and that he did make ſuch a Confeſſion; but then we find, he afterwards retracted that Confeſſion, by which the Court told him he had forfeited the Benefit of that Promiſe, if any ſuch was ever made him; and he was executed in Purſuance of his Sentence; and ſurely with a great deal of Juſtice; for if ſuch Men, who think themſelves at Liberty to murder Magiſtrates, and even their Sovereign, when ever they do not approve his Adminiſtration, are ſuffered to eſcape with Impunity, it is impoſſible any Government can ſubſiſt: But for a Proteſtant Preacher, *A Miniſter of the Goſpel* (as he called himſelf) to turn Aſſaſſin as well as Rebel, upon a pretended religious Principle, for which his Sect exclaim ſo loudly againſt Papiſts and Jeſuits. All the World muſt acknowledge the Juſtice, and even the Neceſſity, of making ſuch a Man an Example.

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The Trial of ROBERT GREEN, HENRY BERRY, and LAURENCE HILL, for *Murder*, at the *King*'s-*Bench Bar*, the 10th of *February*, 1678-9. 31 *Car.* II.

The Charge

THE Indictment charged, that the ſaid three Priſoners (together with *Gerald* and *Kelly*, two Prieſts, and one *Philiber Vernet*, who were fled) on *Saturday* the 12th of *October*, then laſt paſt, did make an Aſſault on Sir *Edmund-bury Godfrey*, and that the ſaid *Green* having twiſted his Handkerchief, put it round *Godfrey*'s Neck, and with the Aſſiſtance of his ſaid Accomplices, ſtrangled him; and ſo they were all found guilty of murdering the ſaid Sir *Edmund-bury Godfrey*.

The Evidence of Titus Oates.

A Jury being ſworn, and charged with the Priſoners, the Witneſſes were called. And firſt *Titus Oates*, who depoſed, That on the 6th of *September*, then laſt paſt, he gave in ſeveral Depoſitions upon Oath, containing a Narrative of the Popiſh Plot before the ſaid Sir *Edmund-bury Godfrey*, then a Juſtice of Peace for *Weſtminſter*, and having taken two or three Copies of the ſaid Depoſitions, he went before Juſtice *Godfrey* again, on the 28th of *September*, and ſwore all the Copies he had made; and then attended the Council with his Narrative: That Juſtice *Godfrey* afterwards told the Deponent, that ſome Great Men thought he had been too zealous in this Buſineſs, while others ſaid he was too remiſs: That he was threatned on both Sides, and went in fear of his Life from the Popiſh Party, That he obſerved he had been dogged ſeveral Days, but ſaid, *He ſhould not fear them, if they came fairly.*

Of Robinſon.

Mr. Prothonotary *Robinſon* depoſed, That being alſo in Commiſſion of the Peace, and meeting Juſtice *Godfrey* at the Quarter-Seſſions for *Weſtminſter*, the 7th of *October* laſt, and dining with him the ſame Day at the High Bailiff's, the Deponent told him, he heard he had taken ſeveral Examinations about the Plot; and *Godfrey* anſwered, He would fain have had others have done it; he thought he ſhould have little Thanks for his Pains. Adding, *Upon my Conſcience I ſhall be the firſt Martyr; but he ſaid, he did not fear them, if they came fairly; he ſhould not part with his Life tamely:* That the Deponent replied, he would do well to have his Man go with him; but *Godfrey* ſaid, he did not like it; It was a Clog to a Man.

Objections to Prance's *Evidence.*

Prance's Evidence.

Miles Prance, a Silverſmith, who worked for the Popiſh Chapel at *Somerſet-Houſe*, depoſed, That two Prieſts engaged him to be concerned

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concerned in the Murder of Juſtice *Godfrey*, telling him it was no Sin, for he was a buſy Man, and would do a great deal of Miſchief: That they ſent to Juſtice *Godfrey*'s Houſe to enquire when he went out, and dogged him ſeveral Days, and particularly on the *Saturday* Morning he was miſſing, they watched him into St. *Clement*'s Pariſh; and about Eight or Nine in the Evening, *Hill* gave the Deponent and his Accomplices Notice to be ready, for Juſtice *Godfrey* was then coming by the Water-gate of *Somerſet-Houſe*; and *Hill* immediately went to the Juſtice, and told him there were two Men quarrelling, and deſired him to come down into the Yard and part them, which, with much Perſuaſion, he conſented to; and being come down as far as the Bottom of the Rails, *Green* twiſted his Handkerchief and put it about *Godfrey*'s Neck, and threw him behind the Rails, where he ſtrangled him.

That about a Quarter of an Hour after, the Deponent *Prance* obſerving he was not dead, *Green* wrung his Neck quite round, and punched him with his Knee: That the Deponent ſtood at the *Water-gate*, while *Green* ſtrangled the Juſtice, and *Berry* watched the Stairs: And the Deponent ſaw *Hill*, *Green*, *Girald*, and *Kelly*, about the Body when he came from the *Water-gate*; and a little time after *Berry* came, and they all helped to carry the Deceaſed into *Hill*'s Room, in Dr. *Godden*'s Houſe, where the Corps lay till *Monday* Night, and then it was removed into *Somerſet-Houſe*, where *Hill* ſhewed it to the Deponent with a dark Lanthorn (but he could not deſcribe the Room where it was laid).

That on *Tueſday* the Corps was ordered to be carried to *Hill*'s Chamber again; but ſome Body being there, they carried it to Sir *John Arundel*'s Lodgings, over-againſt it, where it lay till *Wedneſday* Night, and then they removed it to the Room where it was firſt laid; and about Twelve on *Wedneſday* Night, they carried it in a Sedan through the great Gate of the Upper Court of *Somerſet-Houſe* to *Soho*, where *Hill* met them with a Horſe, and ſetting the Body upon the Horſe, *Hill* rode behind it: And the Deponent *Prance* meeting *Hill* the next Morning, *Hill* told him they had run the Juſtice through with his own Sword, thrown him into a Ditch, and laid his Gloves and Cane on the Bank by him.

Objections to Prance's Evidence.

The Priſoners objected to *Prance*'s Evidence, That he had declared before the King and Council that all this was falſe; whereupon *Richardſon*, the Keeper of *Newgate*, was called.

Richardſon depoſed, That having received an Order to bring *Prance* before the Council, *Prance* deſired he might firſt ſpeak with the King; and the Deponent carrying him into the King's Cloſet, *Prance* fell down upon his Knees, and ſaid, *He was Innocent, and they were all Innocent*; and afterwards made the ſame Declaration before the Council; and the Lords asking him if any Body had been tampering with him, he ſaid, No: But he, the Deponent, was no ſooner returned with his Priſoner to *Newgate*, but *Prance* ſaid, all he had ſworn was true; and it was only his fear of loſing his Trade, and being murdered by the Papiſts, that induced him to make that Recantation before the King. And *Prance* now depoſed again in Court, that all he had ſworn againſt the Priſoners was true.

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Then the celebrated *Bedloe* made Oath, That he was ſeveral Times ſolicited about the latter End of *September* laſt, by *Le Faire*, *Pritchard*, *Kaines*, and other Popiſh Prieſts, to aſſiſt in murdering a Gentleman; and though they did not directly tell him who it was, directed him to inſinuate himſelf into the Acquaintance of Juſtice *Godfrey*, which he did: That the Day the Juſtice was murdered, they told him, there was a material Man to be put out of the Way that Night, who had all the Information which *Tongue* and *Oates* had given in: That they had made ſeveral Attempts on him which had failed; and if he ſhould not be taken out of the Way, and the Papers taken from him, they muſt wait an Age before they could effect their Deſign: That he (the Deponent) promiſed to aſſiſt them; but demanded where the four thouſand Pounds were which had been promiſed as a Reward, and was anſwered, the Lord *Bellaſyſe* had engaged for that Sum, and Mr. *Coleman* had Orders to pay it. However, the Deponent did not go to the Place appointed, as he had promiſed; but meeting the ſame Prieſt who would have employed him in the Murder (on *Monday* Night following, after it was done) in *Somerſet-Houſe Cloyſters*, the Prieſt reproved the Deponent for not coming to aſſiſt them; but ſaid, if he would help to carry off the Body he ſhould have half the Reward: That then the Deponent was led into a Room, where they ſhewed him the Corps by a ſmall Light; that he knew the Body, and ſaw a Crevat about its Neck like that he (the Witneſs) had on: And the Deponent adviſed them to tie Weights to the Head and Feet, and ſink it in the *Thames*; but they replied, they would put it upon himſelf: And that the Prieſt adminiſtred the Sacrament to the Deponent twice a Week afterwards, to engage him to conceal both the Plot and the Murder. However, going down to *Briſtol* ſome little time after, he found himſelf ſo reſtleſs and diſturbed in his Mind, that he could not help making a Diſcovery.

Bedloe's Evidence.

The Surgeons, who viewed Juſtice *Godfrey*'s Body after it was found, depoſed, That he had one Wound that ſtopped at a Rib, and that another went through his Heart; but they did not think thoſe Wounds the occaſion of his Death, becauſe there was no Evacuation of Blood; and his Neck was ſo looſe that they might have ſet his Chin upon either Shoulder.

The Surgeons Evidence.

Brown the Conſtable, who was called on finding the Body, alſo depoſed, That there was no Blood in the Ditch; nor any followed the Sword when it was taken out; that his Breaſt appeared black, and his Neck ſeemed to be broke; and that he had a great deal of Gold and Silver in his Pockets.

Other Witneſſes.

Elizabeth Curtis, Juſtice *Godfrey*'s Maid, depoſed, That the Day before her Maſter was miſſing, *Green* enquired for him about Nine

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in the Morning, and was with her Maſter a Quarter of an Hour; that *Hill*, the Priſoner, was with her Maſter a conſiderable time on the *Saturday* Morning he was miſſing.

Stringer depoſed, That *Berry* the Priſoner ſaid he had Orders from the Queen to ſuffer no Strangers, or any Perſons of Quality, to come into *Somerſet-Houſe* the 12th, 13th, and 14th Days of *October* (*This was to give Credit to a Suggeſtion of the Faction, that the Queen was concerned both in the Plot and the Murder*) it being at that time the Corps lay in *Somerſet-Houſe*, according to the Teſtimony of the Witneſſes.

The Priſoners Witneſſes.

The Priſoners called ſeveral Witneſſes in their Defence, to prove that they were in other Places when the Murder was ſuppoſed to be committed; and that the Body was never repoſited in that Room in *Somerſet-Houſe*, where the King's Witneſſes had ſworn it was.

Mrs. *Mary Tilden* depoſed, That *Hill* had lived in her Uncle Dr. *Godden*'s Family ſeven or eight Years; that he was a truſty Servant, and kept good Hours, always within at Eight o'Clock at Night, being the Time the Family went to Supper; and particularly, that he was not out after Eight that Night Juſtice *Godfrey* was ſaid to be killed; for he waited on them at Table that Evening, and did not ſtir out afterwards: She ſent the Maid to bar up the Door as ſoon as he came in, as ſhe did every Night.

She alſo depoſed, that it was impoſſible the Body could be in the little Room the other Witneſſes mentioned; for their Lodgings were ſo little, that nothing could be brought in but they that were within muſt ſee it; that the Rooms they mentioned was over-againſt their Dining-Room, and ſhe went into it every Day for ſomething or other, and ſaw none of the Body there.

Broadſtreet, another of Dr. *Godden*'s Family, depoſed the ſame thing.

Dr. *Godden*'s Maid alſo depoſed, She was every Day in the little Room mentioned by the Witneſſes, and ſaw nothing of the Body; nor did ſhe miſs *Hill* out of the Houſe that Evening Juſtice *Godfrey* was ſaid to be killed.

Green's Landlord and Landlady depoſed, That he was not out of their Houſe from half an Hour after Seven till after Ten, on the 12th of *October* in the Evening, when Juſtice *Godfrey* was ſuppoſed to be murdered: And the Maid of the Houſe depoſed, that *Green* was within betimes that Evening.

Berry, the Porter of *Somerſet-Houſe*, produced the Corporal of the Guard who placed the Centinels there on the 16th of *October*, at Night, when it was pretended Juſtice *Godfrey*'s Body was carried out of the great Gate of that Palace in a Chair; together with the Soldiers who ſtood Centinels at the Gate, who all depoſed, that no Chair paſſed through the Gate that Night: And being asked how they remembered it was the ſame Night, they anſwered, Becauſe the King came from *Newmarket*; and the Queen went from *Somerſet Houſe* to *White-hall* that Evening, being *Wedneſday*, the 16th of *October*.

Berry's Maid alſo depoſed, That her Maſter was at the Gate of *Somerſet-Houſe* that Evening when the Queen went out; that he afterwards went to Bowls, and came home before Day-light ſhut in, and was not abſent an Hour till he went to Bed, which was about 12 o'Clock. 1678-9 31 Car. II

The Lord Chief Juſtice, in ſumming up the Evidence, gave That for the King all the Weight it would bear; but ſlighted the Teſtimony given in behalf of the Priſoners; telling the Jury it anſwered itſelf, or was impoſſible to be true: That Juſtice *Godfrey* had been murdered, either becauſe he knew ſomething the Prieſts would not have him tell, or they did it in Defiance of Juſtice, and in Terror to all thoſe who dare execute Juſtice upon them. *The Chief Juſtice directs the Jury.*

The Jury withdrawing a little while, brought all the three Priſoners in GUILTY; for which the Chief Juſtice commended them highly, and ſaid, if it was the laſt Word he had to ſpeak, he ſhould have pronounced them guilty; whereupon the People in the Hall gave a Shout as for a notable Victory, and the next Day Judge *Wild* pronounced Sentence of Death on them. *They are convicted, condemned,*

In Purſuance whereof, *Lawrence Hill* and *Robert Green* were executed at *Tyburn*, the Twenty-firſt of the ſame Month of *February*: *Henry Berry*, being a Proteſtant, was reprieved ſome few Days longer, in Expectation he would have become an Evidence; but the Faction being diſappointed, he alſo was executed at *Tyburn*; and they all died profeſſing their Innocence to the laſt, and that they knew nothing, either of the Plot or the Murder. *and executed.*

Never was more Pains taken, or more Artifice uſed to take away the Lives of innocent Men, under Colour of Law, than to get theſe three poor Men condemned. *Remarks on the Trial of Green, &c.*

William Bromwel and *John Waters*, who found the Body of Juſtice *Godfrey* in the Fields, being brought before a Committee, (of which the celebrated Lord *Shaftesbury* was Preſident) after their Examination, were ſeverally committed, the former to *Newgate*, and the latter to the *Gate-houſe*, and ordered to be fettered and hand-cuffed. *Bromwel* was kept in the Dungeon three Days and Nights, and then ſent for and examined again; but *Shaftesbury* finding he could make nothing of him, either by Threats or Promiſes, he was remanded to *Newgate*, where he lay nine Weeks more, no one being permitted to ſee him; only his Wife made an Intereſt in one of the Lords, and obtained Leave to viſit him twice. *The Jury uſed to prove Juſtice Godfrey murdered by the Papiſts*

Corral, the Hackney-Coachman, who was charged with carrying the Corps in his Coach to *Primroſe-Hill*, being examined before the ſame Committee, was offered five hundred Pounds if he would make ſuch a Diſcovery as was intimated to him; and upon proteſting he knew nothing of the Matter, *Shaftesbury* threatned him he ſhould be hanged, and ordered him to be thrown into the Dungeon in *Newgate*, where he was almoſt ſtifled with the Cloſeneſs and Naſtineſs of the Place. After ſome time, Lord *Shaftesbury* ſent for him again, and the Fellow ſtill profeſſing he knew nothing of the Matter, his Lordſhip ordered the

1678-9. 31 Car. II. the Keeper to take and ſtarve him to death: And he was carried back to *Newgate*, and kept in Irons, in the Condemned Hole, from *Thurſday* till *Sunday* Noon, without Meat or Drink, when he was brought before the Committee again, and offered a Reward of 500 *l.* and to be ſecured from Danger, if he would become an Evidence of Juſtice *Godfrey*'s Murder; but the brave honeſt Man fell down upon his Knees, and ſaid, *I know nothing of it, and before I will wrong any Man, I will die immediately!* Whereupon the Lord *Shaftesbury* told him, *He ſhould be carried back to* Newgate, *and rot there:* And when he repreſented he had a Wife and Children, the ſame Lord anſwered, *Let his Wife and Children ſtarve:* And the poor Coachman was kept in the Condemned Hole loaded with heavy Irons, 6 Weeks and 3 Days, and afterwards ſeven Weeks on the Common-Side upon Boards, till another Perſon made Oath, that Juſtice *Godfrey*'s Body was carried out of Town on Horſeback; and then, upon giving good Bail, *Corral* was diſcharged; but his Legs were ſo galled with his Irons, that he was not able to drive a Coach for two Months after he obtained his Liberty.

Miles Prance the *Silverſmith*, who was made the principal Evidence of Juſtice *Godfrey*'s Murder, uſed to work for the Queen's Chapel in *Somerſet-Houſe*, as has been already obſerved; and having about this Time a Lodger named *Wren*, who was 14 Months in arrear for Rent; this Lodger, upon his Landlord's preſſing him for Money, was obſerved to uſe ſome threatning Words; and a Tankard being loſt about the ſame Time, a further Miſunderſtanding happened between the Landlord and his Lodger; but upon the 20th of *December*, *Prance* had his Rent all paid him, and the next Day was taken up by a Warrant from the Council, upon the Information of *Wren* and ſome others, who pretended to ſuſpect *Prance* was privy to Juſtice *Godfrey*'s Murder: And his dealing with Popiſh Prieſts, and working for a Popiſh Chapel, gave ſuch a Colour to the Suggeſtion, that *Wren* put in his Claim for a Share of the 500 *l.* which the Diſcoverers of *Godfrey*'s Murder were promiſed by Proclamation.

Prance, while he was in Cuſtody, was carried to a little Room in the Lobby of the Houſe of Commons, whither ſeveral People went out of Curioſity to ſee him, and among the reſt *Bedloe* the Evidence, who having enquired privately which was the Priſoner retired; and *Prance*, after ſome Hours Attendance on the Commons, was carried to an Eating-Houſe called *Heaven*, where *Bedloe* was planted on Purpoſe by Sir *William Waller*, and upon *Prance*'s coming into the Room, *Bedloe* cried out, *This is one of the Rogues that I ſaw with a Dark-Lanthorn about the Body of Juſtice* Godfrey; *but he was then in a Peruke:* And *Prance* being afterwards brought before the Lords, *Bedloe* charged him directly with the Murder, and *Wren* his Lodger with being out of his Houſe when the Body was miſſing.

But *Prance* being examined, poſitively denied all, wiſhing Damnation to himſelf if he knew any Thing of the Murder, or if he ever ſaw *Bedloe* to his Knowledge; whereupon he was ſent to *Newgate*, thrown into the condemned Hole, and loaden with Irons. The next Day a Perſon came to him, and laying down a Paper on a Form by him retired; and ſoon after, another, having brought him a Candle, left the Room; whereupon *Prance* looking over the Paper, read the following Minutes, *So many Popiſh Lords mentioned by Name——Fifty thouſand Men to be raiſed——Commiſſions given out——Officers appointed——* Ireland *acquainted with the Deſign*——and an Abſtract of *Bedloe*'s Evidence as to the Murder; concluding, *he muſt undoubtedly be privy to the Plot; and adviſing him rather to confeſs than be hanged.*

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For as it was contrived, that *Bedloe* ſhould ſecond *Oates* in his Evidence of the Plot, ſo they propoſed, *Prance* ſhould ſecond *Bedloe* in his Evidence of the Murder. *Prance* conſidering his Circumſtances, and being almoſt dead with Cold and the Naſtineſs of the Place, and in great Pain from his Irons, deſired to be carried to Lord *Shaftesbury*, where he was under Examination from five to eleven at Night, and threatned with Death, if he did not confeſs the Particulars mentioned in the Paper that was brought him: Whereupon *Prance* pretended to make a Diſcovery in Part, promiſing to be larger, when he had obtained his Pardon. While he was in this Diſpoſition, a Paper was drawn up and brought to the Priſoner to ſign; and being remanded to *Newgate*, a Committee of Lords and another of Commoners, went thither to examine him on the 23d of *December*, and the next Day being brought before the Council, he charged *Girald* and *Kelly*, two *Iriſh* Prieſts, *Robert Green*, Cuſhion-Man to the Queen's Chapel, *Lawrence Hill*, Servant to Doctor *Godden*, Treaſurer of the Chapel, and *Henry Berry* Porter of *Somerſet-Houſe*, with the Murder of Juſtice *Godfrey*.

The King afterwards appointed the Duke of *Monmouth*, the Earl of *Offory*, and Mr. Vice-Chamberlain, to go with *Prance* to *Somerſet-Houſe*, to ſee the Rooms where he pretended *Godfrey* was laid, and *Prance* went to ſome of the Rooms very readily, but was at ſuch a Loſs as to the principal Room, and ſome other Particulars, that when the Duke of *Monmouth* asked the Lord *Offory* what he thought of it, he anſwered, It was all a Cheat: However *Prance*, being brought before the Council again, and confronted with the Priſoners, *Green*, *Berry*, and *Hill*, confidently maintained the Charge againſt them, and they as poſitively denied it: After which *Prance* was remanded to *Newgate*, where he lay with his Irons ſometimes on and ſometimes off, according as he was found tractable or not, and was threatned by the Members of both Houſes ſeverely, to make him come up to *Bedloe*'s Evidence. In the mean Time the Man was not ſo abandoned, but he had ſtill ſome Qualms of Conſcience; and deſiring to be brought before the King, he did, in his Majeſty's Preſence, declare, That the Men he had ſworn againſt were all Innocent, and what he had teſtified againſt them was falſe:

Upon

1678-9. 31 Car. II. Upon which the King ſaid, *Is it ſo upon your Salvation?* And he replied, *Upon my Salvation the whole Accuſation is falſe*; and being immediately carried before the Council, he fell upon his Knees, and made the ſame Declaration there, and that he never ſaw *Bedloe* before he was taken up; that he knew nothing of the Plot or the Murder, and could not reſt for the Story he had told; whereupon ſome of the Council threatned him with the Rack. The next Day he was brought before the Council again, and perſiſted he was innocent, declaring, That he had no other Hints to frame the Story by, he had told them, than the aboveſaid Paper of Inſtructions, which was laid by him in the Condemned Hole; and, unleſs at the Time *Richardſon* mentioned at the Trial of theſe Men, *Prance* ſtood firm and immovable in his Denial againſt all Terrors and Temptations, from the 29th of *December* to the eleventh of *January*; whereupon he was loaden with Irons again, and thrown into a cold naſty Room, where he lay in ſuch Torment, that he was perpetually roaring and groaning till he became delirious, and then he kept crying out, *Not guilty, not guilty! No Murder, no Murder!* and when People were ſcandalized at this Treatment, the Managers gave out that he was mad. The Keepers, Mr. *Echard* aſſures us, were under the Direction of an ambulatory Committee, who ordered them when, and in what Degree, to ſqueeze, to pinch, to eaſe or ſhackle, to comfort or torment their Priſoners; and *Prance*, being unable to hold out as *Corral* had done, and finding his Life in Danger, promiſed to become an Evidence again; whereupon his Irons were knocked off, and he was removed from that cold diſmal Place he was in, to a good Lodging, and had Variety of the beſt Meat and Drink provided him, allowed Pen, Ink, and Paper, and the Aſſiſtance of a Friend, to finiſh his Narrative. See *Echard's* Hiſtory of *England*, p. 960, to 962.

This ſame *Prance* alſo in the next Reign, made a voluntary Confeſſion in writing, declaring all the material Parts of his Narrative, Depoſitions, and Evidence, at the Trials of theſe Men, to be falſe, and the Effects of his Cowardice, having been threatned with Death, and tortured to make him accuſe them; which is a full Anſwer to that Queſtion of the Continuers of *Rapin*, *How came it to paſs, that none of the Witneſſes againſt* Green, Berry *and* Hill, *retracted their Evidence in the next Reign, when they might have done it with Impunity, if it had been falſe?* For here we find *Prance* did retract his Evidence; *Oates*, another of the Witneſſes, was proved perjured by forty Witneſſes on two Trials; and *Bedloe*, the other material Evidence, was dead, whoſe Teſtimony however was proved to be falſe at the Trials of *Oates*.

Beſides, for what End ſhould the Papiſts murder Juſtice *Godfrey?* Biſhop *Burnet* tells us, He behaved himſelf in a friendly Manner to the Roman Catholicks, and was in good Terms with them; and though he had 1678-9. 31 Car. II. ſeen *Oates's* Narrative ſworn, which he could not avoid, *Oates* ſwears in this Trial, he made ſeveral Copies of it, which were likewiſe ſworn and communicated to the Government, and to his Friends; ſo that the Juſtice was Maſter of no Secrets, but what many more were acquainted with, before this Accident happened: It is not conceivable therefore for what End they ſhould deſtroy him. Indeed the Nation appears to have been in a great Ferment, at the pretended Diſcovery of a Popiſh Plot, and ſo diſtracted with the Fears of a general Maſſacre, that they would not give themſelves Leave to examine the Improbability of what the King's Witneſſes teſtified; nay, we find that, though the Priſoner's, every one of them, brought good ſubſtantial Witneſſes to prove they were in other Places when the Fact was committed, their Teſtimony was not regarded, but they were Browbeaten, played upon, and ſome of them laughed out of Court. The Managers of the pretended Plot, had ſo contrived the Matter, that the Corps of Juſtice *Godfrey* was carried in great Funeral Pomp from *Bridewell* through the principal Streets of the City, to be buried at St. *Martin's in the Fields*, attended by three or fourſcore Reverend Clergymen, and ſeveral hundreds of eminent Citizens; and theſe were all looked upon as ſo many Witneſſes of his being murdered by the Papiſts, though they knew no more of the Matter than other People: And it was unſafe, after this, for any one to queſtion whether the Juſtice was murdered by the Papiſts, even before any Witneſſes appeared to ſupport the improbable Tale.

This ſhould make Judges and Counſel extreamly cautious how they are biaſſed by popular Clamour, or deceived by the Arts of deſigning Stateſmen, to run down the unhappy Priſoner. The Chief Juſtice who tried them, and ſome of the King's Counſel, lived to ſee they were egregiouſly miſtaken; and that the principal Witneſſes againſt theſe three Men were People of profligate Characters, and evidently perjured; and they could not but reflect with Horrour, how much they had laboured to pervert the Evidence, and influence the Jury to find them guilty.

And here we have an Inſtance of an *Engliſh* Inquiſition, erected by our great Whig Patriots, who, in this Land of Liberty, threw theſe poor People into loathſome Dungeons, before they were convicted of any Crime, and tortured them to death almoſt, to compel them to accuſe themſelves and other innocent Men: So little do theſe pretended Defenders of our Liberties regard them, when they have a Turn to ſerve! How much ſoever they may exclaim againſt Tyranny or arbitrary Power when they are out of Place, they themſelves are the crueleſt Tyrants and Oppreſſors when ever they are poſſeſſed of Power, or can work up the People into a Humour, to ſecond their Ambition and Revenge.

The

1678-9. 31 Car. II. Atkins's Trial.

The Trial of SAMUEL ATKINS, Gent. for *Murder*, at the *King's-Bench* Bar, the 8th, 10th, and 11th of *February*, 1678-9. 31 *Car.* II.

Charged as Acceſſary to Godfrey's Murder.

THE Indictment charges the ſaid *Samuel Atkins* with commanding, counſelling, and abetting *Robert Green*, *Henry Berry*, *Lawrence Hill*, —— *Girald*, *Dominick Kelly*, and *Philibert Vernatt*, to murder Sir *Edmund-bury Godfrey*, on the 12th of *October*, in the 30 *Car.* II. and with harbouring, comforting, and maintaining the ſaid Murderers, after the Fact was committed.

His Arraignment.

The Priſoner being arraigned the 5th of *February*, pleaded *Not guilty*, and deſired that all the Examinations that had been taken againſt him, might be brought into Court at his Trial: He deſired alſo that he might have a ſpeedy Trial, for he had already lain ſixteen Weeks in Priſon. To which the Lord Chief Juſtice anſwered, He ſhould be tried on *Monday* the 10th of *February*, after *Green* and the reſt of the Principals were tried, if the Court had Time; but he was not tried till the 11th of *February*.

The Priſoner, having been indicted as Principal in the ſaid Murder, was arraigned alſo as ſuch; but diſcharged of that Indictment for want of Evidence.

The Evidence,

The Witneſſes produced againſt the Priſoner at his Trial the 11th of *February*, to prove him Acceſſary to the Murder, were *Charles Atkins*, *Bedloe*, and *Thomas Walton*.

of Charles Atkins.

Charles Atkins depoſed, That *Samuel Atkins*, the Priſoner, told him, Sir *Edmundbury Godfrey* had very much injured his Maſter (Mr. *Pepys*, Secretary of the Admiralty) and asked him (*Charles Atkins*, the Witneſs) if he knew a Man that would be ſtout and ſecret; and asked particularly after one *Child*, bidding the Witneſs ſend him to his Maſter: That accordingly the Witneſs met *Child*, and ſent him to Mr. *Pepys*; that he afterwards met *Child* again, who ſaid he had been there; and *Child* propoſed to the Witneſs, *Charles Atkins*, to join with him in murdering a Man.

Bedloe's Evidence.

Bedloe depoſed, That *Le Faire* the Jeſuit told him, that ſuch a one was murdered, and they intended to diſpoſe of the Body; and that one *Atkins* was to aſſiſt in carrying it off: That the Deponent was at a Room in *Somerſet-Houſe* afterwards, where the Corps of Sir *E. Godfrey* lay, and ſeeing a young Man (with ſome other Company) there, he asked him, if his Name was *Atkins*; that the young Man anſwered, it was, and he was Mr. *Pepys*'s Clerk; but he could not ſay the Priſoner at the Bar was the Man: There was no other Light but what they received from a Dark-Lanthorn.

Walton's Evidence.

Walton, the Schoolmaſter, depoſed, That the Priſoner, *Samuel Atkins*, promiſed to meet him at a Publick Houſe the 12th of *October* (the Day *Godfrey* was murdered) but did not come: And the Priſoner demanding of this Witneſs, if he did not know him to be a Proteſtant? He anſwered, he knew him to be a zealous Proteſtant.

However, the Attorney General called a Boy, to prove he had ſeen the Priſoner at Maſs; but the Boy declared he did not know him.

The Priſoner's Defence.

The Priſoner, being ordered to make his Defence, ſolemnly proteſted his Innocence; and ſaid, the Witneſs *Charles Atkins*, who accuſed him, had been ſubſiſted by him, and kept from periſhing; and that he never had any ſuch Diſcourſe with him as had been ſworn.

The Lord Chief Juſtice anſwered, Whether he had or had not, was not material; and acknowledged, that the Evidence *Charles Atkins* had given, was nothing to the Purpoſe.

His Witneſſes.

Then the Priſoner called Captain *Vittles*, Commander of one of the King's Yatchs, who depoſed, That the Priſoner was on board his Yatch the 14th of *October*, the Evening he was ſaid to be in the Room at *Somerſet-Houſe* with *Godfrey*'s Corps, and that he ſtaid there till near Midnight; which was alſo confirmed by the Boat's Crew that brought him to *London* that Night.

He is acquitted.

Whereupon the Jury acquitted the Priſoner, without going from the Bar.

Remarks on Atkins's Trial.

This is a remarkable Inſtance of the Prevalence of the Faction at this Time: Here was an honeſt Gentleman charged with the Murder of *Godfrey*, committed to *Newgate*, and laid in Irons for ſixteen Weeks, upon the moſt trifling Suggeſtions; the principal Deſigns of which ſeems to be, to make him accuſe his Maſter, Mr. Secretary *Pepys*: But he was a Perſon of more Honour, and being able to prove himſelf in other Places, both at the Time of *Godfrey*'s Death, and the Time it was pretended his Corps lay at *Somerſet-Houſe*, he was acquitted of courſe, of being either Principal or Acceſſary to *Godfrey*'s Death. His Name-ſake *Charles Atkins*, appears to have been a very forward Witneſs; though he had been relieved by the Priſoner in his Neceſſity, yet, in Hopes of ſharing the great Rewards that were promiſed at this Time to the Diſcoverers of *Godfrey*'s Murder, he had the Baſeneſs and Ingratitude to accuſe his beſt Friend, and endeavour by his deteſted Perjuries, to deprive him of his Life: And the Whigs, who had the Management of the Matter, and whoſe Buſineſs it was to enflame the People, we find, laid hold of the moſt remote and trifling Circumſtances, to confirm the Truth of the pretended Plot; but they ſeemed a little aſhamed at this Trial of accuſing and proſecuting an innocent

1678-9. 31 Car. II. Man ſo inhumanly, and endeavouring to take away his Life, when they had ſo very little Colour for it.

Mr. *Pepys*, Secretary to the Admiralty, to whom the Priſoner was Clerk, was accuſed alſo as a Conſpirator by the profligate Witneſſes of the pretended Popiſh Plot, and thereupon committed to the *Tower* by the Houſe of Commons; but he was admitted to Bail the next Month, and at length diſcharged without being brought to a Trial: And this was the Caſe of many more, whom the Witneſſes accuſed for no other Reaſon, but in Expectation of raiſing their Fortunes, by ſwearing Men out of their Lives. It muſt remain a laſting Reproach to this Nation, that ſo many were deſtroyed upon the Teſtimony of ſuch Wretches, as no Man ſcarce would have credited in the moſt trifling Concerns. 1678-9. 31 Car. II.

1678. 30 Car. II. The Trial of CHARLES Lord CONWALLIS, for *Murder*, before the Lord High Steward, and a certain Number of Peers commiſſioned to try him, in *Weſtminſter-Hall*, 1678. 30 *Car.* II. 1678. 30 Car. II.

The Trial of Lord Conwallis.

The Indictment.

AN Indictment was found by the Grand Jury of *Middleſex*, ſetting forth, That *Charles* Lord *Conwallis* (together with *Charles Gerrard* and *Edward Bourne*) on the 18th of *May*, then laſt paſt, did felonioufly, and of his Malice afore-thought, make an Aſſault on the Perſon of *Robert Clerk*, in his Majeſty's Palace of *Whitehall*, within the ſaid County; and that the ſaid *Gerrard* took up the ſaid *Clerk* in his Arms, flung him down and broke his Neck, of which the ſaid *Clerk* inſtantly died: And that the ſaid Lord *Conwallis* was preſent, aiding and abetting the ſaid *Charles Gerrard* to commit the ſaid Murder, and ſo was a Principal in it.

The Evidence.

A Soldier, who ſtood Centinel at the Bottom of the Stairs that led from the Gallery in *Whitehall* into the Park, that Night the Fact was committed, depoſed, That on the 18th of *May*, between one and two in the Morning, the Lord *Conwallis* and Mr. *Gerrard*, with three Footmen behind them, came from the ſaid Gallery down the Stairs into the *Park*, and demanding of him the Hour, he told them; but they being diſordered in Drink, with many Oaths replied, he lyed, went by him into the *Park*, and ſwore they would kill ſomebody before they went away: That about an Hour after they returned to the Stairs, and he (the Centinel) demanding, Who comes there? They anſwered him in a very obſcene rude Language, threatning to kill him, but he kept them off: Then one of them gave away his Sword, and ſwore he would kiſs him, which he (the Centinel) refuſing, they threatned him again, and ſeemed to contend which of them ſhould run him through: At length, going up the Stairs, there came two young Lads to the Centinel, and one of them deſired him (the Deponent) to call him early the next Morning, which my Lord *Conwallis* and *Gerrard* hearing as they ſtood on the Top of the Stairs, they bid the Deponent ſhoot the Boy, and they would bear him out; and, on his refuſing, one of them ſwore he would kick the Boy's Arſe to Hell: To which the Boy made ſome Reply, wherein the Word Arſe was repeated: Whereupon one of the Gentlemen in a Rage run down the Stairs; and the Boy who ſpoke the Words getting away, the Gentleman took the other Boy up in his Arms, he crying out all the while, *O my Lord it was not I! indeed my Lord it was not I!* and either by throwing him down on the Ground, or by a Blow, killed the Boy out-right.

The Boy who ſpoke the Words, confirmed the Centinel's Evidence; but depoſed, That he only ſaid, *Why kick my Arſe to Hell?* However the Gentlemen miſtook his Words.

Two of the Lord *Conwallis*'s Footmen, who had been indicted for the ſame Murder and acquitted by the Court of *King's-Bench*, were admitted to give Evidence in this Caſe, and depoſed, That it was Mr. *Gerrard* that committed the Fact; and that my Lord *Conwallis* remained at the Top of the Stairs, and ran away as ſoon as the Fact was done, for Fear of being knocked on the Head by the Soldiers.

The Counſel's Obſervations on the Evidence.

Mr. Sollicitor General obſerved upon the Evidence, That it appeared, both my Lord and Mr. *Gerrard* had a murderous Intention, both of them ſwearing they would kill the Centinel: And as to the Murder that was actually committed, his Lordſhip was preſent at it, and had not given any Evidence that he diſapproved of it, or endeavoured to prevent it; all which amounted to as much in Law, as if he had ſtruck the Blow.

Mr. Serjeant *Maynard* alſo obſerved, That his Lordſhip's being at ſome Diſtance would not excuſe him, if he was engaged with *Gerrard* in an unlawful Deſign; and cited the Lord *Dacres*'s Caſe, who went into a Park with other Company to ſteal Deer; and though my Lord and ſome of them fled on the Keeper's Coming, yet the Keeper being killed afterwards, when his Lordſhip was without the Pales, and a Mile diſtant from the Place, yet he was adjudged guilty of Murder.

Lord Conwallis's Defence.

The Lord *Conwallis* ſaid in his Defence, that he was indeed in Company with Mr. *Gerrard* that Night the Fact was committed, but that he had no ill Intention; and obſerved, that there was but one Witneſs who depoſed

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posed, that both of them said they would kill the Centinel: That he was not conscious that he had any Hand in this Murder, and therefore had not withdrawn himself; but trusting to his Innocence, surrendered to the Coroner the next Day, and now submitted to the Judgment of his Peers.

The Prisoner being taken from the Bar, and the Lords withdrawn to consider of their Evidence, the Lords, about two Hours after, returned to their Seats, and desired to propose a Point of Law to the Judges: To which the Lord Steward answered, That the later and better Opinion was, That such Questions ought to be put in the Presence of the Prisoner, that he might know whether the Case was justly stated: Whereupon the Prisoner was brought to the Bar again, and the following Question proposed to the Judges, (*viz.*) Whether those who were present, and contributed to any Disorders, whereupon a Manslaughter ensues, are as guilty of Manslaughter as he who is actually the Manslayer; as it is in Murder; where all, who are guilty of the Trespass which occasions it, are deemed equally guilty with him who commits the Fact?

A Point of Law referred.

The Judges answered, The Case was the same in Manslaughter, as in Murder.

The Lords withdrawing again, and returning into the Court after a short Recess, and the Lord High Steward demanding of them, in their Order, beginning with the youngest Baron, Whether the Lord *Cornwallis* was Guilty? Six of them declared him guilty of Manslaughter; but a great Majority acquitted him; whereupon his Lordship was discharged: And the Lord High Steward breaking his Staff, the Court was dissolved.

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The Prisoner is acquitted.

Remarks.

The Lords, no doubt, gave their Verdict according to their Judgment: They believed, I presume, that the Deceased was killed by Accident; but had this Noble Peer been tried by a Jury of Commoners, possibly he had not come off so well: For here were two Gentlemen declaring they would kill the Centinel, or some Body, and actually attacked the Soldier, who deposed, that it was with Difficulty he kept them off: Then, without any Provocation, one of them takes up an innocent Boy in his Arms, and throws him down with that Force that he killed him upon the Spot. What Denomination must we give this Fact? And whether it was my Lord of *Gerrard* that did it, only appears by the Evidence of his Lordship's Footmen, who were indicted as Accessaries to the same Murder; and their Evidence was so well received, that it seems to have turned the Scale.

Upon the whole, as the Case stands, a Commoner must be mad who does not avoid all Occasions of contending with a Noble Peer, since the least ill Language is held a sufficient Provocation to take away his Life.

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Lewis's Trial.

The Trial of DAVID LEWIS, Clerk, for *High-Treason*, at *Monmouth* Assizes, the 28th and 29th of *March*, 1679. 31 *Car.* II.

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The Indictment.

THE Indictment charges the Prisoner with High-Treason, upon the Statute of the 27 *Eliz. cap.* 2. for that he went beyond Sea, received Orders from the Church of *Rome*; then returned back to *England*, and remained here forty Days, and upwards; which is made High Treason by that Statute.

The Evidence.

Three or four Witnesses deposed, That the Prisoner read Mass several times, took Confessions, gave Absolutions, Married and Christened: And another, that she heard him preach both in *English* and *Welch*; and that there were Altars, Chalices, and Crucifixes in the Place where he officiated.

The Prisoner's Defence.

The Prisoner in his Defence said, he was indicted indeed on the 27th of *Eliz.* for that, being a natural-born Subject, he was ordained beyond Sea, by an Authority derived from the See of *Rome*, and returned back, and remained in *England*; but he conceived none of the Witnesses proved the Facts laid in the Indictment.

To which Mr. Justice *Atkyns* replied, It was not expected they should bring Persons to prove they saw him ordained; it was enough they had given Evidence that he had exercised the Function of a Priest.

The Prisoner said, they could not prove he read Mass, unless they first proved he was ordained by an Authority derived from the See of *Rome*; for, if there was no Ordination, there could be no Priest; and if no Priest, then no Mass: And as for Confessions and Absolutions, these were performed by the Ministers of the Church of *England*; and many of the Laity baptized in Cases of Necessity, though they were no Priests: And he apprehended that barely the reading Mass was not Treason.

Mr. Justice *Atkyns* told the Prisoner, That he who *heard* Mass, indeed, only forfeited 100 Marks by the 23d of *Eliz.* but he that used to read it, was guilty of High-Treason.

Then the Prisoner objected, that the Witnesses swore against him out of Malice; and particularly, that one of them, not being able to prevail against him in a Suit in Chancery, vowed, *She would never leave prosecuting him, till she had washed her Hands in his Heart's Blood, and made Pottage of his Head:* And the Prisoner produced four Witnesses, who attested the Truth of it. He also produced others, who deposed, That *Price*, one of

1679. 31 Car. II. of the principal Witneſſes againſt him, ſaid that very Morning his Trial came on, that he doubted if the Priſoner was the Man.

He is convicted, and condemned. The Jury being withdrawn, after a ſhort Receſs, brought in their Verdict, that the Priſoner was GUILTY; and Sentence paſſed on him as a Traitor.

He was reprieved from Time to Time, for the Space of five Months; but at length was executed at *Uske* in *Monmouthſhire*, on the 27th of *Auguſt*, 1679.

His Speech. At the Place of Execution Mr. *Lewis* made a Speech to the People, wherein he ſaid, he thanked God that he did not ſuffer as a Thief or a Murderer, but as a Chriſtian, and therefore was not aſhamed. How forward he had been to relieve the Poor, his impartial Neighbours could inform them; and yet, during his nine Months Impriſonment, ſeveral foul Aſperſions had been caſt upon him by ſome of thoſe to whom he had been charitably ſerviceable for thirty Years: He prayed God to forgive them, and hoped, notwithſtanding thoſe Calumnies, he ſhould retain the Character of an honeſt Man amongſt Gentlemen of Worth, with whom he had lived and converſed.

He declared, by all that was ſacred in Heaven and Earth, that he knew nothing of any Plot; nor could the Witneſſes of the Plot, *Oates*, *Bedloe*, *Dugdale*, or *Prance*, lay any thing to his Charge, though they ſifted him thoroughly laſt *May*, while he was confined in *Newgate*.

He was never taught the Doctrine of *King-killing*; and from his Soul he deteſted and abhorred it, as directly oppoſite to the Principles of the Chriſtian Religion, which he profeſſed: That it was the Reſolution of the Council of *Conſtance*, That it was damnable for any Subject, or private Perſon, to murder or conſpire againſt their lawful Prince, though he were a *Turk*, an Apoſtate, a Perſecutor, or a Tyrant. *Clement*, indeed, murdered *Henry* III. and *Ravilliac*, *Henry* IV. of *France*; but they were puniſhed for it with the utmoſt Severity, and ſtigmatized by all *Roman* Catholicks as Miſcreants and Villains; and the whole Body of *Roman* Catholicks ought not to be cenſured for the Villainy of a few Deſperadoes. For his Part, he always loved and honoured the King, and prayed for his Proſperity; and whatever Plot there might have been, he prayed it might be brought to Light, and the Actors brought to condign Puniſhment. 1679. 31 Car. II.

He confeſſed he was a *Roman* Catholick Prieſt, of *the Society of Jeſus*; and bleſſed the Hour in which he was ordained, ſo firmly was he fixed in his Religion. He ſaid, that if Life, and all the good Things of this World, were offered him to renounce it, they could not move him. He was condemned, he obſerved, for reading Maſs, hearing Confeſſions, adminiſtring the Sacraments, anointing the Sick, Chriſtening, Marrying, and Preaching: As for reading Maſs, it was the old accuſtomed and laudable Liturgy of the Holy Church; and all the other Acts were Acts of Religion, tending to the Worſhip of God; and as he died for theſe, he died for Religion. That he was told at his Examination in *London*, *If he would diſcover the Plot, and conform, he might ſave his Life*; but he knew nothing of the Plot, and his Conſcience would not ſuffer him to conform: He muſt die therefore for Conſcience and Religion; and as he died upon ſuch a good Account, he laid down his Life with Alacrity.

He forgave all his Enemies, eſpecially the principal Proſecutor, who had long thirſted after his Blood; and wiſhed his Soul ſo well, that, were it in his Power, he would ſeat him a Seraphin in Heaven; praying for them in the Language of St. *Stephen*, *Lord, lay not this Sin to their Charge*: And in the Words of our Saviour, *Father, forgive them, for they know not what they do.*

He ſaid, It was with Reaſon he loved them; for though they prejudiced their own Souls, they had conferred on him the moſt ineſtimable Benefits: He wiſhed them therefore a good Eternity; adding, *O Eternity, Eternity! How momentaneous are the Glories, Riches, and Pleaſures of this World! And how deſirable art thou, endleſs Eternity!*

Remarks. I ſhall make no other Obſervations on this Trial, but that this Gentleman was condemned and executed, purely for being a Popiſh Prieſt, without any manner of Evidence of his being in any Plot againſt the Government; as was the Caſe of ſome others at this Time. The Faction would not ſuffer a Popiſh Prieſt to live; and ſeemed to threaten the King, unleſs he ſuffered the Laws to be put in Execution againſt them with the utmoſt Rigour; though it is generally agreed, thoſe Laws were only made *in Terrorem*.

The

1679. 31 Car. II. Reading's Trial.

The Trial of NATHANAEL READING, Eſq; for a *Miſdemeanor*, in endeavouring to ſuborn one of the King's Witneſſes to ſtifle his Evidence, before Commiſſioners of *Oyer* and *Terminer*, in *Weſtminſter-Hall*, the 24th of *April*, 1679. 31 *Car.* II.

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Directions to the Grand Jury.

THE Court directed the Grand Jury to find the Bill againſt Mr. *Reading*, if they had but probable Evidence of the Charge; becauſe their Preſentment, they ſaid, was not a Conviction, but in the Nature of an Accuſation, in order to bring the Priſoner to a fair Trial. They were inſtructed alſo not to find it Treaſon, but Miſdemeanor only; and the Jury having found the Bill, in Purſuance of their Directions, eleven of the twelve Judges aſſembled in the Court of *King's-Bench*, to try him on the 24th of *April*, when the Priſoner was brought to the Bar, and arraigned.

The Indictment.

The Indictment ſet forth, That, whereas *Edward Coleman*, *William Ireland*, *John Grove*, and other Traitors, had conſpired the Death of the King, and the Subverſion of the Eſtabliſhed Religion and Government, for which they had been attainted and executed; and whereas *William* Earl of *Powis*, *William* Lord Viſcount *Stafford*, with three other Noblemen, and Sir *Henry Tichburn*, were accuſed of the ſaid Treaſons, and committed to the *Tower*, and thereof impeached by the Houſe of Commons; The Priſoner, *Nathanael Reading*, well knowing the Premiſſes, and being deviliſhly affected againſt the King, his Supreme and Natural Lord, and deviſing to ſubvert the Government and the Religion eſtabliſhed, and to obſtruct and ſtifle the Diſcovery of the aforeſaid Treaſons, and retard the Proſecution of the ſaid Lords in the *Tower*, *&c.* did ſolicit and ſuborn *William Bedloe* to leſſen and ſtifle his Evidence againſt the ſaid Lords, and to give ſuch Evidence as he, the ſaid *Nathanael Reading*, ſhould direct; and to that Purpoſe did corruptly give to the ſaid *William Bedloe* fifty-ſix Guineas, and promiſed him more, to the Hindrance and Suppreſſion of Juſtice, in Contempt of the Laws, *&c.*

No peremptory Challenge in a Miſdemeanor.

The Priſoner pleading *Not guilty*, and the Jurors being called over, the Lord Chief Juſtice *North* directed that Sir *John Cutler* ſhould be Foreman of the Jury: Whereupon the Priſoner challenged him; but was told by the Court that he could challenge none without Cauſe, being indicted only for a Miſdemeanor.

Reading complains of Hardſhips.

The Priſoner replied, The Indictment contained expreſs Treaſon; and complained that he had no Counſel or Friend, or ſo much as his Wife ſuffered to come near him, though he had been very ill, occaſioned by the barbarous and illegal Uſage he had undergone; and believed he was the firſt *Engliſhman*, in

ſuch Circumſtances, that was ever ſo uſed. He apprehended, that the Indictment charged him with greater Treaſons than *Coleman* and the reſt had been executed for, and therefore deſired the Judgment of the Court, If he might not be allowed a peremptory Challenge?

The Proſecutor calls the Crime what he pleaſes.

The Lord Chief Juſtice *North* anſwered, If the Fact laid in the Indictment had been laid as an Overt-Act for the evidencing the Imagination of his Heart in compaſſing the King's Death, and the Deſtruction of the Realm, there it had been an Indictment of Treaſon; but ſince there was no Treaſon formally laid, nor the Word *proditorie*, which was neceſſary in all Indictments of Treaſon, it was only a Miſdemeanor he was charged with, which was a great Favour; therefore he muſt ſhew his Cauſe of Challenge.

The Priſoner inſiſts, he was charged with Treaſon.

The Priſoner deſired to know, If, after this Favour ſhewed him, he might not be indicted for High-Treaſon? And obſerved, that there did not want any one Circumſtance of the Formality of an Indictment for High-Treaſon but the Word *proditorie*; for it was ſaid, that *Coleman* and others did conſpire the Death of the King; that the Lords in the *Tower* were accuſed of the ſame Treaſon; and that he, the Priſoner, knowing the Premiſſes, did falſely, maliciouſly, and adviſedly ſuborn the Witneſſes againſt them, *&c.* which muſt amount to Treaſon in him, or Miſpriſion of Treaſon at leaſt.

The Chief Juſtice anſwered, There was a Difference between the Knowledge of a Treaſon that was ſecret, and the concealing it; and the Knowledge of a Treaſon that was diſcovered: That though the concealing of a ſecret Treaſon, and endeavouring to ſtifle the Evidence was Miſpriſion of Treaſon, yet the knowing of a Treaſon that all the World knew was not Miſpriſion of Treaſon; nor was it laid as a Crime here, but only as an Aggravation of the Crime. And as for his Demand, Whether he might not afterwards be tried for Treaſon, they were not to ſatisfy him; but he was to anſwer to the Indictment as it was. An Indictment of Treaſon or Miſpriſion of Treaſon, was not to be laid ſo as that the Crime ſhould be collected out of the Matter of Fact only, but it muſt be formally laid.

The Court anſwer, Treaſon muſt be formally laid.

The Priſoner replies, he was charged with formal Treaſon.

The Priſoner then deſired to know, If being deviliſhly affected to the King, intending to levy War, change the Government, and alter Religion, was not Treaſon?

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The Court answered, They should resolve none of his Questions; but said, that no Judgment of Treason could be given against him upon this Indictment; therefore if he had any particular Cause to challenge Sir *John Cutler*, he must shew it.

His Challenges over-ruled.

The Prisoner replied, There was an uncommon Intimacy between *Bedloe*, his Accuser, and Sir *John Cutler*; but he was told, unless he could shew that Sir *John* had given his Opinion that he was guilty, this was no Cause of Challenge: And Sir *John Cutler*, and the rest of the Jury, were sworn.

Then the King's Counsel opened the Indictment, and were about to prove that *Coleman*, *&c.* had been attainted and executed; and that the Lords in the *Tower* were imprisoned and impeached as Conspirators in the Popish Plot: But Mr. *Reading* admitted these Facts, and said he believed there never was a greater Plot laid in Hell than this; he abhorred the Thoughts of it, and had encouraged the Discovery of it.

Bedloe's *Evidence against him.*

Then the King's Witnesses were called: And first, *Bedloe* deposed, That Mr. *Reading* had been very just to him in his private Concerns; and as to the Plot, had, in all publick Companies, pressed him to make a full Discovery of it; and declared, that those who had been executed for it suffered justly; and that, indeed, Mr. *Reading* never endeavoured to stifle the whole Plot, only in private desired him to be cautious as to some particular People he solicited for, not but that he believed them guilty as well as the rest; but desired he *(Bedloe)* would not be so hot against them. And after he had made him easy, as he termed it (given this Witness a Bribe) desired he would make *Dugdale*, the other Witness, easy too; telling the Deponent, he might gain his Point with the King and Parliament if some suffered, he need not run at the whole Herd; and said, he would advise him how far he should proceed, and if he could fix any thing for them, he should be sure to be well gratified: That the Persons he solicited most for, were, the Lords *Powis*, *Petre* and *Stafford*, Sir *Henry Tichburn*, Mr. *Roper*, Mr. *Caryll* and one *Corker* a Jesuit; and he made him easy too as to *Whitebread* and *Fenwicke* at their Trial, for he (the Deponent) had enough against them then; but he would not break off the Treaty between Mr. *Reading* and him, concerning the Lords in the *Tower* (as he must have done, if he had given all his Evidence against *Whitebread* and and *Fenwicke* then), because he knew that was of greater Consequence than two old Priests.

Confesses he suppressed Part of his Evidence.

That a Day or two after the Lord *Danby* was sent for by the Black-Rod, Mr. *Reading* told the Deponent he had been with the Lords in the *Tower*, and they did think he was capable of serving them; and that they desired the Deponent would give an Account what he could say against them, that they might view and correct it: That on *Saturday* the 29th of *March*, Mr. *Reading* came to the Deponent's Lodgings, as he expected he would, and he (the Deponent) had concealed Mr. *Speke* and his own Man there, ready against he came: That Mr. *Reading* said when he came into the Room, *Is there no Body here that can over-hear us?* And the Deponent answered, *No*; and asked Mr. *Reading* what the Lords in the *Tower* said, for he was to give in his Answer, to the Secret Committee that Night; but Mr. *Reading* desired him to put it off till *Wednesday*, and he would bring him their final Answer; and the Deponent agreed to put it off till *Monday*: Whereupon Mr. *Reading* said, though he had not yet a full Answer, as to what the Lords would do, he (the Deponent) might expect a noble Reward; and he had Orders to draw blank Deeds to be signed in ten Days after their Discharge, for Sums and Estates which they would settle on the Deponent; and he should have a speedy Supply of Money, as soon as it could be got in: That the Lord *Stafford* was cutting down Wood, and selling it, and when he had raised the Money the Deponent should have it; but at present his Lordship had not Money to defray the Charges of his Family. In the mean time Mr. *Reading* said he had Orders to supply the Deponent's present Occasions; and he acknowledged he had had a great deal of Money from him, the Prisoner giving him Gold sometimes when he did not ask it: But when the Deponent objected that he had only a verbal Promise from the Lords, which he could not rely on, Mr. *Reading* said he would engage his Soul and Life to make it good, though they did not think fit to give any thing under their Hands yet.

That Mr. *Reading* desiring to see the Copies of what the Deponent had accused the Queen and Lords, that he might carry those Papers to the Lords and have their Answer; the Deponent pretended they were at his Mother's Lodgings, and went with him thither, to give the other Witnesses an Opportunity to come out of the Places where they lay concealed: That not meeting with the Papers, and returning to his Lodgings, they found Mr *Speke* and the Deponent's Man there; and having desired Mr. *Speke* to go before them to *Westminster*, Mr. *Reading* and the Deponent fell to writing out what they had agreed upon; and when he inserted any Words that were home against the Lords, Mr. *Reading* would tell him the Law, and what would reach them, and then alter it: That on *Monday* following Mr. *Reading* brought him a Paper of his own Hand-writing, different from the Words they had set down in the Paper on *Saturday*, and which took off the whole Charge of Treason: That the Paper Mr. *Reading* brought was ten times shorter than the former, and that was forty times shorter than that the Deponent had given in to the Secret Committee.

The Court demanding, if he agreed to swear what Mr. *Reading* should direct him? *Bedloe* answered, It was to what he and the Lords should direct: The Prisoner was to give him an Account what the Lords would have him say; and told him that the Lords had corrected the Paper.

Then the Paper being produced, Mr. *Reading* acknowledged it to be his Hand; and that he delivered it to Mr. *Bedloe* before Mr. *Speke*, in the Painted Chamber.

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The Court demanding, If he had not the firſt Paper? *Bedloe* anſwered, No; Mr. *Reading* carried it to the Lords, and he never had it again: This was the Paper corrected by the Lords, which he was to give to the Secret Committee.

Then the Paper was read, which conſiſted chiefly of Hear-ſays, and ſome other Particulars, that would not have affected the Lives of the Popiſh Lords; and thereupon Chief Juſtice *North* told the Priſoner, They ſhould expect a good Account from him, what he had to do to preſcribe the Evidence to the King's Witneſs in writing.

Speke's Evidence. Mr. *Speke* depoſed, That Mr. *Bedloe* daily acquainted him with the Treaties between him and Mr. *Reading*; and that he (the Deponent) came to *Bedloe*'s Lodgings, between five and ſix in the Morning, on the 29th of *March*, where he and *Bedloe*'s Man being concealed, Mr. *Reading* came in about ſeven, and having firſt asked Mr. *Bedloe*, If any body could over-hear them? He anſwered, No; and then fell upon the Diſcourſe concerning what Money and Eſtates the Lords in the *Tower* had promiſed to ſettle on *Bedloe*, for his Service in ſhortening and contracting his Evidence againſt them, and taking off the Charge of High-Treaſon (*according to* Bedloe's *Depoſition*); and that a Writing was drawn up in purſuance of what they had agreed on, for the Lords in the *Tower* to ſee and correct; after which it was to be delivered to the Secret Committee: And that the Deponent ſaw Mr. *Reading* deliver that Paper to *Bedloe* in the Painted-Chamber *Weſtminſter*; and *Bedloe*, immediately after *Reading* was gone, delivered the Paper to the Deponent, which he carried directly to the Lord Privy Seal's Room, where the Committee of Lords uſed to meet; and there he and Mr. *Wharton* read the ſaid Paper, being all written with Mr. *Reading*'s own Hand.

Wiggins's Evidence. *Henry Wiggins*, *Bedloe*'s Servant, alſo depoſed, That he lay concealed with Mr. *Speke* in his Maſter's Room, and heard the Diſcourſe already mentioned between his Maſter and *Reading*, concerning the contracting and leſſening the Evidence againſt the Popiſh Lords.

Reading's Defence. Mr. *Reading* ſaid in his Defence, That he attended the Lords in the *Tower*, and others charged with the Popiſh Plot, by the Leave and Approbation of ſeveral Lords of the Secret Committee, particularly the Prince, the Lord Treaſurer, and the Marquis of *Worceſter*: That the Lord *Stafford* deſired him to move for his *Habeas Corpus*, and gave him his Fee: That Sir *Henry Goring* and Sir *John Gage*, deſired the ſame, as did the Lord *Brudenel* and others, and he did accordingly move the Court of *King's-Bench* for their Writs of *Habeas Corpus*; whereupon he was ordered to attend the Attorney General, to know if he would conſent to their being bailed, which he would not, till he knew what they were accuſed of: He (*Reading*) went therefore to *Bedloe* and *Oates*, to know what they charged his Clients with, and if they might be bailed; which Mr. Attorney being ſatisfied of from their own Mouths, conſented to the bailing of ſeveral of them; and this occaſioned his diſcourſing ſeveral Times with *Oates* and *Bedloe*, concerning the Nature of the ſeveral Charges againſt the Gentlemen accuſed: That he had alſo Occaſion to attend *Bedloe* about his Pardon; to prove which he called Sir *Trevor Williams*, who depoſed, that having a great Opinion of Mr. *Reading*'s Skill in the Law, and deſiring that Mr. *Bedloe*'s Pardon ſhould be as perfect as might be, he recommended him to Mr. *Reading* for his Advice in it.

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Then the Priſoner went on and ſaid, What he had done in this Matter, had been in Friendſhip to Mr. *Bedloe*: That he had ſupplied him with ſeveral Guineas, and one or two when he ſaid he wanted Bread: That *Bedloe* acknowledged the Services he had done him; and aſſured him (the Priſoner) when he received the 500*l.* Reward for diſcovering *Godfrey*'s Murder, he would give him a third Part of it for the Services he had done him, repay whatever he (the Priſoner) had lent him, and give him the Fees that were due to him: That *Bedloe* ſaid, he was glad he was no longer confined in a ſeparate Appartment, and debarred from ſpeaking with *Oates* and *Dugdale*, for now they could lay their Stories together; and that he (*Bedloe*) had ſeveral Witneſſes who would ſwear whatever he bid them; and confeſſed he had not done well in ſome Things, particularly in charging Mr. *Griffith*.

The Lord Chief Juſtice *North* thereupon obſerved, that this was not a fair Way of managing his Defence; either he muſt call *Bedloe* to depoſe upon Oath what he told him, or produce other Witneſſes to prove it: This Kind of Defence indeed was artful enough; but he was not to be ſuffered to calumniate the King's Evidence, without Proof of what he charged them with: He ſhould anſwer to the Facts with which he was charged; all other Things were nothing to the Purpoſe.

Mr. *Reading* replied, Nothing could be more Material, if he underſtood his Defence; and deſired *Bedloe* might anſwer upon Oath, Whether he did not deſire him to ſpeak Truth? But bid him remember, the Land groaned for innocent Blood ſhed already; and if he went on to add Sin to Sin, and charge Men unjuſtly to take away their Lives, poſſibly he might ruin the Nation inſtead of preſerving it.

Bedloe then acknowledged, that *Reading* in publick gave him ſuch Advice, and charged him with the Wrong he had done *Griffith*; but that happened through the Miſtake of thoſe who took up the Uncle for the Nephew.

Then Mr. *Reading* demanded of *Bedloe*, If Mr. *Griffith* did not give him a Gold Watch? (*Intimating, that* Bedloe *accepted the Watch to retract his Evidence againſt* Griffith) *Bedloe* anſwered, He had the Watch, but acquainted the ſecret Committee with it preſently.

The Court demanded of *Bedloe*, Whether the ſeveral Sums he received of Mr. *Reading*, were lent him? To which he anſwered, I wonder Mr. *Reading* ſhould ſay I wanted Bread, when I had five Diſhes allowed me every Day (*by the Government*); declaring That

1679. 31 Car. II. that Mr. *Reading* told him, he had Orders from the Lords to let him have what Money he came for, and ſometimes Mr. *Reading* gave him Money when he did not ask it; but confeſſed, he agreed that Mr. *Reading* ſhould have an 100 *l. per Annum*, out of every 1000 *l.* a Year of his Reward.

Then Mr. *Reading* demanded of *Bedloe*, If he did directly or indirectly deſire him to leſſen a Syllable of his Evidence *that was true?* To which *Bedloe* anſwered, He was to have ſuch a Reward for bringing off the Lords as to what they were charged with; and that *Reading* ſaid, he had Orders to draw blank Deeds.

The Priſoner then objected, That the Witneſſes were not lawful Witneſſes; that *Speke*, by his own Confeſſion, was an Eves-dropper, which was a Crime in Law; and deſired that *Bedloe* might anſwer upon Oath, If he did not lay in Coals and Billets at two ſeveral Places to fire the City of *Weſtminſter*?

The Lord Chief Juſtice *North* interpoſed, and ſaid, The Witneſs was not obliged to accuſe himſelf; and beſides, his Pardon ſet him right againſt all Objections.

Reading replied, The Pardon might remit the Puniſhment, but ſtill theſe Facts would invalidate his Teſtimony; adding, that *Bedloe* firſt propoſed this Buſineſs to him, bidding him tell the Lords *Stafford*, *Powis*, and *Petre*, that if they did not ſecure him a good Reward, he would give ſuch Evidence, as ſhould deprive them of their Lives, and that he had other Witneſſes to back him; but if they would give him a ſuitable Reward, his Teſtimony ſhould do them no Hurt.

The Court demanded, If fifty-ſix Guineas were not paid by Mr. *Reading* to *Bedloe*, to induce him to leſſen his Evidence?

Bedloe anſwered, He had ſometimes two Guineas, ſometimes more, at ſeveral Times, which might amount to that Sum; but not ſo much at once.

Witneſſes for the Priſoner.

Then the Priſoner called Mr. *Palmer*, to prove *Bedloe* borrowed Money of him, who depoſed, That *Bedloe* having twenty Shillings in his Hand, Mr. *Reading* came in, to whom *Bedloe* ſaid, I have no more than this, and this I borrowed of my Mother; whereupon Mr. *Reading* gave him two Guineas; and *Bedloe* ſaid, God-a-mercy, thou art an honeſt Man, and my chief Fountain.

The Priſoner then demanded of Mr. *Palmer*, If he did not hear *Bedloe* confeſs he had laid in Fewel to burn the City of *Weſtminſter*?

Bedloe thereupon ſaid, He acknowledged it, and this was Part of the Treaſon the King pardoned: He acknowledged further, That he told Mr. *Reading* he would have ſuch an Eſtate of the Lord *Stafford*'s in *Glouceſterſhire* ſettled upon him; and that Mr. *Reading* told him, he had Orders to draw blank Deeds for the conveying of that Eſtate, to be ſigned within ten Days after his Lordſhip's Diſcharge.

Reading ſaid, he went to the Lord *Stafford* in the *Tower*, and asked him, if he knew one *Jordan*, that *Bedloe* ſaid would ſupport his Evidence? To which his Lordſhip anſwered, That *Jordan* was his Tenant, but he would not give *Bedloe* Six-pence; he valued himſelf upon his Innocence and the Infamy of his Accuſers; and he ſhould look upon it as his greateſt Guilt, if he gave *Bedloe* any Thing; and would not promiſe him any Thing directly or indirectly. The Lord *Powis* ſaid the ſame; but added, If *Bedloe* will forbear to charge me unjuſtly, as he has hitherto done, he ſhall find I will do by him like a Gentleman, when I am diſcharged. 1679. 31 Car. II.

The Court anſwered the Priſoner, This made againſt him. *Reading* replied, He could not help it; he thought he was bound to do what he had done, to ſave innocent Blood.

The Court demanded, If he could juſtify carrying the King's Evidence to the Priſoners, if there was no more in it? The Priſoner anſwered again, He thought there was no Crime in it; and he did it to prevent Perjury, and the ſhedding of innocent Blood.

Whereupon the Chief Juſtice *North* ſaid, Will you take upon you thus to impeach the Juſtice of the Nation? Are not you a Lawyer, and know that no Man may be of Counſel for a Priſoner in Treaſon or Felony, till he is aſſigned? You have ſpoiled your Cauſe, and confeſſed as much as amounts to the whole Charge.

The Priſoner then exhibited a Protection, that *Bedloe* had given one *Prickman*, a Broken Merchant, under Pretence of being one of his Witneſſes; and ſaid, when he found *Bedloe* uſed ſuch Tricks and indirect Means, he thought he ſhould do both the King and the Nation good Service, if he could prevent his ſpilling innocent Blood.

The Court replied, He ought not to take upon him to do this; he ought to have acquainted the King's Council or the Secret Committee with it, if he had ſuſpected *Bedloe*'s Honeſty; and this was but a plauſible Excuſe to cover his corrupt Dealing: And the Chief Juſtice, in ſumming up the Evidence, told the Jury, That the whole Charge had been proved by undoubted Teſtimony, and by the Priſoner's own Confeſſion: Whereupon, after a very ſhort Receſs, they brought him in *Guilty*. *He is convicted.*

The Chief Juſtice afterwards paſſing Sentence ſaid, The Priſoner's Offence was highly aggravated, becauſe he was a Counſel and knew the Law, and he thought therefore the Court ought to ſhew more than ordinary Severity againſt him, giving Judgment, *That he ſhould be fined a thouſand Pounds, and be committed priſoned for a Tear; and that he ſhould be ſet in the Pillory in* New Palace-Yard. However as his Offence was ſuch as had enraged the People to that Degree, that he might be in Danger of his Life, they had ordered the Sheriff and Juſtices to keep the Peace, ſo that no other ill Conſequences might happen to him, but only the Shame and Infamy he was condemned to, which he thought he deſerved as well as ever any Man did, that was convicted; and on the *Monday* following Mr. *Reading* was ſet in the Pillory, in Purſuance of his Sentence. *The Sentence.*

This ſeems to have been a very nice Caſe, and a Caſe that ſeldom happened, before ſuch extravagant Rewards were offered to raſcally *Remarks.*

Knights

1679. 31 Car. II.

Knights of the Poſt, to prove imaginary Plots, and ſwear innocent Gentlemen out of their Lives. Lord *Shaftesbury*, and the Republican Party, finding their Intereſt decline every Day, either trumped up this pretended Plot themſelves, or improved it, and encouraged the vile Forgers of it to charge every Man as a Conſpirator, that was eminent for oppoſing their Fanatick Schemes.

Their Artillery was not levelled againſt Popery; their ſeeming Zeal againſt that, and its Profeſſors, only ſerved to cover their Malice againſt the Adminiſtration, and all thoſe that were real Friends to the Conſtitution in Church and State. They had long charged the King, and his Friends, with a Deſign to introduce Popery and arbitrary Power; and when they found theſe Suggeſtions derided, and treated with the Contempt they deſerved, they changed their Batteries, and charged the Roman Catholicks, and many Proteſtants of Figure, with a Conſpiracy againſt the King's Life; with a Deſign to fire the City, and maſſacre all *good Proteſtants*; repreſenting the impending Danger in ſuch tragical Terms, and as ſo ſudden and unavoidable, that the Nation were alarmed and confounded; and no Man, for ſome Months, ſeemed to have the Exerciſe of his Reaſon.

Every Story, how improbable and inconſiſtent ſoever, and every Man, though never ſo inconſiderable and infamous, was attended to, and credited, if he offered to give any new Light into this pretended Plot: And, that they might never want perjured Villains to ſupport the Forgery, the Faction in a manner compelled the King to offer ſuch Rewards to the Diſcoverers, as were too great Temptations, to ſuch ſort of People, to ſwear whatever their crafty Leaders ſuggeſted to them: Nay, the People were taught to look upon the Title of a King's Evidence, as more honourable than that of a Nobleman or firſt Miniſter: Theſe Witneſſes were lodged in the King's Palace; had Tables allowed them there; were *Hoſanna'd* whenever they went abroad, and ſtiled our DELIVERERS, and THE SAVIOURS OF THE NATION: And as it was neceſſary to make ſome Sacrifices, to ſpill ſome Noble Blood, to confirm the People in the Belief of the Conſpiracy, five Popiſh Lords were charged with the Treaſon, and committed to the *Tower*: Nor did the Queen her ſelf eſcape their Malice. They proceeded ſtill farther, and accuſed the firſt Miniſter, and ſeveral Men of Quality, and Members of the Commons, as Accomplices in this Plot, that were zealous Proteſtants, and eminent for their Loyalty and Attachment to the Church of *England*: And indeed it was purely for the Sake of theſe, becauſe ſuch Men were ſuffered to be at the Helm, that the Nation was thrown into this Confuſion by the Whigs: The Deſign was, to perſuade the People that theſe Gentlemen were Popiſhly affected, and they themſelves were the only Friends to the Conſtitution; nay, that all the Friends of Monarchy and Epiſcopacy, as well as the Papiſts, were in a Plot to deſtroy the Proteſtant Religion, and the antient Government.

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In theſe circumſtances, it was no wonder, that the Popiſh Lords, who found they were to be firſt ſacrificed, caſt about to countermine the Stratagems of their Enemies, and even offered the Witneſſes ſuch a Share of their Eſtates as might be equivalent to the Rewards offered to deſtroy them, that the Witneſſes might not be under ſuch ſtrong Temptations to diſguiſe the Truth, and take away their Lives.

This, ſurely, was allowable in the Lords, who knew themſelves innocent, whatever Interpretation the Lawyers might put upon it; nor could it be highly criminal in their Agent, Counſellor *Reading*, if he believed them innocent; eſpecially if he deſired the Witneſs *Bedloe only to ſpeak the Truth*, as he ſeems to acknowledge. I make no queſtion but there was a Bargain going forward between the Lords and *Bedloe*, for ſoftening his Evidence; and there is Reaſon to believe, from ſome Circumſtances in the Trial, that *he firſt offered them his Service by* Mr. *Reading*, with whom he was very intimate, and to whom he had been much obliged: That *Bedloe* was a Villain, is very certain by his own Teſtimony; ſometimes contracting, and at others enlarging his Evidence, to ſerve a Turn; Nay, we find, he made ſuch uſe of his Privilege of being a King's Witneſs, that he took upon him to give Protections to broken Tradeſmen, under Pretence they would ſupport his Evidence, and make further Diſcoveries of the Plot. He had propoſed to himſelf ſome thouſand Pounds a Year in Lands, for doing Juſtice to the Lords; for he ſays, in the Trial, that Mr. *Reading* was to have an hundred Pounds *per Annum* out of every thouſand a Year he was to have for his Reward. How he came not to accept the Offers of the Lords, I cannot certainly determine: Whether he thought he ſhould get more by Lord *Shaftesbury*, and his Whig Friends, when he ſaw himſelf ſo careſſed, and arrived at that Height of Power and Influence, as to diſtreſs the King and Government by his Perjuries; or whether he was afraid Mr. *Reading* would one Day lay open his Villanies, and he ſhould loſe the promiſed Reward, is not eaſy to ſay: But all the World are ſatisfied, he was governed by corrupt Motives, both in the contracting and enlarging his Evidence.

The Court indeed told Mr *Reading*, that, if he had ſuſpected *Bedloe*'s Veracity, he ought to have communicated his Suſpicions to the Privy Council, or the Secret Committee: But this was not the Way to have ſerved his Clients; neither the Privy Council, nor the King himſelf, durſt, at that time, protect the moſt innocent Roman Catholick againſt the Rage of the Faction, who had ſo infatuated a Majority of the Commons, that they ran precipitately into all their wild Schemes. Whoever endeavoured to ſtem the Torrent, was expoſed to inevitable Ruin; and it was next to a Miracle, that the Conſtitution it ſelf was preſerved: So ſtrongly did the Fanatick and Republican Spirit operate upon the Senators of thoſe Days.

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The Trial of THOMAS WHITE, *alias* WHITEBREAD, Provincial of the *Engliſh* Jeſuits; WILLIAM HARCOURT, Rector of *London*; JOHN FENWICKE, Procurator for the *Engliſh* Jeſuits; JOHN GAVAN, *alias* GAWEN, and ANTHONY TURNER, Popiſh Prieſts and Jeſuits, for *High-Treaſon*, at the *Old-Baily*, the 13th of *June*, 1679. 31 *Car.* II.

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The Indictment. THE Indictment ſet forth, That *Thomas White* and the reſt of the Priſoners, with other falſe Traitors, did on the 24th of *April*, in the 30th Year of the King, adviſedly, maliciouſly, and traiterouſly compaſs, imagine, and intend to ſtir up Sedition and Rebellion, and to procure a miſerable Slaughter of the King's Subjects; to depoſe and murder his Majeſty; to levy War, and to ſubvert the eſtabliſhed Religion and Government; and that, in order to accompliſh their ſaid traiterous Imaginations and Purpoſes, they the ſaid *Thomas White*, *&c.* did on the 24th of *April*, in the ſaid 30th Year of the King, at the Pariſh of *St. Giles's in the Fields*, in the County of *Middleſex*, traiterouſly aſſemble, conſult, and agree, to murder his Majeſty, and ſubvert the eſtabliſhed Religion and Government: And further agreed to ſay a certain Number of Maſſes for the Soul of *Pickering*, and to give *Grove* a Sum of Money, as a Reward for murdering the King. That they took the Sacrament to conceal the ſaid Treaſons, and did at the ſame Time and Place, perſuade and excite four other Perſons to murder his Majeſty, againſt the Duty of their Allegiance, *&c.*

White *and* Fenwicke *object, they had been tried already for the ſame Offence.* The Priſoners being arraigned, *Whitebread* and *Fenwicke* objected, that they had already been tried for the ſame Facts, a Jury charged with them, and the Evidence found inſufficient, and then the Jury was diſmiſſed without giving a Verdict; and they apprehended they could not be put in Jeopardy of their Lives a ſecond Time for the ſame Cauſe; they ought, at the former Trial, either to have been condemned or acquitted.

Their Objection over-ruled. The Court anſwered, it was in their Diſcretion to diſcharge the Jury without taking a Verdict, where Witneſſes were wanting, or there was any Accident of the like Nature: Both the Chief Juſtices and moſt of the twelve Judges, who were upon the Bench, declared that this was their Opinion.

Then the Priſoners ſeverally pleaded *Not Guilty*, and the Jurors being called, they made no Challenges, but to thoſe who had been Jurors in former Trials for the ſame Facts they ſtood charged with.

Sir *Creſwel Levinz* opening the Evidence for the King, obſerved, that the Priſoners were all Popiſh Prieſts, and, as ſuch, were guilty of High-Treaſon by the 27th *Eliz.* and ought to die for that; but they were now charged with a Treaſon of a blacker Nature, and ſo would not have the Satisfaction of ſaying *they died for their Religion*: And notwithſtanding the ſaid Statute had been made an hundred Years, there were very few Examples of Prieſts who had ſuffered purely for their Religion, though many had ſuffered for ſuch Crimes as the Priſoners were charged with. On the contrary, in Popiſh Countries they had murdered the Proteſtants by thouſands, without Law or Juſtice; particularly at *Mirandola*, at *Paris*, in *Ireland*, and in *Piedmont*.

Oates's Evidence. Then *Titus Oates* was produced as an Evidence of the Plot, and depoſed, that the Priſoner *Whitebread* appointed a Conſult to be held at *London*, in the Month of *April*, 1678. and a Conſult was held accordingly, where the Priſoners *Whitebread*, *Fenwicke*, *Harcourt*, and *Turner* were preſent, and ſigned a Reſolution, that *Pickering* and *Grove* ſhould proceed in attempting to kill the King: That *Whitebread* ſigned this Reſolution at *Wild-Houſe*, *Fenwicke* at his Lodgings in *Drury-Lane*, and *Harcourt* at his Chamber in *Duke-ſtreet*; that the Deponent *Oates*, and nine or ten more Jeſuits, came from *St. Omers* to *London* to be at this Conſult; and when it was over they return'd again; particularly *Whitebread* arrived at *St. Omers* the Beginning of *June*, in order to viſit the *Engliſh* Colleges in *Flanders*, and ſtayed at *St. Omers* till the tenth of *June*, and in ſome of his Diſcourſes with thoſe Fathers, ſaid, *He hoped to ſee the black Fool's Head at* White-hall *laid faſt enough*; *and that if his Brother ſhould appear to follow his Foot-ſteps, his Paſſport ſhould be made too, and he alſo ſhould be diſpatched:* That the Deponent, on the 13th of *June*, *O. S.* receiving Orders to come to *England* again, took Paſſage in the Packet-boat the 14th, and arrived at *London* the 17th of *June*, and in *July* following came over *Richard Aſhby*, with Inſtructions from the Priſoner *Whitebread*, to offer Sir *George Wakeman* (the Queen's Phyſician) ten thouſand Pounds to poiſon the King: That *Aſhby*, two or three Days after his Arrival, *viz.* the latter End of *July*, or the Beginning of *Auguſt*, went to the *Bath*, and the Priſoners *Fenwicke* and *Harcourt* adviſed him to give an Account of Matters to the People in *Somerſetſhire*; and *Fenwicke* ſaid, he did not queſtion before he came to Town again, to have the Gentleman at *White-hall* (whom they called *the black Baſtard*) diſpatched.

A printed Narrative no Evidence. *Partiality of the Court.*

That the Priſoner *Gavan*, in the Month of *June*, 1678. wrote Letters to the Fathers at *London*, giving an Account of their Affairs in *Staffordſhire* and *Shropſhire*, and of the Diligence of one Father *Ewers* in thoſe Parts: And in *July* or *Auguſt*, *Gavan* came to Town, and the Deponent met him at *Ireland*'s Chamber, where he heard him give the ſame Account of the Affairs of *Staffordſhire* and *Shropſhire* as he had done

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done in his Letters before. That the 12th of *Auguſt* (he was poſitive it was between the 8th and 12th) Mr. *Ireland* took his leave of them, as though he was going to *St. Omers*, and *Fenwicke* the Priſoner was to be Treaſurer and Procurator in his Abſence; that about the 21ſt of *Auguſt* *Fenwicke* and *Harcourt*, and ſome other Fathers, met together at *Wild-Houſe*, and there lay before them fourſcore Pounds, moſt of it in Guineas, which was to be paid to the four *Iriſh* Ruffians who were to murder the King at *Windſor*, and *Coleman* (that was executed) came in, and gave the Meſſenger a Guinea to haſten his Journey; and the Company adjourning from thence to *Harcourt*'s Chamber, the Money was paid to the Meſſenger there: That the Day before, or the Day after this, there was a Conſultation of the *Benedictine* Monks, where *Fenwicke* and *Harcourt* were preſent, and related, they had received an Account from Archbiſhop *Talbot* in *Ireland* of the Papiſts conſpiring the Death of the Duke of *Ormonde*, and deſiring that Commiſſions and Money might be ſent over thither for carrying on the Deſign; and that *Fenwicke* actually ſent Commiſſions to *Cheſter* by a ſpecial Meſſenger, and ſome by the Poſt; and *Fenwicke* gave the Deponent Money for his Expences, and admoniſhed him to procure Maſſes to be ſaid for carrying on the Deſign: That on the 3d of *December*, the Deponent, hearing *Whitebread* was come to Town, went to his Chamber, but could not ſee him; and going again the next Morning, *Whitebread* reviled him and ſtruck him, imagining the Deponent had made a Diſcovery; for the Gentleman, the Deponent had communicated the Thing to, and who went to the King about it, being dreſſed like the Deponent, they were informed it was him; but the Deponent juſtifying himſelf to *Whitebread*, he ſaid he would be Friends with him, if he could learn who had done it; and he further depoſed, that on Sir *George Wakeman*'s refuſing to accept 10,000*l.* for poiſoning the King, *Whitebread* ordered 5000*l.* more to be offered him, which he accepted.

Then *Whitebread* demanded of *Oates*, how long he was acquainted with him before the Conſult in *April*; and *Oates* anſwered he never ſaw *Whitebread*'s Face till then.

It being demanded of *Oates*, how long he ſtaid in *London*, he ſaid, from the Time he came over to *England*, to the Time he went back again, was under twenty Days; and that Father *Williams* Rector of *Wotton*, the Rector of *Liege*, Sir *John Warner*, Sir *Thomas Preſton*, and others, came over with him.

The Priſoners demanding if Sir *Robert Brett* and Mr. *Nevil* came with him, he ſaid, he believed they might; and being told he had aſſerted it poſitively in his Narrative, the Lord Chief Juſtice ſaid, a Man might venture to write more than he would ſwear; to which *Fenwicke* replied, his Narrative was upon Oath; whereupon the Chief Juſtice obſerved, that a Pamphlet was no Evidence; they muſt bring the Perſon that heard him ſwear it, to prove it.

Aſſigned Narrative no Evidence.

Then the Priſoners deſired *Oates* might aſcertain the very Week when he ſaw them in *London*, and the Places where, *&c.* that they might have an Opportunity to ſhew they were in other Places; to which the Chief Juſtice anſwered,

Partiality of the Court.

he perceived their Defence would be little elſe but Captiouſneſs, to diſprove the Witneſſes in Circumſtances of Time, Place, Perſons, and Numbers, which were but little Matters to the Subſtance; and *Dugdale*, another Witneſs, was ſworn. (Dugdale *was Steward to Lord* Stafford, *and run away with* 300*l. of his Lord's Money.*)

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This Witneſs depoſed, that the Priſoner *Whitebread* wrote a Letter to Mr. *Ewers* the Jeſuit, (the Deponent's Confeſſor) which he ſaw at *Tixhall*, the Lord *Aſton*'s Seat in *Staffordſhire*; for all the Letters that came to Mr. *Ewers*, were directed to the Deponent, and encloſed in Mr. *Groves*'s Letters; and this Letter he broke open and read, wherein *Whitebread* adviſed *Ewers* to chuſe them that were truſty ſtout Fellows, and ſuch as were hardy and deſperate, (*to kill the King*) and that *Gavan* and ſeveral others had engaged the Deponent in the Conſpiracy againſt the King's Life; that there were ſeveral Conſultations about it at Mr. *Ewers*'s Chamber, at Mr. *Gavan*'s, and at the Deponent's Chamber at *Tixhall*; and one particularly in *September* then laſt paſt, where *Gavan*, Lord *Stafford*, and ſeveral others, were preſent; and the Deponent was to be ſent to *London*, to aſſiſt in executing the Deſign, and to be under the Tuition of *Parſons*: Then *Gavan* bid the Witneſs look him in the Face, if he could; but the Court told *Gavan*, he muſt not threaten the King's Witneſſes.

Dugdale's Evidence.

Gavan averred, he never was in *Dugdale*'s Chamber, and demanded of *Dugdale*, in what Room of the Lord *Aſton*'s Houſe this Diſcourſe was, and who were preſent.

Dugdale anſwered, it was in the little Parlour, and in Mr. *Ewers*'s Chamber; and that Mr. *Ewers*, Mr. *Lawſon*, Mr. *Petre*, and others, were there: That *Gavan* well knew the Deponent's Zeal, for he had given them 400*l.* to pray for his Soul, and carrying on this Deſign; and afterwards, when they ſaid they were afraid they ſhould want Money for carrying it on, he promiſed them an 100*l.* more, and *Gavan* aſſured him he ſhould be canonized for a Saint.

That *Gavan* ſaid farther, that there was a Letter come from *Paris* into the Country through Mr. *Harcourt*'s Hands, importing, that it was their Opinion at *Paris* and *St. Omer*'s, that they ſhould fling the King's Death on the Presbyterians, and then they might bring the Epiſcopal Men into their Party, to revenge themſelves upon them: That there was to have been a Maſſacre alſo; and if any eſcaped it, who were not Papiſts, there was to be an Army to cut them off: And *Gavan* endeavoured to prove by Scripture, that it was lawful and good to deſtroy the King, or any one, for the Sake of Religion; and obſerved, that the Reliques of Father *Garnet* (executed for the Powder Plot) had wrought great Miracles beyond Sea.

The King's Counſel demanding of *Dugdale*, how many Letters of *Harcourt*'s he had intercepted, he anſwered, he believed an hundred; and particularly one, which gave an Account of the Death of Sir *E. Godfrey* the *Monday* before he was found, and muſt be written on the *Saturday* he was killed, for the Words were, *This very Night Sir* Edmund-bury Godfrey *is diſpatched*; and that the next Day, being *Tueſday*, he went to an Alehouſe near his Lord's Houſe, and asked, if they did not hear of a Knight that

was

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was killed at *London*: Then Mr. *Chetwind* was ſworn, and depoſed, that he was in *Staffordſhire* laſt *October*, and on a *Tueſday* that Month, one Mr. *Sanbridge*, a Kinſman of the Lord *Aſton*'s, told him he had been at *Eld*'s, and that a Girl of the Houſe acquainted him Mr. *Dugdale* had been there, and reported there was a Juſtice of Peace of *Weſtminſter* killed, and on the *Saturday* following his Letters brought down the News of it; and being at *Litchfield* the ſame *Saturday*, News came thither that Sir *E. Godfrey* was found murdered.

Whitebread the Priſoner then demanded of *Dugdale*, whether thoſe very Words *killing the King* were in the Letter he wrote; to which *Dugdale* anſwered, that to the beſt of his Remembrance, thoſe were the very Words that the Letter came by the ordinary Poſt, directed to him (the Deponent.)

The Chief Juſtice demanding of *Dugdale*, if he knew any thing againſt the Priſoner *Turner*, *Dugdale* anſwered, he agreed to all in his hearing at Mr. *Ewers*'s Chamber in *Tixhall*, and at other Places, about two Years ago; to which *Turner* replied, he had not been in *Staffordſhire* theſe four Years.

Prance's *Evidence.*

Then *Prance* (Silverſmith to the Popiſh Chappels) was ſworn, and depoſed, that about a Year before he made *Harcourt* the Priſoner an Image of our Lady, and when he paid him the Money for it, he told him there was a Deſign of killing the King.

That the Deponent was with Mr. *Fenwicke* the Priſoner, *Ireland*, and *Grove*, at *Ireland*'s Lodgings about a Fortnight before the laſt *Michaelmas*, and they were talking of 50,000 Men to be raiſed to carry on the Catholick Cauſe, and ſettle the Catholick Religion; and *Fenwicke* ſaid they were to be commanded by the Lords *Arundel*, *Bellaſis*, *Petre*, and *Powis*: And the Deponent demanding, what poor Tradeſmen muſt do, if there were Civil Wars, *Fenwicke* ſaid, he need not fear, for he ſhould have Church-work enough in making Images, Chalices, Crucifixes, Vaſes, *&c.* And that *Harcourt* the Priſoner had in like manner diſcourſed with the Deponent about the Plot, and particularly when he paid him 44 *l.* for four Candleſticks.

Bedloe's *Evidence. confeſſes he ſuppreſſed Part of it.*

Then *Bedloe* was ſworn, and depoſed, that he did not teſtify Half what he knew at the former Trial of *Whitebread*, *Fenwicke*, *Ireland*, *&c.* becauſe he had promiſed Mr. *Reading* to bring off *Whitebread* and *Fenwicke*, that he might put a Confidence in him concerning his Evidence againſt the Lords in the *Tower*—— But now he depoſed, that he ſaw *Fenwicke* at the Conſult, and heard *Whitebread* tell *Coleman*, at *Harcourt*'s Chamber, the Manner of ſending the four Ruffians to *Windſor* to kill the King, about the Month of *September*; and that he ſaw *Harcourt* take eighty or an hundred Pounds out of his Cabinet for them, and pay the Meſſenger, giving him alſo a Guinea that Mr. *Coleman* left to drink his Health; that it was agreed alſo at *Harcourt*'s Chamber, that *Grove* ſhould have 1500 *l.* and *Pickering* as many Maſſes ſaid for his Soul as amounted to that Sum, at Twelve-pence each Maſs; that *Pickering* had been checked and diſciplined by his Superiors for having miſſed ſo many Opportunities of killing the King: Once the Flint of his Piſtol was looſe, at another Time there was no Powder in the Pan, or he had loaded only with Bullets. That when *Whitebread* was at Mr. *Harcourt*'s Lodgings, it was alſo agreed by them, that ſince Sir *George Wakeman* would not accept 10,000 *l.* he ſhould have 15000 *l.* but *Ireland* ſaid, the moſt certain Way of diſpatching the King was, in his Morning Walks at *New-Market*: That *Fenwick* and *Conyers* accordingly went thither, and he heard there were ſeven or eight of them. That Mr. *Harcourt* was no Stranger to the Deponent's bringing over Packets and Portmanteaus from beyond Sea: He had brought Letters from *Watton*, *St. Omers*, *Bruges*, *Paris*, *Villadolid*, and *Salamanca*, and carried Anſwers containing an Account of the Plot; and moſt of theſe were lodged in *Harcourt*'s Hands, and he had been ſent from *Harcourt* to *Langhorn* with Papers relating to this Affair, to regiſter them. 1679. 31 Car. II.

That he ſaw *Harcourt* give Sir *George Wakeman* a Bill of Exchange for 2000 *l.* and tell him it was in Part of a greater Sum; and Sir *George* anſwered, that 15000 *l.* was but a ſmall Reward for ſettling Religion, and preſerving three Kingdoms from Ruin; and if it were not for a certain Woman (the Queen) he would not undertake it; but for her he would do any thing. And that Sir *George Wakeman* read the Bill, put it up, and went and received the Money.

Then the King's Counſel produced a Letter that was found among *Harcourt*'s Papers from one *Petre*, at *St. Omer*'s, a Jeſuit, giving an Account that *Whitebread* had appointed a Conſult in *April*, concerning ſome conſiderable Matters that required Secrecy; the Tenor whereof was, that the Provincial (*Whitebread*) had appointed all thoſe who had Suffrages at the intended Congregation, to be in *London* the 21ſt of *April*, *O. S.* in order to its Beginning the 24th; and if his Occaſions would not permit him to be preſent, he ſhould ſignify ſo much, that his Abſence might be ſupplied; but that none ſhould go to *London* much before the Time, or appear in Town till the Conſult was over, leſt Occaſion ſhould be given to ſuſpect the Deſign: *Finally, Secrecy, as to the Time and Place, is much recommended to all thoſe that receive the Summons, as it appeared of its own Nature neceſſary.* *A Letter, appointing a Congregation of Jeſuits, the 24th of April.*

The Chief Juſtice hereupon deſired *Harcourt* the Priſoner, to expound this Letter concerning this Meeting and Privacy. *Fenwicke's Defence.*

To which *Harcourt* anſwered, the Letter was not written to him, but to one who had a Right to Vote in their Congregation, which was held once in three Years; the chief Buſineſs whereof was, the ſending a Procurator to *Rome*; and Secrecy was very fit to be recommended, as they lived in a Country where they were an Eye-ſore, and might give Offence by their meeting in ſuch Numbers.

The Chief Juſtice replied, this was a forced Conſtruction: Could it be ſuppoſed this Secrecy was only required on Account of their chuſing an Officer? The Priſoners urged again, that their Lives depended upon it; and *Whitebread* entring on his Defence ſaid, He thanked God he was not afraid to die, but would not die unjuſtly: Life was a Thing not to be thrown away; but without Contradiction, Mens Lives might be taken away by Perjury, as well as by a Knife or a Piſtol; and no Man's Evidence ought *Whitebread's Defence.* *Partiality of the Court.*

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1679. 31 Car. II. to be admitted, that was not a lawful Witneſs, which Mr. *Oates* was not; and he hoped he might, without Offence, ſay that he was perjured; for he depoſed that he came over, and was preſent at the Conſult the 24th of *April*, and that he (*Whitebread*) ordered him to do ſeveral things, and diſcovered the whole Plot to him; but it was highly improbable he ſhould truſt a Man in ſuch a Buſineſs, whom, by his own Confeſſion, he never ſaw till the Time of the Conſult; he ought rather to have been ſent to *Bethlem* than *Newgate*, had he been ſo imprudent: Beſides, *Oates* was a Man that had nothing to ſubſiſt on, but what he had from them.

The Chief Juſtice anſwered, it was no Wonder they ſhould take a Man into their Confidence, whom they had maintained abroad for a conſiderable Time.

Whitebread replied, his Predeceſſor had maintained him; but when he came to be Superior, he found him not fit for the Purpoſes he pretended to: For firſt, it was doubtful if he was a good Catholick; ſecondly, he led a very idle Life, and was very deſirous of being entertained by them; whereupon they deſired *Oates* to retire ſomewhere elſe, and to induce him to do ſo, gave him a good Suit of Clothes, a Peruke, and four Pounds in his Pocket, which *Oates* promiſed to repay them again when he had ſold his Library he boaſted of in *London*; but he never did: And urged that there was a wide Difference between doing a charitable Act to a Man in Want, and a Scholar, and truſting him in ſuch an Affair as that. And to ſhew that *Oates* could not be at the Conſult the 24th of *April*, he ſaid, they ſhould prove that he was not out of *St. Omers*, from the 10th of *December* to the 23d of *June*, above one Night. He deſired the Court alſo to conſider, how improbable it was he ſhould write ſo plainly, of *a Deſign to kill the King*, and ſend the Letter by the common Poſt to *Dugdale*, a Perſon he never ſaw but once.

Fenwicke's Defence. *Fenwicke* in his Defence, deſired the Court to obſerve the Tenor of the Evidence againſt him; eſpecially that of *Oates*, who ſwore he ſaw ſuch and ſuch Letters. Was it poſſible he ſhould ſhew ſuch Letters to a Man that had been turned away from *St. Omers* for his Misbehaviour? Beſides, he had a thouſand Letters taken upon him, in which there was not any thing to be found tending to a treaſonable Deſign: That there were taken upon him alſo five or ſix thouſand Pounds in Bills and Bonds, as well as Letters; and it was ſtrange this Deſign ſhould not appear in any of them.

The Chief Juſtice anſwered, it was much more ſtrange, that One ſuch Letter ſhould be taken: He believed *Harcourt* would not have ſuffered the Letter that was read to have been ſurprized, if he had thought it would have been of ſuch Conſequence, and the Senſe have appeared ſo criminal.

Partiality of the Court. Then the Priſoners called their Witneſſes, who were Students of the *Engliſh* College at *St. Omers*, being ſixteen in Number; but before they were ſuffered to Speak, the Court obſerved they were all Roman Catholicks, and might have a Diſpenſation for what they ſaid.

1679. 31 Car. II. *The Evidence of the St. Omers Students for the Priſoners.* Theſe Gentlemen of *St. Omers* depoſed, that *Oates* was in the College of *St. Omers* (except one Night) from *Chriſtmas* to *June* 1678, and conſequently could not be at the Conſult held at *London* the 24th of *April*, as he pretended.

Some of them particularly depoſed, that they dined with *Oates* at *St. Omers*, that very Day he ſaid he came over, *viz.* the 25th of *April*, *N. S.* That *Oates* went into the Infirmary the ſame Day, and fell out with a Gentleman there.

Others depoſed, that they could not but take Notice when *Oates* was abſent, becauſe all the Students dined in one Room, and *Oates* had a diſtinct Table by himſelf, between the Lads and the Religious; for though he went to School with the Boys, yet being a Man, he was allowed the Privilege of ſitting by himſelf at Dinner.

Others depoſed, that *Oates* was put to read in the Sodality the 25th of *March*, 1678. and that he read there every *Sunday* Morning at Six a Clock, from that Time till *June* following, when he went away.

John Hall, the Butler of the College, depoſed, that he ſaw Mr. *Oates* at *St. Omers*, all the Months of *April* and *May*, and till the 23d of *June*, when he went away; that the Deponent ſerved *Oates* with Bread and Beer during that Time, except when he was in the Infirmary, which he thought was four or five Days, and that he had this Reaſon to remember him; that he laid his Table at a particular Place near the Door, where he always ſat.

Other Witneſſes depoſed, that ſeveral of the Perſons, *Oates* had ſworn came over with him, were then in *Flanders*.

Oates's Reply to this Evidence. To this *Oates* replied, that the Witneſſes were Papiſts and Jeſuits, and would ſwear any thing for their Cauſe; and the Lord Chief Juſtice obſerved, that though Papiſts were competent Witneſſes in Law, yet they were of ſuch Principles, that the Jury ought to give them but little Credit; (*At which the People gave a great Shout*;) Whereupon the Chief Juſtice ſaid to the Priſoners, they muſt pardon the People's ſhouting; for they had ſo turned their Hearts, that a Papiſt would hardly be able to live in *England*. (*Then the People ſhouted again.*) *Gavan* the Priſoner anſwered, *If there be but a Place in Heaven for us, I am contented*; and brought Witneſſes, to prove that he was in *Staffordſhire* at the time *Oates* ſwore he was in *London*, *viz.* in *July* 1678.

Partiality of the Court. *Whitebread*, the Priſoner, deſired he might prove that *Oates* was miſtaken in the Evidence he gave at *Ireland*'s Trial: The Chief Juſtice anſwered, that would be to try *Ireland*'s Cauſe over again. *Whitebread* replied, if *Oates* was convicted of Perjury in one Caſe, he was not to be believed in another: But the Chief Juſtice told them, they were not to take Notice of what was done at a former Trial, unleſs they could produce a Record of *Oates*'s Conviction. And it was demanded of every one of the Priſoner's Witneſſes, before they gave their Evidence, if they were Papiſts? Whereupon *Harcourt* the Priſoner obſerved, if their Witneſſes could not be looked upon as good Witneſſes, becauſe they were Papiſts, they muſt renounce all Intercourſe with other Countries.

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The Court anſwered, their hearing them ſhewed they looked upon them as good Witneſſes; but a Witneſs was of more or leſs Credit according to the Circumſtances; and therefore they thought it was a proper Queſtion to ask their Witneſſes, if they were Papiſts?

To which *Harcourt* replied, every one of the Witneſſes on the other ſide were known to be bad, flagitious Perſons, Men of deſperate Fortunes, that got their Livelihood by Swearing; and produced Witneſſes to prove that *Ireland* was in *Staffordſhire* the Beginning of *September*, when *Oates* ſwore he was at Mr. *Harcourt*'s Chamber in *London*, and borrowed twenty Shillings of Mr. *Ireland*.

But the Court told the Priſoners, they muſt not charge *Oates* with what he had ſaid at a former Trial: However the Lord Chief Juſtice afterwards obſerved himſelf, that *Oates* had ſworn that *Ireland* was in *London* in *Auguſt*, and the Beginning of *September*, and ſaid that the Priſoners ought to have Right done them, and were at Liberty to diſprove it; whereupon Sir *John Southcott*, the Lady *Southcott*, Mr. *Edward Southcott*, and other credible Witneſſes, were called by the Priſoners, and depoſed, that *Ireland* was in the Country in *Auguſt*, and the Beginning of *September*, when *Oates* had ſworn he was in *London*; and Captain *Hill* depoſed, that *Bedloe*, another of the King's Witneſſes, was a Priſoner in the *Marſhalſea*, and lived upon the common Basket; to which the Lord Chief Juſtice anſwered, *Bedloe* might be an honeſt Man for all that.

Whitebread the Priſoner objected, that *Bedloe* at his laſt Trial depoſed, that he had nothing to ſay againſt him; and now charged him with great Matters: So that it was evident he had falſified his Oath; for if he was then ſworn to depoſe the Truth, the whole Truth, and nothing but the Truth; and he did not ſwear the whole Truth then, he was perjured; and if he did ſwear the whole Truth then, he could have nothing to charge him with now.

To which Chief Juſtice *North* anſwered, that *Bedloe* was then in Treaty with *Reading*, and to beget a Confidence in him, that he would ſerve the Popiſh Lords and bring them off, he was eaſy, as to the Priſoner *Whitebread*, and leſſened his Evidence at that Time: However, he told the Jury, they ought to conſider the Objection that was made to *Bedloe*'s Teſtimony.

Then the King's Counſel called ſome Witneſſes to ſupport *Oates*'s Evidence, and prove that *Ireland* was in *London* in *Auguſt* and the Beginning of *September*; and that *Oates* was in *London* the 24th of *April* 1678. at the Conſult, as he had ſworn.

Other Evidence to ſupport Oates's.

The firſt depoſed, that ſhe ſaw *Ireland* ſtanding at his own Door, as ſhe paſſed by, in *Auguſt* 1678. Another ſwore, that he ſaw *Oates* in the Street, in a Diſguiſe, the latter-end of *March*, or the Beginning of *April*; and a Third ſwore, ſhe ſaw *Oates*, in a Diſguiſe, at Sir *Richard Barker*'s, in *May*; and a Servant ſwore, he ſaw *Oates* at his Maſter's, Sir *Richard Barker*'s, the Beginning of *May*, and ſpoke to him.

Sir *Richard Barker* depoſed, that he ſaw *Oates* in *June*, or *July*, 1678, in *London*; and his Servants told him they had ſeen *Oates* the *May* before, in two ſeveral Diſguiſes: Another Witneſs depoſed, that he dined with *Oates* at *Iſlington*, the Beginning of *May* 1678, and that he had a Summer Suit on, and a Green Knot upon his Shoulder.

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Whitebread the Priſoner hereupon obſerved, that *Oates*, at his firſt Trial, could not name any one Perſon that had ſeen him in *England*, and pretended to be but ſix Days in *London*; and now brought Witneſſes to prove he was in *London* moſt part of the Summer; ſo that either he or his Witneſſes muſt be perjured.

The Chief Juſtice anſwered, they made their Defence to depend upon an Uncertainty of Time, which no Man could ever remember; but bid them ſay what they could for themſelves: Whereupon *Gavan* the Priſoner continued his Defence, and ſaid, he was charged by one Witneſs with a Fact committed in *London*; and by another Witneſs with another Fact committed in *Staffordſhire*, a different County; and deſired the Opinion of the Court, whether theſe were two Witneſſes, ſuch as the Law required? To which it was anſwered, that this had been ſettled in Sir *Henry Vane*'s Caſe, who was indicted for levying War; and one Witneſs proved the levying War in one County, and the other his levying War in another County; and though they were but ſingle Witneſſes of ſingle Facts, yet, both coming up to the Charge in the Indictment, they were adjudged ſufficient to maintain it: So here, one Witneſs proving a Conſpiracy to kill the King in this County, and another proving a Conſult with other Perſons againſt the King's Life in *Staffordſhire*, theſe were two Witneſſes to the ſame Treaſon, and ſufficient in Law. *Gavan* afterwards made ſolemn Proteſtations of his Innocence, and obſerved that he was not of Age to be at the Conſult in *April*; appealing to the Jury, if the two Witneſſes produced againſt him could be deemed credible Witneſſes; for no Man, he apprehended, could be a good Witneſs, that was not an honeſt Man: That *Oates*'s Evidence probably proceeded from Malice, having been turned out of the College of *St. Omers* and diſguſted; beſides, his Evidence had been proved falſe in ſeveral Inſtances, by ſixteen Witneſſes; and though he was not convicted of theſe Perjuries before, yet they made him appear to be no credible Witneſs: That the Teſtimony of thoſe, who only ſaid they ſaw *Oates* paſſing by, was not to be brought into Competition with that of thoſe Sixteen, who converſed with him daily. Beſides, *Oates* contradicted his own Witneſſes, by ſaying he was in *London* only ſix Days, when they depoſed he had been in *London* much longer. *Gavan* acknowledged he knew *Dugdale* at the Lord *Aſton*'s in *Staffordſhire*, and had converſed with him in *Ewer*'s Chamber; but never, he proteſted, upon any Treaſonable Matter; nor was *Dugdale* a credible Witneſs, who had run away with 300*l.* of his Lord's Money. The Court told him, he muſt not tell a Story out of this or that Lord's Mouth, to aſperſe the Witneſs, unleſs he had Evidence to prove what he charged him with.

Whitebread then repeated his former Objection, how improbable it was that he ſhould put theſe Words in a Letter, *That he ſhould provide ſtout Men to kill the King*, and ſend it by the common

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mon Poſt; or that he ſhould beat one to whom he had committed ſuch Secrets as *Oates* depoſed; and obſerved further, that it was ſtrange there ſhould be a Plot, wherein ſo many Perſons of Honour and Quality were concerned, and ſuch Preparations pretended to be made, and yet no Footſteps of it appear; and concluded with recommending himſelf to God and the Jury.

Fenwicke the Priſoner obſerved, that it was not probable ſo many innocent young Lads ſhould come over to atteſt a Falſhood; and that the Witneſſes on the other Side, were People of a poor beggarly Condition, who expected to advance their Fortunes by this pretended Diſcovery: That it could not be ſuppoſed they ſhould truſt *Oates* with the Sight of ſuch Letters, and ſuch Secrets as he pretended; being a Perſon they never eſteemed, and had expelled the College. He obſerved further, that none of the Commiſſions or Letters, the Witneſſes mentioned, had appeared; nor was it proved that any Money was paid, or Arms provided, though it was three Quarters of a Year ſince the pretended Diſcovery; and indeed, that there were no Circumſtances to induce the Jury's belief, but *downright Swearing*; concluding that the Priſoners were Perſons of unblameable Lives, never accuſed of any Crime before; whereas the World were ſufficiently acquainted, how ſcandalouſly their Accuſers had lived.

The Directions of the Chief Juſtice to the Jury.

The reſt of the Priſoners having uſed much the ſame Arguments in their Defence, the Chief Juſtice ſummed up the Evidence, and told the Jury, that the Teſtimony of the *St. Omer*'s Witneſſes was of much leſs Weight than that which had been given on the other Side; not only becauſe they were not upon their Oaths, but becauſe the Teſtimony of a Papiſt, was not to be credited, with or without Oath; ſince they were of a Religion that could diſpenſe with Oaths for the ſake of their Cauſe: The Teſtimony of theſe young Men therefore, who had been ſent over for this Purpoſe, and had been trained up in ſuch Principles, was very much to be ſuſpected: That the Priſoners' Defence conſiſted in catching at a Point of Time; but that was a thing no Man could charge his Memory with; they were not to govern their Judgments by a Miſtake of ſeven or eight Days: And if the ſixteen Witneſſes, that came over from *St. Omers*, were not to be believed, neither were the reſt; for the Papiſts never wanted Witneſſes to prove what they pleaſed; they made no Bones of it. He told them alſo, that *Harcourt*'s Letter, written the ſame Night Juſtice *Godfrey* was miſſing, which ſays, *This Night Sir* Edmund-bury Godfrey *was diſpatched*, was an undeniable Evidence the Papiſts murdered him; becauſe he was not known to be dead, till the *Thurſday* following, by other People, which muſt turn every Proteſtant Heart againſt them; for the Plot was in a great Meaſure proved by that Murder: However, this, he ſaid, was but a Specimen of what the Papiſts intended, and none knew where it would End: *They had killed but one Man's Perſon; but in Effigy, the whole Nation. It was but in one Man's Blood their Hands were imbrued; but their Souls were dipped in the Blood of All. They would kill the King, or any body elſe that ſtood in the Way of their Religion; a Religion they would bring in by a Converſion of Blood, and a Baptiſm of Fire.*

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Then the Jury being withdrawn, after a very ſhort Receſs, brought in all the Priſoners GUILTY; whereupon Mr. Recorder *Jefferies* ſaid, that the Priſoners had not been wanting to themſelves in offering, nor the Court in hearing, what they had to ſay; but upon a long Evidence, and a full diſcuſſing of all Objections, they had been found Guilty; and he thought every honeſt Man would ſay they were unexceptionably found ſo: It was a juſt Verdict the Jury had given.

They are convicted.

Jefferies applauds the Verdict.

The Sentence not being pronounced till after Mr. Langhorn's *Trial, I defer my Remarks on the Trial of theſe five Jeſuits, till I have gone through his.*

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Langhorn's Trial.

The Trial of RICHARD LANGHORN, Eſq; for *High-Treaſon*, at the *Old-Baily*, in *London*, *June* the 14th, 1679. 31 *Car.* II.

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The Indictment.

THE Indictment charges the Priſoner with High-Treaſon, in compaſſing the Death of the King; and to that end, ſending Letters to procure Aid of the Pope and the *French* King: The Indictment alſo charges him with receiving ſeveral Commiſſions from *Rome*, conſtituting Military Officers to command the Forces to be raiſed in theſe Kingdoms, for executing the ſaid Treaſons, and with receiving other Commiſſions for conſtituting Civil Officers, and delivering them out to other Traitors. The Indictment further charges him with aiding and abetting *Ireland*, *Pickering*, and *Grove*, in their traiterous Deſign of killing the King, and with moving and ſoliciting the *Benedictine* Monks to pay the Sum of 6000*l.* to procure a Perſon to kill the King: And laſtly, it charges him with counſelling and abetting *Coleman* in his Treaſons, who had been convicted and executed, for writing Letters to *le Chaiſe*, the *French* King's Confeſſor, to procure the *French* King's Aid, in ſubverting the Government, and Religion eſtabliſhed.

General Evidence of a Plot.

The King's Witneſſes being called, *Dugdale* and *Prance* gave Evidence of a Plot in general Terms: That the King was to have been murdered, the Proteſtants maſſacre'd, an Army raiſed, and the eſtabliſhed Religion and Government ſubverted, *&c.*

Oates's Evidence.

Oates was more particular, and depoſed, that in *April*, 1677, he went into *Spain*, and in *September* following Mr. *Langhorn*'s Sons came thither; the one entering himſelf a Scholar at the *Engliſh* College in *Madrid*, and the other at *Valladolid*, in order to qualify themſelves for Popiſh Orders. That the Deponent, coming to *England*,

1679. 31 Car. II. *land*, brought Mr. *Langhorn* Letters from his Sons, and told him, he thought they would enter into the Jeſuits Society; at which Mr. *Langhorn* rejoiced, being himſelf a great Votary to the Jeſuits; but ſaid, he hoped, if they continued in the World as ſecular Prieſts, they would ſuddenly have great Promotions in *England*, for Things would not long continue in the Poſture they were: That the Deponent afterwards carried a Letter from Mr. *Langhorn* to the Fathers at *St. Omers*; wherein he ſaid, he had written to Father *le Chaiſe* about their Concerns, but that Mr. *Coleman* had been ſo large, it was not neceſſary to trouble them with longer Epiſtles. In another Letter Mr. *Langhorn* expreſſed his great Care for carrying on the Deſign of the Catholicks; and ſaid, the Parliament began to flag in promoting the Proteſtant Religion, and now they had a fair Opportunity to begin and give the Blow: That after the Conſult in *April* 1678. the Deponent had Orders from the Provincial to give *Langhorn* an Account what Reſolutions paſſed at the Conſult; and he told him, that Father *Cary* was ordered to go Procurator to *Rome*; and that there was a Reſolve ſigned, that *Pickering* and *Grove* ſhould go on with their Attempt to aſſaſſinate the King; and Mr. *Langhorn* lifted up his Hands, and prayed God it might have good Succeſs: That the Deponent ſaw, in Mr. *Langhorn*'s Study in the *Temple*, a Commiſſion for the Lord *Arundel* of *Wardour*, to be Lord Chancellor of *England*; another to the Lord *Powis*, to be Lord Treaſurer; a third to the Lord *Stafford*, to be Pay-Maſter of the Army; and another for *Langhorn*, to be Judge Advocate: As alſo Commiſſions to the Lord *Bellaſis* to be General, and to the Lord *Petre* to be Lieutenant-General, and a Commiſſion to *Coleman* to be Secretary of State. Theſe were all granted by an Authority derived from the Pope, and ſigned *Johannes Paulus de Oliva*, with the Jeſuits Mark, being a Croſs through the Letters *J H S*. That he ſaw about fifty more Commiſſions for inferior Officers, in the Priſoner's Cuſtody: That the Priſoner gave the Deponent ſome Original Letters from *le Chaiſe*, and *Anderton* Rector of the College at *Rome*, to carry to the Fathers, which were in Anſwer to ſome Letters the Priſoner had ſent them; and therein *le Chaiſe* aſſured him of his Conſtancy in aſſiſting the Society to carry on the ſaid Cauſe; and ſaid, he need not doubt but the *French* King would ſtand by them. *Oates* alſo depoſed, that the Priſoner *Langhorn* was Solicitor to the Society, and upon his ſoliciting the *Benedictines* for Money, the Deponent heard they promiſed ſix thouſand Pounds towards carrying on the Cauſe. He remembered alſo, that the Priſoner was diſguſted with Sir *George Wakeman*, becauſe he was not contented with 10000*l.* for poiſoning the King; ſaid he was a covetous Man, a narrow ſoul'd Phyſician, and that, it being a publick Concern, he might have done it for nothing.

Then the Priſoner demanded, what Time *Oates* went to *St. Omers*, and when he returned to *England?*

Oates anſwered, he went to *St. Omers* about the 10th of *December*, and ſtaid there till he came to *England* in *April* 1678. and that he did not remain in *England* above twenty Days; and that Father *Williams*, Father *Marſh*, the Rector of *Liege*, Sir *John Warner*, Sir *Thomas Preſton*, Mr. *Pool*, and Sir *Robert Bret*, came to *England* with him. 1679. 31 Car. II.

Mr. *Langhorn* demanded, if he came from *Dover* to *London* in the Coach, or Horſe-back?

Oates anſwered, the Queſtion was ſo ſudden, he could not be poſitive. *Langhorn* demanded, where he lodged in Town? *Oates* anſwered, he lodged at Mr. *Groves*'s three or four Nights, in Town. Oates confounded.

Langhorn demanded, when he turned Papiſt?

Oates anſwered, in *February* or *March*, 1676.

The Priſoner aſked, if he left his Vicarage before he had turned Papiſt?

Oates anſwered, it was not very long before.

Langhorn demanded, if he became a Jeſuit? The Chief Juſtice ſaid, he muſt not aſk him a Queſtion that brought him in Danger: *Langhorn* replied, that *Oates*, in one of his Narratives, ſaid, There came over nine of us, *All Jeſuits*; and demanded of *Oates*, if ever he converſed with him, or ſaw him, after he acquainted him with the Conſult?

Oates anſwered, once or twice after he came to *England* again in *July*: That he uſed to go to the Priſoner's Chamber in the *Temple*, and not to his Houſe; for the Priſoner ſaid his Wife was a Proteſtant, and but *Ambes-ace* turned from a Devil; and therefore he ſhould not come to his Houſe.

Then *Bedloe* was ſworn, and depoſed, that Mr. *Coleman* and Mr. *Harcourt* ſent him with Letters to *le Chaiſe* and Father *Stapleton*; and that *Coleman* took the Letters unſealed, and carried the Deponent with him to Mr. *Langhorn*'s Chamber, who regiſtered them in a Book; and then Mr. *Coleman* ſealed them up, and gave them to the Deponent to carry to *le Chaiſe* and *Stapleton*. The Purport of the Letter to *le Chaiſe* was, that they waited only for his Anſwer, how far he had proceeded with the *French* King about ſending the Money; for they only wanted Money; every Thing elſe was ready: The *Engliſh* Catholicks were ſafe, having procured all Places and Offices to be given to Catholicks, or ſuch as they thought would be ſo: That all the Garriſons were already in their Hands, or ready to be put into them: And in the Letter to Father *Stapleton* it was ſaid, they had ſo fair an Opportunity, having a King ſo eaſy to believe what was dictated to him by their Party, and the *French* King at the ſame Time ſo powerful, that if they miſſed this Opportunity, they muſt deſpair of ever having ſuch another to introduce Popery in *England*. Bedloe's Evidence.

That the Priſoner did not only regiſter theſe Letters, but every Penny of Money that was paid, and all Tranſactions in Relation to this Concern: That the Deponent brought Letters alſo from the Catholicks abroad to the Popiſh Lords here, which were regiſtered by *Langhorn*; the Tenor whereof was, that the Lord *Bellaſis*, and the reſt of the Party, ſhould be in a Readineſs; for they had provided *Iriſh* Troops in *Spain*, to be ſhipped at the *Groyn*, who ſhould land at *Milford Haven*, and join the Lord *Powis* in *Wales*.

Then *Oates* added to his former Evidence, that the Congregation at *Rome* contributed eight hundred thouſand Crowns to be ſent into *England*; and *Langhorn*, the Priſoner, enquired concerning

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cerning that Money, and had Knowledge of the Receipt of it in *France*, as he told Father *Kaines* and Father *Fenwicke* in *July* or *Auguſt*.

The Priſoner's Defence.

Mr. *Langhorn* objected to the Teſtimony of the Witneſſes, that they confeſſed themſelves Partakers in the Crime they accuſed him of; but was anſwered, they were good Witneſſes notwithſtanding, though they had not had their Pardons; but they had ſeveral Pardons: To which he replied, that they came under the ſame Reaſon of Law with an Approver; and though the Approver was pardoned, the Appellee ought to be diſcharged by Law; but objected further, that they had received, or expected, Rewards for their Evidence.

Oates and Bedloe brag of their Riches

In anſwer to this, *Oates* ſaid, he had diſburſed ſix or ſeven hundred Pounds out of his Pocket, and did not know when he ſhould ſee it again: And *Bedloe* ſaid, he was ſo far from gaining by it, that he was ſeven hundred Pounds out of Pocket.

Then the Court interpoſed, and ſaid, it was but reaſonable the Witneſſes ſhould have a Maintenance from the King; and, unleſs they could prove any Thing was given them by Contract, or by Way of Subornation, it could not be made an Objection.

Langhorn objects, the Witneſſes ſwore for Gain;

Langhorn anſwered, *Bedloe* had received 500 *l.* for his Evidence; and though it might be reaſonable to offer a Reward, by Proclamation, for the Diſcovery of a Perſon charged with a Crime, when he abſconded; yet he thought it hard, when a Priſoner was in Cuſtody, Witneſſes ſhould be brought in againſt him by ſuch Means.

Anſwered, this was the Wiſdom of the Parliament.

The Court replied, that the offering a Reward for the further Diſcovery of the Plot could be no Objection to the Teſtimony of the Witneſſes; that this was to fly in the Face, and reflect on the Integrity and Wiſdom, of the King, Lords, and Commons, for it was done by the Advice of all three; and demanded, if his whole Defence lay in Objections to the Incompetency of the Witneſſes?

The Priſoner's Hardſhips.

The Priſoner ſaid, his whole Defence muſt lie in diſabling the Witneſſes, for he had been kept cloſe Priſoner in *Newgate*, from the 17th of *October* to that Day ſev'night, and converſed with no Friend or Relation: He had not ſo much as heard what he was charged with, nor could foreſee what theſe Men would teſtify againſt him.

His Witneſſes.

Then the Priſoner called his Witneſſes, and proved that *Oates* did not come from *St. Omers* to *England* in the Company he pretended; and that he was at *St. Omers* all the Time he had ſworn he was in *England*, particularly in the Months of *April* and *May*; which was atteſted by near twenty Witneſſes, as well Students of *St. Omers*, (who ſaw him at Dinner in the College almoſt every Day, and converſed with him,) as others.

Further Partiality of the Court.

Then Mr. *Langhorn* deſired, (ſince *Oates* had affirmed he was ſix or ſeven hundred Pounds out of Purſe) he might examine a Witneſs or two, to ſhew he was very poor and indigent before he became an Evidence: But the Court anſwered, This was nothing to the Purpoſe.

The Priſoner then deſired he might read the Copy of a Record in the Houſe of Lords, to ſhew that *Bedloe* ſwore he had no other Perſon

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to accuſe, either in the Houſe, or out of the Houſe, than thoſe he then charged; and he, the Priſoner, was not one of the Perſons mentioned there.

The Court anſwered, perhaps *Bedloe*'s Memory failed him; he ought not to be concluded by what he ſaid there.

The Priſoner demanded of *Oates*, if he knew that he diſtributed any of the Commiſſions he mentioned?

Oates anſwered, the Priſoner ſaid he had diſtributed them; and particularly, that he ſent one, by his Son, to the Lord *Arundel* of *Wardour*, to be Commiſſary-General: And *Oates* ſaid he had other Evidence, but he thought it proper not to mention it now, becauſe it would diſcover his Evidence againſt the Popiſh Lords; deſiring the Court to excuſe him, becauſe he reſerved it for another Trial.

Oates owns he ſuppreſſed Part of his Evidence.

Then the King's Counſel called the ſame Witneſſes, to prove *Oates* was in *London*, at the Time of the Conſult, in *April* and in *May*, 1678, as they had done in the preceding Trials of the Jeſuits, (to which the Reader is referred) and they gave the ſame Teſtimony in this.

Clay's Evidence.

And *Clay*, a Prieſt, depoſed, that he met *Oates* at Mr. *Charles Howard*'s in *Arundel-Houſe*, twice in the Year 1678. once in *April*, and another Time in the Beginning of *May*: That he converſed with *Oates*; and Mr. *Howard* told the Deponent, *Oates* had ſome Thoughts of being a Jeſuit.

Then the Priſoner called Mr. *Charles Howard* as an Evidence, who depoſed, that *Oates* was at his Houſe in the Year 1677, and after *July* in the Year 1678. but he did not remember he was there in *May*: as *Clay* depoſed.

The Priſoner, proceding in his Defence, ſaid, as he had proved that *Oates* had falſified in one Point of his Teſtimony, namely, as to his being at the Conſult in *April* 1678. and as to the other Perſons he ſwore were there; particularly Sir *Thomas Preſton*, Sir *John Warner*, and Mr. *Poole*, who were proved to be in the *Low Countries* at that Time, he ought not to be believed in the reſt; proteſting that he had not ſeen *Oates* ſince *November* 1677. when he brought him Letters out of *Spain* from his Sons: And deſired the Court would obſerve, that he had but one Week's Time to prepare for his Defence; and was forced to take ſuch Informations as his Friends could pick up to anſwer *Oates*'s Narrative, ſuppoſing he would have given the ſame Evidence here as he had done at former Trials. That it could not be ſuppoſed the young Gentlemen, who came over from *St. Omers*, came with any ill Deſign, or were bribed by Rewards to ſay what they did; for he never ſaw the Faces of any of them till his Trial.

To which Chief Juſtice *North* replied, they were all Papiſts, and ſpoke in a common Cauſe.

Mr. *Langhorn* ſaid, if they were not to be believed, becauſe they were Papiſts and Friends, neither were the other Witneſſes to be believed, becauſe they were Enemies. And as to *Bedloe*'s Evidence, it was not probable that he, (the Priſoner) in his way of Practice, ſhould become a Clerk to regiſter Letters, and keep the Accounts of a Religious Order; and it was ſtill more improbable that he ſhould admit *Bedloe* to be privy to

1679. 31 Car II. those Accounts, being one he could not tell whether he had ever ſeen before. If he could have gueſſed what *Bedloe* would have charged him with, he might have been better prepared for his Defence: For his Part, he made uſe of ſuch Witneſſes as his Friends brought; he never ſaw them before they appeared in Court; while the other Side had Time to prepare and get their Witneſſes together; and he hoped he ſhould lie under no Diſadvantage on Account of Religion, for that would look as if they condemned him purely for his Religion. He ſaid, he abſolutely diſclaimed all Principles of Diſloyalty, and believed it was Damnation to any one that went about to kill the King, and concluded with recommending his Cauſe to the Court and the Jury.

The Directions of the Lord Chief Juſtice to the Jury.

The Lord Chief Juſtice, in ſumming up the Evidence, obſerved that the Priſoners Witneſſes came over to ſave their Brethren the Papiſts, who were about to be hanged for the Plot; they were ſent over for that Purpoſe, and then ſpeaking to no other Time, but the Months of *April* and *May*, 1678. would incline Men to believe it. He obſerved further, that the Lawfulneſs of depoſing and killing Kings of a different Religion, was a Doctrine they avowed in Print, and that they taught and practiſed all ſorts of Lying and Equivocation, as lawful to propagate their Faith; and it was not improbable that theſe *St. Omers* Boys, bred up in their Colleges, had theſe Principles inſtilled into them; that their Diſpenſations, Pardons, and Indulgencies for Breach of Vows, were ſtill worſe, and rendered them unfit for human Society, or to have any Faith or Credit given to their Teſtimony; although it might be fair to hear what they ſaid: And that there was not only this in it, but *Oates* had juſtified his being in *London*, by ſeven or eight Witneſſes, who expreſly contradicted the others Teſtimony; and though there were ſome Witneſſes, who depoſed, that Sir *Thomas Preſton*, and Sir *John Warner*, were on the other Side the Water, who were not contradicted by any other Witneſſes, yet if the reſt were not to be believed as to *Oates*'s being there, neither were theſe: Indeed, there ſtood a Gentleman at the Bar for his Life; but if Mr. *Oates* ſaid true, Their Lives, their Liberties, their King, their Religion, and all were at Stake: They knew the cruel Principles of the Papiſts by Experience, and could not be blamed for taking care of themſelves. The Plot was proved as clear as the Day, by *Oates* and his Teſtimony; was confirmed by that which could never be anſwered, *viz.* The Letter found among Mr. *Harcourt*'s Papers, who was one of the Conſpirators, giving an Account that the Conſult was to be held the 24th of *April*, 1678. as Mr. *Oates* had depoſed; and they did not read that Letter as an Evidence againſt Mr. *Langhorn* in particular, but as a Proof of the Plot in general.

The Priſoner begged leave to obſerve that *Oates* might eaſily know of this Congregation, there being ſeveral other Letters of Summons ſent over to the Fathers at *St. Omers*, for the holding that Congregation, which was like the Meeting of a Dean and Chapter; and there was Reaſon for requiring Secreſy, the Fathers being in great Danger if they were taken, on account of their Popiſh Orders.

The Chief Juſtice anſwered, there was no Occaſion for extraordinary Caution, the Papiſts being uſed with great Indulgence at that Time; and having concluded his Charge, went off the Bench with the reſt of the Judges, leaving Mr. Recorder *Jeffries* to take the Verdict, and the Jury withdrawing, after a very ſhort Receſs, brought the Priſoner in GUILTY: Whereupon the Recorder ſaid, it was a Verdict according to the Juſtice of the Evidence. 1679. 31 Car. II. Langhorn convicted.

Then Mr. *Whitebread*, and the other four Jeſuits tried the Day before, were ſet to the Bar, together with Mr. *Langhorn*, and the Recorder made a Speech to them; wherein having expatiated on the Heinouſneſs of the Priſoners Crimes, and the bloody Principles on which their Religion was founded, he ſaid he was much concerned for Mr. *Langhorn*, who was arrived to great Eminence in his Profeſſion; but that he too had not only treſpaſſed againſt all the Rules of Chriſtianity, but againſt the Rules of his Profeſſion, and could not be ignorant what an Offence it was to attempt any Injury againſt the Perſon of the King, or to endeavour to introduce a foreign Power. He ſaid, their Crimes had been ſo fully proved, that no Perſon there could have any Doubt of their Guilt, and that there was not the leaſt Reaſon to ſuſpect the Credibility of the Witneſſes produced againſt them: They had been fully heard, and ſtood fairly convicted of the Crimes they were accuſed; and having again inveighed againſt their Principles, bid them conſider the Tribunal, whither they were going; concluding with abundance of pious Exhortations: After which he pronounced the uſual Sentence in Caſes of High-Treaſon. Sentence paſſed on the five Jeſuits, and Mr. Langhorn

The five Jeſuits being drawn on Sledges from *Newgate* to *Tyburn*, on *Friday* the 20th of *June*, obtained leave to ſpeak to the People: Whereupon *Thomas Whitebread*, their Provincial, ſaid, I am now going to make my Appearance before the Face of Almighty God, and receive a final Judgment for all my Thoughts, Words, and Actions, and cannot be ſuppoſed to ſpeak any thing but Truth; therefore in his moſt holy Preſence, and as I hope for Mercy from his divine Majeſty, I do declare, that I go out of the World as innocent, and free from any Guilt of theſe Things laid to my Charge, as I came into the World from my Mother's Womb: And I do from my Heart, renounce all manner of Pardons, Abſolutions, Diſpenſations for Swearing, as Occaſions or Intereſt may ſeem to require, which ſome have been pleaſed to lay to our Charge as Matter of our Practice and Doctrine, but is a Thing ſo unjuſtifiable and unlawful, that I believe, and ever did, that no power on Earth can authorize me, or any body, ſo to do. I heartily forgive thoſe that falſly accuſed me: Time will make it appear, they have wronged me, and their own Souls a great deal more: I pray God bleſs his Majeſty, both temporally and eternally, which has been my daily Prayer for him, and is all the Harm I ever intended, or imagined againſt him: And I do with this my laſt Breath, in the Preſence of God, declare, that I never did learn, teach, or believe; nor can, as a Catholick, believe, that it is lawful, upon any Occaſion or Pretence whatſoever, to deſign or contrive the Death of his Majeſty, or Whitebread's Speech at Tyburn.

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or any Hurt to his Perſon; but on the contrary, all are bound to obey, defend, and preſerve his ſacred Perſon to the utmoſt of their Power. And I do moreover declare, that this is the true and plain Senſe of my Soul, in the Sight of him who knows the Secrets of my Heart, and as I hope to ſee his bleſſed Face, without any Equivocation, or mental Reſervation. What remains for me now to do, is, to recommend my Soul into the Hands of my bleſſed Redeemer, by whoſe only Merits and Paſſion I hope for Salvation.

Harcourt's Speech.

William Harcourt made a Speech of the like Tenor, proteſting he was innocent both of the Plot, and *Godfrey*'s Death; and declared he did not write that Letter concerning the Diſpatch of *Godfrey*, as *Dugdale* had depoſed.

Turner's Speech.

Anthony Turner declared, he was never preſent at any Conſult or Meeting, where any Propoſal was offered, or Reſolve made, for taking away the King's Life; and if he had known of any Plot, he ſhould have thought himſelf obliged in Conſcience to diſcover it: Proteſted he was never once at *Tixall*, the Lord *Aſton*'s Houſe, in the Year 1678, though the Witneſs had ſworn he was laſt *September* at a treaſonable Conſult of the Jeſuits there, in Mr. *Ewers*'s Chamber. He acknowledged he was at the Congregation of the Jeſuits on the 24th of *April*, 1678, but, in that Meeting, as he hoped for Salvation, proteſted they meddled not with State-Affairs, but only treated about the Concerns of their Province, as they uſually did every third Year all the World over, without Offence to Temporal Princes.

The Sheriff told him, he obſerved they only juſtified themſelves, but the People would not believe a Word they ſaid; and therefore bid him ſpend his Time in Prayer, and he ſhould not think the Time too long.

Then *Turner* made further Proteſtations of his Innocence, and ſaid, As for thoſe Catholicks I have converſed with ſince the Noiſe of the Plot, *I proteſt before God, in the Words of a dying Man, I never heard any one of them, either Prieſt or Layman, expreſs the leaſt Knowledge of a Plot againſt the King, for the advancing the Catholick Religion:* Then he prayed for the King, and declared, he forgave all thoſe that had falſly accuſed him.

Gavan's Speech.

John Gavan alſo made a Speech, and ſaid, I am come now to the laſt Scene of Mortality, to the Hour of my Death; an Hour which is the Horizon between Time and Eternity; an Hour which muſt either make me a Star to ſhine for ever in the Empire above, or a Firebrand to burn everlaſtingly among the damned Souls in Hell below; an Hour in which, if I deal ſincerely, and with a hearty Sorrow acknowledge my Crimes, I may hope for Mercy; but if I falſly deny them, I muſt expect nothing but eternal Damnation; and therefore what I ſpeak in this great Hour, I hope you will believe. And now, in this Hour, I do ſolemnly ſwear, proteſt and vow, by all that is ſacred in Heaven and Earth, and as I hope to ſee the Face of God in Glory, that I am as innocent as the Child unborn, of thoſe treaſonable Crimes which Mr. *Oates* and Mr. *Dugdale* have ſworn againſt me at my Trial; nor do I make uſe of any Equivocation, or mental Reſervation, to palliate the Truth: Neither do I make uſe of any Diſpenſations from the Pope, or any Body elſe; or of any Oath of Secrecy, or any Abſolution, in Confeſſion or out of Confeſſion, to deny the Truth; but I ſpeak in the plain Senſe which the Words bear; and if I do ſpeak in any other Senſe, to palliate or hide the Truth, I wiſh with all my Soul, that God may exclude me from his heavenly Glory, and condemn me to the loweſt Place of Hell-Fire. 1679. 31 Car. II.

And I think it my Duty to proteſt to you, with my laſt dying Words, that neither I in particular, nor the the Jeſuits in general, hold *the King-killing Doctrine*, or any ſuch Opinion; but utterly abhor and deteſt it. *Mariana*, the *Spaniſh* Jeſuit, is the only one I know of, that holds this Opinion, and he does not defend it abſolutely, but only problematically; for which his Book was called in, and that Opinion expunged and cenſured. I refer you to that Royal Author *Henry* the Fourth of *France*, who, in a publick Oration he pronounced in Defence of the Jeſuits, declared, that he was very well ſatisfied with the Jeſuits Doctrine, concerning Kings; and indeed the whole Catholick World is the Jeſuits Advocate. Do not *Germany*, *France*, *Italy*, *Spain*, and *Flanders*, truſt the Education of their Youth to them, and truſt their own Souls to be governed by them in the Adminiſtration of the Sacraments? and can it be imagined ſo many great Kings and Princes ſhould do, or permit this to be done in their Kingdoms, if the Jeſuits were Men of ſuch damnable Principles as they are now taken to be in *England?*

As to Mr. *Oates* and Mr. *Dugdale*, I call God to Witneſs, that they by falſe Oaths have brought me to this untimely End: I heartily forgive them, and pray God to grant them Repentance. I have nothing elſe to do more, my great God, but to caſt my ſelf into the Arms of your Mercy. I believe you are One divine Eſſence, and Three divine Perſons: I believe the Second Perſon of the Trinity became Man to redeem me; and I believe you are an eternal Rewarder of the Good, and an eternal Chaſtiſer of the Bad: In fine, I believe all you have revealed for your own infinite Veracity: I hope in you above all Things, for your infinite Fidelity; and I love you above all Things for your infinite Beauty and Goodneſs; and I am heartily ſorry that ever I offended ſo great a God. I am contented to undergo an ignominious Death for the Love of you, my dear Jeſu, ſeeing you have been pleaſed to undergo an ignominious Death for the Love of me.

Fenwicke's Speech.

John Fenwicke, made the like ſolemn Proteſtations of his Innocence, both as to the Plot and *Godfrey*'s Murder, the reſt had done: Whereupon *How* the Sheriff told him, he believed he had a Hand in *Godfrey*'s Murder; *Fenwicke* anſwered, Now I am a dying Man, do you think I would damn my Soul? To which the Sheriff replied, I wiſh you all the Good I can; but I'll aſſure you, I believe never a Word you ſay.

Then *Fenwicke* went on and ſaid, In the Words of a dying Man, and as I hope for Mercy at the Hands of God, before whom I muſt ſhortly appear, and give an Account of all my Actions,

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Actions, I do again declare, that what I have said is true; and I hope Christian Charity will not let you think, that by the last Act of my Life I would cast away my Soul, by sealing up my last Breath with a damnable Lye.

The five Jesuits executed.

After which, having performed their private Devotions, in which they met with some Interruption from Sheriff *How*, the Cart was drawn away, and they were all hanged together till they were dead, and then cut down and quartered.

Mr. *Langhorn* having been reprieved from Time to Time, either to give him an Opportunity of settling his Affairs with his Clients, or in hopes of making an Evidence of him, was at length drawn on a Sledge from *Newgate* to *Tyburn*, on the 14th of *July*; where he made no Speech before his Execution, but left a Paper with the Sheriff, of the following Tenor, (*viz.*)

Mr. Langhorn's *Paper delivered to the Sheriff.*

1. That he acknowledged King *Charles* II. to be his lawful Sovereign.

2. That he did, in his Soul, believe, that neither the Pope, nor any Prince, Potentate, or foreign Authority, nor the People of *England*, or any Authority, out of this Kingdom or within the same, have any Right to dispossess his Majesty of the Crown, or depose him for any Cause, or pretended Cause, whatsoever; or to license any Subject to bear Arms against his Majesty, or take away his Life, or do him any bodily Harm; or to disturb the Government, as established by Law, or to alter the said Government or Religion established, by Force.

3. That he never was guilty, in his most secret Thoughts, of any Treason, or Misprision of Treason.

4. That he never said to *Oates*, or any other Person, that if his Sons continued in the World as secular Priests, they would suddenly have great Promotions in *England*, for Things would not continue long in the Posture they were; or any Thing to that Effect.

5. That he never wrote any Letter or Paper to, or received any Letter or Paper from, *la Chaise*, or any other *French* Jesuit, or from Father *Anderton*, Cardinal *Barbarino*, or any other Cardinal; nor did he ever see any Letter or Paper purporting to be written to the said *la Chaise*, *Anderton*, or Cardinal *Barbarino*, unless the printed Letters in Mr. *Coleman*'s Trial, which he never saw any where but in the printed Narrative of that Trial; nor did he ever hear any mention made of the Name of *la Chaise*, before he read the said printed Narrative.

6. That he never wrote, or entered in any Book, any Letters, or Copies of Letters, written by the said *Coleman* to any Person whatever.

7. That he never entered or registered in any Book or Paper, or caused to be entered or registered, any Act, Consult, Determination, Order, or Resolve, passed, decreed, or agitated in any Congregation, Consult, Chapter, or Assembly of the Society or Order of Jesuits, or of any other Religious Order; nor was any such ever communicated to him.

8. That he never saw *Bedloe*, who gave Evidence against him, till he saw him at his Trial, to his Knowledge.

9. That after the Month of *November* 1677. he never saw or spoke with *Titus Oates*, the other Witness, till he saw him at his Trial.

10. That he never saw any Commission, Patent, or Grant, to his Knowledge, under, or pretended to be under, the Hand or Seal of *Johannes Paulus de Oliva*, or any other General of the Jesuits, unless the Paper or Instrument produced and shewn him at his Trial; which, whether it was signed or sealed by the said *de Oliva*, he did not know. 1679. 31 Car. II.

11. That he never wrote, or procured to be written, any treasonable Letter or Paper, in any Book or Paper whatever.

12. That he believed, if he had known of any treasonable Design against the King, or to alter the Government or Religion established, and should have concealed it, it would have been a Sin unto Death, and deserved eternal Damnation.

13. That he believed, it was not lawful to lie, or speak any Untruth, or to commit any Sin that Good may come of it; and that it was not in the Power of any Priest, or Pope, or of God himself, to give him a Licence to lie or speak any Untruth; for Almighty God, who was perfect Truth, could not give any one a Licence to commit a Sin against his own Essence.

And he solemnly declared, in the Presence of God, that he made this Declaration and Protestation in the plain and ordinary Sense of the Words, as they are commonly understood by *English* Protestants, and the Courts of Justice, without any Evasion, Equivocation, Delusion, or mental Reservation whatsoever; and without any Dispensation, or Pardon, or Absolution already granted by the Pope, or any other Authority whatsoever; and without the Hope, Expectation, or Desire, of any such Dispensation; and without thinking he could be acquitted before God or Man, or absolved of this Declaration. And he left it to the Judgment of all good Men, Whether they would believe what he had thus solemnly affirmed and sworn in his present Circumstances, or what had been sworn by his Accusers: And having declared he died a *Roman* Catholick, he said, he believed his Religion was the sole Cause that moved his Accusers to charge him with Treason, and the only Ground that could give them any Hope to be believed; or which could move the Jury to believe the Evidence of such Men.

That he had not only a Pardon offered him, but also great Preferment and Estates, since he was condemned, if he would have forsaken his Religion, and owned himself guilty of the Crime charged upon him, AND WOULD HAVE CHARGED THE SAME CRIMES UPON OTHERS; but he blessed God, who had preserved him from yielding to those Temptations, and strengthned him, rather to chuse this Death than stain his Soul with Sin, and charge others, against Truth, with Crimes, of which he did not know that any Person was guilty.

Then he prayed for the King, and that his Majesty might never fall into such Hands as his Royal Father fell into. He prayed also for *Oates* and *Bedloe*, and all that had been accessary to the shedding his innocent Blood, or preventing the King's Mercy being extended to him; for all those that rejoiced at his Execution; and for all those who should be so unchristianly uncharitable as to disbelieve, and refuse to give Credit

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Credit to the Proteſtations he then made. He prayed that God would not lay his Blood to the Charge of the Nation; and laſtly prayed for thoſe that had ſhewn any Charity for him.

Mr. Langhorn executed.

Mr. *Langhorn* having delivered this Paper to the Sheriff, and performed his Devotions, the Executioner did his Office.

Remarks on the Trials of the five Jeſuits and Langhorn.

The Objection made by *Whitebread* and *Fenwicke*, *That they had already been tried for the ſame Facts, the Jury charged with them, and the Evidence given againſt them, and then the Jury diſmiſſed without giving a Verdict*, was certainly an Objection of great Weight: For every Priſoner, with whom a Jury is charged in Capital Caſes, ought either to be convicted, or acquitted at that Time *; or elſe inſtead of one Trial, a Man may be made to undergo twenty Trials for the ſame Facts, when the Court find the Evidence againſt him defective. But this was not all; *Oates* and *Bedloe* both confeſſed, they took the Liberty to contract and enlarge their Evidence as they ſaw fit, and conſequently were both perjured, being ſworn to ſpeak the Whole Truth at every Trial, as the Priſoners themſelves obſerved; and they appear to have been rather encouraged than reprehended by the Court for this infamous Practice. We have an Intention (ſay both *Oates* and *Bedloe*) to reſerve our Evidence for the Deſtruction of greater Men, who might have been prepared to defend themſelves, if we had diſcovered what we intended to ſwear againſt them at the former Trial, and therefore we thought fit to conceal Part of our Evidence: We thought it of more Conſequence, ſays *Bedloe*, to diſpatch the Lords in the *Tower*, than take away the Life of an old Prieſt or two; for neither *Oates* or *Bedloe* imagined that theſe Prieſts could ever have been tried again, and brought a ſecond Time in danger of their Lives, for the very Facts they had been tried for before. And indeed I do not remember one Inſtance of the like Nature in all the Volumes of State Trials; though Chief Juſtice *North* was pleaſed to ſay, it was often done, and all the Judges declared it to be Law. The Opinions of Judges too often vary with the Times, and that which was Law one Day is not ſo another.

* *Trials per pais* 202. 2 Hawk. 459.

How did the King's Counſel, and the whole Bench of Judges, endeavour to enflame and prejudice the Jury againſt the Priſoners! It is often ſaid, indeed, that the Judges ought not only to be impartial, but to be Counſel for the Priſoners; and inſtead of interpreting and wreſting the Laws or the Evidence to their Deſtruction, as is but too common, they ought to take Care that they do not ſuffer in their Defence, by their own Ignorance or Inadvertency: But here the whole Court laboured, with all their Skill and Influence, to get the Priſoners convicted. They were prepoſſeſſed, and prejudiced themſelves with an Opinion of the Truth of the Plot, and ſeemed to think the Law ought to be ſtretched, and every reaſonable Maxim overruled, that tended to acquit and bring off the Priſoners.

They told the Jury, that the Teſtimony of a Papiſt was not to be believed, with or without Oath: But, were we to turn the Tables, and ſuppoſe a Proteſtant tried in a Popiſh Country, and the Judges declared, no Proteſtant was to be believed, ſhould we not have thought ſuch a Speech highly injurious? And, as the Priſoners obſerved, if we will admit no Evidence but that of Proteſtants, we muſt break off all Commerce and Intercourſe with Popiſh Countries, and our People muſt expect to be uſed there as we uſe the Papiſts here. But what is ſtill more ſhocking is, that the Chief Juſtice ſhould obſerve, that the Priſoners Defence conſiſted only in catching at a Point of Time, and direct the Jury not to govern their Judgments by a Miſtake of ſeven or eight Days; for what Defence could be more proper, when they were charged with being at treaſonable Conſults, than to ſhew they were at very diſtant Places at the Times the Witneſſes ſwore to?

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We find alſo, that the Court would not ſuffer the Priſoners to ſhew the Witneſſes contradicted themſelves, and ſwore, at This, contrary to the Evidence they gave at former Trials, which was ſurely a Hardſhip: But the greateſt Hardſhip, as Mr. *Langhorn* obſerves, was, that Witneſſes ſhould be hired, by ſuch extravagant Rewards, to deſtroy them.

Let a Man be never ſo innocent, a Reward of 500 *l.* and ſo many Honours and Privileges as theſe Witneſſes procured to themſelves, by their Perjuries, muſt raiſe up a Multitude of raſcally Knights of the Poſt, to ſwear whatever is dictated by their crafty Principals; eſpecially where downright Swearing is thought ſufficient, without one probable Circumſtance to ſupport their Teſtimony. It was to no Purpoſe to object to the Characters of the Witneſſes, that they were Men of infamous Lives, that made a Trade of Swearing; that they did not only confeſs themſelves guilty of the Crimes they accuſed the Priſoners of, but many more: That all of them acknowledged themſelves perjured, and *Oates*, that he had turned Papiſt and Jeſuit, received Sacraments, and entered into the moſt ſolemn Oaths and Engagements, on Purpoſe to betray thoſe that relieved his Neceſſities. That *Dugdale* had cheated his Lord; and that *Bedloe* acknowledged, he had twice provided Fewel to ſet Fire to the City of *London*; but theſe Men's Teſtimony was preferred to that of Numbers of Papiſts of the beſt Quality and Characters, and againſt Men who had never been accuſed of any thing Criminal before this pretended Plot. The Chief Juſtice *Scroggs*, the Recorder *Jeffries*, and moſt of the Judges, lived to be convinced of their Error, and repent their forward Zeal, and even ſuffered by the like popular Clamours. *Oates* had the Impudence, a very little afterwards, to prefer Articles, to the King and Council, againſt the Chief Juſtice himſelf, as a Criminal and Favourer of the Plot. In the next Reign we find *Oates* convicted of Perjury in theſe Trials, upon two Indictments, by above forty Witneſſes, of which ſeveral were Proteſtants of Quality. *Prance*, another of the Witneſſes, retracted his Evidence, and declared, he was tortured into a Compliance with the Faction, and compelled to be an Evidence to ſave his Life. Another of the Witneſſes, that ſwore he dined with *Oates* at *Iſlington*, alſo retracted his Evidence; inſomuch, that there is ſcarce a Man in *England* at this Day, except the Fanaticks, who were the real Forgers of the Plot, and look upon themſelves as bound in Honour to ſupport the Credit of it, but believes

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the whole Charge to be a Sham; and that the principal Deſign of the Faction, in trumping up this Plot, was the ſame as that of their Fore-fathers, who by their Clamours againſt Popery, led the Way to the Ruin both of Church and State.

It is but too evident, from dear-bought, repeated Experience, that whenever the Sectaries and Republicans clamour loudeſt againſt *Popery* and Arbitrary Power, their Views are to deſtroy the Conſtitution, and ſubvert both the Civil and Eccleſiaſtical Eſtabliſhment; for within the Term Popery they ever comprehended Epiſcopacy, when they dare ſpeak out; and by Tyranny we are to underſtand Monarchy, however gentle and limited by the moſt equitable Laws.

Our Biſhops, they tell us, are the Servants, and make up Part of the Train of Antichriſt; our Liturgy is the Maſs in *Engliſh*; and our Doctrines and Principles the ſame, or no better than thoſe of *Rome*: The aſſerting the Freedom of the human Mind, and that it is in a Man's Choice whether he will be virtuous or vicious, is by them ſtiled *Arminianiſm* and Popery; and, when they are out of Play, all Government and Reſtraints put upon Men's Actions, are deemed Invaſions of their native Liberties, and downright Perſecution.

Thus we ſee it was in the Reign of Queen *Elizabeth*, nothing would ſatisfy the Puritans of thoſe Times, but an entire Subverſion of the Conſtitution; and when the Government did not think fit to humour them ſo far, they publickly preached up Rebellion, and confederated with the bigotted *Spaniard*, in the memorable Year 1588. to ſubdue their Sovereign, and deliver up their Country to a Popiſh Prince, rather than ſubmit to the Government as then eſtabliſhed in Church and State.—They continued their Clamours through the Reigns of King *James* I. and King *Charles* I. till they brought their King to the Block, ſet up their Idol *Preſbytery*, and their adored Republican Form of Government, as moſt agreeable to that Model, and perfectly eradicated the Royaliſts, and the very Conſtitution with them; which was no ſooner miraculouſly reſtored, but they fell to plotting again, and by the ſame vile Arts their Fathers uſed, a ſecond Time brought this flouriſhing Kingdom to the Brink of Ruin; they raiſed a violent Cry againſt Popery, hired falſe Witneſſes to ſwear the Papiſts intended a general Maſſacre, and fire the City; and ſo infatuated the Generality of the People, that every one who would not credit the improbable Tale, was deemed a Papiſt, and the beſt Friends of the Conſtitution proſecuted, under a Pretence they deſigned the Subverſion of it. And indeed this was their principal Aim, to render the Friends of the Eſtabliſhment ſuſpected of endeavouring to introduce Popery and arbitrary Power: And ſuch an Aſcendant had they gained over the People, that it was not, for ſome Time, in the Power of the King and Government to ſtem the Torrent; but theſe, and Abundance of innocent Men more, were ſacrificed to their Fury, before the Nation was diſabuſed and reſtored to their Senſes.

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May we learn, from theſe memorable Inſtances of Fanatick Rage and Artifice, never to be ſo diſtracted with that dreadful Word POPERY as to fall into the Snare again, and become acceſſary to our own Deſtruction, as many honeſt Gentlement ſaw they had been, when it was too late, in the Year 1641. and were not able to retrieve the Miſchiefs they had done, by joining and encouraging the Faction.

From ourſelves our Deſtruction muſt proceed, if ever it is effected: Our Enemies are an inconſiderable impotent Faction, that can never hope for Succeſs, if they do not make a Party among ourſelves, and purchaſe ſome corrupt Members of our Body, that for Handfuls of Barley and Pieces of Bread, are ready to ſell themſelves and their Country: Men void of Thought and Reflection, and all Regard for Futurity; whoſe Eyes are ſo dazzled with the Honours and Preferments that are offered them, that they have loſt all publick Spirit, and for a little preſent Profit will venture the involving themſelves and their Poſterity in the common Ruin.

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The Trial of Sir GEORGE WAKEMAN, Bart. and of WILLIAM MARSHAL, WILLIAM RUMLEY, and JAMES CORKER, *Benedictine* Monks, at the *Old-Baily*, for *High-Treaſon*, 18 *July*, 1679. 31 *Car.* II.

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The Indictment of the firſt three.

SIR *George Wakeman*, *Marſhal*, and *Rumley*, were indicted for *High-Treaſon*, in compaſſing the Death of the King, and the Subverſion of the Government and Religion eſtabliſhed, and for holding a Conſultation for that End the 30th of *Auguſt*, 1678. And Sir *George Wakeman* is further charged with accepting a Commiſſion, derived from the Authority of the See of *Rome*, to be Phyſician-General to the Popiſh Army, intended to be raiſed; and the ſaid *William Marſhal* and *William Rumley* are charged with paying the Sum of 6000 *l.* towards the effecting and conſummating the ſaid Treaſon.

The Indictment of Corker.

James Corker was indicted for *High-Treaſon* ſeparately, for being at the treaſonable Conſult, at the *White Horſe*, on the 24th of *April*, 1678. and hiring Aſſaſſins to kill the King, and for being an Accomplice with the five Jeſuits, in the reſt of their Treaſons, ſet forth in the Indictment of the ſaid five Jeſuits.

Sir Robert Sawyer's tragical Speech.

Sir *Robert Sawyer*, in opening the Evidence againſt the Priſoners, ſaid, they ſtood indicted as principal Actors in the late *moſt Catholick and bloody Plot*: That the Church and State ſeemed to them too trifling a Sacrifice to be offered up to the univerſal Supremacy of *Rome*: They had determined

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determined alſo to cut off the King, and reſolved on ſeveral Methods, to perpetrate the horrid Parricide: Some had contrived to ſhoot him, *viz.* *Grove* and *Pickering*, and theſe had been brought to condign Puniſhment; others were incited to ſtab him, and theſe had been brought to Juſtice too; and now a third Sort were to be tried, for endeavouring to take him off by Poiſon. Sir *George Wakeman*, whoſe Experience and Dependance on the Court gave him great Opportunities, was pitched upon as the propereſt Inſtrument to effect it; and though his Religion might be ſome Inducement to him to commit the Fact, yet was he hired with a Reward of fifteen thouſand Pounds, to undertake the great Employment; of which he had received Part in Hand.

The other Priſoners at the Bar, he ſaid, had been privy to the great Conſult for murdering the King; and though the Jeſuits were the principal Engineers, yet all the other Orders had agreed to contribute to it: The *Benedictines* in particular, were to furniſh the Sum of ſix thouſand Pounds; concluding that there was no manner of Credit to be given to the ſolemn Aſſeverations of the Conſpirators, who had been executed, and denied their Knowlege of the Plot with their laſt Breath.

The King's Witneſſes.

The King's Witneſſes being called, *Dugdale* firſt gave a general Account of the Plot, as was practiſed in the former Trials, *viz.* that the King was to be murdered, the Proteſtants maſſacreed, the City fired, and an Army raiſed to ſubvert the Conſtitution and the Proteſtant Religion.

Prance alſo gave a general Account of the Plot; and *Jenniſon* was produced to prove *Ireland* (who was executed) was in *London* when *Oates* ſwore he was there; from whence it was inferred, that there was no Credit to be given to *Ireland*'s Aſſeverations at his Death, or to the Witneſſes that had ſworn the contrary.

Oates's Evidence againſt Wakeman.

Then *Oates* was called as a Witneſs to prove that Sir *George Wakeman* undertook to poiſon the King, and depoſed, that in *July* 1678, *Aſhby* the Jeſuit came ſick to *London*, and Sir *George Wakeman* wrote him a Letter, containing Inſtructions how he ſhould order himſelf at the *Bath*, and in the ſame Letter, informed *Aſhby* that the Queen would aſſiſt him (Sir *George*) in poiſoning the King: That two or three Days after, the Deponent ſaw Sir *George Wakeman* and *Aſhby* together, and they talked of a Commiſſion to make Sir *George* Phyſician-General of the Army: That the Fathers *Harcourt*, *Fenwicke*, and ſome others, were afterwards ſummoned to attend the Queen at *Somerſet-Houſe*; and the Deponent (*Oates*) attended on them thither, and waited in the Anti-Chamber, while the Fathers went in to the Queen; and he heard a Woman's Voice, ſaying, *She would aſſiſt them, in propagating the Catholick Religion with her Eſtate, and that ſhe would endure theſe Violations of her Bed no longer; ſhe would aſſiſt Sir* George Wakeman *in poiſoning the King.*

That when the Fathers came out, he (*Oates*) deſired to ſee the Queen, and had a gracious Smile from her; and while he was in her Preſence, ſhe asked Father *Harcourt* if he had received the laſt 1000 *l.* in the ſame Voice he heard without; and there was no other Woman in the Room with the Queen.

That in the ſame Month of *July*, *Aſhby* propoſed the giving 10,000 *l.* to Sir *George Wakeman*, to poiſon the King, in the Preſence of *Fenwicke* and *Harcourt*; and Sir *George* ſaid, it was too little; and a Letter being ſent immediately to the Provincial *Whitebread*, to inform him that Sir *George Wakeman* had refuſed 10,000 *l.* *Whitebread* ordered the Fathers in *London* to propoſe 5000 *l.* more; and it was accepted, and 5000 *l.* paid in Part; Sir *George Wakeman*'s Name being ſubſcribed to the Receipt in a Book, which was kept by the Fathers at *Wild-Houſe* ſometimes, and ſometimes by Mr. *Langhorn*: That the Tenor of the Receipt was, *Memorandum, ſuch a Day* 15000 *l.* *was propoſed to Sir* George Wakeman, *which he accepted*; and underneath, *Received in Part of this* 15000 *l.* 5000 *l.* *of Father* Harcourt, *by Order of* Edward Coleman.

GEORGE WAKEMAN.

He further depoſed, that the Receipt was dated between the Beginning and Middle of *Auguſt*, 1678, and that he ſaw Sir *George*'s Commiſſion to be Phyſician-General of the Army, in Sir *George*'s Hands.

The Court demanding, if the Witneſs ever ſaw Sir *George* write in his Life, he anſwered, he ſaw him in a writing Poſture, with a Note before him; and when Sir *George* laid down the Pen and went away, he looked on the Note, and the Ink was not dry: That this was the ſame Hand the Letter to *Aſhby*, and the Receipt for the Money, were written in.

Sir *George* demanded of *Oates*, if he had not ſaid poſitively, he did not know the Hand?

Oates anſwered, he did not remember he had ſaid ſo: Sir *George* demanded, if he had not ſaid before the King and Council, that he never ſaw him, and did not know him?

Oates ſaid, having been up two Nights, and very much fatigued and indiſpoſed, he might not charge him home then; but now he had a proper Light, and could ſee his Face, he knew him to be the ſame Man; for he had ſeen him at *Aſhby*'s Chamber two ſeveral Days, and once was when the 10,000 *l.* was propoſed to him.

Sir *George* demanded of *Oates*, what Day that Propoſal was made to him? He anſwered, it was made by *Aſhby*, in *July*, before he went to the *Bath*, in the Preſence of *Harcourt*, *Ireland*, and *Fenwicke*; whereupon Sir *George* obſerved, he would be ſure to name Perſons that could be no Witneſſes, and demanded why, if he knew theſe Things when he was before the Council, he ſaid he knew nothing of him, but concerning a Letter written from *Aſhby* to *Fenwicke*.

Oates's Evidence againſt Corker.

Oates did not think fit to anſwer the Queſtion at this Time, but proceeded in his Evidence againſt *Corker*, and depoſed, that he had a Patent from the See of *Rome*, to be Biſhop of *London*, and conſented to the Propoſal made by his Brethren, the *Benedictine* Monks, to contribute 6000 *l.* towards carrying on the Deſign, and wrote a Letter from *Lamſpring* in *Germany*, in *Auguſt* laſt, that he conſented to it; for he was Preſident of the *Benedictines*, and therefore his Suffrage was neceſſary.

That

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That *Corker* alſo was privy to the Conſult, and excepted againſt *Pickering*'s being concerned in the Aſſaſſination, becauſe he was an Eccleſiaſtick: It was more proper to employ a Layman, he ſaid, than one that attended at the Altar.

Againſt Marſhal.

As to *Marſhal*, he depoſed, that he agreed to the contributing 6000 *l.* and ſaid, (as *Corker* had done) that it was better to employ a Layman in the Aſſaſſination, than a Religious.

Againſt Rumley.

And as to *Rumley*, that he alſo was privy to the Contribution of 6000 *l.* and prayed for the Succeſs of the Deſign.

Corker demanded, if he accepted the Patent to be Biſhop of *London?* To which *Oates* anſwered, he ſaw it in *Corker*'s Hands; and he ſaid, he hoped it would not be long before he exerciſed his Epiſcopal Function.

Marſhal's *Defence.*

Marſhal asked *Oates*, how long he had known him?

Oates anſwered, two Years, and had ſeen him officiate at the Altar, but never converſed with him. *Marſhal* then deſired to know what Day the Conſult was held; *Oates* anſwered, between the Beginning and the Middle of *Auguſt*; and it was a great Favour he told him the Month: To which *Marſhal* replied, it was impoſſible to make a Defence, if Circumſtances of Time and Place were not mentioned. Then *Oates* ſaid, it was held at the *Benedictine* Convent, either the Day before, or the Day after the Feaſt of the Aſſumption; whereupon *Marſhal* obſerved, he had now ſworn it poſitively: *Oates* ſtill ſaid, he would not be poſitive; and the Chief Juſtice ſaid, the Witneſſes were not to be ſnapped up thus: Then *Oates* ſaid, he verily believed it was the Day before, or the Day after. *Marſhal* demanded, if this would be Evidence againſt a Murderer or a Highwayman, unleſs the Day were fixed exactly?

Oates then depoſed further, that *Marſhal* was at another Conſult in the *Benedictine* Convent the 21ſt of *Auguſt*, about the *Iriſh* Affairs, and deſired Commiſſions might be ſent to *Ireland* for Officers in the Army that was be to raiſed there, and agreed to the Poiſoning the Duke of *Ormonde*. Then *Oates* deſired he might withdraw, becauſe he was not well; but the Chief Juſtice told him he muſt ſtay till their Defence was over; but he ſhould have any Refreſhments brought him.

Oates *choked with the Queſtions that were asked him.*

Bedloe's *Evidence againſt* Wakeman.

Bedloe being ſworn, depoſed, that he was at Mr. *Harcourt*'s Chamber (as he thought) about the Beginning of *Auguſt*, 1678, when Sir *George Wakeman* came in, and taking a Turn about the Room, ſaid, for what am I drilled on thus, in a Concern of this Importance? Is this a Buſineſs to be ſlighted? I have no Performance of your Promiſes. *Harcourt* anſwered, why, what would you have? We are ready for you: And Sir *George* replied, then I am ready for you; and *Harcourt* taking a little Note out of his Cabinet, gave it to Sir *George*, and ſaid, there is a Bill for you; I have been to Day at *Whitehall*, and received it by the Queen's Order, from ſuch a Gentleman, and it is upon ſuch a Man for 2000 *l.* Whereupon Sir *George* ſaid, tis well Somebody gives me Encouragement; I have more Encouragement from my good Lady and Miſtreſs, than from any of you: Nay, ſays *Harcourt*, for Encouragement, that you ſhall not want, for the reſt ſhall be paid in due Time; adding, Sir *George*, this muſt be well followed, and cloſely obſerved, becauſe ſo much depends upon it; for if we ſhould miſs killing him at *Windſor*, and you ſhould miſs killing him Your Way, we will do it at *New-Market*: Sir *George* anſwered, if I find you ready, I will be ready in all Things. The Deponent ſaid, he did not know whether the Word *Poiſon* was mentioned, but he knew, by what Mr. *Harcourt* and others had told him, that Poiſon was meant; there was no body in the Room but Sir *George*, *Harcourt*, and himſelf; and Sir *George* asking Mr. *Harcourt* who he was, *Harcourt* ſaid, a Friend, that had been long engaged in their Buſineſs, and was to do the next great Work to his: That Sir *George* going into *Fleet-ſtreet* the ſame Day, to get his Bill accepted; the Deponent met him there, and asked if it was accepted, and Sir *George* anſwered it was, and he was to receive the Money that Afternoon: That the Deponent asking *Harcourt*, after Sir *George* was gone, whether this was Part of the 15000 *l.* he anſwered, that Matter was not adjuſted yet; he only received this as a preſent Supply, but it was for the ſame Deſign, if they ſhould fail of other Means; and that Sir *George* in a ſhort Time received as much as made the 2000 five thouſand Pounds.

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Bedloe's *Evidence againſt* Corker.

As to *Corker*, *Bedloe* depoſed, that he heard him talking with *Le Fevre*, of the Letters they had received from beyond Sea, and how forward they were here in raiſing an Army; what Intereſt they had in the People, and who had been ſent to in the Country.

Corker demanded, if he heard the Words *Killing*, *Army*, or *Deſign*; *Bedloe* ſaid, every one of thoſe Words were uſed; but he could not ſay how they were placed.

Againſt Marſhal.

As to *Marſhal*, *Bedloe* depoſed, that he communicated the Letters, the Deponent brought from beyond Sea, to the Country Gentlemen who were to aſſiſt them in the Deſign, particularly to Sir *Francis Ratcliff*; and that they treated of the Subverſion of the Government, and introducing Popery: After which Sir *George Wakeman* and *Bedloe* had the following Dialogue in Court.

A Dialogue between Wakeman and Bedloe.

Sir *George Wakeman*. What Day was it I had the Diſcourſe you mention with *Harcourt*, and received the Bill from him?

Bedloe. It was the Beginning of *Auguſt*, (but I do not ſpeak to a Day) and you read it aloud.

Wakeman. Had I any acquaintance with you?

Bedloe. No, but *Harcourt* told you who I was.

Wakeman. And would I, on the firſt Sight of you, diſcover what would endanger my Life?

Bedloe. Ay; and an hundred Times more, if *Harcourt* had told you I was his Confident.

Wakeman. You do not know me?

Bedloe. Yes I do.

Wakeman. I call God to Witneſs, I don't know I ever ſaw you; and you have a very remarkable Face.

Bedloe. I was well enough acquainted with him when he was at the *Bath*, but that is ſome Years ſince; then I took Phyſick of him. *Wakeman* ſaid, I never was there but once, and that was about two Years ago; and though he tells you of a Bill delivered me, he neither mentions the

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the Time when, nor on whom it was drawn: Here are all the Marks of Falſhood imaginable; and here is Mr. *Chapman*, Mayor of *Bath*, who received the Note *Oates* mentions, concerning the Directions for Mr. *Aſhby* at the *Bath*, and he thought he had Part of the Letter.

Oates ſaid, that Letter was half a Sheet of a Side, cloſe written; and he remembered, *Aſhby* was to take half a Pint of Milk, Morning and Evening, and have ſo many Strokes of the Pump; but this was ten Days before *Aſhby* went to the *Bath*.

The Chief Juſtice demanded, if the Buſineſs of killing the King was in the ſame Letter with the phyſical Directions?

Chapman Witneſs Wakeman.

To which Mr. *Oates* anſwering Yes, Mr. *Chapman* appeared as a Witneſs for Sir *George*, and depoſed, That the 17th of *July*, 1678. Mr. *Aſhby* came to the *Bath*; that he was about eighty Years of Age, very feeble and infirm; and telling the Deponent, that Sir *George Wakeman* had recommended him to him, and deſired he would provide him a Lodging as near the King and Queen's Bath as he could, the Deponent did ſo; and *Aſhby* ſhewed him a Letter from Sir *George*, of which that he produced in Court was the lower Part of half a Sheet of Paper, containing full Directions how Mr. *Aſhby* was to take Phyſick, and uſe the Bath, and the Pump: That the Deponent took the *Latin* Bill, which concerned him, and returned the other Part of the Letter to Mr. *Aſhby*; though his Son and he both read the *Engliſh* Part, and, upon the Word of a Chriſtian, there was nothing mentioned of killing the King; but he did not know the Hand, neither was there any Name ſubſcribed to it.

The Chief Juſtice obſerved thereupon, that this could not be the ſame Letter *Oates* mentioned; for that was of Sir *George*'s Hand-writing, and his Name ſubſcribed to it.

Wakeman's Defence.

To which Sir *George* anſwered, that he never wrote any other Letter, but that which he dictated to his Man, and ſent by Mr. *Aſhby* to the *Bath*; and ſaid, that *Oates* owned before the Lords, that he ſent but one Letter; and had he mentioned the Contents to be ſuch as he had ſworn in Court, he ſhould infallibly have been taken into Cuſtody; but he had his Liberty, and might have gone to *Conſtantinople*, if he pleaſed, and ſhould certainly have made his Eſcape, if he had been guilty, after he ſaw ſo many apprehended on that Account.

The Court demanded of Mr. *Chapman*, if there was any Milk mentioned in that Letter? To which Mr. *Chapman* anſwered, No: It would be ridiculous to drink Milk with the Waters; it would make them curdle.

Oates ſaid, this Letter was not the ſame Hand he ſaw, and the Direction for Milk was while he ſtaid in Town.

Hunt's Evidence for Wakeman.

Then *Hunt*, Sir *George*'s Servant, depoſed, that his Maſter coming home late and indiſpoſed, and Mr. *Aſhby* having ſent for Directions for the *Bath*, Sir *George* bid him take Pen, Ink, and Paper, and write what he dictated; and when he had written, there was ſome Miſtake in it, which his Maſter bid him correct; and afterwards the Deponent wrote it over fair, and carried it to Mr. *Aſhby* next Morning; and there was nothing in the Letter but Directions for the *Bath*, whither Mr. *Aſhby* was to go the next Morning.

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Henningham's Evidence.

Eliz. Henningham, another Witneſs, depoſed, that ſhe was preſent at the Writing of the Letter Sir *George* dictated to his Servant, and there was no ſuch Thing as *Oates* mentioned in it.

Sir Philip Lloyd's Evidence.

Sir *Philip Lloyd*, one of the Clerks of the Council, depoſed, that on the 30th of *September*, 1678. *Oates* ſaid before the Council, he had ſeen a Letter from Mr. *White* to Mr. *Fenwicke*, at *St. Omer's*, wherein he wrote Word, that Sir *George Wakeman* had undertaken the poiſoning the King, and was to have 15000 *l.* for it, of which 5000 *l.* were paid by *Coleman*: That Sir *George* being called in thereupon, utterly denied it all, and ſeemed under no Concern at the Accuſation: And *Oates* being called in again, the Lord Chancellor demanded of him, if he knew any Thing perſonally of Sir *George*; and *Oates* lifted up his Hands, and ſaid, *No: God forbid, he ſhould ſay any Thing againſt Sir* George Wakeman, *for he knew nothing more againſt him.* *Oates* hereupon appealed to the whole Board, whether he was in a Condition to make any Anſwer at all; for he had been hurried, he ſaid, and ſat up two Nights, inſomuch that he was ſcarce *Compos mentis*.

The Chief Juſtice anſwered, Was Mr. *Oates* ſo ſpent, that he could not ſay, *I have ſeen a Letter under Sir* George Wakeman's *own Hand?* Truly Sir *George* urged it right, that he would not have been permitted to have had his Liberty ſo long, if *Oates* had charged him with this then.

Oates reflects on the Council-Board.

Oates replied, *They were ſuch a Council as would commit No-body*: Whereupon the Chief Juſtice reprehended him, and ſaid, he had a great deal of Aſſurance; but the Council's not committing Sir *George* was an Argument to him, that *Oates* did omit to charge him with the Letter at that Time.

The Court refuſe to hear the Evidence before the Lords and the Council.

Sir *George* deſired a Copy of *Oates*'s Examination before the Houſe of Lords might be read; but the Court would not permit it, becauſe there was no Witneſs to ſwear that they ſaw ſuch an Examination ſworn and ſubſcribed by *Oates*.

Then Sir *George* deſired, Sir *Philip Lloyd* might depoſe what *Oates* and *Bedloe* had ſworn before the Council; but this was held not fit to be done without the Leave of the Board.

Marſhal's Defence.

Marſhal then applied himſelf to his Defence, and deſired *Bedloe* would lay his Hand upon his Heart, and declare in the Preſence of God, if ever he ſaw him before he came to the *Gatehouſe*; and did not declare there, that he was an utter Stranger to him.

Bedloe anſwered, he had ſeen *Marſhal* before, at the *Benedictine* Convent in the *Savoy*: And Sir *William Waller* depoſed, that he went to the *Gatehouſe* with *Bedloe*, and *Bedloe* called *Marſhal* by his Name, as ſoon as he ſaw him; and *Marſhal* thereupon ſaid, he had ſeen his Face, but did not know him.

Marſhal demanded of *Bedloe*, when he ever ſaw him, before he ſaw him in the *Gatehouſe?* *Bedloe* anſwered, he carried Letters for him, and uſed to converſe with him, in the *Savoy*. *Marſhal* replied, Prove it by Man, Woman, or Child, that ever you were in the *Savoy* with me in your Life, and I will go to the Gallows,

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and not ſay one Word more. *Bedloe* ſaid, he had Witneſſes to prove it; but they were in *Kent*.

Corker's *Defence.*

Corker in his Defence ſaid, It was an eaſy Matter to deviſe Crimes, and frame Accuſations againſt innocent Men, in ſuch a Manner that the contrary could not poſſibly be demonſtrated; therefore there ought to be ſome Probability in the Teſtimony, as well as downright Swearing; otherwiſe Mr. *Oates*, and his Companions, might, upon their bare Oaths, by Turns, hang up all the innocent Men in the Nation: Beſides, he that ſwears ought to be a credible Witneſs; but thoſe, who ſwore againſt him, were Men of ſcandalous Lives.

The Chief Juſtice ſaid, he muſt not heap up Contumelies, and call Men Names, when he had proved nothing againſt them.

Then *Corker* obſerved, that Mr. *Oates* did not only make him guilty of this great Conſpiracy, but involved the Nobility, Gentry, and the whole Body of the Catholicks, in this Treaſon; and he thought it highly improbable, that ſo many Perſons of Honour and Eſtates, who were Men of unblemiſhed Characters, and lived in Peace and Quiet under the Government of ſo good a King, ſhould hazard their Lives, Honours, Families, and Souls in ſuch a Deſign, wherein ſo many thouſands of People, and almoſt a whole Nation, were to be overwhelmed; that ſuch vaſt Armies ſhould be raiſed, and foreign Nations engaged in the Plot, and no other Evidence, no other Proofs of it, than the poſitive Oaths of *Oates* and *Bedloe*. And the Chief Juſtice obſerving, that *Dugdale* and *Prance* were Witneſſes of the Deſign to raiſe an Army, *Corker* went on, and ſaid, Conſidering what theſe Perſons were, their vile Oaths, the Encouragements they had met with, ſuch Endearments and Careſſes as they had found, their Teſtimony was not much to be regarded.—That it was impoſſible he could have been at *Lamſpring*, the farthеſt Part of *Weſtphalia*, as Mr. *Oates* had depoſed, ſince he was not abſent ſix Weeks: Neither was he Preſident of the *Benedictines*, as Mr. *Oates* had ſworn, and produced Witneſſes to prove, that Mr. *Stapleton* was then Preſident.

Both *Corker* and *Marſhal* alſo brought Witneſſes to prove, that when *Oates* came to the *Savoy*, to ſearch for the Conſpirators, and *Pickering* was taken, *Oates* declared he had nothing againſt *Corker* and *Marſhal*; and they were not taken up till a Month afterwards, when *Oates* had improved in his Evidence. Then *Corker* deſired, (as Sir *George Wakeman* had done already) that a Copy of *Oates*'s Examination in the Houſe of Lords might be read; wherein he ſaid, that he knew nothing more of the Plot, or any other Perſons concerned in it, than what he declared there; but this the Court would not ſuffer to be read, affirming it was no Evidence.

Then Mrs. *Rigby*, the Houſe-keeper of the *Benedictine* Convent, was called, as a Witneſs for the Priſoners, *Marſhal* and *Corker*, and depoſed, that ſhe knew of no Conſult of the Jeſuits at that Houſe, and that ſhe never ſaw Mr. *Oates* there, unleſs in the preceding Summer, 1678, when he came a begging, and Mr. *Pickering* bid her ſhut the Door, and never let that Man come in again.

Whereupon *Marſhal* obſerved, that this was in the very Heat of the Plot; and it was ſtrange, if *Oates* was employed to carry on the Conſpiracy, as he had ſworn, that they ſhould ſuffer him to be in ſuch Neceſſity, and ſent away with a Flea in his Ear, when he could gain ſuch Advantages by diſcovering them; and deſired he might have two or three Days Time allowed him, to ſend for Witneſſes, to prove he was in *Warwickſhire* in *June*, *July*, and *Auguſt*, when *Oates* ſwore he was in *London*; and ſaid, he hoped the Court would not throw away his Life, when in three Days Time he could bring Witneſſes to prove it. The Chief Juſtice anſwered, then they muſt throw away the Lives of the Jury, for they muſt be kept faſting till they gave their Verdict. *Marſhal* replied, there had been Priſoners (meaning *Whitebread* and *Fenwicke*) upon their Trials, ſent back to Priſon without the Jury's giving a Verdict, and afterwards tried again. The Chief Juſtice ſaid, the Jury were wholly diſcharged of them. *Marſhal* anſwered, if the Court had any regard to his Life, they would diſcharge the Jury of him too, and produced a Witneſs, who depoſed, that *Marſhal* had his Witneſſes in Town the laſt Seſſions, to prove he was in *Warwickſhire*.

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Here Sir *George Wakeman* and *Corker* made great Proteſtations of their Innocence, and their Abhorrence of Treaſon, and the King-killing Doctrine. And *Marſhal* continuing his Defence, ſaid, if no Door of Mercy could be opened, upon any Conſideration offered by the Living, yet the loud Cries of the Dying, the earneſt Vows and ſolemn Proteſtations of Innocence, made by thoſe who were lately executed, would ſurely have ſome Weight; for it muſt be confeſſed, that either they conſpired finally to damn their own Souls, or that they were not guilty of what they, and the Priſoners at the Bar, ſtood jointly charged with.

Juſtice *Pemberton* demanded, if they would affront the Court, and vouch the Truth of thoſe Speeches made at the Gallows; and affirm them to be innocent, when they had been found guilty, and executed according to Law.

Marſhal replied, he only deſired ſome Conſideration might be had to the Words of dying Men.

The Court charges the Priſoners with the King-killing Doctrine, &c.

The Chief Juſtice ſaid, If your Religion was not made up of Equivocation and Lying, and you had not Indulgences and Diſpenſations for it, and if killing Kings were not deemed meritorious; if this were not avowed by your Popes and Great Men, your Argument might have ſome Weight. We know what your Religion is, and what merciful Men you are: You may have Tricks enough to gull your own Party; but Proteſtants can ſee through all your Actions.

They diſclaim it.

Corker anſwered, as to thoſe damnable Doctrines, they profeſſed themſelves innocent of them; and deſired the Jury might not go away with a Notion, that they entertained ſuch Principles of Religion: Theſe were horrid Crimes; they proteſted againſt them, and hoped the Jury would take Notice of it.

The Chief Juſtice of Opinion, the Evidence was defective.

Then the Chief Juſtice ſummed up the Evidence; and as to *Rumley*, he directed the Jury to acquit him, becauſe there was but one Witneſs againſt him; and he ſaid, he thought that *Oates*'s

Oates's Evidence, as to Sir *George Wakeman*'s Hand-writing, was very ſlight; and *Bedloe*'s Evidence againſt *Wakeman*, he did not give much Credit to; nor did he think the Evidence of *Oates* and *Bedloe*, againſt *Corker* and *Marſhal*, concluſive, he ſaid; but left it impartially to the Jury, to be guided by their own Conſciences.

The Jury being withdrawn, after an Hour's Receſs, returned into Court with their Verdict, that the Priſoners were NOT GUILTY.

The Trials of theſe pretended Plotters were always introduced with violent declamatory Speeches of the King's Counſel, to prepoſſeſs and prejudice the Jury againſt them; and Witneſſes were produced to give a moſt tragical Account of the Plot in general, though this was acknowleged to be no Evidence againſt the Priſoners. The Judges alſo ſuggeſted perpetually, that the Priſoner's Witneſſes were not to be believed, becauſe they were Papiſts, and under ſuch Diſadvantages, ſcarce any of them could have eſcaped, if *Oates* and *Bedloe*, and the reſt of the ſwearing Tribe, had not over-acted their Parts, and by numerous Improbabilities and Contradictions in their Evidence, ſtaggered the Faith of the moſt willing Believers. They improved, it appears, in their Evidence and their Impudence every Day; and when they had ſolemnly declared before the Houſe of Lords and the Council Table, that they knew nothing more of the Plot, or the Plotters, than their Examinations and Narratives contained, daily diſcovered new Matter, and more Conſpirators; having the Aſſurance to charge the Privy Council, and ſeveral other great Men among the Proteſtants, as Promoters and Encouragers of the Plot, who were known to be the beſt Friends to the Conſtitution; which rendered the Generality of the People cooler in the Proſecution of Perſons accuſed, than they had been, and Juries more cautious of convicting them: The Proteſtations of ſo many dying Men, that they knew nothing of any Plot, had alſo ſome Effect upon the People, and induced them to weigh the Evidence againſt thoſe unhappy Men, more ſedately and impartially than they had done the Evidence given at former Trials.

No Gentleman appears to have been more zealous in proſecuting the Popiſh Plot at firſt, then the Lord Chief Juſtice *Scroggs*; but at theſe Trials we find he violently ſuſpected the Roguery of the Witneſſes, and, in a manner, directed the Jury to acquit all the Priſoners, who paid the greater Regard to his Opinion, no doubt, becauſe they had ſeen him ſo ſtrenuous an Aſſerter of the Reality of the Plot at the former Trials. There was no room to ſuſpect the Chief Juſtice to be partial in the Priſoners Favour, after what he had ſaid and done to forward the Conviction of *Coleman*, *Ireland*, and the five Jeſuits: None but a Man of *Oates*'s Aſſurance, could ever have charged him with diſcountenancing the Diſcovery of the Plot afterwards. Here we have a fair Opportunity of obſerving, how eaſily the People of this Nation are carried away by popular Clamours, and the Arts of deſigning Men, who ever do their Buſineſs more effectually, by applying to the Paſſions of Men than their Reaſon. The People were ſo terrified and confounded at the Apprehenſions of an approaching general Maſſacre, that for ſome Time they ſeemed to have loſt their Senſes: They did not ſo much as reflect, what an inconſiderable Number the Papiſts in *England* were, compared with the Proteſtants; and that an Attempt of that Nature muſt have ended in the utter Deſtruction of the Roman Catholicks, if it did not ſucceed; as it was impoſſible it ſhould, where the Papiſts were not one in a Hundred, and had neither the Miniſtry, Forces, or any one Civil Magiſtrate to ſupport them; for, according to *Oates*'s firſt Diſcovery, the King, the Duke of *York*, and the Miniſtry, both in *England* and *Ireland*, were to be ſacrificed with the Reſt; though afterwards, indeed, when *Oates* found how greedily his Narrative was ſwallowed, he ventured to charge the Queen, the Duke, the Privy Council, Miniſters, and Judges, with encouraging and favouring the Plot; that is, with a Deſign of murdering the King, and maſſacring all true Proteſtants: A Tale ſo monſtrous and improbable, that it evidently diſcovered the whole to be an Impoſture, and ſhewed how miſerably the People had been impoſed upon by the Faction, and the Perjuries of their wretched Inſtruments.

1679. 31 Car. II.

The Trial of CHARLES KERNE, Clerk, for *High-Treaſon*, before the Lord Chief Juſtice *Scroggs*, at *Hereford* Aſſizes, the 14th of *Auguſt*, 1679. 31 *Car.* II.

1679. 31 Car. II.

The Charge. THE Indictment charged the ſaid *Charles Kerne* with High-Treaſon, in coming to *England*, and remaining here after, he had received Popiſh Orders, contrary to the Statute 27 *Eliz.*

The Evidence. The Witneſſes for the King being called, one of them depoſed, that ſhe ſaw the Priſoner in a Surplice deliver the Sacrament to four or five People in a Popiſh Chappel, and that he uſed the Words *Corpus Chriſti*, or ſome ſuch Words as Prieſts uſe at the Sacrament; for ſhe herſelf was a Roman Catholick at that Time.

Another Witneſs depoſed, that ſhe was in a Chamber, and heard the Priſoner Chriſtening a Child in the next Room.

The Defence. The Priſoner ſaid little in his Defence, but that the Witneſſes were inſtructed what to ſay; that he had taken the Oaths of Allegiance and Supremacy; and that there was no Evidence of his being a Prieſt: And probably he thought the Proof ſo defective, that there was no Occaſion to ſay much; for the Chief Juſtice, in his Directions, told the Jury, that there ought to be two Witneſſes

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Witneſſes in High-Treaſon, and here was but one Witneſs to prove the Priſoner exerciſed his Function, beſides the Maid, who ſaid ſhe heard him baptize a Child through a Wall; but this was a tender Point (I preſume, he meant the Witneſſes ſwearing to a Man's Chriſtening a Child through a Wall, when ſhe did not pretend to know what he ſaid, was a tender Point); and as he would not ſhed innocent Blood, ſo neither would he willingly let a Popiſh Prieſt eſcape; and leaving it to the Jury, they found the Priſoner NOT GUILTY.

1679. 31 Car. II. Bromwich's Trial.

The Trial of ANDREW BROMWICH, Clerk, for *High-Treaſon*, before the Lord Chief Juſtice *Scroggs*, at *Staffford* Aſſizes, the 13th of *Auguſt*, 1679. 31 *Car.* II.

Jurors diſcharged on Suſpicion of their being Popiſhly affected.

THE Priſoner being arraigned, and the Jurors called, the Sheriff acquainted the Chief Juſtice, that *Allen*, one of the Jurors he had returned, declared, that as nothing was done againſt the Popiſh Prieſts above, ſo neither would he do any thing againſt them here, or find them guilty; and thereupon *Allen* was committed to Priſon by the Chief Juſtice, till he ſhould find Sureties for his good Behaviour; and he diſcharged three more of the Jurors, on Suſpicion of their being Popiſhly affected. After which a Jury was ſworn and charged with the Priſoner, who challenged none of them.

The Charge

The Indictment ſet forth, that the ſaid *Andrew Bromwich*, being a Native of *England*, and ordained a Prieſt by an Authority derived from the See of *Rome*, did on the 13th of *January*, in the 30th Year of the preſent King, come to, and remain at *Perry Barr* in the County of *Staffford* in this Kingdom, contrary to the Statute, which made the ſaid Offence High-Treaſon.

The Evidence.

The Witneſſes being called, *Ann Robinſon* depoſed, that ſhe received the Sacrament of the Priſoner in a Wafer five Times, according to the Manner of the Church of *Rome*.

Jeffery Robinſon depoſed, he had heard the Priſoner ſay ſomething, in a Surplice, in an unknown Tongue; but he could not ſay what it was; and the Court demanding if he knew the Priſoner, he declared he did not know him.

Jane Robinſon, *Jeffery*'s Wife, being ſworn, and the Court demanding of her, if ſhe ever heard the Priſoner ſay Maſs, or received the Sacrament of him, ſhe anſwered, ſhe never ſaw him do any thing; ſhe did not know him.

The Defence.

The Priſoner in his Defence, denyed his having ſaid Maſs, or given the Sacrament to any of the Witneſſes; alledged, he had taken the Oaths of Allegiance and Supremacy, and done every thing that might teſtify his Loyalty; and inſiſted that there was no Evidence of his being a Prieſt.

The Chief Juſtice's Obſervations.

The Chief Juſtice replied, none but a Prieſt could give the Sacrament in a Wafer; and though *Jeffery Robinſon* pretended he did not know the Priſoner, he had ſaid at firſt, that he heard him ſay ſomething, in a Surplice, in an unknown Tongue; that this Witneſs durſt ſay no more than his Wife and his Prieſt would give him Leave to ſay, and they could not expect more poſitive Evidence from theſe People.

and Directions to the Jury.

Then he ordered the Statute of 27 *Eliz.* Cap. 2. to be read, which makes it High-Treaſon, for Popiſh Prieſts, Subjects of this Crown, to remain in *England*; and in his Directions to the Jury, informed them that they were not to find poſitively that the Priſoner was a Prieſt; but if they believed in their Conſciences, upon the whole Evidence, that he was a Prieſt, they were to find him guilty: That here was one poſitive Witneſs, and another had ſworn he heard the Priſoner ſay ſomething in an unknown Tongue, in a Surplice; and he left it to them, whether they would not believe the Teſtimony of one poſitive Witneſs, and the circumſtantial Evidence of the other Man: They ſaw what Dangers they were in, and he left it upon their Conſciences, whether they could let Prieſts eſcape, who were the very Peſts of Church and State; declaring, *they had better get rid of one Prieſt, than three Felons.*

The Priſoner convicted.

The Jury being withdrawn, and continuing without ſome Time, at laſt brought in a Verdict, that the Priſoner was GUILTY: Whereupon the Chief Juſtice commended the Verdict, and ſaid he ſhould have found the ſame Verdict himſelf.

1679. 31 Car II. Atkins's Trial.

The Trial of WILLIAM ATKINS, Clerk, for *High-Treaſon*, before the Lord Chief Juſtice *Scroggs*, at *Staffford* Aſſizes, the 13th of *Auguſt*, 1679. 31 *Car.* II.

The Charge

THE Indictment was of the like Tenor as the former, *viz.* That the Priſoner being a Native of *England*, and having accepted Popiſh Orders, came to *Wolverhampton* in *Staffordſhire*, and remained there, contrary to the Statute; which made this Offence High-Treaſon; and the ſame Jury was charged with the Priſoner, as had tried *Bromwich*. Then the Witneſſes being called,

Francis

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Francis Wilden depoſed, that he had heard the Priſoner at Prayers in an unknown Tongue with a Surplice on, and ſeen him give the Sacrament after the Manner of the Church of *Rome*, to ſeven or eight People, at Mrs. *Stamford*'s Houſe in *Wolverhampton*.

John Jarvis depoſed, that he had heard the Priſoner ſay ſomething in an unknown Tongue; that he had confeſſed to him, and received the Sacrament of him a great many Times when he had his Prieſt's Habit on. A third depoſed, he had confeſſed to him, and a fourth, that he had been at Confeſſion, and ſeen the Priſoner perform divine Service according to the Manner of the Church of *Rome*: And the Priſoner finding the Evidence ſo full againſt him, made no Defence; whereupon the Jury found him GUILTY, and the uſual Sentence in Caſes of High-Treaſon was pronounced on him and *Bromwich*.

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The timerous Chief Juſtice having been threatened and bullied by the Leaders of the Faction and their Tools, *Oates*, &c. for ſhewing himſelf impartial at the Trial of *Wakeman*, *Corker*, &c. ſeems to be endeavouring at theſe three Trials to make amends for his Remiſſneſs, by delivering up theſe unhappy Prieſts to the Fury of the Populace; concluding that his Conduct at theſe Trials would for ever wipe off the Reproach of his attempting to ſtifle the Popiſh Plot, with which *Oates* and his Brethren of the Poſt, had endeavoured to charge him.

The Statute of 27 *Eliz.* indeed makes it High-Treaſon for an *Engliſh* Prieſt to be found in *England*; but then the Statute does not aſcertain what ſhall be deemed legal Proof of a Man's being a Prieſt; whereupon the Judges have determined that a Man's exerciſing any Part of the Prieſtly Office, whether he be really a Prieſt or not, ſhall be deemed ſufficient Proof of his being a Prieſt, which ſeems to be a pretty handſome Stretch upon ſo penal a Law, eſpecially as the Offence is purely the exerciſing an Act of Religion, and the Parties have committed no Offence againſt the State, as in this Caſe. But the Chief Juſtice goes ſtill farther, and informs the Jury, that notwithſtanding two Witneſſes are required in High-Treaſon, yet, *if they believed in their Conſciences from the Circumſtances*, that the Priſoners were Prieſts, though there was but one poſitive Witneſs of their exerciſing the Prieſtly Office, it was ſufficient: He would not, he told them in *Kerne*'s Caſe, willingly ſhed innocent Blood; (one of the Witneſſes ſwearing only that ſhe heard the Priſoner ſay ſomething ſhe did not underſtand through a Wall;) but on the other Hand, he would not willingly have one popiſh Prieſt eſcape; intimating that he would have every popiſh Prieſt hanged, if it was for no other Offence, but purely for being a Prieſt, and that upon every ſlight Evidence: Though the Lawyers had always held till this Time, that thoſe Laws were only made *in terrorem*, and were never intended to be put in execution rigorouſly. In all the former Trials for the popiſh Plot, the King's Council ſeemed to make a Merit of it, that they did not proſecute the Jeſuits and popiſh Prieſts purely on account of Religion; and of all the Prieſts that were tried at *London*, either in this, or in any former Reign, I do not remember any that were executed purely for being Prieſts. It was not thought fit to make ſuch Examples, even now in the Capital City, whatever was done on the Borders of *Wales* in a Corner of the Kingdom, leſt the ſame ſhould have been taken notice of by Foreigners, and retaliated on the Proteſtants of other Countries. But ſuch was the Fury of the Faction at this Time, that the Government was in a Manner compelled to give up theſe unhappy Men to their Rage; even the Chief Juſtice was content to be their Inſtrument, to ſave himſelf from being perſecuted as a Promoter of Popery; and yet this would not skreen him from their Reſentment, as appears from future Proceedings.

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Whether it was ſtrictly legal to diſcharge three of the Jurors *upon Suſpicion* they were popiſhly affected, as was done in *Bromwich*'s Caſe, eſpecially as there was no Proof it, and it does not appear they were regularly challenged for the King, is very much to be queſtioned; but to tell the Jury, *if they believed the Priſoner to be guilty, (though there were not two Witneſſes) this was Satisfaction to find him guilty*; was certainly carrying Things a great deal too far; as two poſitive Witneſſes are ever required in Treaſon. Nor did the Chief Juſtice ſhew any great Impartiality, when he alarmed the Jury with the pretended Dangers that threatened them from the Papiſts, and telling them *they had better rid the World of one Prieſt, than three Felons*; but this, as I have already obſerved, was to curry favour with the Faction. If he could have reſtored himſelf to the good Graces of the Populace, by ſacrificing an old Prieſt or two, he would have thought it an excellent Expedient; but he lived to repent his Eaſineſs, and found his Enemies were not to be appeaſed by a leſs Sacrifice than that of his own Head, which they bid fair for afterwards. May all timerous Magiſtrates and Time-ſervers meet with the like Fate.

1679. 31 Car. II. *The Trial of* Knox *and* Lane.

The Trial of THOMAS KNOX, (Servant to the Earl of *Danby*,) and JOHN LANE, for a *Miſdemeanor*, at the *King's-Bench* Bar, the 25th of *November*, 1679. 31 *Car.* II.

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The Indictment. THE Indictment charges, that the Defendants, *Knox* and *Lane*, knowing that *Oates* and *Bedloe* had been Witneſſes againſt *Coleman*, *Ireland*, *Grove*, and other Traitors, who had been executed for their Treaſons; and knowing the Lords *Powis*, *Stafford*, *Bellaſis*, *Arundel*, *Petre*, and Sir *Henry Titchburne*, were accuſed of Treaſon, and committed to the *Tower*, and ſtood impeached by the Houſe of Commons for the ſame; and that *Thomas* Earl of *Danby* alſo was impeached of High-Treaſon and other Miſdemeanors; they, the ſaid *Knox* and *Lane*, intending to ſtifle the Diſcovery of the ſaid Treaſons, and to evade the Laws and the Proſecution of Juſtice againſt the ſaid Lords and Sir *Henry Titchburne*, did, on the 30th of *April*, in the thirty firſt Year of his preſent Majeſty, falſely and maliciouſly conſpire to ſcandalize the ſaid *Oates* and *Bedloe*, and to repreſent them as wicked Perſons, and Men of no Credit. And that the Defendant *Knox*, by the Agreement of the Defendant *Lane*, and one *Osborne*, did cauſe ſeveral Letters to be written, wherein the ſaid *Oates* and *Bedloe* were accuſed of conſpiring falſly to charge the ſaid Earl of *Danby*; and ſuggeſting that *Oates* was a vicious Perſon, and would have committed Sodomy on the ſaid *Lane*; and that *Knox*, the better to effect the ſaid wicked Deſigns; gave ſeveral Sums of Money to the ſaid *Lane* and *Oſborne*, and promiſed them great Rewards. All which is laid to be contrary to their Duty; to the Obſtruction of Juſtice, *&c.*

The King's Council's Obſervations upon it. The King's Council, in opening the Indictment, obſerved to the Jury, that the Queſtion to be tried by them, was not whether the Lords, and others, charged with the Treaſons mentioned in the Indictment, were guilty of the Popiſh Plot; but whether the Defendants, in this Indictment, were guilty of endeavouring to diſcountenance and ſuppreſs the Evidence, and of ſcandalizing the Witneſſes who were to give Evidence againſt the Lords, and the reſt of the Priſoners; informing the Jury, that the endeavouring to withdraw, or diſgrace the King's Evidence in any Caſe, was unlawful, but it was ſtill a much greater Offence in Caſes of High-Treaſon; and as ſeveral Perſons had been attainted and executed for theſe Treaſons, the Defendants had affronted and diſparaged the Juſtice of the Nation, which was not to be endured.

The Evidence of Radford. The Witneſſes being called, Mr. *Radford* was ſworn, and depoſed, that *Richard Lane*, Father of the Defendant, *John Lane*, was one of the Yeomen of the Guard, as the Deponent alſo was; and that, they being upon Guard together, about a Year before, *Richard Lane*, the Father, told the Deponent, that *Oates* had attempted his Son, *John Lane*, the Defendant, ſeveral Times, in order to commit Sodomy with him.

Of Samuel Oates. —— *Samuel Oates*, Brother to *Titus Oates*, depoſed, that *John Lane*, the Defendant, was Servant to his Brother *Titus*, and turned away twice; and he heard him ſay, as he was jeſting with the Servants, a Fortnight before he was turned away the laſt Time, that he did not queſtion, ere long, to find a Way to get a thouſand Pounds.

Of Sir William Waller. Sir *William Waller* depoſed, that as he was attending the Committee of Lords appointed to enquire into the Plot, on the 29th of *April* laſt, a Complaint was brought before them, that *Oates* had attempted to commit Sodomy with his two Servants, *Oſborne* and *Lane*; and thereupon the Lords ordered the Deponent, and Mr. *Warcop*, another Juſtice of Peace, to take the Examinations of *Oſborne* and *Lane*: And *Lane* confeſſed, he had been ſeduced by *Knox* to betray his Maſter *Oates*, and ſwear ſeveral Things againſt him which *Knox* dictated; and *Lane* then produced ſeveral Informations, charging *Oates* with Sodomy; which he acknowledged had been carried by *Knox*, *Oſborne*, and himſelf, to ſeveral Juſtices of Peace, charging *Oates* with attempting to commit Sodomy on the ſaid *Lane*, but no Juſtice of Peace would meddle with it. And that afterwards *Knox* took private Lodgings for *Lane* and *Oſborne*, that *Oates* might not find them out; perſuading them to ſtand faſt to what they had ſaid, and they ſhould not want a conſiderable Reward: That *Lane* depoſed farther, before him, the ſaid *Waller*, and Mr. *Warcop*, that *Knox* dropped a Guinea at a Tavern, and ſaid he would not give it them, becauſe then he could ſwear ſafely, he never gave them any Money: And that *Knox* told them, the ſaid *Lane* and *Oſborne*, that the Lord Treaſurer *Danby* would never have ſurrendered himſelf, unleſs they had promiſed to ſtand faſt by the Evidence *Knox* had dictated. Sir *William Waller* farther depoſed, that, as they were taking *Lane*'s Examination, *Knox* wrote a Note to *Lane*, which was conveyed through the Door, of the following Tenor: *We always clubbed, and you paid two Shillings at the* Sugar-loaf: *Tear this.* And that *Lane* confeſſed, it was agreed amongſt them, that if any one of them ſhould diſcover, the other two ſhould murder him: And that both *Lane* and *Oſborne* confeſſed, that *Knox* ſaid, the Lords in the *Tower* would not be wanting to acknowledge their Kindneſs, in diſparaging the King's Evidence.

Sir *William Waller* depoſed farther, that *Knox* alſo was brought before him and Mr. *Warcop*, and, to excuſe himſelf, ſaid, he received the Papers from *Lane* and *Oſborne*, and that they told him they wrote them out, being troubled in Conſcience, and deſired him to go with them to a Juſtice of Peace: That *Knox* confeſſed, he dropped a Guinea, and alſo ten Shillings, upon a Bed one Morning, but ſaid, he lent it them, and they were to repay him again. *Knox* alſo con-

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confeſſed, that the Papers, ſo drawn up and delivered to him, had been in the Keeping of the Lord *Latimer* a long Time.

Mr. Warcop.

Juſtice *Warcop* depoſed to the ſame Effect as Sir *William Waller* had done, adding, that *Lane*, when he was before the Committee, begged their Pardon, and God's Pardon, for what he had ſworn againſt *Oates*, for it was all falſe: And that *Knox* acknowledged, he lay with *Lane* and *Oſborne*, in ſeveral private Places, when Warrants were out for apprehending them; adviſed them where to lie concealed, and paid for their Lodgings, but ſaid they were to pay him again; and that *Osborne* and *Lane* both ſwore that *Knox* paid for all, treated them ſeveral Times at the Tavern, and bid them call for what they would have.

Wiggins.

Wiggins, Servant to *Bedloe*, depoſed, that being with *Knox* at a Publick-Houſe, *Knox* deſired him to get Copies of his Maſter *Bedloe*'s Papers, eſpecially ſuch as concerned the Lord Treaſurer *Danby*, and to take a Journal of his Maſter's Actions, and the Names of thoſe that came to him; for the Lord Treaſurer had heard, that Lord *Shaftesbury* and the Duke of *Bucks* caballed with *Bedloe* againſt him: That *Knox* offered to carry the Deponent to the Lord Treaſurer, who would give him Encouragement, he ſaid; and that *Knox* added, *Oates* and *Bedloe* were two great Rogues, the King knew them to be ſo; and when he had heard all they could ſay, he would hang them; and that, if the Deponent was turned out of his Buſineſs, he ſhould have any Place in his Lord's Diſpoſal.

Dangerfield.

Thomas Dangerfield depoſed, that he was employed by the Lady *Powis* to carry Money to the Defendant *Lane*, in the *Gatehouſe*, ſeveral Times, and particularly once he received twenty Shillings of Mrs. *Celier*, by the Lady *Powis*'s Order, and ſent it to *Lane*; and that the Defendant *Knox*, deſiring *Lane* would write ſomething to ſignify he continued firm, *Lane* wrote a Note of the following Tenor, (viz.) *That he would die before he would comply with that Villain* Oates, *and if any good People would get him his Liberty, he would do the Catholicks great Service, by diſcovering what he knew of* Oates; *declaring he wrote this from the Bottom of his Heart, and would die in it*: That this Note being carried to the Lady *Powis*, ſhe and the Lord *Powis* were much rejoiced at it; and he was told the Lady *Powis* was the greateſt Part of the next Day upon her Knees, giving God Thanks for the great Advantage their Cauſe had gained by it.

That he (the Deponent) afterwards obtained *Lane*'s Liberty, and carried him to *Powis-Houſe*, where he remained ſome Time; but afterwards the Lord *Powis* thought proper to ſend him into the Country, and conceal him there: That the Deponent alſo was employed to procure *Knox*'s Liberty, but could not; however, *Knox* obtained his Liberty afterwards by Mr. *Nevil*'s Means: That the Deponent received ſeveral Papers from *Knox*, containing a Charge againſt Mr. *Oates*, for attempting to commit Sodomy with *Lane*, which he ſent by Mrs. *Celier*, to the Lords in the *Tower*, who made their Remarks on them; and that Mrs. *Celier* directed the Deponent to draw up an Affidavit from thoſe Papers, and get *Lane* ſworn to it; which he did, and it was ſworn before Sir *James Butler*: That *Osborne* alſo made an Affidavit, that *Oates* attempted to commit Sodomy with *Lane*, which *Knox* ſhewed to the Deponent, and ſaid it would do *Oates*'s Buſineſs; and the Lady *Powis* afterwards furniſhed *Knox* with Money, underſtanding that his Circumſtances were but low, and that (his Maſter) the Lord Treaſurer, did not ſupply him; and the Deponent let *Knox* have forty Shillings, on his complaining of the Diſtreſs he was in, taking a Note of him, as if borrow'd of himſelf.

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Then an Information, that *Knox* had ſworn before a Juſtice of Peace, was read; wherein he depoſed, that *Osborne* came to him, and told him he was Servant to *Oates*, and that he had heard *Oates* and *Bedloe* conſulting how they might deſtroy the Lord Treaſurer; and that his Conſcience would not ſuffer him to ſleep till he had revealed it: That *Lane* alſo came to him (the Deponent *Knox*) and gave him the ſame Account, and ſhewed him ſeveral Papers, which were Memorials relating to his Majeſty, the Queen, and the Lord Treaſurer: And that they both conjured him (*Knox*) to keep the Thing ſecret; for they were afraid, if it came to the Ears of *Oates* and *Bedloe*, they ſhould be murdered.

Knox's Information.

Mr. *Withins*, Counſel for the Defendant *Knox*, obſerved, that the Indictment conſiſted of two Parts: The firſt charged, that the Defendants, in *April* laſt, did conſpire againſt *Oates* and *Bedloe*, who had diſcovered the Popiſh Plot, to take away their Reputation, and render their Teſtimony of no Credit.

The Defence of Knox by his Counſel.

The other Part charged, that *Knox* had cauſed Letters to be written, as from *Osborne* and *Lane*, to himſelf, containing the Aſperſions above-mentioned; but as to the laſt Part of the Charge, there had been no Manner of Proof made of it: And as to the firſt, he did not controvert, but that *Osborne* and *Lane* might have a Deſign to diſgrace *Oates* and *Bedloe*, and to draw his Client *Knox* in to countenance their Malice; but inſiſted that he was not in the Contrivance, for that they had ſhewn the Papers to ſeveral others before they brought them to *Knox*, nor did it appear in the whole Evidence, that *Knox* himſelf had ſworn any thing againſt *Oates* or *Bedloe*; there appeared only a great deal of Weakneſs in *Knox*, in believing ſuch idle People, which he hoped would not be thought a great Crime in a young Man, who had no Malice or ill Deſign in it; but apprehending he had met with a Diſcovery againſt his Lord's Life, was endeavouring to prevent it.

The Defence of Lane by his Counſel.

Mr. *Holt*, Counſel for the other Defendant *Lane*, alſo inſiſted, that there had been Evidence given only of one Part of the Charge in the Indictment; and that the Proof not being proportionable to the Charge, his Client ought to be acquitted, otherwiſe he might become liable to a ſeverer Puniſhment than the Crime proved would juſtify.

The Chief Juſtice's Obſervations.

To which the Chief Juſtice anſwered, If there was Evidence enough to prove a Contrivance to diſcredit them, that was ſufficient.—Mr. *Holt* deſired to know, if the Jury did not find them *Not Guilty* generally, whether they might not find them not guilty of writing the Letters. The Chief Juſtice anſwered, No; for if five Things were laid, and one of them proved, which tended to the Diſparagement of *Oates* and *Bedloe*,

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Bedloe, which was the Subſtance of the Charge that maintained the Indictment, that was ſufficient; beſides, the Tranſactions between *Knox* and *Dangerfield* implied a Confederacy; and *Knox* owned he took Lodgings for *Osborne* and *Lane*, and lay with them when Warrants were out againſt them.

To which the Counſel for the Defendant *Knox*, replied, that *Dangerfield* ſwore that *Lane* brought him a Paper, containing the ſame Matter he brought to *Knox*, and that he got it ſworn before Sir *James Butler*; and if *Dangerfield* believed the Charge to be true, and carried *Lane* before a Juſtice of the Peace to ſwear it, why might not *Knox* believe it?

However the Court acquainted the Jury, that the Caſe was ſo clear againſt the Defendants, that they did not ſee any occaſion to ſum up the Evidence; and the Jury laying their Heads together, without going from the Bar, found the Defendants GUILTY. At which the People gave a great Shout; and the Defendant *Knox* was ſentenced to pay a Fine of 200 Marks, to ſuffer one Year's Impriſonment, and to find Sureties for his good Behaviour for three Years. *Lane* was ſentenced to be ſet in the Pillory, to pay a Fine of 100 Marks, and to be impriſoned for a Year; which Sentences were executed upon them.

The Defendants convicted. Fined, Pilloried, and impriſoned.

Remarks. Theſe were very difficult Times; the Faction, by offering extravagant Rewards, had raiſed up a Set of Witneſſes, that appeared ready to ſwear any Man out of his Life, their Maſters were pleaſed to mark out for Deſtruction. They began with Papiſts as moſt obnoxious; againſt whom it was not doubted their Evidence would be eaſily credited; but by degrees they proceeded to accuſe ſome of the beſt and greateſt Proteſtants in the Kingdom with being Popiſhly affected, and engaged in the ſame Deſign, to ſubvert the eſtabliſhed Religion and Government; and this was indeed the principal Deſign of the Faction, in trumping up this Plot, a Stratagem of their Fore-Fathers, revived to charge the Friends of the Church and Government with being Popiſhly affected, and endeavouring to introduce arbitrary Power, in order to ſubvert both Church and State themſelves, and eſtabliſh their Idol Presbytery, and a Republican Form of Government in the room of them. There was a Conſpiracy indeed, to deſtroy both our Religion and Government by the Presbyterians, as appeared a very little afterwards, and they had the Cunning to throw it upon the Papiſts, who finding their party every Day cut off by falſe Witneſſes, artfully managed by that Incendiary *Shaftsbury*, endeavoured to countermine his Projects, by offering Rewards to the Witneſſes hired to ſwear againſt them; and by endeavouring to expoſe the ſcandalous Lives of ſome of thoſe raſcally People, dubbed with the Character of the King's Witneſſes; and ſince ſuch vile Arts were uſed to get innocent Men condemned, ſurely the Perſons charged with ſuch Crimes, could not be much blamed, eſpecially by the Faction who taught them the Way, for endeavouring to ſave their Lives by the like Means; as others endeavoured to murder them under a Colour of Law.

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Knox depoſed upon Oath, that both *Osborne* and *Lane* firſt came to him, and offered to ſwear Sodomy againſt *Oates*; and that both *Oates* and *Bedloe* were in a Conſpiracy to take away the Life of the Lord Treaſurer *Danby*, which ſeems much more probable, than that *Knox* ſhould frame ſuch a Story, and deſire them to ſwear it, if the Characters of the reſpective Parties be conſidered; eſpecially as it is evident that the Witneſſes ſometimes tampered with the Faction, and ſometimes with the Lords in the *Tower*, to ſee which they could make the moſt of; and when they found the Lords (particularly the Lord Treaſurer) not inclinable to anſwer their Expectations, they betrayed the Inſtruments concerned in theſe kinds of Negociations, in order to raiſe their Merit, and entitle themſelves to the greater Rewards from the Faction.

But further, it is very certain that *Oates* had been charged, and was generally eſteemed guilty of many flagrant Crimes (*and eſpecially of Perjury and Sodomy*) long before he became a Witneſs of the Popiſh Plot; and no wonder if the Noblemen he endeavoured to deſtroy by his Perjuries, made ſtrict Enquiries into theſe Particulars, in order to take off the Credibility of his Teſtimony. This was no more than Self-preſervation prompted them to, and was very far from being Criminal, though it was a very difficult and dangerous Task at this Time, when the People were ſo infatuated as to look upon every Man to be a Papiſt and a Traitor to the Government, who offered to enquire into the Characters of thoſe infamous Wretches. *Knox*, no doubt, hoped to do his Maſter, the Earl of *Danby*, great Service in diſcovering the Deſigns the Faction had againſt him; and encouraged *Osborne* and *Lane* in ſwearing their Depoſitions before a Juſtice of Peace, though his Maſter, it ſeems, refuſed to ſupport him in it, leaſt it ſhould caſt an Aſperſion upon him, and prove diſadvantageous to his Cauſe, for he knew *Shaftsbury*'s Ars; and that he would either corrupt or terrify them to retract what they had ſwore, as he had done by *Dangerfield*; who at firſt was an Evidence for the Popiſh Lords, and afterwards made an Evidence againſt them by ſome ſuch Means.

As to *Oates*'s ſcandalous Life, there are ſome Men perhaps that will give more Credit to Biſhop *Burnet*, than any other Writer in this Matter, who ſpeaking of the Credibility of the Plot, in the firſt Volume of his poſthumous Hiſtory, ſays, *Titus Oates* was the Son of an Anabaptiſt Teacher, who conformed and went into Orders, as his Son the Evidence alſo did: That the Son was an ignorant Man, proud, ill-natured, and haughty, and Complaints had been exhibited againſt him, for very indecent Expreſſions concerning the Myſteries of Chriſtianity: That he had alſo been proſecuted for Perjury; and being Chaplain to a Man of War, was diſmiſſed upon Complaint of ſome unnatural Practices not to be named: Being admitted afterwards Chaplain to the Duke of *Norfolk*, and diſcovering an Inclination to Popery, *Hutchinſon*, a Jeſuit of that Family, had the Honour of his Converſion, who being very intimate with the Biſhop, told him, that *Oates* and the Jeſuits were always in ill

Terms;

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Terms; and they allowing him but Nine-pence a Day, *Hutchinſon* often relieved him: That the Jeſuits, wanting to get rid of *Oates*, ſent him beyond Sea, which made it unlikely he ſhould be truſted with their Secrets.

That the Biſhop talking with *Oates* about the Plot, *Oates* broke out into a mighty Rage againſt the Jeſuits, ſaying, *he would have their Blood*; and it being demanded of him, what it was prevailed on him to change his Religion and turn Papiſt, *Oates* ſtood up, and laying his Hand upon his Breaſt, ſaid, *God and his holy Angels knew he never changed, but went amongſt them on purpoſe to betray them*; which gave the Biſhop ſuch a Character of the Man, that he never afterwards had any Regard to what he ſaid or ſwore.

As to *Bedloe*, the Biſhop ſays, at his firſt Examination before the Secretary of State in his Majeſty's Preſence, he declared he knew nothing of the Plot; but being examined at the Bar of the Houſe of Lords the next Day, he pretended, of his own Knowledge, to make a full Diſcovery of the Plot, and to confirm *Oates*'s Teſtimony, which convinced the King, that ſome body had practiſed upon him ſince his Examination before the Secretary, and inſtructed him what to ſay: The Biſhop adds, that *Bedloe* had led a very vicious Life, and gone by falſe Names, whereby he had cheated ſeveral People; that he had alſo perſonated a Man of Quality in *France* and *Spain*, where he lived by Cheating; ſo that he could not think he made this Diſcovery out of Conſcience, as he gave out.

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On the other Hand, I do not find any thing objected to the Character of *Knox* before this Trial; and all that he ſeems to be convicted of here, was an honeſt Zeal to ſerve his Maſter, and the reſt of the Lords that were falſely accuſed.

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The Trials of LIONEL ANDERSON, WILLIAM RUSSEL, CHARLES PARIS, HENRY STARKEY, JAMES CORKER, WILLIAM MARSHAL, and ALEXANDER LUMSDEN, Popiſh Prieſts, at the *Old-Baily*, *London*, on the 17th of *January*, 1679. 31 *Car.* II.

Charge. THE Indictment charges them with High-Treaſon, in remaining in *England* after having taken Popiſh Orders, contrary to the Statute of 27 *Eliz.*

To which they all pleaded *Not Guilty*, except *Corker* and *Marſhal*, who objected, that they ought not to be arraigned for High-Treaſon again, becauſe they had already been tried for High-Treaſon and acquitted; but the Court told them, the former Trial was for being in a Plot againſt the King and Government; and this Indictment was, for remaining in *England* after they had accepted Popiſh Orders; whereupon they pleaded *Not Guilty*, as the reſt had done.

The Priſoners making no Challenges to the Jurors, the firſt twelve in the Panel were ſworn.

Anderſon pleads, he abided in England, by the King's Order.

Then Mr. *Anderſon* ſaid, as to the Crime of remaining in *England*, with which he was charged, he ſtaid here by the King's expreſs Command, and had an Order for it from the Council-Board: To which the Court anſwered, if he had ſuch an Order, he muſt apply himſelf elſe where; their Buſineſs here was to try him on the Statute on which he was indicted.

The conſirmed on Statute, ſtill the Iriſh Plot, and now revived on account of the Practices of the Prieſts againſt the Government.

The King's Counſel proceeding to open the Indictment, obſerved, that this Statute, on which the Priſoners were indicted, had been made above an hundred Years; but that through the Lenity of our Princes, it had lain dormant till this Time; and that the Reaſon of reviving it now, was the Practices of the Popiſh Prieſts to ſeduce the People, and incite Rebellions againſt the Government, which firſt gave Occaſion to the making of it, and at preſent made this Proſecution neceſſary: That it was not purely for being Prieſts they were indicted, but for remaining in *England* after they had received Popiſh Orders, acknowledging foreign Authority, and rejecting that of their Sovereign.

Dangerfield's incredible Evidence.

The Witneſſes being called, *Dangerfield* depoſed, that being a Priſoner for Debt in the *King's-Bench*, in *May* or *June* laſt, he went to Confeſſion to the Priſoner *Anderſon*; and having received Abſolution from him, *Anderſon* ſent him to another Prieſt that was ſaying Maſs, to receive the Sacrament; after which he returned to *Anderſon* again, who gave him a Toleration to go and be drunk with one *Stroud*: For the Deponent was employed by the Catholicks to endeavour to bring over *Stroud* to be a Witneſs for the Lords in the *Tower*, and to invalidate *Bedloe*'s Teſtimony; and the Deponent demanding of *Anderſon*, if he might lawfully get drunk juſt after receiving the Sacrament? *Anderſon* replied Yes; he gave him Authority to do ſo, it being for the good of the Cauſe.

Anderſon thereupon ſaid, here I am upon my Life and Death, and I wiſh that all the Puniſhments of Hell and Damnation may come upon me, if ever I opened my Mouth to this Rogue about any ſuch Buſineſs.

Anderſon objects, that he is not a credible Witneſs.

The Court told him, they muſt not ſuffer ſuch Language; to which *Anderſon* replied, if *Dangerfield* and he were ſo well acquainted, ſome body muſt have ſeen them talk together one time or other; and if he could produce one Perſon that would teſtify he ever ſaw him ſpeak to this Witneſs, he would be hanged, and ſay no more: That Witneſſes ought to be creditable People; and this Man had been pilloried twice, broke Priſon once, and committed many heinous

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Offences; and that his Teſtimony againſt Colonel *Manſel*, whoſe Blood that Villain deſigned to have ſhed, was not admitted, upon that Account.

But the Court told *Anderſon* this would not avail him, unleſs he could produce the Record of his Conviction: Then *Titus Oates* was produced as a Witneſs, who depoſed, that *Anderſon* was a Prieſt, and he had heard him ſay Maſs.

His further Defence.

Whereupon the Priſoner acknowledged he had ſaid Maſs, but ſaid that was no Proof of his being a Prieſt; and that the Law made a Difference, and only ſet a pecuniary Penalty of 200 Marks, and a Year's Impriſonment upon one that ſaid Maſs; and there was no Proof of his receiving Orders from the See of *Rome*.

The Chief Juſtice replied, if this Statute could never have any Effect, or a Prieſt be convicted on it, unleſs they could produce Witneſſes that ſaw him take Orders, then indeed he might avoid the Statute: But when it was plainly proved, that he had done thoſe Acts which none but Prieſts were allowed to do, it muſt convince all the World that this Iſſue, whether he was a Prieſt or not, was well proved.

Anderſon demanded, if they could prove him to be an *Engliſhman? Oates* anſwered, he had heard the Priſoner ſay he was an *Engliſhman*, and the Son of an *Engliſh* Gentleman. And *Bedloe* appeared, and depoſed, that he was a Prieſt, and an *Engliſhman*, Son of Mr. *Anderſon*, a Gentleman of two or three hundred Pounds *per Annum* in *Oxfordſhire*; he knew his Father very well: *Anderſon* replied, was I guilty of being acquainted with ſo great a Rogue as this Fellow, I would have been my own Executioner, and not have expected my Sentence here: My Father has the Honour to be well known to my Lord Chief Baron, who knows this to be falſe.

Bedloe proved perjured in Court.

Whereupon the Lord Chief Baron ſaid, Mr. *Anderſon* was the Son of a Gentleman of Quality in *Lincolnſhire*.

And yet, ſays *Anderſon*, this Rogue can ſay this upon Oath; but indeed his whole Life has been full of ſuch Miſtakes.

Prance then depoſed, he had heard the Priſoner ſay Maſs at *Wild-Houſe* ſeveral Times.

Anderſon's Defence continued.

Anderſon anſwered, he could prove he never ſaid Maſs at *Wild-Houſe*; for ſome of thoſe Fathers would have had him excommunicated, for writing for the King's Temporal Juriſdiction over all his Subjects, independant of the Pope, as appeared by a Letter from the Biſhop of *London* on his Behalf. He was known, he ſaid, to moſt of the dignified Clergy in *England*, and would not deny his having ſaid Maſs; but he had not ſaid Maſs in any Popiſh Chappel theſe ten Years: He would not tell a Lye to ſave his Life, or to take away the Life of the greateſt Villain upon Earth; no, not of that Rogue (*pointing to Dangerfield*); but I proteſt, my Lord (ſaid he) there is not one Word that has been ſworn againſt me true, unleſs what *Oates* depoſed concerning my ſaying Maſs; and I can prove to your Lordſhip by Authority, that it was the Opinion of all the Judges, about nine Years ago, delivered to the King and Council, that this Law was only made *in terrorem*.

He urges, this Law was made only in terrorem.

The Court anſwered, he muſt not be permitted to talk thus; would he arraign the Judges? Twas true, the Statute had not been rigorouſly put in Execution, till they themſelves gave Occaſion for it: But now it appeared neceſſary for the Preſervation of the King's Life, againſt which there were ſuch Conſpiracies.

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Then *Anderſon* deſired three Things might be proved: Firſt, that he was an *Engliſhman*; Secondly, that he took Orders from *Rome*; and thirdly, that he did abide in *England* contrary to the Statute; for this being a Penal Law, the Facts ought to be proved poſitively, and the Perſon accuſed was not to be *preſumed* guilty from Circumſtances.

Requires ſtrict Proof of the Facts.

The Court anſwered, The Firſt he had proved himſelf, by appealing to the Chief Baron; and the Second, his being a Prieſt, he had acknowledged.

Then *Anderſon* deſired that they would ſtop Proceedings till they knew the King's Pleaſure; for he had given ſeveral Teſtimonies of his Loyalty and Obedience to the Government: But the Court told him, the Jury muſt now try the Fact, and declared that the Proof was abundantly ſufficient to convict him.

urges his Loyalty.

Mr. *Corker*, being brought upon his Trial, *Oates*, *Bedloe*, and *Prance*, all depoſed, they had heard him ſay Maſs, and perform other Parts of his Function.

Corker's Trial.

To which *Corker* only anſwered, he had not ſaid Maſs at ſome of the Places the Witneſſes mentioned.

Then Mr. *Marſhal* was ſet to the Bar, and there being but one Witneſs of his being a Prieſt, Witneſſes were called, to prove he acknowledged himſelf a Prieſt in Court, at his Trial for the Plot; which the Court obſerved was very hard, and ſuch Teſtimony as ought not to have been made uſe of.

Marſhal's Trial.

Marſhal inſiſted that *Oates*'s Teſtimony being found falſe at his former Trial, he ought not to be credited now; but he was anſwered, a Witneſs might ſwear true, though the Jury did not believe him.

Mr. *Ruſſel* being brought to the Bar, and proved to be a Prieſt by three Witneſſes, did not offer any thing in his Defence; whereupon *Charles Paris* was brought upon his Trial, and *Prance* teſtifying he had heard him ſay Maſs two Years, or two Years and a half before. The Priſoner deſired the Witneſs might be poſitive as to the Time, or it would be impoſſible to diſprove him; but the Court anſwered, a Man could not be poſitive as to the Time; however, he produced Witneſſes to prove he was at *Windſor* about the Time the Witneſſes ſwore he was in Town, and deſired he might give the *Venetian* Ambaſſador's Letter in Evidence, who teſtified he had never officiated in his Family; but *Paris* was told this was no Evidence.

Ruſſel's Trial.

Paris's Trial.

A Letter not allowed to be given in Evidence.

Then Mr. *Starkey* was brought to the Bar; and *Oates* depoſed, that he heard him ſay Maſs about three Years before, conſecrate the Hoſt, and receive the Sacrament in both Kinds, in a Prieſt's Habit; and *Starkey* demanding of this Witneſs, what a Prieſt's Habit was? *Oates* anſwered, he had a Thing about his Neck, and a Surplice, and a Thing about his Arm; the Surplice was girt about him.

Starkey's Trial.

Starkey replied, that *Oates* neither knew a Prieſt's Habit, nor the Difference between Habits

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bits and Ornaments; that his Habit was a Caſſock down to the Ground, and a Side-Cloak; that his Ornaments were not a Surplice, but an Albe that falls to the Ground, with other Things beſides: He inſiſted that there was no Proof of his taking Orders, and if he was not in Orders, it could be no Maſs; for it was the Prieſt that made the Maſs, and not the Maſs the Prieſt; and he had known a Lay-Man, a Proteſtant, ſay Maſs about *London*, and at laſt ſtole the Chalice; his Name was *Gardener*.

Then *Prance* depoſed, he had heard *Starkey* ſay Maſs at ſeveral Places, and heard him ſay, he had ſaid Maſs in the late King's Army.

Starkey anſwered, he never did; but he appeared for the King, when he had not above five hundred Men in Appearance for him; had ſpent above four thouſand Pounds in the King's Service, and loſt a Leg by a Cannon Shot; and when he was baniſhed, had but three Half-Crowns left in the World.

The Court replied, whatever he had merited by his Service, he had beſt apply to the King for Mercy; but the Jury could take no Notice of it.

Starkey ſaid, he was baniſhed by the Uſurpers into *France* fourteen Years, becauſe he refuſed to take the Engagement never to bear Arms for the King; and he had diſcovered a Plot againſt the King's Life.

The Court anſwered, they were only to try whether he was a Prieſt or not; and told the Jury, there were two Witneſſes of it, and, if they believed them, they ought to find him guilty.

Alexander Lumſden being brought upon his Trial, it was proved, by three Witneſſes, he had exerciſed the Prieſt's Function: To which he objected, that this was no Proof of his being a Prieſt; but the Chief Baron, in his Directions to the Jury, told them, there was no Neceſſity they ſhould have Proof of a Prieſt's Ordination; but if it was proved he had exerciſed the Office of a Prieſt, it was ſufficient Evidence to convict him; but that Mr. *Lamſden*'s Caſe differed from the reſt: As he was a *Scotchman*, the Court were in Doubt whether he was within the Statute; for the Words being *within the King's Dominions*, they queſtioned whether they extended to a Native of *Scotland*, which was not under the Dominion of the King of *England* at the Time of making that Statute; and therefore they directed the Jury to find a ſpecial Verdict as to him.

The Jury, after a ſhort Receſs, brought in the firſt ſix Priſoners GUILTY; and as to *Lumſden*, they found that he was a Prieſt, and that he was remaining in *England*, as the Indictment charged; but that he was born at *Aberdeen* in *Scotland*, and whether he was guilty of *High-Treaſon*, they left to the Determination of the Court.

All the Priſoners (except *Lumſden*) being brought to the Bar again to hear their Sentence, and having nothing more to offer againſt pronouncing Judgment, than they had already urged at their Trials, the Recorder made a Speech on the Occaſion; wherein he obſerved, that neither the Law on which they were convicted, nor the putting it in Execution at this Time, were unreaſonable: That the King ought to be acknowledged Supreme Head and Governor in his Dominions; and ſuch Perſons as were for transferring their Allegiance to a Foreigner, and giving him a Power to depoſe the King, and diſpoſe of his Dominions, as every one did who accepted Orders from the See of *Rome*, muſt be thought to deſerve the greateſt Puniſhment; and if Care was not taken of thoſe who profeſſed ſuch Principles, and preached ſuch Doctrines, they ſhould ſoon ſee an End of their Government and Religion too; and ſince they were now endeavouring to put theſe Doctrines in Practice, there could be no Reaſon alledged, but as the Occaſion of making the Law was revived, ſo the Execution of the Law ſhould revive with it: After which the uſual Sentence in High-Treaſon was pronounced; but they were reprieved from Time to Time, and never executed.

Six condemned as Traitors; but reprieved.

The King's Counſel ſeem to admit, that this Law, making it High-Treaſon for an *Engliſh* Popiſh Prieſt to remain in the King's Dominions, was never put in Execution, till the pretended Popiſh Plot; when it was taken for granted that all ſuch Prieſts were in a Conſpiracy, with the reſt of the Papiſts, to murder his Majeſty, and to ſubvert our Religion and Government; and we find three or four Popiſh Prieſts were actually executed, on the Borders of *Wales*, ſome few Weeks before, on this general Surmiſe, without any Proof of their being in a Plot againſt the Government, though it was not thought fit to execute theſe, who were condemned in the capital City; not only becauſe their Loyalty was conſpicuous to all the World, but leſt the Catholick Powers ſhould be alarmed at it, and retaliate it on the Proteſtant Clergy abroad.

Remarks on Anderſon's Trial.

Indeed the King and the Adminiſtration were always averſe to theſe rigorous Proceedings againſt the Papiſts, *purely for their Religion*; but were puſhed upon it by the Faction, that they might have a Handle to charge the Government itſelf, with favouring Popery, if they refuſed to let theſe ſanguinary Laws, that were made only *in terrorem*, be put in Execution: But when they proceeded to accuſe Men of the moſt approved Loyalty, who had loſt their Fortunes in the Royal Cauſe, been plundered, wounded, and baniſhed, for adhering to the King and Royal Family, it was thought high Time to put a Stop to their Rage; and though by their Clamours they prevailed to have theſe Gentlemen brought upon their Trials, yet, when their Loyalty appeared ſo eminently in the Defence they made, it convinced all Men of Senſe and Impartiality, that they ought to have met with better Treatment: It is obvious, that the greateſt Reaſon the Faction were prejudiced againſt them was their conſpicuous Loyalty: It was not becauſe they conſpired againſt the King's Life, but becauſe they had contributed ſo nobly to the Support of the Monarchy, when their rebellious Fore-fathers attacked and overturned it, that they would have ſacrificed them.

But to carry our Reflections a little further: Poſſibly our Sectaries and Republicans were the only People upon the Face of the Earth, that ever were for hanging, drawing, and quartering *all Prieſts* of a different Perſuaſion: Their Brother and Advocate *Defoe*, indeed, would have fixed this Calumny upon the Church of *England*, for which he was deſervedly puniſhed: But here we ſee

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ſee the Sectaries themſelves labouring to get theſe Laws put in Execution, and charging all Men with being popiſhly affected, and Enemies to the Conſtitution, that oppoſed their Fury; though I believe all Mankind but themſelves will admit, that the *Roman* Catholicks are generally better Friends to the Monarchy than our Fanaticks; or rather, that there is more Occaſion to guard againſt the Plots of the Sectaries than the Papiſts, ſince the former have appeared Enemies to the Conſtitution ever ſince they began the Schiſm in the Church: They once actually deſtroyed both Church and State, and ſtill appear maliciouſly bent to deſtroy them again, whenever they can meet with another favourable Juncture to effect their Deſigns: And, as has been already obſerved, the Government has never more Reaſon to be upon its Guard againſt the Faction, than when they clamour loudeſt againſt Popery: For, among the Sectaries both in *England* and *Scotland*, the Church of *England* has been ever looked upon as a Popiſh Church, and treated as ſuch, when they have had the Power in their Hands.

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The Trial of JOHN TASBOROUGH, Gent. and ANNE PRICE, Spinſter, for *Subornation of Perjury*, at the *King's-Bench* Bar, the Third of *February*, 1679. *Hil.* 32 *Car.* II.

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Tasborough and Price their Trial.

The Charge. THE Indictment recites, that *Whitebread*, *Harcourt*, *Langhorn*, and others, had been convicted and attainted of *High-Treaſon*, in conſpiring the Death of the King, and that *Dugdale* was a Witneſs againſt them: That the Defendants, intending to ſtifle the Diſcovery of the ſaid Treaſons, did, before the Trial of the ſaid *Harcourt*, ſuborn and endeavour to perſuade the ſaid *Dugdale* not to be a Witneſs at the ſaid Trial; and after the Trial, did ſuborn and ſolicit the ſaid *Dugdale* to retract and deny his Evidence, and promiſed him large Sums of Money to induce him ſo to do; adviſed him to withdraw himſelf, and importuned him to ſign a Note, importing, *That he had ſworn falſly againſt the* Catholicks, *and that, knowing he had many powerful Enemies, he had withdrawn himſelf to a Place of Safety, in order to make a full Diſcovery*, &c. And to prevail on him to ſign the ſaid Note, promiſed him many great Rewards.

The Witneſſes being called,

Dugdale's Evidence. *Stephen Dugdale* depoſed, that the Defendant, Mrs. *Price*, having been a Servant with him in the Lord *Aſton*'s Family, when he came up to *London* to be a Witneſs for the King, he ſent for her, and they uſed to converſe much together; and that, in *June* laſt, the Night before *Harcourt*'s Trial, ſhe would have perſuaded him not to give Evidence againſt *Harcourt*, becauſe he was her ghoſtly Father; but the Deponent anſwered, he could not help it; and he did not ſee her again a pretty while: However, ſhe was afterwards reconciled to him, and came to him again in *September* laſt, telling him, ſhe came from a great Perſon, and if he would retract his Evidence, and go to *Flanders*, he ſhould have a thouſand Pounds ſecured to him in a Merchant's Hands, which he ſhould receive when he returned to give Evidence for them; telling him he muſt take the Plot off the Catholicks, and throw it on the Proteſtants: That the next Time ſhe came, he demanded of her who was the great Perſon ſhe came from; and ſhe telling him from the Duke of *York*, the Deponent immediately went to the Lord *Shafteſbury* and Mr. *Hampden*, and acquainted them with it; and that they directed him to go on a little farther, and trepan her, that they might diſcover the whole Deſign; and accordingly he gave her Encouragement, and got Dr. *Chamberlain* and his Clerk concealed in a Place where they might hear his Diſcourſe with Mrs. *Price*; after which he aſked Mrs. *Price*, who firſt propoſed this Matter? and ſhe anſwered, ſhe did.

That *Tasborough*, the other Defendant, came firſt to the Deponent in *October* laſt, and ſaid, Mrs. *Price* acquainted him he would come over to them, and he gave *Tasborough* Encouragement to believe ſo; whereupon *Tasborough* ſaid, he was come from the Duke, to confirm what Mrs. *Price* had promiſed, and it ſhould certainly be made good, and he ſhould have the Duke's Protection: That, if he did come over to them, it would be a very charitable Act, and like a Chriſtian; and if he had done amiſs, he might have a Pardon for it: That they produced the Note mentioned in the Indictment, for him to ſign; and *Tasborough* ſaid, it was nothing but what he might lawfully do; and, upon the Deponent's Importunity, Mrs. *Price* left the Note with him, and he gave it to Dr. *Chamberlain* to copy.

That he afterwards met Mr. *Tasborough* and Mrs. *Price* at the *Six Cannes* in *Holbourn*, and they told him, it was the laſt Time they would meet him, if he did not then ſign the Note; that his Refuſal would be much to his Prejudice, and they ſhould not be able to do any Thing for him, unleſs he ſigned it before the Duke went to *Scotland:* And that, once before this, Mrs. *Price* pretended to go to *Windſor* about the Buſineſs, and get his Pardon, telling him the Duke would protect him: That *Tasborough* directed him alſo to apply to the *Spaniſh* Ambaſſador, and he would write Letters to *Flanders* in Behalf of the Deponent; but he could never find the Duke countenanced the Matter, or knew of it, though they uſed his Name. He depoſed farther, that they told him, before the Duke would believe him real, he muſt ſubſcribe to the Note: That the thouſand Pounds were prepared for him; he ſhould go to *Flanders*, and be maintained and protected there; and objecting his Fears of the Inquiſition, if he went to *Flanders*, Mrs.

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Mrs. *Price* alledged, if he could not be content to be in a [illegible] Earl's Houſe, and not go beyond Sea.

That diſcourſing once with *Tasborough* about Sir *George Wakeman*'s Trial, he obſerved what a Progreſs had been made, by acquitting Sir *George*: The Proteſtants themſelves were now at a Stand, he ſaid, *Whether there was a Plot or not*; adding, if you come over to us, it will overthrow all; as for *Oates*, *Bedloe*, and *Prance*, they ſhould ſoon do their Buſineſs.

Then a Copy of the Note mentioned in the Indictment was produced, and proved to be a true Copy.

Wright's Evidence.

———*Wright*, being ſworn, depoſed, that he heard Mrs. *Price* deſire *Dugdale* to be kind to Father *Harcourt*; and another Time he heard her ſay, ſhe had been to viſit *Harcourt*, who took her in his Arms, and ſaid, do not cry for me, I die in a good Cauſe; and ſhe added, if the King commanded her to be burnt at a Stake, ſhe would ſubmit to it, and ſo would the whole Party; whereupon *Dugdale* ſaid, while you uſe theſe kind Expreſſions, you would cut off his Head; and Mrs. *Price* replied, you are a Rogue, I am ſatisfied; and often ſaid, there were not four greater Rogues on this Side Hell than the King's Evidence, (*Oates*, *Bedloe*, *Prance*, and *Dugdale*.)

The Chief Juſtice obſerving, it was ſtrange ſhe ſhould tamper with him after ſhe had called him Rogue, the King's Counſel anſwered, who ſhould ſhe tamper with, but one ſhe thought a Rogue?

Croſs's Evidence.

Croſs, the Vintner, depoſed, That Mrs. *Price* came often to his Houſe, in *June* and *July* laſt, and uſed to ſend for *Dugdale*; and he heard them diſcourſe concerning *Harcourt*, but did not know what it tended to.

Chamberlain's Evidence.

Then *Chamberlain* and *Cleave* his Clerk were ſworn, who lay concealed in *Dugdale*'s Chamber while he converſed with Mrs. *Price*, and depoſed, that they heard her tell *Dugdale*, the *Spaniſh* Ambaſſador was unwilling to treat with him, becauſe his Interpreter was out of Town, and it would be dangerous to truſt another; but that the Duke of *York* would protect him, and pardon him, and give him a thouſand Pounds to maintain him; and *Dugdale* ſaid, you know, Mrs. *Price*, that I did not begin this Intrigue, but you propoſed it to me; and ſhe owned ſhe propoſed it.

Clerk of the Council's Evidence.

Sir *Robert Southwell*, Clerk of the Council, being ſworn, depoſed, that Mrs. *Price* was examined before the Council the 23d of *October*, and it being demanded who framed the above-ſaid Paper, ſhe anſwered, ſhe indicted it herſelf, and one Mrs. *Man* wrote it out for her: And that Mr. *Tasborough* being examined alſo, acknowledged he told *Dugdale*, that unleſs he ſigned it, he could procure him no Favour; for that was to be the Foundation, to teſtify that he was a Man of that Sorrow he had expreſſed himſelf to Mrs. *Price*.

Then Mr. *Sanders*, Counſel for Mrs. *Price*, entered upon her Defence, and ſaid, It was true Mr. *Dugdale* and Mrs. *Price* were Fellow-Servants in the Lord *Aſton*'s Family, and *Dugdale* had promiſed her Marriage, though he thought fit afterwards to deſert her: That upon his coming to *London*, he renewed his Courtſhip; and it was not unlikely, as ſhe was a Papiſt, ſhe might ſolicit a Man ſhe had an Intereſt in for her Party; but it was probable, the Story of ſuborning him was framed by *Dugdale* himſelf, which was baſely done by one with whom he had contracted Marriage.

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The Chief Juſtice ſaid, It was much they ſhould be contracted, when ſhe told him he was a great Rogue.

Mr. *Sanders* anſwered, He deſired it might be obſerved, that it was after ſhe had told him he was a Rogue that he pretended ſhe had ſuborned him.

Mr. Juſtice *Pemberton* replied, And therefore ſhe thought him fitter for her Purpoſe.

To which Mr. *Sanders* anſwered, If ſhe had an Intent to ſuborn him, ſhe would not have called him Rogue to his Face; that was not the Way to inſinuate herſelf.

The Priſoner's Witneſſes.

Then Sir *John Nicholas* depoſed, that *Dugdale* acknowledged before the Council, he had made ſome Propoſals of Marriage to Mrs. *Price*, but ſaid there was no Contract.

Other Witneſſes depoſed, that *Dugdale* courted and kept Company with Mrs. *Price* after he came up to Town: Upon which her Counſel obſerved, that ſhe kept him Company on that Account, and not with an Intent to ſuborn him to retract his Evidence. To which the Court replied, Why did you write that Note then?

Tasborough's Defence by his Counſel.

Mr. *Pollexfen*, Counſel for Mr. *Tasborough*, ſaid, that, notwithſtanding any Evidence that had been given, his Client might be very innocent; for it appeared Mrs. *Price* told him, that *Dugdale* was ſorry for what he had ſworn, and would retract his Evidence; and *Dugdale* himſelf ſaid, he ſeemed to comply, and treated as if he was yielding.

Mr. Juſtice *Pemberton* thereupon obſerved, that *Tasborough* ſaid, Mrs. *Price* acquainted him with the Propoſal ſhe had made of a thouſand Pounds, and he was the Man that was to confirm the Promiſes ſhe had made.

The Chief Juſtice alſo obſerved, That *Tasborough* told *Dugdale*, if he would retract his Evidence, according to the Note that was produced, he ſhould have a thouſand Pounds for his Pains: And it was obſerved, that *Tasborough* uſed the Duke of *York*'s Name, and ſaid he had Authority from him to propoſe thoſe Things, which was a Wrong done to ſo great a Prince.

The Counſel replied, that as *Dugdale* apprehended he ſhould make himſelf a great many Enemies, and might want a Subſiſtence if he complied with them, *Tasborough* might ſay, very innocently, he ſhould be protected, and have a Proviſion made for him, if he deſerved it: There was a great deal of Difference, between offering a Man Money to ſwear a Falſhood, and retract the Truth, and offering him Money to bring Truth to Light, and retract a Falſhood; and it was lawful to promiſe a Witneſs Protection and Aſſiſtance.

The Chief Juſtice ſaid, A thouſand Pounds Reward was too great a Temptation: They did not live in ſo virtuous an Age, but a Man might be tempted, by ſuch a Promiſe, to retract his Evidence, though it was true: By this they would let in all manner of Temptations to Witneſſes; they ſhould never know where they were.

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Mr. *Thompſon*, Counſel for Mr. *Tasborough*, urged, that he was a Gentleman of a fair Character, and not likely to be concerned in ſuch an Affair as *Dugdale* would repreſent this to be, (namely, the ſuborning him to retract his Evidence, without any Regard whether it was true or falſe;) and that Mr. *Tasborough* had applied himſelf to the Lord Privy Seal, upon Mrs. *Price*'s giving him this Information, that Mr. *Dugdale* might receive ſuch Encouragement as was fitting in this Matter.

Then Mrs. *Price*, having obtained Leave to ſpeak for herſelf, ſaid, that *Dugdale* importuned her to go to the Duke of *York*, and promiſed to pay her Coach-Hire; for the Truth of which ſhe appealed to *Dugdale* himſelf; but was told by Mr. Juſtice *Pemberton*, ſhe muſt not interrogate him.

Mrs. *Price* then averred, that *Dugdale* himſelf ſolicited her to draw the Note mentioned in the Indictment; and appealed to *Dugdale*, if he did not acknowledge to her, that he was perjured: Whereupon the Court told her, ſhe was an impudent Woman, ſhe muſt have her Mouth ſtopped, and would not ſuffer her to ſay any more. And Mr. Juſtice *Jones* proceeding to ſum up the Evidence, obſerved to the Jury, that the Familiarity which had been proved between *Dugdale* and Mrs. *Price*, was rather an Argument of her tampering with him, than the contrary; for it was not uſual to attempt ſuch Things with Strangers; and he thought both Parts of the Indictment well proved as to her, as well the perſuading *Dugdale* not to give Evidence againſt *Harcourt*, as the ſuborning him to retract his Evidence afterwards: *Tasborough* indeed was not concerned in the firſt Part, but in the ſuborning *Dugdale* to retract his Evidence, he was equally guilty; for he did not, as had been ſuggeſted, charge *Dugdale* with giving a falſe Evidence againſt his Conſcience, but only adviſed him to keep out of the Way, and retract his Evidence againſt the Catholicks, and he ſhould have a thouſand Pounds, a Pardon, and Protection; and though it might be a very good Thing, to adviſe one who had done an Injury to Repentance and Recantation, yet the offering him a Reward of a thouſand Pounds could never be juſtified: That this was the uſual Way of ſuborning People; no Man ever came to another, and deſired him directly to forſwear himſelf; but the telling him of a thouſand Pounds Reward, and how he might ſerve the Catholick Cauſe, were very proper Arguments in this Caſe to prevail with him, and ſuch as few People in his Circumſtances would have reſiſted; and though *Tasborough* might have the Character of an honeſt Man, it was not to be doubted he had been taught, that in the Service of the Catholick Cauſe, all ſuch Practices would be ſanctified.

They are convicted. After which the Jury laid their Heads together, and found both the Defendants guilty without going from the Bar; and being committed to the Marſhal of the *King's-Bench*, *Tasborough* was fined one hundred Pounds, and *Price* two hundred.

Their Sentence.

Remarks on the Trial of Tasborough *and* Price.

It was the Unhappineſs of theſe Times, that no Man, charged with deſigning to ſtifle this pretended Plot, and tampering with the Witneſſes, could make a proper Defence: He durſt not ſo much as ſuggeſt that the Plot was a Forgery, and the Witneſſes perjured, for Fear of being charged as a Conſpirator, and drawing upon himſelf a Criminal Proſecution. And indeed, *Shaftesbury*, and the Faction, had worked up the People to ſuch a Fury, that a Man was in Danger of being pulled in Pieces, that dared to doubt of the Conſpiracy, or the Veracity of the Witneſſes, or to take any notice of their infamous Characters.

It ſeems to be admitted on all Hands, that if the Plot was a Forgery, and the Witneſſes perjured, there was no manner of Hurt in encouraging the Witneſſes to retract their Evidence, and make what Satisfaction they could to the Perſons they had injured by their Teſtimony; nay, this muſt be acknowledged by all Mankind to be their Duty, ſince it was done with a Deſign to prevent the ſpilling innocent Blood; and it is evident at this Day, to a Demonſtration, that the Plot was in Reality a Sham, and the Witneſſes notoriouſly perjured: Even *Burnet* and *Rapin*, the celebrated Advocates of the Faction, have, both of them, been compelled, by the Force of Truth, to confeſs thus much, however they may have endeavoured, in ſome Part of their Works, to diſguiſe their real Thoughts, leaſt they ſhould incur the Diſpleaſure of their Party.

Rapin ſeems very ready to grant, there was no Deſign *againſt the King's Life*: On the contrary, like a true Diſciple of *Shaftesbury*'s, he has formed another Plot, in which he makes the King and the Duke of *York* the principal Conſpirators. But if it be admitted there was *no Plot againſt the King's Life*, whatever Deſigns the King and Duke might have to ſubvert the eſtabliſhed Religion and Government, all thoſe who were executed for the Plot, were certainly murdered, under a Colour of Law; for it was a Conſpiracy againſt the King's Life they were charged with, and this is what they were condemned for: Beſides, a Conſpiracy to aſſiſt the King, to bring about an Alteration in the eſtabliſhed Religion or Government, was not Treaſon by any Statute or Law then in being, and conſequently the Witneſſes were perjured, and the Sufferers unjuſtly put to death, though ſuch a Conſpiracy, as *Shaftesbury*, and after him *Rapin*, ſuppoſes, ſhould be admitted.

But whoever forged the Plot, it is evident, from the Narratives of *Tongue* and *Oates*, that the Original Deſign was to charge the Jeſuits, or rather the Pope, with a Deſign to murder both the King and Duke, to alter the very Frame of the Government, uſurp the Dominion of the Kingdom, and to govern it by a Viceroy or Lieutenant, as a Province of the See of *Rome*: And this is ſtill more apparent from the Commiſſions both for Civil and Military Offices, which *Oates* pretended were iſſued out at *Rome*, by an Authority derived from the Pope, or the General of the Jeſuits; and the Authority, he pretended, was given them, by thoſe Commiſſions, to depoſe and murder his Majeſty.

However, when *Shaftesbury* came into the Project, he perfectly new-modelled their Scheme; and inſtead of ſetting aſide the King and the Duke, he made them to be in a Plot with the Papiſts, and thoſe he called Popiſhly affected, againſt the Proteſtant Religion, and the Liberties of the People, in order to incite

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incite a Rebellion againſt King *Charles* II. as the Faction had done againſt K. *Charles* I. and they had infallibly brought the Son, as well as the Father, to the Block, if their Views had not been ſeen through before the Project was ripe: So that here was in reality a Plot of the Faction, and not of the Papiſts, to deſtroy the King and Government.

It can never be expected indeed, that the Sectaries, and their Adherents, ſhould entirely give up the Popiſh Plot, how full ſoever the Proof of the Forgery may be, becauſe they muſt then confeſs the Villainy of their Party in forging it, and in putting ſo many innocent Men to death, by hiring perjured Witneſſes to ſwear them out of their Lives, which muſt render their Party odious to all Mankind, and induce thoſe that wiſh well to the Government, to be upon their Guard whenever the Sectaries exclaim againſt Popery; a Stratagem they have formerly tried with ſuch Succeſs, that we find them repeating it in almoſt every Reign. But to return to the Trial:

The Judge, who ſummed up the Evidence, ſeems to labour with all his Might to get the Defendants convicted, inſomuch that he ſcarce confines himſelf to Truth; for he ſays, *Tasborough* did not charge *Dugdale* with giving falſe Evidence, and therefore deſired him to retract it; but would have him retract it, right or wrong; whereas in the Note that was drawn up for *Dugdale* to ſign, it is expreſly ſaid, that *Dugdale* had ſworn falſly. Then the Judge obſerves, that the offering of a thouſand Pounds Reward could never be juſtified; but if it be conſidered, that this was offered only to prevent the ſhedding innocent Blood, and that the Party offered as largely to get them convicted, when they knew the Priſoners innocent, the offering a thouſand Pounds to get the Witneſs to retract his murdering Evidence, might very well be juſtified; it would have been in vain to have offered leſs to a Man of Mr. *Dugdale*'s Honeſty, who was reſolved to make the moſt of the Parties that bid Money for his Evidence.

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It was, indeed, enough to confound all Juſtice, and render it impoſſible almoſt to diſtinguiſh between Right and Wrong, if ſuch extravagant Rewards were offered to Witneſſes in ſuch mean Circumſtances, as the Judge rightly obſerved: But the Faction led the Way, and that in a very wicked Cauſe; and ſurely it was as lawful for innocent Men to endeavour to get the Evidence, falſly given againſt them, retracted, as it was for their Enemies to hire Witneſſes to take away their Lives.

Nor can I ſee why *Dugdale* ſhould not have been permitted to have made ſome Anſwer to Mrs. *Price*, when ſhe charged him to his Face in Court, and appealed to himſelf, *Whether he did not importune her to go with him to the Duke of* York? *And whether he did not acknowledge himſelf perjured?* If the Truth might have been brought to Light, by this or any other Means, it would have given more Satisfaction, than the adhering rigorouſly to Rules that have very little Reaſon to ſupport them.

1679. Car. II. rris's al.

The Trial of BENJAMIN HARRIS, Bookſeller, for a *Miſdemeanor*, at *Guildhall*, *London*, the 5th of *February*, 1679. 32 *Car.* II.

1679. 32 Car. II.

Charge publiſhing a ſeditious Libel.

THE Defendant, by an Information exhibited by Mr. Attorney-General, was charged with publiſhing a Libel, entitled, *An Appeal from the Country to the City*; in which it was ſaid, That the greateſt Danger accruing to the Kingdom, upon the King's untimely Death, would proceed from a Confuſion, and Want of ſome eminent and intereſted Perſon they might truſt, to lead them up againſt a *French* and Popiſh Army; for which Purpoſe no Perſon was fitter than the Duke of *Monmouth*, as well for Quality, Courage, and Conduct, as for that his Life and Fortune depended on the ſame Bottom as theirs: He would ſtand by them, and therefore they ought to ſtand by him; and remember the old Rule, *He who has the worſt Title, ever makes the beſt King*; and inſtead of that Motto, *God and my Right*, he ought to take that of *God and my People*.

Evi-

Three Witneſſes proved the Defendant's ſelling the Book; and a Fourth depoſed, that the Defendant was eſteemed an Anabaptiſt; and that when he was queſtioned by the Company of Stationers, for ſelling ſuch ſcandalous Books, he anſwered, he had ſeveral Thouſands to ſtand by him.

The Defence.

The Defendant's Counſel admitted he ſold the Book, but ſaid he did not do it maliciouſly: He ſaw the Book about Town, and bought a Parcel of them, hoping to get Money by them in his way of Trade; but had no Intention to ſcandalize the King or Government, and called two of his Neighbours to teſtify he was a peaceable Man, and not uſed to ſpeak diſreſpectfully of the Government.

The Charge of the Chief Juſtice.

The Chief Juſtice, in his Directions to the Jury, ſaid, that the expoſing this Libel to Sale was a great Offence; that it had been lately reſolved by all the Judges, that thoſe who printed or ſold ſcandalous Books or Pamphlets, reflecting on the Publick, or on private Perſons, ſuch Books might be ſeized, and the Offenders puniſhed by Law; and that all Writers of News, though not ſcandalous, ſeditious, or reflecting on the Government, if they wrote falſe News, were puniſhable: That the Book in Queſtion contained ſuch baſe Reflections againſt all ſorts of Perſons, he thought there could not be a worſe; or a worſe Man than the Defendant, who for a trivial Profit diſturbed the Peace of his Country, and would ſet the People together by the Ears for the Value of a Groat.

The

1679. 32 Car. II. *He is convicted, and sentenced.*

The Jury finding the Defendant *Guilty of selling the Book*, the Chief Justice told them they must find him *Guilty*, or *Not Guilty*; whereupon they found him *Guilty* generally, and he was sentenced to be set in the Pillory, to pay a Fine of 500 *l.* and to give Security for his good Behaviour for three Years.

1679. 32 Car. II.

1679. 32 Car. II. Smith's Trial. The Trial of FRANCIS SMITH, Bookseller, for a *Misdemeanor*, at *Guildhall, London*, the 7th of *February*, 1679. 32 *Car.* II.

1679. 32 Car. II.

The Charge, for Publishing a Libel,

AN Information was exhibited against the Defendant by the Attorney-General, charging him, that after the Trial of Sir *George Wakeman*, *Marshal*, *Rumley*, and *Corker*, and their Acquittal before the Lord Mayor, the Lord Chief Justice *Scroggs*, *&c.* he had published a scandalous Libel, entitled, *Some Observations on the late Trial*, reflecting on the Court, *&c.*

confessed. The Information having been opened, and the Witnesses called, the Defendant's Wife came into Court, and said her Husband was sick, or he would have come into Court, and made his Submission in Person; whereupon his Council admitted the Record, and the Jury found him *Guilty*.

He afterwards submitted to a small Fine.

JANE CURTIS, also being prosecuted for publishing the same Libel, came into Court, confessed her Offence, and made her Submission; whereupon the Jury found her *Guilty*.

Jane Curtis also confesses her Offence.

1679. 32 Car. II. Gascoigne's Trial. The Trial of Sir THOMAS GASCOIGNE, Bart. for *High-Treason*, at the *King's-Bench* Bar, the 11th of *February*, 1679. 32 *Car.* II.

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The Indictment.

THE Indictment charges, that Sir *Thomas Gascoigne*, late of *Elmet* in the County of *York*, on the 30th of *May*, in the 31st Year of his present Majesty, at *Elmet* aforesaid, did compass and imagine the Death of the King, and the Subversion of the Established Religion and Government; and that the said Sir *Thomas Gascoigne*, Sir *Miles Stapleton*, and other false Traitors, did at the Time and Place aforesaid, assemble themselves, and resolve to put the said Treasons in Execution, agreeing to contribute large Sums of Money to several of his Majesty's Subjects, to procure them to kill him; and that the said Sir *Thomas Gascoigne* did himself solicit *Robert Bolron*, and promised him for that Service 1000 *l.*

Some assigned to assist the Prisoner.

The Prisoner being fourscore and four Years of Age, and very deaf, obtained leave for two of his Friends to stand by him and assist him at his Trial; but I do not perceive there was any one but Mr. *Hobart* an Attorney, that did him any Service.

The Evidence of Bolron, *the Prisoner's Servant.*

The Witnesses being called, *Bolron*, lately a Servant to Sir *Thomas*, deposed, that in 1674, he came to live with Sir *Thomas* as Steward to his Coal-works; and that a little before *Easter*, 1675, being in the next Room, he heard Sir *Thomas* tell Mr. *Charles Ingleby*, that least his Estate should be forfeited, he was resolved to make a collusive Conveyance thereof; and *Charles Ingleby* said, he would draw the Conveyance: That the Defendant afterwards went with Sir *Thomas* to Sir *William Ingleby*'s, and saw him Receive 1000 *l.* as the Consideration Money (colourably); that he heard the Deed read, and was Witness to the Execution of it; and it was a Conveyance of Sir *Thomas*'s whole Estate to Sir *William Ingleby* for seven Years, reserving only 100 *l. per Annum*, besides the Consideration Money; and this he did (as the Deponent heard him tell Sir *Miles Stapleton*) to secure his Estate in case he should be discovered to be in the Design of killing the King: That in the Year 1676, he heard Sir *Thomas* tell *Christopher Metcalfe*, that he resolved to send 3000 *l.* to the Jesuits in *London*, for carrying on the Design; and Sir *Thomas* mentioned 300 *l.* for *Corker*, 300 *l.* for *Harcourt*, 300 *l.* for *Cowwallis*, alias *Pracid*, and 300 *l.* to several other Persons; and said he would return 300 *l.* at a Time, by *Richard Phisick*, to prevent Suspicion: That in 1677, he heard Sir *Thomas* say, he had returned it; and that, were it a thousand Times as much, he should be glad to spend it in so good a Cause; and at other Times, he heard him say, it was for killing the King: He further deposed, that Sir *Thomas Gascoigne*, Sir *Miles Stapleton*, the Lady *Tempest*, *Thomas Thwing*, and several more, agreed to found a Nunnery at *Dolebank*, if their Design of killing the King took Effect, and the Roman Catholick Religion was established in *England*; and Sir *Thomas* assigned 90 *l.* a Year out of his Estate towards endowing it.

Bolron added, that on the 30th of *May* last, Sir *Thomas* bid him go into a Gallery, and there *William Rushton*, his Confessor, came to him, and would have persuaded him to kill the King, telling him how meritorious an Act it would be, and that the Pope would give the Kingdom to another: That returning to Sir *Thomas* again, and telling him what Discourse he had with *Rush-*

1679. Car. II

Ruſhton, Sir *Thomas* took him by the Hand, and ſaid, if the Deponent would engage in the Deſign of killing the King, he would give him 1000 *l.* and when he refuſed to be concerned in ſuch a wicked and bloody Deed, Sir *Thomas* deſired he would keep his Diſcourſe ſecret; but he went immediately to a Juſtice.

The Court demanding how ſoon he went? He ſaid he went within a Fortnight to Mr. *Tindal*, and made Oath that Sir *Thomas* offered him 1000 *l.* to kill the King: That going afterwards to *London*, he applied himſelf to Sir *Robert Clayton*, who carried him to the Lord *Shaftesbury*, and an Order of Council was made concerning him.

It being demanded of him by the Court, If he left Sir *Thomas Gaſcoigne*'s Houſe in good Friendſhip? *Bolron* anſwered, Yes: He was often at his Houſe afterwards, and went thither to hear Maſs. It being demanded if he had any Eſtate when he left his Service? *Bolron* anſwered, he rented 15 *l. per Ann.* of Sir *Thomas*, and had 7 *l.* a Year of his own; and added, that he heard Sir *Thomas* tell the Lady *Tempeſt* he would ſend 150 *l.* to *Dolebank*, in hopes the Blow would be ſhortly given; and *Cornwallis* wrote Word he had received it, but ſaid it was too little to carry on ſo great a Deſign; for this was to arm the poor Catholicks when the King was killed.

Priſoner's Anſwer to this Evidence.

Then Mr. *Hobart*, who was appointed to aſſiſt Sir *Thomas*, repeated Part of the Evidence to him; and Sir *Thomas* anſwered, He acknowledged he had Money of Sir *William Ingleby*, and ſealed a Deed to him, and that he had returned more than 3000 *l.* by *Phiſwick*, who was his Servant, for the Uſe of his Sons, Daughters, and other Relations; but averred, that what *Bolron* had atteſted concerning the founding a Nunnery, and the Deſign of killing the King, was abſolutely falſe: And particularly his offering *Bolron* 1000 *l.* to be one of the Aſſaſſins: And demanding if ever he knew him have 200 *l.* together in his Life? *Bolron* anſwered, he had ſeen 500 *l.* together in his Houſe, and 700 *l.* in Mr. *Phiſwick*'s Hands: That Sir *Thomas*'s Eſtate was then at leaſt 1200 *l. per Ann.* though he believed he had ſettled 600 *l. per Ann.* on his Son. Sir *Thomas* replied, he wiſhed *Bolron* would make it good; but there was not one Word of Truth in his Evidence: After which

Mowbray, another of Sir *Thomas*'s Servants, was ſworn, and ſaid he would firſt give Evidence of the Plot in general (as the reſt of the Witneſſes were taught) and depoſed, that he came to wait on Sir *Thomas* in his Chamber in 1674, and continued with him till 76, during which Time *Adamſon*, *Fincham*, *Stapleton* and *Killingbeck*, all Prieſts, and the two *Thwyngs* uſed to viſit Mr. *Ruſhton*; and the Deponent, being diligent in attending Sir *Thomas* at the Altar, was much in his Favour, and permitted to be in his Chamber when the Prieſts were in private with him, where he often heard them talk of a Deſign to advance the Popiſh Religion, and that it was like to be effected ſpeedily, ſince moſt of the conſiderable Papiſts were engaged in it; and if fair Means could not do it, Force muſt be uſed; for the King had promiſed the Jeſuits abroad to eſtabliſh their Religion when he was reſtored, which they deſpaired of now, and therefore he was adjudged an Heretick, and to be killed; and *Ruſhton* had given an Oath to Sir *Thomas*, his Son and Daughter, to conceal it, and be active in it: That at another Time *Ruſhton* produced a Liſt with 4 or 500 Names ſubſcribed to it, among which was Sir *Thomas Gaſcoigne*'s; the Title whereof was, *A Liſt of them that are engaged in the Deſign of killing the King, and promoting the Catholick Religion*; and they ſaid the Pope had given a Commiſſion to execute the Deſign, with a plenary Indulgence of Ten Thouſand Years to all who ſhould either act, or contribute thereto; beſides other Gratifications.

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That about *Michaelmas*, 1676, he heard Sir *Thomas*, his Son, the Lady *Tempeſt*, and Mr. *Ruſhton*, diſcourſing concerning killing the King, and firing the Cities of *London* and *York*; and Sir *Thomas* then aſſured *Ruſhton* he would obſerve the Oath of Secrecy, and contribute to the utmoſt of his Power to promote the Deſign; and they unanimouſly agreed it was a meritorious Undertaking, and ſaid they would venture their Lives and Fortunes in it: This he heard, as he ſtood without the Door of the Room.

The Priſoner's Anſwer to this Evidence.

Mr. *Hobart* having repeated this Evidence to Sir *Thomas*, he anſwered, this Witneſs had got his Story out of the News-Books: There was not a Word of Truth came out of his Mouth; and demanded why he did not diſcover this Matter ſooner? *Mowbray* ſaid, he was perſuaded to continue a Papiſt, that he might not diſcover it; and after he had taken the Oaths, and turned Proteſtant, they threatened to take away his Life; and his Circumſtances would not permit him to come to *London*.

Further Evidence.

Then Sir *Thomas*'s Almanack was produced as Evidence againſt him, wherein was mentioned 100 *l.* paid to *Peter* for *Corker*, which Sir *Thomas* ſaid was part of *Mary Appleby*'s Portion that he returned to *Corker*, becauſe he did not know where ſhe lived in *Paris*.

Mr. Attorney obſerved, There was another Book which mentioned 900 *l.* paid to *Corker*: To which Sir *Thomas* anſwered, he had been ſeveral Years returning Money: He was obliged to pay 100 *l.* annually to *Mary Appleby*, and ſeveral other Sums, as the Rents came in: They might amount to 2000 *l.* from firſt to laſt. And the Money he was charged with applying to erect a Nunnery, was for Mr. *Thwyng* and his Siſters, that lived next Door to him.

A Letter was then produced, to prove his Intention of founding a Nunnery, containing grateful Acknowledgments to Sir *Thomas* for all charitable Favours: Tells him his Niece, and Mrs. *Haſtings*, deſired to ſee him at *Dolebank*, and that the Writer had ſent a Paper ſafe to Mrs. *Bedingfield*, and informed her of Sir *Thomas*'s Deſign to have the following Proviſo inſerted in the Writing, (*viz. That if* England *be converted, then the whole* 90 l. per Ann. *to be applied here in* Yorkſhire, *about or at* Heworth), which would be for the Glory of

1679. 32 Car. II. God; and that the good Religious there were desirous to remove to Mr. *Dawson's*, because the House would not receive more Scholars, and had other Inconveniencies.

Whereupon the Chief Justice observed, it was pretty plain there was a Nunnery designed.

Another Letter, written by *Pracid* the Priest, was read, wherein it was declared, that the pretended Oath of Allegiance could not be taken; and whoever gave Leave, deceived the People, and acted contrary to the Catholick Church.

Then *Phiswick* was sworn, and deposed that he was Servant to Sir *Thomas* above six Years, and in that Time had returned upwards of six thousand Pounds; Part whereof was for Sir *Thomas*, Part for his Son, and Part for the Lady *Tempest*; and it being demanded what Estates they had? *Phiswick* answered, His Son had between 4 and 500 *l. per Ann.* the Lady *Tempest* 300 *l.* and Sir *Thomas* 1600 *l. per Annum.*

The Prisoner's Witnesses.

Sir *Thomas* being permitted to call his Witnesses, *Babington* appeared and deposed, that last Spring Sir *Thomas* gave him Orders to sue *Bolron* on two Bonds: Whereupon *Bolron* offered to convey a House at *Newcastle* to Sir *Thomas*, and a Conveyance was drawn, as a collateral Security for the Money; but *Bolron* refused to execute it, unless Sir *Thomas* would deliver up the two Bonds: That the Deponent also received Orders to deliver Declarations in Ejectment to turn *Bolron* out of his Farm, and telling *Bolron* of it, he said, *Then, by God, I will do that which I did not intend to do*; and *Moor*, who was bound for *Bolron*, told the Deponent that *Bolron* declared, if Sir *Thomas* sued him, he would inform that he kept Priests in his House.

Moor also deposed, that *Bolron*, desiring him to be bound with him to Sir *Thomas Gascoigne*, told him, he need not fear any Trouble; for if Sir *Thomas* sued him, he would inform he kept Priests; and that *Bolron* not paying the Money, the Deponent desired Mr. *Babington* to take out a Writ against him; whereupon he absconded, and went to *London*: That the Deponent meeting him upon the Road, as he was returning to *Yorkshire*, *Bolron* said, you and I have often discoursed of Sir *Thomas Gascoigne*; you may do me Good: If you do not, pray do me no Harm; and the Deponent demanding if Sir *Thomas* was in the Plot, for he had often told him he was Innocent, *Bolron* answered, he was then a Papist, and equivocated, and if he had told a thousand Lies, or killed twenty Protestants, their Priests would have forgiven him: And then pulled out Ten Shillings, and said, *It is all the Money I have: Pray do me no Harm, for you know I have all along denied it.*

Thompson deposed, that *Bolron* was Steward of Sir *Thomas Gascoigne's* Colliery, and Sir *Thomas* not liking his Accompts turned him out; and there being a great deal of Money due to Sir *Thomas*, he desired the Deponent to be bound with him, and so became bound with him to Sir *Thomas*; but demanding afterwards how he should be indemnified? *Bolron* answered, if Sir *Thomas* sued him, he would do him an ill Turn, and soon after went to *London*: That *Bolron* returning from *London*, and having taken up Sir *Thomas*, the Deponent asked him, What he designed to do? and *Bolron* answered, Do not fear, I am to receive 30 *l.* on the King's Account; but another bids me 60 *l.* I know what *Oates* and *Bedloe* had, and will not bate a Farthing. 1679. 32 Car. II.

Backhouse, the Constable, deposed, That on the 7th of *July* last, he served a Warrant on Sir *Thomas*, and was ordered to bring the Witnesses before the Justices; and Mrs. *Bolron* being then sick, said, she knew nothing against Sir *Thomas*; but her Husband said she must go, or he would have her drawn at the Cart's Arse: Another Witness deposed, that when *Bolron* told his Wife she must go, and swear against Sir *Thomas*, she cried, and refused to go; and *Bolron* threatening to tie her to a Horse's Tail, she answered, she knew nothing against Sir *Thomas* relating to his Majesty or the Church.

Gregson deposed, That in *August*, after *Bolron* came from *London*, the Deponent asked him, how Sir *Thomas* did, and how he would come off about the Plot? and he answered, Sir *Thomas* might come off well enough; but it would cost him much Money. The Deponent then asked, how they came to differ? and he said, that Rogue *Addison*, the Priest's Brother, was the Occasion of it, who called him to an Account, or else he had not done it; and after *Bolron* had rode from him a little way, he returned and said, the King had like to have been stabbed by one of the Privy-Council, and now they would sooner believe his Information.

Two Witnesses deposed, That they overheard *Bolron* and *Mowbray* discoursing concerning Sir *Thomas Gascoigne*; and *Bolron* said, Sir *Thomas* had been severe upon them both, and now they had a Way to be revenged: *Mowbray* answered, he thought Sir *Thomas* an honest Man; but if he knew any Thing to hang my Lady *Tempest*, he would discover it; and *Bolron* replied, but Sir *Thomas* troubles me, and if I do not make out something against him (which must be by two Witnesses) he will ruin me; and *Mowbray* demanding how they should do it? *Bolron* answered, If thou wilt come to my House, I will put thee in a Way, and we shall be well rewarded; and *Mowbray* fixed a Day to go to him.

Hickeringill deposed, That on the 12th of *September* last, he was at an Alehouse with *Mowbray*, and one *Legat*, and they were consulting together how to disgrace Sir *Thomas*, and take away his Life; and *Mowbray* called out the Deponent, and said Sir *Thomas* and the Lady *Tempest* had done all they could to disgrace him, (he supposed he meant their giving out he had robbed them, which became the Country Talk) and now he would match them: Now he would requite them.

Johnson deposed, That the first Month *Bolron* came into Sir *Thomas*'s Service, he lost 3 *l.* by him; for the Deponent stated the Accompt: To which *Bolron* answered, Sir *Thomas* forgave it him.

Pebles, the Clerk of the Peace for the County of *York*, deposed, That *Bolron* was very

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very busy in charging People with Disaffection, and had but an indifferent Character in the County; most Men spoke ill of him.

Clow deposed, That he arrested *Bolron* at the Suit of *Hickeringill*, and *Bolron* said he would make Sir *Thomas* pay the Debt, or he would play him such a Trick as he little dreamt of.

Hobart deposed, That he knew of the Payment of most Part of the Money, that had been mentioned to be returned by Sir *Thomas*, 1800 *l.* whereof was paid to *Trumbal*, upon a Purchase; 200 *l.* to a Client of his, and 600 *l.* to *Corker* at Times, for the last of which Sums he had Receipts from Mrs. *Mary Appleby*, to whom Sir *Thomas* was Guardian.

er Wit-es for King.

Then the King's Council called Sir *John Nicholas*, Clerk of the Council, who deposed, that Sir *Thomas* said before the Council, *Bolron* was his Servant, till within this Twelve-month; and for his Honesty, he had nothing to say to him, 'till of late, that he had not behaved himself so well in giving an Information against him.

Mrs. *Bolron* being called, deposed, That she was unwilling to go before the Justice; but that her Husband nevre threatned her, to make her accuse Sir *Thomas*.

Another Witness deposed, He heard Sir *Thomas* say, he never had a more faithful Servant than *Bolron*.

ges di-the a-t the ner.

Then Mr. Justice *Jones* summed up the Evidence, and directed the Jury to find the Prisoner guilty; as did Mr. Justice *Dolben*, and Mr. Justice *Pemberton*; and particularly, Mr. Justice *Dolben* told the Jury, he observed they took Notice how improbable it was that Sir *Thomas Gascoigne* should sue *Bolron* upon the Bonds that were mentioned, and take a Course to turn him out of his Farm, at a Time when he knew *Bolron* was privy to his Conspiracy; and when Sir *Thomas* himself had offered him a Thousand Pounds to kill the King: But he said, they must give a Verdict according to their Evidence. And there being two Witnesses who swore positively to a Thing within their own Knowledge, scarce any Improbability ought to weigh against Evidence: But notwithstanding the Court laboured in this manner to get Sir *Thomas* con-

Tho-ac-ed.

victed, the Jury, after half an Hour's Recess, brought in their Verdict, that he was *Not Guilty*.

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Remarks on this Trial.

Thus we see new Witnesses of the Plot rising up every Day: If a Servant had cheated or robbed his Master, he would revenge himself, and endeavour to ward off a Prosecution, by swearing his Master into a Plot.

This was an expeditious Way of paying Debts, and getting a Protection against the Officers of Justice, which most of the Witnesses of the Plot wanted; but when there were such extravagant Rewards offered besides, for Witnesses to support the Credit of the Plot, no Wonder we find them multiply apace. The Chief Justice seems to have been sufficiently convinced that the Prisoner was Innocent, and probably went off the Bench, that he might not incur the Displeasure of the Faction, by declaring his Opinion on summing up the Evidence. The other three Judges were either still deluded with the Belief of a Plot, or biassed by their Fears of the same Party, or they would not have borne so hard on the Prisoner, in their Directions to the Jury; particularly Mr. Justice *Dolben*, who tells them they ought to believe the two Witnesses, notwithstanding the high Improbability of Sir *Thomas*'s giving Orders to sue a Man, and turn him out of his Farm, after he had offered him 1000 *l.* to kill the King. Surely he ought to have taken Notice also, that the Witnesses were not credible Witnesses: That they were moved by Revenge, or Avarice, or that they gave this Evidence to save themselves from a Jail; but in State Prosecutions it is very rare to find Judges perfectly indifferent: They are too often moved, either by Hopes or Fears, to shew great Partiality, and instead of being Counsel for the Prisoners, as they sometimes have declared they ought to be, they wrest both the Law and the Evidence to his Destruction: And where they do this, with an Intent to serve, or keep fair with a powerful Faction, or an arbitrary Administration, they seem to look upon such Motives as a sufficient Justification of their Conduct to Men; but how they will be able to answer it to the Righteous Judge of all the Earth, possibly they seldom reflect.

The

1680. 32 Car. II. Caſtlemaine's *Trial.*

The Trial of ROGER PALMER, Eſq; (Earl of *Caſtlemaine* in *Ireland*) for *High-Treaſon*, at the *King's-Bench* Bar. *June* 23d, 1680. *Trin.* 32 *Car.* II.

The Charge THE Indictment charges the Earl with High-Treaſon, in conſpiring the Death of the King, and the Subverſion of the eſtabliſhed Religion and Government; and in order thereto, promiſing great Rewards, and paying divers Sums of Money to ſeveral Perſons unknown, and writing Notes to incite ſeveral other Perſons to engage in the ſame traiterous Deſigns.

Mr. Attorney's Obſervations. Mr. Attorney, in opening the Evidence, obſerved, that the Lord *Caſtlemaine* was the Perſon who managed the Evidence for the Priſoners who had been tried for the Popiſh Plot, and was always preſent at thoſe Trials, and countenanced the Criminals, and afterwards became an Interceſſor for them.

Oates's Evidence. *Oates* depoſed, That he brought a Letter from the Fathers in *Spain* to the Earl of *Caſtlemaine*, whereby they informed him, that the Fathers there zealouſly concurred with the Fathers in *England* in the *Deſign*, namely, *The Subverſion of the Government, the Alteration of Religion, and the Deſtruction of the King.*

The Chief Juſtice demanding, If this was expreſſed in the Letter? *Oates* anſwered, The Word *Deſign* was; under which they uſed to comprehend all thoſe Things.

That he did not deliver this Letter to my Lord himſelf, but ſaw a Letter afterwards at *St. Omers*, wherein he acknowledged the Receipt of it: That he (the Deponent) afterwards came over from *St. Omers*, to the Conſult at the *White Horſe* in the *Strand*, and conſented with the reſt of the Jeſuits to the King's Death; and that my Lord *Caſtlemaine*, being ſome few Days after at *Wild-houſe*, endeavoured to reconcile thoſe Fathers and the Jeſuits, that they might the better carry on the Deſign: That the Deponent did not know his Lordſhip then; but going over *Lincoln's-Inn-Fields* with Mr *Langhorne* afterwards, and meeting his Lordſhip, Mr. *Langhorne* preſented the Deponent to him, and they went together to Mr. *Fenwicke*'s Chamber, where they diſcourſed of the Conſult, and how unanimous the Fathers were in ſigning it: They talked alſo of laying aſide the King, and bringing in the Popiſh Religion; and my Lord ſaid, He wiſhed them Succeſs, and *now he ſhould be revenged for the Injuries done him.*

The Chief Juſtice demanded, If they always meant the Death of the King, when they mentioned *The Deſign?*

Oates anſwered, It was ſo taken among them (the Jeſuits), and ſo received by the Lord *Caſtlemaine.*

The Chief Juſtice asked, How he could ſay it was ſo received by his Lordſhip?

Oates anſwered, He had often in his Letters ſpoken of introducing the Popiſh Religion, and annexed it to the Word *Deſign.* Whereupon the Chief Juſtice replied, Then *Deſign* meant ſomething elſe beſides killing the King.

The Court demanded, When he firſt diſcovered the Lord *Caſtlemaine* was concerned in this Buſineſs? *Oates* anſwered, The laſt Seſſion of the Long-Parliament: That he accuſed him *Trinity-Term* was Twelvemonth, and he was committed; and when *Dangerfield* came in and accuſed my Lord, he (the Deponent) brought a Charge a ſecond Time againſt him.

Lord *Caſtlemaine* obſerved, when this Witneſs was before the King, he ſpoke of a Divorce.

The Attorney General anſwered, What he ſaid in another Place, was not to be debated now.

His Lordſhip replied, If he proved him an ill Man in any Place, it was fit to be mentioned here; and demanded, If he ſaw the Divorce.

Oates ſaid, He would give Evidence of that, if his Lordſhip came to be indicted for his Prieſthood; but he did hear my Lord ſay at *Wild-houſe*, he had been at great Charge to carry on that Buſineſs of the Divorce: And a Letter was found, in a Prieſt's Chamber that was ſearched, wherein the whole Caſe was ſtated between him and his Wife *Barbara*; and he did tell the King, he ſaw in *Strange*'s Hand an Account of a Divorce between my Lord *Caſtlemaine* and *Barbara* Dutcheſs of *Cleveland.*

Mr. Attorney objected, That if the Priſoner might ask Queſtions about ſuch foreign Matters, any Man might be catched. The Chief Juſtice anſwered, This was not ſo remote, but Uſe might be made of it. And the Lord *Caſtlemaine* ſaid, How could a Man be catched in the Truth? And demanded of *Oates* again, Whether he ſaw a Divorce, and where; or whether he ſaid ſo?

Oates anſwered, He did not know whether he ſaid ſo or not; *and would have ſtolen away, but my Lord deſired he might ſtay in Court.*

Then *Dangerfield* was called as a Witneſs, to whoſe Teſtimony his Lordſhip objected, That he had been convicted of Felony; broke Priſon, and been outlawed upon it; that he was alſo ſtigmatized, had ſtood in the Pillory, and been burnt in the Hand; and deſired his Counſel might be heard, as to his

Dangerfield's Evidence.

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his being a Witneſs: Whereupon Counſel was heard, and the Judges being in Doubt, one of them went and conſulted the Judges of the *Common Pleas*; after whoſe Return the Chief Juſtice ſaid, Mr. Juſtice *Raymond* had put the Caſe to the Judges of the *Common Pleas*, (*viz.*) That the Witneſs was convicted of Felony, had been burnt in the Hand, out-lawed for Felony, and had a General Pardon; and they were of Opinion, that a General Pardon would not reſtore him to be a Witneſs, after an Outlawry for Felony, becauſe of the Intereſt the Subject had in him; but where a Perſon was burnt in the Hand, they looked upon it as a more general Diſcharge than a Pardon would amount to; and that, if he had been convicted of Felony, and not burnt in the Hand, a Pardon would not have ſet him right, but being convicted and burnt in the Hand, they ſuppoſed he might be a Witneſs.

Then *Dangerfield* was ſworn, and depoſed, That about a Year ago, the Lady *Powis* ſent him with a Letter to the Lord *Caſtlemaine*, and his Lordſhip ſent an Anſwer by him, which the Lady *Powis* read aloud to the Deponent and Mrs. *Cellier*, in which were theſe Words: *This Perſon I like very well, and though he be no Scholar, he will ſerve to inſtruct the Youths as he ſhall be directed*; and that by *the Youths*, were meant the *St. Omers* Witneſſes, whom his Lordſhip uſed to inſtruct; and it was a common Saying, when any of them were out in their Parts, *I muſt go to my Lord* Caſtlemaine *for my Leſſon*; and that his Lordſhip went with them to the Trials, and complained of the ill Uſage ſome of them received there; and that his Lordſhip employed him to get *Lane* out of the *Gate-houſe*.

The Chief Juſtice demanding, How he came into his Lordſhip's Acquaintance? He anſwered, The firſt Time was when he went with the Lady *Powis*'s Letter, and in *July* after, he went to wait on him with ſome Letters of the ſame Purport with thoſe he conveyed into Colonel *Manſel*'s Chamber, to promote the ſham Plot; for there was a Purpoſe, that ſo many Letters ſhould be conveyed into the Houſes of ſeveral Perſons of Quality, called Presbyterians (for that was the Character all Perſons, who were not for promoting the Catholick Intereſt, lay under); which Letters his Lordſhip approved, and ordered ſeveral Copies to be made of them, ſaying, He would contribute to thoſe who were concerned in that Matter: That in *Auguſt* afterwards, the Day after the Deponent had been treated with by the Lords in the *Tower* to kill the King, he waited on the Lord *Caſtlemaine*, who, ſending his Servant out of the Room, looked upon him with a ſtern Countenance, and demanded, Why he refuſed the Buſineſs for which he was taken out of Priſon; and the Deponent anſwering, Would his Lordſhip have him kill the King? His Lordſhip fell into ſuch a Fury, that he was forced rudely to leave the Room; adding, that he had heard my Lord ſeveral Times, in familiar Diſcourſe, call the King Tyrant.

The Earl's Witneſſes.

The Lord *Caſtlemaine* then entered upon his Defence; and firſt he produced a Witneſs to prove, that *Oates* indicted one *Haſtings* for Sodomy, who was acquitted. Then *Hutchinſon* the Prieſt, who converted *Oates*, was called, who depoſed, He was very poor and neceſſitous. Several Students of the College of *St. Omers*, depoſed, That he was at *St. Omers* when he ſwore he was at *London* at the Conſult.

Records proving Dangerfield a common Cheat.

A great many Records were produced, being the Convictions of *Dangerfield* for ſeveral notorious Cheats, ſuch as gilding Silver, and paſſing it away for Gold, for which he had been ſeveral Times ſet in the Pillory.

Mrs. *Cellier* depoſed, That the Earl of *Caſtlemaine* was very angry with her, for ſending ſuch a Raſcal as *Dangerfield* to him. And another Witneſs depoſed, that *Dangerfield* ſaid, His Lordſhip was very angry with him, for going to the *Tower* in his Lordſhip's Name, unknown to him.

Which the Chief Juſtice obſerved, was before the Time *Dangerfield* pretended he had that Diſcourſe with his Lordſhip, about killing the King.

Dangerfield's Evidence contradicted.

The Lady *Powis* depoſed, That ſhe never ſent a Letter by *Dangerfield* to the Lord *Caſtlemaine*, or any body elſe; or read a Letter in his Preſence, or was ever long enough in his Company. And Mrs. *Cellier* depoſed, That no Letter was read by the Lady *Powis* in the Preſence of her and *Dangerfield*.

Other Witneſſes for the King.

Then Sir *Richard Barker* was called as a Witneſs for the King, and depoſed, That his Servants told him, *Oates* was in *London* at *Whitſun-tide* 1678, and that he ſaw him there himſelf the latter End of *June*.

Another Witneſs depoſed, That he ſaw *Dangerfield* at the Lord *Caſtlemaine*'s in *June*, *July*, or *Auguſt*; but he thought it was *July*.

The Chief Juſtice's Directions to the Jury.

The Chief Juſtice, in ſumming up the Evidence, ſaid, He would have no Man think him partial, where our Religion, the King's Life and the Government, were in danger; but he muſt ſay, there ought to be competent Proofs, where Men where charged with ſuch Things; becauſe their Lives, Eſtates, and Honours, were at Stake: That he thought no great Matter had been offered by my Lord againſt *Oates*'s Credit; but as to *Dangerfield*, they ſaw many enormous Crimes proved againſt him, and though the Law allowed him to be a Witneſs, yet it was the Buſineſs of the Jury to weigh the Reputation of the Witneſſes; nor did he think a Judge could diſcharge his Conſcience, without taking Notice of ſuch Things: That had *Dangerfield* been only guilty of this Treaſon, he ſhould have thought him a competent Witneſs notwithſtanding, for that was *Oates*'s Caſe too; but when ſo many Crimes of another Sort had been proved againſt him, whether the Man were on a ſudden become a Saint, when he became an Evidence, he left to them. They were to take Notice alſo, how he was contradicted in his Evidence, by the Lady *Powis* and Mrs. *Cellier*; and that, where two Witneſſes were produced, both ſpeaking materially to the ſame Thing, and

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one was believed, and the other not, then there was in Truth but one Witneſs, which was not ſufficient to find the Priſoner guilty.

The other Judges deliver their Opinion.

Mr. Juſtice *Jones* alſo declared, That it was neceſſary, in a Caſe of Treaſon, *That there ſhould be two Witneſſes believed by the Jury.*

Mr. Juſtice *Raymond* gave it as his Opinion, That both the Witneſſes muſt be believed by the Jury.

Whereupon the Jury, after a ſhort Receſs, brought in their Verdict, That he was *Not guilty.*

Remarks on Lord Caſtlemaine's Trial.

At this Trial, the Eyes of the reſt of the Judges (as well as of the Chief Juſtice) ſeem to be opened; they appear to have reſumed their Reaſon and their Courage, and determined no more to be made the Tools of an inſolent Faction, to hunt down ſuch Gentlemen as they were pleaſed to mark out for Deſtruction: They now very honeſtly inform the Jury, that they ought to take Notice of the infamous Characters of the Witneſſes, and that, where there were not two Witneſſes *believed* by them, the Priſoner ought to be acquitted: And the Chief Juſtice very juſtly obſerves, that a Judge could not diſcharge his Conſcience, without taking Notice of ſuch Things to the Jury: But how different this Conduct was from their Behaviour at ſome former Trials, is obvious to every common Reader. [illegible] in with the [illegible] brow-beat and threaten both t[illegible] and their Witneſſes, when they end[illegible] to make the ſcandalous Lives of the [illegible] Evidence appear, and tell them, that no probabilities in their Teſtimony, how ſtr[illegible] ing ſoever, ought to be conſide[illegible] they had the Oaths of two poſitive W[illegible] not only inſinuating, that the Witne[illegible] to be believed, but declaring it was *impoſſible* their Teſtimony could be disbelieved!

Theſe Proceedings muſt make future Judges exceeding cautious how they fall in with popular Clamours, and are borne down by Noiſe and Impudence to ſerve the vile Purpoſes of Deſigning Men, whoſe Revenge, Ambition, or Avarice, put them upon forming pretended Plots to cover and conceal the real Conſpiracies they themſelves are engaged in, to deſtroy the Conſtitution in Church and State: This has ever been the grand Stratagem of the Party, which they have ſo often played with Succeſs, that they have had the Aſſurance to revive it again in our Days. They find many People ſo exceeding weak, as to be deceived frequently by the ſame Wiles their Fathers practiſed, and indeed to have leſs Sagacity than *Solomon* could ſuppoſe Brute Animals had, where he ſays, *Surely in vain the Net is ſpread in the Sight of any Bird.*

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Proceedings againſt the Lord Chief Juſtice Scroggs.

Articles of *High Miſdemeanors*, offered to the Conſideration of his Majeſty and the Privy-Council, againſt Sir WILLIAM SCROGGS, Lord Chief Juſtice of the *King*'s-*Bench*, by *Titus Oates*, and *William Bedloe*. *Anno* 1679. 31 *Car.* II.

Articles exhibited to the Council by Oates and Bedloe.

1. THAT the ſaid Chief Juſtice had ſet at Liberty ſeveral Perſons accuſed of High-Treaſon, particularly the Lord *Brudenel*, *&c.*

2. That at the Trial of Sir *George Wakeman*, and others, he did brow-beat and curb the ſaid *Oates* and *Bedloe*, two of the principal Witneſſes for the King; ſpoke ſlightly of them, miſrepeating and omitting material Parts of their Evidence, whereby the Parties were acquitted of the Fact, though fully proved by the ſaid Witneſſes.

3. That, after the Trial of Sir *George Wakeman*, *&c.* he ſaid, they were not to be believed, ſhould be believed by him, to their great Diſparagement.

4. That he oppreſſed his Majeſty's Subjects, by long Impriſonment, particularly *Henry Care*, for publiſhing *The Weekly Packet of Advice from Rome*, diſcovering the Idolatries of the Papiſts, though the ſaid Book contained nothing contrary to Law, and refuſed to admit him to Bail.

5. That he refuſed to admit to Bail *Jane Curtis*, *Francis Smith*, and others (charged with publiſhing ſeditious Libels).

6. That the ſaid Chief Juſtice was addicted to curſing, ſwearing, and drinking to Exceſs; and at the Houſe of a certain Perſon of Quality publickly uttered many Oaths and Curſes, and drank to Exceſs.

7. That he had admitted to Bail *Charles Price*, charged with being a Popiſh Prieſt; and ſeveral other Perſons charged with High-Treaſon.

8. That he had refuſed his Warrant to ſearch for Popiſh Prieſts and Jeſuits; and in a ſlighting and ſcornful Manner bid the Informer go to Sir *William Waller*, who buſied himſelf in ſuch Matters.

9. That, at the Trial of *Knox* and *Lane* for endeavouring to diſcredit the ſaid *Oates* and *Bedloe*, he did not give any Directions to the Jury, but abruptly left the Court before they gave their Verdict, to the great Diſparagement of the King's Witneſſes, the ſaid *Oates* and *Bedloe*.

10. That he permitted *Osborn*, who was engaged with *Knox* and *Lane* to diſcredit them, to make an Affidavit before him, reflecting on the ſaid *Oates* and *Bedloe*, without the

the Conſent of his Majeſty, or his Counſel, or of the ſaid *Oates* and *Bedloe*.

11. That the ſaid Chief Juſtice *had dared to ſay*, in Preſence of his Majeſty and the Council, That he thought *Oates* and *Bedloe* always had an Accuſation ready againſt any Body.

12. That he ſaid to *Bedloe*, at *Monmouth* Aſſizes, that he did believe in his Conſcience that *Richard Langborne*, whom he had condemned, died wrongfully.

13. That he made Merchandize of the Trials of Sir *George Wakeman*, and ſome Popiſh Prieſts, ſelling them to the Bookſellers: And though he took 20 Guineas Earneſt of one Set of Bookſellers, yet ſold them to another, and would not return the Earneſt he had taken.

The Anſwer of Sir William Scroggs, *Knt. Lord Chief Juſtice, to the Articles exhibited by* Titus Oates *and* William Bedloe.

1. To the firſt he ſaith, That the Lord *Brudenel* was bailed, and afterwards diſcharged by the Court of *King's-Bench*; and that *Bedloe* uſed much Importunity to get him diſcharged, declaring he had nothing to ſay againſt him.

2. That the ſecond Article was a Reflection upon the whole Court; but it having been urged at the Trial, That if *Oates* had charged Sir *George Wakeman* with ſuch a Letter, under his Hand, before the Council, they would have committed him: *Oates* anſwered, *That that Council would commit no Body for the Plot*, which might occaſion his being frowned upon.

3. To the third he ſaid, There were ſome Paſſages in that Trial which gave him great Cauſe to doubt.

4 and 5. To theſe Articles he ſaid, The Perſons mentioned in them were committed for publiſhing libellous and ſcandalous Papers, according to Law; but there was no Law for theſe Men to call him to an Account for judicial Acts relating to others.

6. The ſixth was an inſolent Scandal, and he referred himſelf to the Teſtimony of that Perſon of Quality, whoever he was.

7. The Perſons, mentioned in this Article, were bailed, and diſcharged by the Court; the Attorney-General being firſt called, but indeed the Conſent of *Oates* and *Bedloe* was not asked.

8. He ſays he does not think himſelf obliged to do all the Buſineſs of a Juſtice of Peace; but it was a Servant that gave that Anſwer.

9. To the ninth he ſays, He told the Jury the Matter was plain, and went away, to try Cauſes in *London*, without paying any Compliment to Mr. *Oates*.

10. He ſays, that the Affidavit, mentioned in this Article, was not ſworn before him, but two others, in one of which *Osborn* depoſed *Oates* had ſaid, *That the Kingdom of England would never flouriſh, till it became Elective*: And in the other, that he was not ſled at *Knox's* Trial, as *Oates* had ſworn.

11. To the eleventh he anſwered, It was more to be wondered how *Oates* dared to charge that as an Article of a Miſdemeanor, which was ſaid in the King's Preſence, and repeated falſe too. 1679. 32 Car. II.

12. That he did tell Mr. *Bedloe*, at *Monmouth* Aſſizes, that he was more unſatisfied at *Langborn's* Trial than all the reſt; for that he was credibly informed ſince, That Mr. *Langborn's* Study was ſo ſituate, that one who was walking in his Chamber could not ſee him write in his Study, which was *Bedloe's* Evidence.

13. That this was Matter of meer Contract with other Men, of which he did not think himſelf bound to give *Oates* and *Bedloe* an Account: But that by taking Twenty Guineas he loſt Forty; and that his Backwardneſs to go to *Wakeman's* Trial, did not look as if he had received 10000 *l.* to favour *Wakeman* (as theſe Witneſſes had given out.)

Concluding that if theſe Articles ſhould appear to his Majeſty to be frivolous, ſcandalous, or not true, his Majeſty would pleaſe to ſhew his juſt Reſentment thereon, in Honour to his Courts and Government: And that ſuch an unprecedented Attempt might not go unpuniſhed, the Promoters of it might be left to be proceeded againſt according to Law.

This Matter was debated before the King and Council, the 21ſt of January 1679, *and* Oates *and* Bedloe *left to be proſecuted at Law.*

Complaints againſt the Chief Juſtice to the Houſe of Commons.

The Party not ſucceeding in this extraordinary Attempt againſt the Chief Juſtice, before the King and Council, brought the very ſame Accuſation againſt him before the Houſe of Commons, in *November*, 1680, and were ſo ſucceſsful there, as to procure an Impeachment of High-Treaſon to be preferred againſt him, conſiſting of Eight Articles.

Articles of Impeachment for High-Treaſon reſolved on.

1. By the firſt whereof it was charged, that the ſaid Chief Juſtice *Scroggs* had *traiterouſly* endeavoured to ſubvert the fundamental Laws, Religion and Government of this Kingdom, and inſtead thereof to introduce Popery and arbitrary Power.

2. That he arbitrarily diſcharged the Grand Jury of *Middleſex*, in *Trinity-Term*, 1679, before they had made their Preſentments, and found ſeveral Bills of Indictment before them, by which illegal Diſcharge of the ſaid Jury, the Courſe of Juſtice was maliciouſly ſtopped, the Preſentments of many Papiſts, and other Offenders, were obſtructed, and in particular *a Bill of Indictment againſt* James *Duke of* York, *for abſenting himſelf from Church*, which was then before them, was prevented from being proceeded upon.

3. That the Chief Juſtice, and the reſt of the Judges of the *King's-Bench*, did make a Rule of Court, that *The Weekly Packet of Advice from Rome*, publiſhed by *Henry Care*, ſhould not be printed or publiſhed, thereby aſſuming to themſelves a Legiſlative Power.

4. That he, and the reſt of the Judges of that Court, had moſt notoriouſly departed from all Rules of Juſtice, in the Impoſition of Fines on Perſons convicted of Miſdemeanors;

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nors; being manifeſtly partial to Papiſts, and Perſons popiſhly affected, and grievouſly oppreſſing his Majeſties Proteſtant Subjects.

5. That he refuſed to bail Perſons that were bailable, particularly *Care*, *Broome*, *Harris*, *Smith*, *Curtis*, &c. which was a high Breach of the Liberty of the Subject, deſtructive of the fundamental Laws, and tending to introduce arbitrary Power.

6. That he had granted Warrants for attaching the Perſons, and ſeizing the Goods of his Majeſty's Subjects, not named or deſcribed, particularly in the ſaid Warrants *(againſt ſeditious Libels and their Publiſhers)*.

7. That he openly defamed and ſcandalized ſeveral of the Witneſſes of the Popiſh Plot; endeavouring to diſparage their Evidence, and take off their Credit; traiterouſly endeavouring to ſtifle and diſcourage the Diſcovery of the ſaid Plot.

8. That the ſaid Sir *William Scroggs*, by his frequent and notorious Exceſſes and Debaucheries, and his prophane and atheiſtical Diſcourſes, did daily affront Almighty God, diſhonour his Majeſty, give Countenance and Encouragement to all Manner of Vice and Wickedneſs, and brought the higheſt Scandal on the publick Juſtice of the Kingdom.

An odd Concluſion of the Articles.

All which Words, Opinions and Actions, were ſpoken and done traiterouſly, and maliciouſly, to alienate the Hearts of the King's Subjects from his Majeſty; to ſet a Diviſion between him and them; to ſubvert the fundamental Laws, Religion and Government, and to introduce Popery and arbitrary Power: For which they impeached him of High-Treaſon, and other High Crimes and Miſdemeanors;

Praying that the ſaid Sir *William Scroggs*, Chief Juſtice of the Court of *King's-Bench*, may be put to anſwer the Premiſſes, and committed to ſafe Cuſtody.

The Queſtion being put, to impeach the Chief Juſtice, on theſe Articles, ſeveral Speeches were made on the Occaſion, for and againſt it; of which I ſhall tranſcribe one or two on each Side, which will give a conſiderable Light into this Matter.

Sir Thomas Lee *againſt the ſaid Impeachment*

Sir *Thomas Lee* ſtood up and ſaid, Mr. Speaker, In my Opinion, the Matter contained in the laſt ſeven Articles does not anſwer the firſt Article, or the Title: For therein you accuſe Sir *William Scroggs* in general Words of High-Treaſon, the higheſt of Crimes; and when you come to Particulars, you inſtance the diſmiſſing of Grand Juries, prohibiting the printing of Pamplets, the Inequality of levying Fines, and the like. Sir, I would not be underſtood to be an Advocate for the Lord Chief Juſtice *Scroggs*, but I hope, as long as I ſit here, you will always give me Leave to be an Advocate for this Houſe; which I can not more ſignally demonſtrate, than by offering my Opinion againſt every Thing which I think will reflect on the Juſtice or Prudence of the Houſe, or prove any Hindrance to the finiſhing of thoſe great Affairs you have under Debate.

Sir, I am of Opinion, that though all theſe Things, contained in theſe Articles, ſhould be fully proved, they will not amount to

...Houſe: I think we ought to be cautious ... we increaſe Laws to take away our L... Our Fore-fathers were very careful in ... appears by the Statute of 25 *Edw.* III. w... was made to prevent the Judges taking ... them any Power, to declare any Thing T... ſon, but what was expreſſed within that ... tute; reſerving all obvious Crimes of ... Nature, to the Judgment of the Nation ... Parliament, who, no doubt, may decla... ther Things Treaſon, which are not w... that Statute: But it is a Queſtion with ... whether it can be done any other Way, ... by Bill, that ſo it may be an Act of K... Lords, and Commons, and not for the H... of Lords only, the Commons only Pro... tors, and the King not concerned.

That the Lords alone are proper Judges ... many Caſes, when Perſons are proſecuted u... on ſome known Law, is not to be doubte... But I much queſtion, if they ought to be ... in Caſes of Declarative Treaſon, though u... on an Impeachment from the Houſe of Co... mons; for that were to allow the Lords al... a Power of making a Law in Caſes of t... higheſt Nature, even of Life and Death. ... our Fore-fathers thought not good to ent... their Lives or Liberties with any one E... alone; they thought, in a Multitude of Co... ſellors there was moſt Safety: And there... I hope, we ſhall be very cautious how ... make a Precedent in the Caſe. And I am ... more earneſt in moving herein, becauſe ... am very confident that no Precedent can ... offered to make good, that there ever ...

...Opinion, that the Articles ought ... for high Crimes and Miſdemean... am the more forward earneſtly ... to, becauſe I am afraid if theſe Art... go for High-Treaſon, it may occ... Diſpute with the Lords, who happily ... do not conclude that the Matter con... the Articles amounts to Treaſon, ... commit him, notwithſtanding their ... made in the Earl of *Danby*'s Caſe. An... may occaſion ſuch Miſunderſtandings, as ... hinder all other Buſineſs: Alſo if you ſe... up for High-Treaſon, it may occaſion ... ther Diſpute with the Biſhops, whether ... ſhall withdraw or no, when the Caſe ... to be tried: Upon the whole Matter, I ... it will be much ſafer that you make the ... peachment for High Crimes and M... meanors only.

Mr. *Daniel Finch* (afterwards Earl of ... *tingham*) ſaid, Mr. Speaker, My Oblig... to ſerve my Country calls on me to give ... my Opinion in this Matter, and not ... Kindneſs to my Lord Chief Juſtice; for I ... ſafely declare, that I do not think him fi... that eminent Place now; becauſe inde... never thought he was fit: So that what I ... ſay proceeds from my Kindneſs to the P... lick, and my particular Obligations to ... Houſe: I think we ought to be cautious ...

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680. Car. II. any thing declared Treaſon in Parliament, which was not Felony by ſome expreſs known Law before. And I hope we ſhall be ſo careful of ourſelves, and our Poſterity, as not to go about to make a Breach upon the Conſtitution of the Government, in this Particular; but rather make it an Impeachment only for high Crimes and Miſdemeanors.

Fran- Win- gton *the Im- chment*

Sir *Francis Winnington*, on the other Side, ſaid, Mr. Speaker, I cannot agree with that honourable Member that ſpoke laſt, as to his Notion, that the Parliament cannot declare any thing to be Treaſon, which was not Felony before: The Statute of 25 *Edw.* III. leaves the Power at large to Parliaments, without any ſuch Reſtriction. And I am of Opinion, that any thing that tends to the Deſtruction, or Alteration of the Government, hath always been, and always ought to be, declared Treaſon in Parliament, if brought there to be adjudged. The Parliament doth not in this make new Crimes, and then condemn them; but only declares that to be a Crime which was ſo before, and wanted nothing but Condemnation. And it may conſiſt with the Prudence of this Houſe, as well to be careful how to weaken thoſe Laws, and Cuſtoms, which tend ſo much to the Preſervation of the Government, as how to increaſe any that may tend to the Deſtruction of any one Man, by multiplying Precedents for chaſtiſing Treaſon: The Crimes for which *Treſilian*, and the reſt of the Judges, in the Reign of *Richard* II. were impeached, were not Felony by any known Law, and yet they were condemned by Parliament. *Empſon* and *Dudley* were accuſed in general, for endeavouring to ſubvert the Government, which being in general Words, was not Felony by any known Law; yet, the Judges having Recourſe to Parliament, they were condemned. The Articles againſt *Finch*, *Berkley*, and the reſt of the Judges (*Anno* 1641) were all for High-Treaſon, and the Matter, contained in the Articles, amounted to no more than what is contained in this. There is ſo little Weight in the Caſes that have been offered againſt this, that I think they are offered for Ornament, rather than Argument. The Chancellor is the Keeper of the King's Conſcience; and the Judges of his Coronation Oath. As they are in great Places, and have great Power, ſo they ought to be more carefnl how they behave themſelves: And as they have greater Encouragements, ſo they ought to be ſubject to more ſevere Chaſtiſements than others, the Publick being more concerned in their Actions: And therefore the Cuſtom of Parliaments hath made that Treaſon in them, which is not ſo in other Perſons; the Words of Judges, and Privy-Counſellors, in ſome Caſes, are Overt-Acts of themſelves. I think it will become the Wiſdom of the Nation, to make all the Defence and Proviſion they can, againſt the corrupt Doings of Men in thoſe Places; and I do not ſee what Danger can ariſe to Poſterity by ſuch Proceedings. Is it not with the Parliament we intruſt this Power? Who can imagine that ever a Parliament can be ſo conſtituted, as not to be carefully concerned in their Proceedings, as to Life and Death; and only to concern themſelves therein, when ſome extraordinary Exigencies, in which the Government is much concerned, requires it? What Man would deſire to live, after he was thought worthy of Death by ſuch an Aſſembly? And notwithſtanding what has been ſaid, to extenuate the Crimes mentioned in theſe Articles, I think that the Order that was made in the *King's-Bench*, about printing, by the Judges, was taking on them a Legiſlative Power, which hath formerly been adjudged Treaſon: And I think now we live in as dangerous Times as ever, under as great Neceſſity to have a Care of the Miſchiefs that may happen to the Nation, by ill Judges, as ever; and I ſee no Reaſon to doubt our being able to make good theſe Articles.

dents d.

Mr. *Powel* ſeconded Sir *Francis Winnington*, repeating good Part of his Argument, and inſiſted on the Precedent in the reign of *Richard* II. and the Condemnation of a Knight in *Cheſhire*, for conſpiring the Death of the King's Uncle; and of the Earl of *Northumberland*, for giving a great Number of Liveries; concluding, that he was of Opinion, that the Order made in the *King's-Bench* againſt Printing, their Warrants for ſeizing of Books, and their diſmiſſing Grand Juries, did tend to the Subverſion of the Government, and had been, and ever ought to be, in Judges, adjudged High Treaſon; and therefore it could not conſiſt with the Prudence of the Houſe, or the Security of the Nation, that the Chief Juſtice ſhould be impeached of any thing leſs than High Treaſon.

Mr Powel *for it.*

Sir *Richard Temple* replied, Mr. Speaker, I can not admit that Parliaments, by Impeachments before the Lords, can make any thing Treaſon, but only ſuch Matters as were Treaſon by Common Law, before the Statute of *Edward* III. And I think we ought to be ſo cautious of Poſterity, as not to preſs for ſuch Precedents, leſt you put into the Hands of the Lords a Power, for which we may have cauſe to repent hereafter, but never get back again; for the Lords do not uſe to part with thoſe Powers they once get. There are Precedents, by which it appears that the Lords have attempted to make declarative Treaſons alone, without any Impeachment from the Commons. Have a Care how you give them Encouragement to proceed therein: Better keep to the other way of making no declarative Treaſons, but by Bill (*by Act of Parliament.*)

Sir Richard Temple *againſt it.*

However, it was reſolved that the Impeachment ſhould be engroſſed, and carried up to the Houſe of Lords, by Mr. *Cavendiſh*; and it being carried up accordingly, the Chief Juſtice put in the following Anſwer.

The ſaid Sir *William Scroggs*, by and under Proteſtation, that there is no manner of High-Treaſon, nor any Overt-Act of High Treaſon, particularly alledged or expreſſed in the ſaid Articles of Impeachment, to which the ſaid Sir *William Scroggs* can, or is bound by Law to make Anſwer unto; and ſaving to himſelf, (and which he prayeth may be ſaved to him) both now, and at all Times hereafter, all, and all manner of Benefit and Advantage of Exception to the Inſufficiency of

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the ſaid Articles in point of Law; as well for that, there is no overt-act of Treaſon expreſſed therein, as for all other the Defects therein appearing; for Plea thereto he ſaith, that he is no wiſe guilty of all, or any the Crimes, Offences, or Miſdemeanors, of what Nature, Kind, or Quality ſoever, by the ſaid Articles of Impeachment charged upon him, in Manner and Form, as in and by the ſaid Articles is ſuppoſed; which he is ready to aver and prove, as this honourable Houſe ſhall award, and humbly ſubmitteth himſelf, and the Juſtice of his Cauſe, to this moſt honourable Houſe, and prayeth to be diſcharged of the Premiſes, and to be hence diſmiſſed and acquitted of all the Matters, Crimes, Miſdemeanors, and Offences, in, and by the ſaid Articles of Impeachment charged upon him.

His Petition for a Trial.

The Lord Chief Juſtice alſo petitioned the Lords, that whereas he was Impeached by the laſt Parliament, and had put in his Anſwer, they would appoint the Commons to reply; that a convenient Day might be appointed for hearing the Cauſe, and he might no longer lie under the Reproach of High-Treaſon.

The Chief Juſtice reſigns, and has a Penſion.

Whereupon the Lords ordered the Anſwer and Petition to be ſent to the Houſe of Commons; but I do not find there was any further Proceedings thereupon: However it was thought fit that he ſhould reſign the Poſtof Chief Juſtice, as he lay under ſuch an Impeachment, and accept a Penſion from the Crown in the Room of it.

Reſolutions to impeach other Judges.

The Commons alſo reſolved to impeach Sir *Francis North*, Chief Juſtice of the *Common Pleas*, Sir *Thomas Jones*, another of the Judges of the *Kings-Bench*, and Sir *Richard Weſton*, one of the Barons of the *Exchequer*: But it does not appear they proceeded on theſe Impeachments.

Remarks on the Proceedings againſt the Lord Chief Juſtice Scroggs.

The Impudence of *Oates* and *Bedloe*, in preferring that ſcandalous Charge to the King and Council, againſt the Lord Chief Juſtice, is ſurely not to be paralleled. The Editor of this proceeding has indeed dubbed one of them with the Title of Doctor, and the other with that of Captain, to render them more conſiderable in the Eye of the World; but I do not find the firſt was ſo much as a *St. Omers* Doctor, or the other Captain of any thing, unleſs it were of a Company of Knights of the Poſt that he employed to ſecond his own Perjuries: And that theſe vile Wretches ſhould have the Face to tell the Lord Chief Juſtice whom he ſhould bail, and whom he ſhould not admit to Bail, direct him how he ſhould treat the Witneſſes at every Trial, and what Directions he ſhould give to the Jury, is very extraordinary; nay, they charge it as an Offence, that the Chief Juſtice dared to bail People *without their Conſent*, and ſuffered Affidavits to be made before him, reflecting on *their Characters*, and yet were not aſhamed or afraid themſelves to accuſe the Chief Juſtice of being a common Swearer and a Drunkard. This, it is manifeſt, they were encouraged and ſupported in, by Saint *Shaftesbury*, and the Faction, or they durſt not have treated one of the greateſt Magiſtrates in *England* in this Manner.

But what puts it beyond all Doubt, that *Shaftesbury* and his Party were at the Bottom of all this is, that they procured the very ſame Articles to be exhibited againſt the Chief Juſtice, in an Impeachment of the Houſe of Commons, which thoſe deſpicable Tools had preferred to the Council: And ſurely the State was in a very happy Situation at this Time, When two or three abandoned Villains under Pretence of being the King's Evidence, ſhould take upon them to direct and reprehend the Judges of the higheſt Courts, and expect they ſhould ask Leave of them before they bailed or committed an Offender. It is plain the Faction had reduced the Crown to a very low Ebb, when ſuch Inſolence was ſuffered with Impunity. What had the greateſt private Subject to do to preſcribe Rules to the Courts of Juſtice, much leſs Men the moſt obnoxious to Juſtice themſelves of any of the King's Subjects? This was to make the Bar arraign the Bench, and Criminals ſit in Judgement upon their Judges: And yet even this we find countenanced and encouraged by a Party that *Shaftesbury* had formed in the Houſe of Commons; a Party that fell very little ſhort of that which began the Grand Rebellion, and whoſe Artillery was indeed levelled againſt the King. They hoped to wound him through the Sides of his Miniſters, and render him odious to the People, by reflecting on his Judges, that they might have a Pretence to depoſe and murder him as they had his Father; and they had this farther View in attacking the Judges, that none ſhould dare for the future to oppoſe their treaſonable Schemes, or ſtand up in Defence of the Crown or the Conſtitution. Thus they exactly copied after the Precedents their Fore-fathers had ſet them, and had met with the like Succeſs, had not the King been alarmed at their inſolent Proceedings in Time; taken the Reigns of the Government into his own Hands, and ſhewed them that, whenever he was pleaſed to exert his political Talents, he knew how to protect himſelf and his loyal Subjects, and defeat their impotent Malice.

The Gentlemen who ſpoke againſt the Impeachment, ſufficiently ſhewed the Abſurdity, and Injuſtice, of Impeaching a Perſon of High-Treaſon, when they were not able to ſpecify one Fact that had the leaſt appearance of Treaſon in it, but leave the Lords to find out and declare Something to be Treaſon that was never thought to be ſo before: And they were certainly very unlucky in the Precedents they brought for it, as that in the Reign of *Richard* II. when the Barons broke out into Rebellion againſt the King, and compelled him to ſacrifice his Miniſters and Judges to their Fury; and that other in the happy Days of 41, juſt before the Grand Rebellion, when they charged the Lord *Strafford* with High-Treaſon, for his faithful Service to his late Majeſty, and whoſe Attainder had been repealed by an Act of Parliament of this very Reign: And ſurely very unhappy muſt the Subject be, when every Action of his Life is capable of being interpreted and declared Treaſon, which a Faction in the Houſe of Commons is pleaſed to charge and denominate ſuch.

But

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But never was ſo merry a Concluſion to an Impeachment of High-Treaſon: Namely, that *All* the Chief Juſtice's Words, Opinions, and Actions (*above ſpecified*) were ſpoken and done *Traiterouſly* and *Maliciouſly*, which was as much as to ſay, That he ſwore, curſed, and got drunk, traiterouſly and maliciouſly; for theſe are the Crimes charged againſt him in the laſt Article.

However, this doughty Impeachment was dropped for Matters, the Faction apprehended of more Conſequence, namely, the immediate altering of the Succeſſion, the depoſing their Sovereign, and changing the Monarchy into a Common-wealth, in which we ſhall find they did not meet with the ſame Succeſs their rebellious Anceſtors had done.

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The principal Crime they intended to charge the other Judges with, particularly Sir *Francis North*, and Mr. Juſtice *Jones*, whom they likewiſe reſolved to impeach, was, their aſſiſting in drawing up a Proclamation againſt tumultuous Petitions for the ſitting of a Parliament, but theſe alſo were dropped, to make room for more important Schemes.

Other Judges charged withdrawing up Proclamations.

1680. 32 Car. II. Cellier's firſt Trial.

The Trial of ELIZABETH CELLIER, for *High-Treaſon*, at the *King's-Bench* Bar. 11th, *June*, 1680. 32 *Car.* II.

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The Charge.

THE Indictment charges the Priſoner with High-Treaſon, in compaſſing the Death of the King, and the Subverſion of the eſtabliſhed Religion and Government; and particularly with paying great Sums to ſeveral Perſons unknown, to kill the King, and to throw the Plot upon other People.

The Evidence of Gadbury.

The firſt Witneſs examined againſt her, was *Gadbury*, the pretended Conjurer and Almanack-maker, who depoſed, That telling Mrs. *Cellier* he could ſay enough to invalidate the Teſtimony of *Oates* and *Bedloe*, ſhe anſwered, ſhe cared not, if it coſt her ten Guineas, if ſhe could diſcover the Truth: That walking through *Weſtminſter-Abbey* with the Priſoner, ſhe ſaid, This Place was formerly filled with *Benedictine* Monks, and the *Temple* with Friars; and what if it ſhould be ſo again?

That ſhe alſo demanded of him, when the King was ſick, Whether he would live or die, and ſaid, ſhe was afraid he would die; and the Deponent anſwering, he would not inform her, becauſe it was his Sovereign, ſhe replied, ſhe would go to another Aſtrologer then: That ſhe alſo brought a Nativity to him, to know if the Perſon was to be truſted, and he afterwards underſtood it was *Dangerfield*'s.

Then *Dangerfield* was called as a Witneſs; but the Priſoner objected to his Teſtimony, becauſe he had been whipped, tranſported, pilloried and perjured; and produced ſeveral Records of his Conviction, but none for Perjury: Whereupon *Dangerfield* produced his Pardon; but the Chief Juſtice not thinking it reached all the Crimes he was charged with, his Evidence was waved: There being but one legal Witneſs therefore, and his Evidence very defective, the Jury *acquitted* her according to the Chief Juſtice's Direction, and *Dangerfield* was committed.

Dangerfield's Evidence objected to.

The Priſoner acquitted.

Dangerfield committed.

Mrs. *Cellier* had been pretty buſy in ſearching into the Characters of the Witneſſes of the pretended Popiſh Plot, and in detecting the vile Practices of Lord *Shaftesbury*, and the Faction, to ſupport the Credit of it; but had the good Fortune to eſcape this Time: However upon publiſhing a Pamphlet afterwards, in which ſhe ſtated her Caſe, and made ſome Reflections on the King's Witneſſes, as they were called, ſhe was brought upon the Stage again, and ſuffered ſeverely for her Indiſcretion, as will appear in a future Trial.

Remarks.

The

1680. 32 Car. II. Care's Trial.

The Trial of HENRY CARE, for a *Misdemeanor*, in publishing a scandalous Libel, at *Guild-Hall*, 2d *July*, 1680. 32 *Car.* II.

The Charge. THE Information charges, That whereas there was a Plot, and traiterous Conspiracy, against his Majesty, and the established Religion and Government, of which divers Traytors had been convicted; the said *Henry Care*, intending to scandalize and bring into Contempt the Justice of the Kingdom, did on the 18th of *August* last, at the Parish of St. *Sepulchres*, *London*, print and cause to be published a scandalous Book entitled, *The Weekly Packet of Advice from* Rome, in which were the following Expressions: *viz.* "There is lately found out by an experienced "Physician, an incomparable Medicament, "called, the Wonder-working Plaister, truly "Catholick in Operation, somewhat of kin "to the Jesuit's Powder, but more effectual. "The Virtues of it are strange and various: "It will make Justice deaf as well as blind: "Takes out Spots of deepest Treasons, more "cleverly than Castle-Soap does common "Stains: It alters a Man's Constitution in two "or three Days, more than the Virtuoso's trans-"fusion of Blood in seven Years: Is a great *A-*"*lexipharmick*, and helps Poysons and those "that use them: It miraculously exalts and pu-"rifies the Eye-sight, and makes People behold "nothing but Innocence in the blackest Male-"factors: It is a mighty Cordial in a declining "Cause; stifles a Plot as certainly as the Itch "is destroyed by Butter and Brimstone: It "makes Fools Wise Men, and Wise Men "Fools, and both of them Knaves. The "Colour of this Balm is bright and dazling, "and being applied privately to the Fist, in "decent Manner, and a competent Dose, in-"fallibly performs all the said Cures and "many others". Which was laid to be done in great Contempt of the King, to the Scandal of the Government, the Administration of Justice, *&c.*

The Evidence. The Printer *Stevens*, deposed That he treated with *Care* as the Author of the Book, and received the Copy from him, or his Order: He did not remember that any body but Mr. *Care*'s Boy brought any Part of the Copy to him.

The Printer's Man deposed, That he received several Parts of the Copy of the Weekly Packet from *Care*'s own Hand; but he could not say the particular Paper in the Information; and that Mr. *Care*'s Boy brought some of the Copy.

His Defence. Sir *Francis Winnington*, and the rest of the Prisoner's Counsel, said in his Defence, That Mr. *Care* was a Satyrist against Popery, and his Packets were very well liked, 'till he committed this Fault: An extravagant Flight might slip from him without any ill Intention; and as he was a good Subject, and loved the Government in Church and State, he could not be supposed guilty of Malice. Then two or three Witnesses were called, who deposed, they had seen him at Church, but could not say he ever received the Sacrament: And Sir *Francis Winnington* insisted, that he was not proved the Author of that individual Paper in the Information.

The Chief Justice's Direction. The Chief Justice, in his Directions to the Jury, said, he at first took it to be a Cause of small Moment, but was convinced, by the Noise and Shouts during the Trial, that it was a Party Business; and told the Jury, they were not to concern themselves whether the Prisoner was Malicious or not, but only to try the Fact, whether he published the Book; and if they found him Guilty, he would judge whether it implied Malice: Whereupon the Jury withdrew, and after an Hours Recess, brought in their Verdict, That the Prisoner was *Guilty*. And he was sentenced to pay a Fine of to be set in the Pillory and imprisoned.

Remark. The Prisoner's Counsel seem to admit the Fact at first, and then pretend that the Particular Paper in the Information, was not proved to be his; but as the Printer deposed, he treated with *Care* for the Copy, and received all the Copy from him or his Servant, this Paper must be included.

And here we find, when the Faction could no longer blind the Judges with false and specious Tales, attested by their Knights of the Post, their next Stratagem was to employ Swarms of Scriblers, to accuse the Judges of Bribery and Corruption, and even to charge them formally with Partiality and Injustice before the Privy Council and the Parliament: Whereby they hoped to deter the Judges from prying too narrowly into their Knavery, or to get these removed and others put in their Places, that would comply with their dictates: And could they have made the Judges of *Westminster-Hall* their Tools, no Doubt but they might have supported the Credit of this, or any other Plot they were pleased to invent, and by this means have destroyed all the true Friends of the Constitution on Pretence of their being Popishly affected. This was the Game they played with such Success in the Year 41, when every Judge, that durst appear faithful to his Prince, and the Trust reposed in him, and would not submit to the Direction of the Rebels, was immediately charged with High-Treason: And King *Charles* being surrounded with a Set of treacherous Courtiers, who advised him to give up his Judges, and his best Friends to their Rage; lost all manner of Power and Influence in his Dominions in that very Instant. Those who were desirous to serve their King, found he could no longer protect them, since both the Ministry and Judges were become accountable to the Commons: But it is to be presumed, that future Princes, from this Example, will be cautious

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cautious how they ſuffer themſelves to be ſtripped of their Authority, by the Clamours of a reſtleſs Faction, againſt their Judges and Miniſters, who are uſually attacked in the firſt Place, in order to make their Way to the Throne itſelf: On the other Hand, it is acknowledged to be the Intereſt and Duty of every Prince, to abandon thoſe Miniſters and Judges, he is ſatisfied have abuſed him, or his People; and even to puniſh their Miſdemeanors himſelf, with the utmoſt Severity and Diſpatch; for Men will ever form ſome Notion of the Maſter from the Servants he employs. If the Miniſter wants either Capacity, or Integrity, it is preſumed the Prince is defective in his Intellects, or in his Concern for the Welfare and Protection of his People.

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The Trial of JOHN GILES, for an *Aſſault* on JOHN ARNOLD, Eſq; a Juſtice of Peace for *Monmouthſhire*, 14 *July* 1680. 32 *Car.* II.

1680. 32 Car. II. Giles's Trial.

THE Indictment charges the Defendant, That he, together with divers others, on the 15th of *April* laſt, aſſaulted the ſaid *John Arnold*, at the Pariſh of St. *Dunſtan in the Weſt*, in the County of *Middleſex*, cutting the Throat and Face of the ſaid *John Arnold* with a Knife, and giving him ſeveral other dangerous Wounds with their Swords; one whereof between his Belly and his left Pap, of the Depth of ſeven Inches, two others in his Breaſt, and two in his left Arm. *The Indictment.*

The King's Counſel, in opening the Evidence, obſerved, That this was a Branch of the Popiſh Plot; and that the Reaſon of this cruel Aſſault upon Mr. *Arnold*, was occaſioned by his putting the Laws in Execution againſt Papiſts; and particularly his proſecuting and convicting one *Evans*, a Popiſh Prieſt. *The Obſervations of the King's Counſel.*

Then Mr. *Arnold* was ſworn, who depoſed, That on the 15th of *April* laſt, he was with ſome Company at the *Devil-Tavern*, near *Temple-Bar*, till Ten o'Clock at Night; and then remembring he had Buſineſs with Mr. *Phillips*, his Counſel, who lived near the End of *Bell-Yard*, he deſired the Company to ſtay a Moment till he returned, and deſired his Friends Servants, who waited in another Room, to go with him: Croſſing *Fleet-Street*, to *Bell-Yard*, he ſaw two Men in Cloaks follow him, and imagined they were the Servants he had called; but entering *Bell-Yard*, one of them got before him, and looked earneſtly in his Face: The Deponent paſſed him again, and by the Light of a Candle in a Woman's Hand, ſaw perfectly that it was the Priſoner, whoſe Companions coming up, they laughed aloud; but he continued his Way to *Fatkanapes-Lane* End, and there, as he was looking for the Kennel, a Cloak was thrown over his Head, and they run him croſs the Lane, againſt a Wall, with that Violence, that they broke his Head: Then he drew his Sword, but could not turn about to defend himſelf, before he was knocked down, and perceived a ſharp thruſt in his Side, the Point running into his Belly: He was afterwards run through both Arms with a broad Sword, and through one of his Arms with a ſmall Weapon, and received ſeveral other Wounds. And while one of them kept him down, with his Foot on his Breaſt, the Perſon that kept him down was run into the Leg by another of his Companions, and ſaid, *Damm me, thou haſt ſpoiled my Leg*: That the Deponent received ſeveral Wounds in his Body, notwithſtanding he had a Pair of Whale-bone Bodice on, and ſome of them perceiving it, ſaid, *Damm me, he has Armour on*; whereupon one of them gave him ſeveral Cuts in the Face, and he thought he ſhould never recover ſome of the Wounds and Bruiſes he received: That there being a Candle in a Window, and a Link-boy paſſing by, he again ſaw the Priſoner's Face; and the Cloak being pulled off, he cried out, and People came in, and carried him to the *Sugar-Loaf*, and from thence to his Lodgings, and ſent for a Surgeon: That the Aſſaſſins laughed aloud all the while they were cutting and hacking him; and when they went away, one of them ſaid, *Now, you Dog, pray for the Soul of Captain* Evans. *Arnold's Evidence.*

Other Witneſſes depoſed, they heard *Giles* the Priſoner ſay, He muſt make Haſte into *Glouceſterſhire*, leſt he ſhould be ſtopped on Suſpicion of *Arnold*'s Buſineſs. *Other Evidence.*

A Sword-Cutler, of *Uske*, in *Monmouthſhire*, depoſed, That *Giles* came to him to mend his Sword, and demanding if he had been fighting with the Devil? *Giles* anſwered, *No*; *but with damn'd* Arnold.

Another depoſed, That the Day Mr. *Arnold* was wounded, *Giles* aſked him where he might buy a good Rapier? To which he anſwered, He did not know; but he had then a good broad Sword.

Others depoſed, *Giles* was out of his Lodgings at Ten that Night; nor could he give an Account where he was at that Time.

Other Witneſſes depoſed, He was a Papiſt, or popiſhly affected: That he was acquainted with *Lewis* the Jeſuit, and ſaid he would perſuade the Executioner not to execute *Lewis*; and afterwards attending at the Execution, he ſaw *Giles* dip Cloths in *Lewis*'s Blood, when he was quartered.

Hobbs, the Surgeon, depoſed, That he ſaw Mr. *Arnold*'s Wounds, which were as he had related; and that they could not be given by himſelf, as the Priſoner ſuggeſted.

The Recorder *Jeffries*, in ſumming up the Evidence, ſaid, In Caſes of this Nature, the *The Recorder's Directions.*

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Laws of *England* had not proportioned the Punishment to the Crime: He thought it was impossible now to doubt the Truth of the Plot: This Piece of Villany was little short of that acted upon Sir *Edmund-bury Godfrey*: That *Giles* could give no Account where he was that Night, from Nine to One; and though the Proof ought to be very strong, it was not to be expected it should be altogether so full, as in Cases of private Right, and where Things were transacted publickly, in the Face of the Sun.

Giles is convicted.

The Jury, after half an Hour's Recess, brought in the Prisoner GUILTY: Whereupon he was sentenced to stand three Times in the Pillory, *viz.* in *Lincoln's-Inn-Fields*, at *Gray's-Inn*, and at the *May-Pole* in the *Strand*: To pay a Fine of 500 *l.* and lie in Prison till he paid it, and find Sureties for his good Behaviour for Life. 1680. 32 Car. II.

Remarks.

It is highly probable that *Giles*, and his Company, committed this Outrage on Mr. *Arnold*, for his prosecuting Popish Priests, and especially *Lewis* the Jesuit, who was executed a little before; for I could never hear they had any other Quarrel with him. And our Laws seem exceeding defective, as the Recorder observes, that such desperate Assassines should escape with so inconsiderable a Punishment: Whereas, for taking a single Penny from a Man, the Punishment is Capital.

1680. 32 Car. II. *Thwyng's Trial.*

The Trials of THOMAS THWYNG, and MARY PRESSICKS, for *High-Treason*, at *York* Assizes, 29 *July* 1680. 32 *Car.* II.

The Charge.

THE Indictment charges the Prisoners with High-Treason, in compassing the Death of the King, the Subversion of the Government, and the Protestant Religion; with assembling and consulting to put the said Treasons in Execution, contributing several Sums of Money to accomplish their said traiterous Designs, and giving Notes for more.

Bolron's Evidence.

The Witnesses being called, *Bolron* deposed, That he was made Steward of Sir *Thomas Gascoigne*'s Coal-works, in 1674, and in 75 he turned Papist; and that in *January* 76, Father *Rushton*, his Confessor, with the Prisoner *Thwyng*, and several others, came to the Deponent's House, and asked him how he stood affected to the Roman Catholick Religion, and if he would venture his Life and Estate in it on Occasion? To which the Deponent agreeing, *Rushton* gave him the Oath of Secrecy; and in 1677, Sir *Thomas Gascoigne*, Sir *Miles Stapleton*, the Lady *Tempest*, Mr. *Rushton*, the Prisoner *Thwyng*, and several others, met in the old Dining Room at Sir *Thomas Gascoigne*'s House, and agreed the King should be killed; and *Thwyng* said, if they lost this Opportunity, they should never have the like again; and that the effecting it would be very beneficial to the Church of *Rome*. They also agreed to erect a Nunnery at *Dolebank*, after the King should be killed; and the Lady *Tempest* offered them *Broughton* for the present, and *Thwyng* was to be Confessor to the Nunnery: That the Deponent paid 10 *l.* to *Rushton* in *Thwyng*'s Presence, towards killing the King, and saw a List, in *Thwyng*'s Hands, entitled, *A List of the Names of the Actors, and Contributors, engaged in the Design of promoting the Roman Catholick Religion, and also of establishing a Nunnery*: By which was meant raising Money for killing the King. And *Thwyng* told the Deponent afterwards, That 30,000 *l.* was raised in *Yorkshire*, *Lancashire*, and *Derbyshire*, for killing the King; and the List of Particulars was sent beyond Sea.

That in 1678, the Deponent discoursing with the Prisoner *Pressicks*, about the Plot, at his own House, she said, Father *Harcourt*, her Confessor, first engaged her in it. That *Pickering* told her, he was to have killed the King, and she was sorry he did not do it: The King was an Ass, and not fit to govern; for what Money the Parliament gave him, he spent upon Whores and Concubines.

Mowbray's Evidence.

Mowbray deposed, That about *Michaelmas* 1676, *Rushton*, *Addison*, and *Thwyng* the Prisoner, with other Priests, met at *Rushton*'s Chamber, and agreed to kill the King, because he had not kept his Promise, made to the Jesuits beyond Sea, to bring in their Religion; and said that *York* and *London* were to be fired: And that Force must be used against the King, and all other Heretick, that opposed the Advancement of their Religion. It was not only lawful, but meritorious to kill him: That there was a List of those engaged in the Design, and *Rushton* and the Prisoner *Thwyng* were the Managers of it.

Mrs. *Bolron*, the elder, deposed, That the Prisoner *Pressicks* said several Times, that she knew of the Plot: That *Pickering* was to have killed the King, and she was sorry he did not do it; though it had been done, if it had not been for *Oates* and *Bedloe*: There would be no Quiet in *England*, till the Roman Catholicks got the upper Hand, and there was not a Protestant left in *England*: The King spent his Money among Concubines, and was not worthy to be a King, and hoped an Army of Catholicks would be raised to bring in Popery.

Mrs. *Bolron*, the younger, deposed, That in 1678, she heard *Pressicks* the Prisoner say, That there was a great Conspiracy carrying on, to alter the Government, and establish the *Romish* Religion.

Job

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John Hutchinſon deposed, That he heard *Preſſicks* the Priſoner ſay, We ſhould never be at Peace, till we were all of the Roman Catholick Religion; for the King was an Heretick, and ſpent more Money on his Whores, than on his Queen: We ſhould never be at Baſe, till the Duke of *York* was made King.

Thwyng's Defence.

Thwyng, the Priſoner, called ſome Witneſſes, who deposed, That the King's Witneſſes ſwore againſt him maliciouſly at this Trial; but that they had declared formerly, that neither Sir *Thomas Gaſcoigne*, to whom he was related, nor any of his Family were concerned in the Plot.

Other Witneſſes deposed, *Bolron* ſwore he would ruin Sir *Thomas Gaſcoigne*, and his Family; and Sir *Thomas Gaſcoigne*'s Groom deposed, That *Thwyng* was not at his Houſe at the Time one of the Witneſſes deposed he was there at a Conſult.

The Judges Directions.

Mr. Juſtice *Dolben*, in ſumming up the Evidence, directed the Jury to acquit *Preſſicks*, becauſe there was no Evidence againſt her, but of what ſhe had ſaid others were to do; and it did not appear ſhe was privy even to that: As to her ſaying ſhe was ſorry *Pickering* did not kill the King, *&c.* he did not think ſuch Words amounted to Treaſon: But as to *Thwyng*, there were two poſitive Witneſſes againſt him; and intimated, that he thought the Witneſſes *Thwyng* brought to invalidate the Teſtimony of *Bolron* and *Mowbray*, was not to be regarded.

Mr. Baron *Atkyns* obſerved, There was one Witneſs which deposed, that *Preſſicks* confeſſed ſhe was privy to the Plot: And for *Thwyng*, there were two poſitive Witneſſes againſt him; and did not ſeem to give any Credit to the Witneſſes *Thwyng* produced to prove it a malicious Proſecution: Whereupon the Jury acquitted *Mary Preſſicks*; but brought in *Thwyng* GUILTY, and Sentence was paſſed on him as a Traytor: He was reprived from Time to Time, till the 23d of *October*, and then executed

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Preſſicks *acquitted.*

Thwyng *convicted, and executed.*

It ſeems a little ſtrange, that *Thwyng* ſhould be convicted, on the Teſtimony of Witneſſes that were not believed at the Trial of Sir *Thomas Gaſcoigne*, who was charged with being at the ſame Treaſonable Conſults, and made the ſame Defence that *Thwyng* did. This is aſcribed, in a great Meaſure, to the Credulity of the Judges that tried the unfortunate *Thwyng*: Mr. Juſtice *Dolben* was yet a Believer of the Plot; and Mr. Baron *Atkyns* a zealous Promoter of the Belief of it, and of every Thing elſe that might advance the Intereſt of the Faction: But the Government were ſo little ſatisfied of *Thwyng*'s Guilt, that they ſuſpended his Execution for three Months: However, the Parliament meeting in *October*, and a prevailing Faction ſeeming determined not to enter upon Buſineſs, unleſs the Perſons accuſed of the Popiſh Plot were proſecuted with the ſame Heat they were at firſt; the Miniſtry found themſelves under a kind of Neceſſity of ſuffering *Thwyng* to be executed, according to his Sentence, two or three Days after the Parliament met; though this Compliance was far from having the Effect the Court expected from it; and indeed it was the greateſt Blemiſh on that Adminiſtration, that they ſuffered Men to be put to Death, of whoſe Innocence they were but too well ſatisfied.

Remarkson Thwyng's *Trial.*

The Trial of ELIZABETH CELLIER, for a *Miſdemeanor*, in publiſhing a Libel. 11 *Sept.* 1680. 32 *Car.* II.

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Cellier's Trial.

The Charge.

THE Indictment charges, that the ſaid *Elizabeth Cellier*, being a Papiſt, and deſigning to bring his Majeſty, and his Government, and the Proteſtant Religion into Contempt; and to aſperſe the Witneſſes that had teſtified againſt her, and others, indicted of High-Treaſon, did, on the firſt of *September*, in the 32d Year of the King, at the Pariſh of St. *Clement Danes*, in the County of *Middleſex*, falſly, maliciouſly and ſeditiouſly, write and publiſh a ſcandalous Libel, entitled, *Malice Defeated*, *&c.* wherein are contained many ſcandalous Expreſſions, reflecting on the Adminiſtration; particularly for ſuffering *Prance*, *Corral*, and others, to be threatned and tortured, to make them Witneſſes of the Popiſh Plot.

The Evidence.

The Witneſſes being called, it was unanſwerably proved, that Mrs. *Cellier* had acknowledged herſelf the Author of the Book, and had ſold and delivered them to ſeveral People, at her own Houſe.

To confute the Story of *Prance*'s being tortured in *Newgate*, *Prance* himſelf was called as a Witneſs at this Trial, who declared that he was never tortured; but Mr. *Richardſon*, the Keeper of *Newgate*, took great Care of him.

Corral, the Coachman, alſo was called; but he not appearing, his Wife was examined, and deposed, That ſhe carried her Husband Proviſion when he was in *Newgate*; but was not permitted to ſee him while he was on the Maſter's Side: That about a Fortnight after, ſhe ſaw him with great Fetters on, which made her imagine he had murdered ſome Body; and the Jaylors ſaid they put on thoſe Irons to keep his Legs warm; and that there were many Holes in his Legs, as others could teſtify, who furniſhed her with Plaiſters for him: And Baron *Weſton* obſerving, that it was reported *Richardſon* had Irons, they called *Sheers*, that weighed forty Pounds, he anſwered, he had not one that weighed twelve Pounds;

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Pounds; but did not contradict the Evidence *Corral's* Wife gave: However, the Lord Mayor ſaid, *Corral* had denied all before him upon Oath.

Her Defence.

Mrs. *Cellier's* Counſel deſerted her Cauſe, and ſaid nothing for her; but ſhe urg'd in her Defence, that ſhe was told what ſhe had wrote, and thought ſhe might juſtify the publiſhing it, ſince ſhe did not make the Story. She urged alſo, that her Family had been very Loyal, her Father and her Brother were both killed in one Day, in the Service of his Majeſty; and ſhe herſelf had ventured her Life by Sea and Land, to ſerve him, as his Majeſty had acknowledged.

To which Mr. Baron *Weſton* anſwered, No Doubt his Majeſty had recompenced her, according to her Deſerts; but they muſt act by the Rules of Law: That the torturing Criminals was illegal, and he did not know it had been practiſed ſince the Reign of Queen *Elizabeth*, when *Campion*, the Jeſuit, was examined upon the Rack.

She is convicted.

The Jury finding her *Guilty*, Sir *George Jeffries*, the Recorder, pronounced the following Sentence on her, *(Viz.) That ſhe ſhould pay a Fine of* 1000 l. *be committed till Payment, ſtand three Times in the Pillory, and find Sureties for her good Behaviour for Life: That part of the Books ſhould be burnt by the common Hangman in her View, and a Paper, containing her Offence, affixed to the Pillory*; which Sentence was afterwards executed.

Her Sentence.

Remarks.

Mrs. *Cellier*, it ſeems, was not able to prove all the Stories ſhe had heard, in relation to the threatening and torturing *Prance* and *Corral*, to make them Witneſſes of the Popiſh Plot; but Mr. *Echard*, to whom I refer the Reader, has given us a very full and particular Account of that Matter: And here we find *Corral's* Wife atteſting, that ſhe was not permitted to ſee her Husband, in *Newgate*, a great while, and when ſhe was, ſhe found him loaded with Irons, and great Sores in his Legs, occaſioned by them; which is ſomething extraordinary, when the Man was neither charged with Treaſon or Felony. *Prance* alſo was diſtracted with the Uſage he met with, ſometimes ſwearing one Thing, and then another; now confeſſing, and then denying what he had teſtified, in the moſt ſolemn Manner: But what puts the Matter beyond all Doubt, was, the voluntary Confeſſion of *Prance* in the next Reign, when he declared, that all the material Parts of his Evidence, at the Trials of *Green*, *Berry*, and *Hill*, were abſolutely falſe, and the Effects of his Cowardiſe, having been tortured and threatened with Death, to make him accuſe thoſe innocent Men.

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Stafford's Trial.

The Trial of WILLIAM Viſcount STAFFORD, for *High-Treaſon*, before the Houſe of Lords, in *Weſtminſter-Hall*, (HENEAGE Lord FINCH, Lord Chancellor of *England*, being conſtituted Lord High Steward on this Occaſion) the 30th of *November*, 1680. 32 *Car.* II.

The Articles againſt him.

THE Articles were entitled, *Articles of Impeachment, of High-Treaſon, and other Crimes and Offences, againſt* William *Earl of* Powis, William *Viſcount* Stafford, *and* Henry *Lord* Arundel *of* Wardour, William *Lord* Petre, *and* John *Lord* Bellaſis, *now Priſoners in the* Tower *of* London.

1. The firſt Article charges, That there had been for many Years a traitorous and execrable Conſpiracy carried on by the Papiſts, to ſubvert the ancient Government and Laws of this Kingdom, and to ſuppreſs the true Religion therein eſtabliſhed.

2. That the ſaid five Lords, together with *Philip Howard*, commonly called Cardinal of *Norfolk*, *Thomas White*, alias *Whitebread*, Provincial of the Jeſuits, and divers other Jeſuits, Prieſts, Friers, and other Perſons, had traitorouſly agreed, conſpired, and reſolved to depoſe and murder his preſent Majeſty, and by malicious and adviſed Speaking, Writing, and otherwiſe, had declared ſuch their Purpoſes and Intentions: That they had alſo conſpired and contrived to ſubject this Kingdom to the Pope, and ſhare among themſelves the Eſtates of his Majeſties Proteſtant Subjects; to reſtore Religious Houſes and the Lands belonging to them, and to erect others, and to deprive all Proteſtant Biſhops and other Eccleſiaſtical Perſons of their Offices and Preferments.

3. That the ſaid Conſpirators and their Accomplices had held ſeveral Conſultations concerning the Inſtruments they ſhould uſe to murder his Majeſty, and had reſolved to effect it by poiſoning, ſhooting, ſtabbing or ſuch like Means, and actually hired ſeveral Perſons to go to *Windſor*, and other Places where his Majeſty reſided, to murder him; and the Aſſaſins had accepted the Rewards offered them, undertaken to do the Deed, and gone to thoſe Places for that Purpoſe.

4. That they had procured Forces to be raiſed, and made Application to the Pope, his Cardinals, Nuncios, and others, to obtain Supplies of Men, Money, Arms and Ammunition, to levy War, and raiſe a Rebellion within this Kingdom, and to ſeize his Majeſty's Navy and Forts; whereupon the Calamities of War, Murders of innocent Subjects, Men, Women and Children, Burnings, Rapines, Deva-

ſtations,

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vaſtations, and other dreadful Miſeries muſt have enſued.

5. That the Conſpirators had procured and accepted Commiſſions, granted by or under the Pope, or other uſurped Authority, to raiſe Men, Money, Arms, and other Things neceſſary for their wicked and traitorous Deſigns, particularly, a Commiſſion for the ſaid *Henry* Lord *Arundel* of *Wardour*, to be Lord Chancellor; a Commiſſion to the ſaid *William* Earl of *Powis*, to be Lord Treaſurer; a Commiſſion to the ſaid *John* Lord *Bellaſis* to be General; another to the ſaid *William* Lord *Petre*, to be Lieutenant-General; and a Power to the ſaid *William* Viſcount *Stafford* to be Pay-maſter of the Army intended to be raiſed.

6. In order to conceal the Diſcovery of their Plots and Conſpiracies, and ſecure themſelves from Juſtice, the ſaid Conſpirators had uſed many wicked and diabolical Arts, cauſing their Prieſts to adminiſter Oaths of Secrecy together with the Sacrament, and upon Confeſſions, to give Abſolutions on concealing the ſaid Conſpiracy. That they cauſed Sir *Edmundbury Godfrey*, who had taken ſeveral Examinations relating to the ſaid Conſpiracy, to be murdered, giving out that he was alive, and privately married: And after his Body was found, maliciouſly reported that he murdered himſelf: Which murder was committed with Deſign to ſtifle and ſuppreſs the Evidence, and to deter all other Magiſtrates from making further Enquiries into their Plots and Conſpiracies.

And laſtly, That they had contrived, by many falſe Suggeſtions, to lay the Imputation and Guilt of the aforeſaid horrid and deteſtable Crimes upon the Proteſtants, that thereby they might eſcape the Puniſhments they juſtly deſerved; expoſe the Proteſtants to great Scandal, and ſubject them to Perſecution and Oppreſſion in all Countries, were the Romiſh Religion was profeſſed.

Of all which Treaſons and Crimes, the Knights, Citizens, and Burgeſſes in Parliament aſſembled, did impeach the ſaid Lords, and every of them, in the Name of all the Commons of *England*, praying they might be put to anſwer the Premiſſes, and ſuch Trials and Judgments might be had thereupon, as was agreeable to Law and Juſtice, and the Courſe of Parliaments.

To which the Lord *Stafford* anſwered generally, that he was *not Guilty*, and the Commons replied, and joined Iſſue thereupon.

On the 30th of *November*, the Lords being come down from their Houſe to the Court erected in *Weſtminſter-Hall*; the Commons ſeated on each ſide of them, all bare, and the Managers in the Rooms appointed for them; the Lord Viſcount *Stafford* was brought to the Bar, to whom the Lord High Steward made a Speech, wherein he told his Lordſhip, that he was proſecuted on the loud and dreadful Complaints of the Commons, and was to be tried by the whole Body of Peers, where he might be ſure no falſe Weights or Meaſures ever were, or could be found, but the Balance would he exactly kept, and all the Grains of Allowance his Caſe would bear, certainly put into the Scales; but as it was impoſſible their Lordſhips ſhould condemn the Innocent, ſo it was equally impoſſible they ſhould clear the Guilty: If therefore he had been agitated by a reſtleſs Zeal, to promote what they called the *Catholick Cauſe*, and had engaged [illegible]ch black and deep deſigns he was charged with, and this ſhould be fully proved, he muſt expect to reap what he had ſown: And as he muſt hear with Patience what ſhould be ſaid againſt him, ſo he ſhould have Time to anſwer it, and have a very fair and equal hearing.

d High ward's ch, at Opening e Trial.

The Charge being read, during which Time his Lordſhip was allowed to ſit, Mr. Serjeant *Maynard*, one of the Managers for the Commons, opened the Impeachment and Evidence. He obſerved that the Impeachment conſiſted of two Parts, a general and particular Charge: And accordingly they ſhould firſt prove a Plot in general, and then ſhew the Share the Lord at the Bar had in it: That great and wicked were the Deſigns of the Conſpirators: To deſtroy the King, in Hopes of better Times under his Succeſſor: To deſtroy and maſſacre all that ſtood in their Way, the whole Body of Proteſtants in *England*: That an Army at Home was in a Manner formed, Commanders appointed, and Aid from *France* invited and promiſed: They thought it meritorious, to deſtroy a Heretick King, and the Papiſts at home and abroad had broke through all the Bonds of Nature, and other Obligations, to obtain their Ends. The Hiſtories of all Times and Countries, afforded Inſtances of ſuch Catholick Plots, and therefore there was no Improbability they ſhould be in one now, to propagate their Religion. Another Thing, that might induce a Belief of the Plot, he obſerved, was, the Murder of *Godfrey*, who had taken the Examinations of the Plot; and the many Endeavours to ſeduce and tamper with the Witneſſes, and blaſt their Characters, was a further Confirmation of it.

The King's Counſel open the Charge.

Sir *Francis Winnington*, another of the Managers, ſeconded Serjeant *Maynard*, and ſaid, he looked upon the Cauſe of that Day, to be the Cauſe of the Proteſtant Religion: That the Papiſts had great Advantages and Encouragements at that Time, to enter into this Conſpiracy: They had crept into the King's Councils; and though ſome of them had been detected and diſcharged, as ill Men had ſucceeded them.

Men were grown too eaſy and favourable to the Papiſts Projects for; reconciling them to us had been lately ſet on Foot.

The Miniſtry prevented the Execution of the Penal Laws againſt Papiſts, and turned them upon the Proteſtant Diſſenters, and by that means weakened and divided the Proteſtant Intereſt.

But the greateſt Encouragement they had to enter on this Conſpiracy, was, the Proſpect of a Popiſh Succeſſor: His preſent Majeſty's Firmneſs to the Proteſtant Religion, fruſtrated all their Hopes of re-eſtabliſhing their Religion while he lived; and therefore, like true Papiſts, they would throw off all Obligations of Loyalty and Allegiance, and deſtroy him.

As to the Proof of the Plot in general, he thought the ſeveral Attainders of the Jeſuits,

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and the Convictions of *Reading*, and others, of tampering with the Witneſſes, a ſufficient Evidence of it: And as their Lordſhips Anceſtors had, by their Honour and Juſtice, preſerved the Anceſtors of the Commons, They did not doubt but their Lordſhips would tread in their Steps. They had now in their Hands an Opportunity of making their Zeal for Truth, and the Proteſtant Religion, famous to Poſterity; and no Artifice could create the leaſt Jealouſy in them, that their Lordſhips would ſhew any Injuſtice to the Commons of *England*: To their Judgment, therefore, this Cauſe was ſubmitted, and when they had their Lordſhips Judgment, they did not doubt but they ſhould drive Popery out of this *Engliſh* World.

Mr *Treby*, another of the Managers, obſerved, That their Evidence conſiſted of two Parts, 1. To ſhew the general Conſpiracy, and 2. The particular Share the Lord at the Bar had in it.

They had laid it in their Articles, That there was an execrable Plot carried on by Papiſts, and that the Conſpirators acted divers Parts, and in divers Places, beyond Sea as well as here; That this was an Enterprize too extenſive to be managed by a ſingle Nobleman, and therefore they would ſhew, firſt, That there was ſuch a grand and univerſal Deſign of Papiſts, in which this Lord was to co-operate his diſtinct Share; though, when they deſcended to Particulars, it would appear, that his Part had been great, and managed with Malice as great as any.

Smith's Evidence.

Then the Managers called their Witneſſes; and firſt one *Smith*, who gave a general Account of the Plot: he depoſed, That he had been a Popiſh Prieſt, but was now turned Proteſtant; That he had lived in the College of the *Engliſh* Jeſuits at *Rome* five Years; and the Jeſuits in their Sermons and private Diſcourſes maintained, That the King of *England* was an Heretick, and that whoever would take him out of the Way, would do a Meritorious Act; that he underſtood at *Rome*, there was a Plot going forward to murder the King, and when he came to *England* he obſerved there was the ſame Deſign here; and *That it was common Talk all over the Country.*

Dugdale's Evidence of the Plot in general.

Dugdale depoſed, That for fifteen or ſixteen Years paſt, there had been a Deſign to introduce Popery by Force of Arms upon the King's Death; but he heard nothing till of late of killing the King: That he had been at ſeveral Conſultations for taking off the King, and there had been a general Collection of Money for carrying on the Deſign; he had received five hundred Pounds at once, and paid it to *Ewers* the Jeſuit, for Arms received from beyond Sea: That the Lord *Aſton* and Sir *James Symonds*, were ordered to diſpoſe of Arms, which came from beyond Sea, to the Value of thirty thouſand Pounds; and he had heard the *French* King would furniſh a Body of Troops and other Supplies: That the Jeſuits Letters went through the Deponent's Hands for two Years, and he received one, the 14th of *October*, 1678, dated the 12th, which ſaid, *This Night* Godfrey *is diſpatched*; and the Reaſon he was taken off, *Ewers* told the Deponent, was, becauſe *Coleman* ſent the Duke of *York* Word he had diſcovered the whole Plot to him: That the Deponent himſelf contributed four hundred Pounds towards the Plot, and promiſed a hundred more: That the Lord *Stafford* was preſent at ſeveral Conſults, where the introducing Popery, the buying Arms, and the King's Death, were under Conſideration; and there was an Indulgence, publiſhed in the Year 1678, That whoever ſhould be active in theſe Deſigns, ſhould have a Pardon for all their Sins: That when the King was killed, Arms were to be put into the Hands of certain Perſons, who were to riſe at an Hour's Warning, and cut the Proteſtants Throats, and if any eſcaped, the Army was to deſtroy them; adding, that *Whitebread* the Jeſuit wrote *Ewers* a Letter by the common Poſt, wherein he deſired him, in Words at length, without a Cypher, *To provide ſtout Fellows to kill the King.*

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Oates's Evidence.

Oates depoſed, that he was reconciled to the Church of *Rome* on *Aſh-Wedneſday*, 1676, and admitted then a Novice of the Order of the Jeſuits: That in *April* 1677, he was ſent to *Spain*, where the King's Death was talked of, for that he was an Enemy to God and Man. In *November* following the Deponent was ordered to *England*, where he underſtood *Grove* had been diſappointed in his Deſign of killing the King; but had great Hopes of effecting it the next Year: That in *December* 1677, the Deponent was ſent to *St Omers*, where they received an Account of an Attempt that *Pickering* had made upon the King's Life, which failed by the Flint of his Piſtol being looſe: Then he gave Evidence of the treaſonable Conſult at the *White-Horſe* in *April*, 1678, as he had done at the Jeſuits Trials, and of Sir *George Wakeman*'s being employed to poiſon the King; and ſaid, *Strange* told him how *London* was fired, and that the Incendiaries who were apprehended, were releaſed by the Duke of *York*'s Order.

Jenniſon's Evidence.

Jenniſon depoſed, That *Ireland* would have employed him to murder the King; and that he (the Deponent) recommended four ſtout *Iriſhmen* to him in *Auguſt*, 1678, for that Service, whoſe Names *Ireland* took down.

The Managers having given Evidence of the Plot in general, the Witneſſes were directed to teſtify what they knew againſt the Lord *Stafford* in particular.

Dugdale's Teſtimony againſt Lord Stafford in particular.

Whereupon *Dugdale* depoſed, That the latter End of *Auguſt*, or the Beginning of *September*, 78, he was admitted to a Conſultation at the Lord *Aſton*'s Houſe, where the Lord *Stafford*, the Lord *Aſton*, and ſeveral more, came to a Reſolution, upon the Intelligence they had received from beyond Sea: That the ſpeedieſt Way to introduce their Religion was, to kill the King; to which Reſolution the Lord *Stafford* conſented: That ſoon after, the Lord *Stafford* ſent for the Deponent into his Chamber, and promiſed him five hundred Pounds, if he would be concerned in murdering the King: He ſaid, the Services of his Family had not been rewarded, which was Reaſon ſufficient for his Enmity to the King,

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King, if there was nothing of Religion in the Caſe. And he remembered particularly, that the Day, the Lord *Stafford* offered him the five hundred Pounds, was on the 20th, or 21ſt of *Sept.* 78.

Oates's further Evidence.

Oates depoſed, That in *June* 78, the Lord *Stafford* received a Commiſſion to be Pay-Maſter General of the Army, at *Fenwick*'s Chamber in *Drury-Lane*.

Turbervile's Evidence.

Turbervile depoſed, That in the Year 75, his Brother, being a *Benedictine* Monk, recommended him to the Lord *Stafford* at *Paris*, who was then lame of the Gout; and that his Lordſhip propoſed to him his being concerned in the Murder of the King, who was (he ſaid) an Heretick, and a Rebel to God Almighty; ordered the Deponent to go to *Diep*, and told him he ſhould go with him to *England*: But his Lordſhip wrote the Deponent Word at *Diep*, he ſhould go to *England* by way of *Calais*, and ordered him to wait on his Lordſhip at *London*; but he never went near my Lord *Stafford*, not being willing to be concerned in the Matter: That it was at his Lordſhip's Houſe at *Paris*, that he propoſed killing the King; the Deponent was at his Houſe there, ſeveral Times, within the Space of a Fortnight. The Houſe was at the Corner of a Street, which faced *Luxemburgh-Houſe*, and the Prince of *Conde* lodged in the ſame Street.

This, the Lord *Stafford* obſerved, was not true, and demanded of *Turbervile*, What kind of Room his Chamber was, where he came to him? Which *Turbervile* ſaid he could not remember: And being asked how he came not to diſcover this ſooner? Said, He was afraid of having his Brains beat out; but on the King's Proclamation, and the Perſuaſion of his Friends, who told him he might do it ſafely, he made the Diſcovery.

Lord Stafford's Defence.

The Lord *Stafford* proceeding in his Defence, ſaid, If ſome Doctors of the Church of *Rome* held the Doctrine of King-killing, the Doctors of the *Sorbonne*, and ſeveral other conſiderable Members of that Church, had condemned it, as he did for his Part; and that he had taken the Oath of Allegiance, with which he thought no Power on Earth could diſpenſe: Nor had his Life given any Countenance to the Accuſation of the perjured Villains, who ſwore againſt him: Declaring, that Offers of procuring his Pardon had been made him, by ſeveral Peers, and Members of the Privy-Council, if he would make a Diſcovery: But upon the ſtricteſt Search he could not imagine there was any Foundation for the Charge againſt him; and obſerved, he had Time enough, after the Diſcovery of the Plot, to have made his Eſcape, if he had been guilty.

Then he demanded of *Dugdale*, What Proviſion of Arms was made to put this pretended Deſign in Execution? To which *Dugdale* anſwered, He heard there were 30,000 Arms provided beyond Sea; and he underſtood they ſhould have at leaſt 200,000 Men to aſſiſt them: Which his Lordſhip obſerved was very ſtrange, ſince there was not 20,000 *Roman* Catholicks in *England* able to bear Arms.

His Lordſhip alſo called ſeveral Witneſſes, who depoſed, That he was at the Marquis of *Worceſter*'s Seat, at *Badminton*, in *Auguſt* 78, when *Dugdale* ſwore he was at *Tixall*. And *Thomas Sawyer* depoſed, That *Dugdale* was forced to leave the Lord *Aſton*'s Service, on account of his Debts; and that being taken up by the Watch, in *December* 78, he deſired the Parſon of the Town to prevail with the Lord *Aſton* to own him for his Servant; for he ſhould be undone (he ſaid) if he went to Jail; but the Lord *Aſton* would not own him: And *Dugdale* ſwore thereupon, That he would be revenged on the Lord *Aſton*; which was but two or three Days before he became an Evidence againſt the Lord *Aſton*, and the reſt of the Popiſh Lords.

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His Witneſſes called.

The Miniſter of *Tixall* depoſed, That he begged of the Lord *Aſton* to own *Dugdale* for his Servant, to prevent his being carried to Jail; but his Lordſhip anſwered, he would have nothing to do with him.

Sir *Walter Bagott*, one of the Juſtices of Peace, before whom *Dugdale* was brought by the Watch, depoſed, That he waited on the Lord *Aſton*, to know if *Dugdale* was his Servant; but he would not own him: Whereupon the Deponent took *Dugdale* to *Stafford* with him, where there was a Meeting of Juſtices, and they tendred him the Oaths of Supremacy and Allegiance, which he took; and examining if he knew any thing of the Plot, he denied he had any Knowledge of it: And Mr. *Kinnerſley*, and Sir *Thomas Whitgrave*, two more of the Juſtices of Peace, depoſed to the ſame Effect.

The Miniſter of *Tixall* further depoſed, That whereas *Dugdale* had ſworn he received a Letter, concerning the Death of Sir *Edmondbury Godfrey*, dated the 12th of *October*, and communicated the ſaid Letter to the Deponent, and Mr. *Sambridge*, the *Tueſday* following; he, the Deponent, averred, that he never heard of *Godfrey*'s Death, either from *Dugdale*, or any other Perſon, 'till it was publickly known. And Mr. *Sambridge* depoſed to the ſame Effect.

Robinſon and *Murrel* depoſed, That *Dugdale* would have ſuborned them to have been Witneſſes againſt ſeveral Gentlemen, to prove their being in the Plot; and particularly againſt the Lord *Stafford*.

Robinſon and *Holt* alſo depoſed, That *Dugdale* would have ſuborned them to be Witneſſes.

One of the Lord *Stafford*'s Servants depoſed, That he was with him all the while he reſided at *Paris*, and that his Lordſhip was never lame, as *Turbervile* had depoſed; neither did he ever hear that *Turbervile* was at his Lordſhip's Houſe at *Paris*.

Weybourne depoſed, That the Lord *Stafford* came over from *France*, by way of *Diep*, in *January* 75, and not by *Calais*, as *Turbervile* had ſworn.

Several Witneſſes alſo depoſed, That *Turbervile* ſolemnly proteſted he knew nothing of the Plot.

Then his Lordſhip demanded of *Oates*, Whether he, when he was a Miniſter of the Church of *England*, did really turn Papiſt, or did

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did but pretend to turn? To which *Oates* answered, *He did only pretend, and was not really one.*

His Lordship also desired that *Oates* might produce some of the Letters he pretended to have received from his Lordship, or some Notes, or Abstracts, he had taken from them; but *Oates* answered, he had not kept any of those Letters, neither had he taken any Notes out of them, lest they should endanger his Life.

Whereupon his Lordship observed, That *Oates* could not be deemed a credible Witness, having acknowledge his Hypocrisy and Dissimulation with God and Man.

That *Oates* also was so poor and necessitous, that he begged for Six-pence, suggesting that he became an Evidence to save himself from starving: To which *Oates* replied, He had not received Two-pence since he made the Discovery: Whereupon his Lordship observed, that *Oates* had sworn at another Trial, that he had been seven hundred Pounds out of Pocket; which could not easily be, if he had received nothing. *Oates* answered, A noble Peer had made him a Present of an hundred Pounds; he sold his Narrative of the Plot for another hundred Pounds; he had also received an hundred Pounds for taking of Jesuits, and fifty Pounds more he had received for other Copies; all which and more he had spent in the Service. (*In promoting the Belief of the Plot.*)

His Lordship observed also, That *Dugdale* was in the Bailiffs Hands when he became an Evidence; and that he probably did it to obtain his Liberty, and entitle himself to the Reward that was offered to Discoverers.

His Lordship also again insisted, That *Oates*, who had dissembled with God Almighty to such a Degree, as to take the Sacrament after the Manner of the Church of *Rome*, which their Lordships and the House of Commons had declared to be gross Idolatry, could never be looked upon as a good Witness; and appealed to their Lordships, if one, who pretended to abhor his own Religion, and had engaged to such an Height, in a Way which his Conscience told him was Idolatrous, was not a perjured Fellow, and incapable of being a Witness: He could be no Christian, but a Devil, and a Witness for the Devil. Had he been a Penitent, they should have discovered it, by a pious, sober, and peaceful Behaviour; and it was but last Night, when he abused the Lieutenant of the *Tower*, and called him Rascal, which the Lieutenant attested to be true.

Witnesses produced to support the Credit of the King's Witnesses.

Then the Managers produced other Evidence, to support the Credit of their Witnesses, and to falsify the Evidence given for the Prisoner.

Ansel deposed, That he had seen *Dugdale* in the Lord *Aston*'s Parlour with the Lord *Stafford*; and that *Dugdale* told him of the Death of a Justice of Peace in *London*, on *Monday* the 14th of *October* 78.

Mr. *Booth*, a Member of the Commons, deposed, That *Robinson*, a Witness of the Prisoner's, who pretended he was suborned by *Dugdale*, was a common Cheat: Whereupon the Lord *Stafford* observed, he was the more likely to be suborned. 1680. 32 Car. II.

Other Witnesses deposed, That *Holt* and *Murrel*, who had deposed they were suborned by *Dugdale*, were necessitous People: Others deposed, that they had been practised with to destroy *Dugdale*'s Credit. They produced other Witnesses, who deposed that *Dugdale* lived in good Credit at the Lord *Aston*'s, and transacted most of his Affairs; and some Witnesses deposed, that *Turbervile* waited at *Diep*, to come over with the Lord *Stafford*, and that he was at *Paris* when the Lord *Stafford* was there. Others deposed, that the Lord *Stafford* had been lame several Times within the Space of seven Years; but his Lordship still averred, that he had never been lame.

Other Witnesses of the Lord Stafford's.

In answer to this Evidence, the Lord *Stafford* proved, that several of the Witnesses produced against him, were active Men in the Grand Rebellion, and disaffected to the Government; and then proceeded to make his Observations on the Evidence that had been given.

He observed, That *Dugdale*, the first Witness, had deposed his Lordship was at *Tixall*, in *August* 78, which appeared to be false; and he thought a Man, who would swear false in one Thing, was not to be credited in any: That his Lordship's Witnesses also had disproved him in several other Parts of his Testimony, and shewed he had endeavoured to suborn People to swear against his Lordship.

That *Oates*'s swearing before the Lords, he had no more to say against any body, and afterwards accusing the Queen, and swearing his Lordship had a Commission, was down-right Perjury. And he observed, *Oates* was so far from expressing any Repentance, or Concern, for his dissembling so notoriously with God and Man, that he did, the Day before, with a smiling Countenance, and as it were in Derision, own the monstrous Offence; and though a wicked Man might be admitted a Witness, yet never did a wicked Man aver a Piece of Villany, which he might have concealed, and boasted of it, that was ever credited afterwards.

As to *Turbervile*, the next Witness, he thought it strange, none of his Servants should see him at *Paris*, if he had conversed with him a Fortnight together: Besides, *Turbervile*'s Knowledge of the Plot was but very lately, two Witnesses having deposed that he swore he knew nothing of it a Year ago.

He observed also, that none of the Witnesses were Men of Quality, or Condition; but gave their Evidence to get Money, rather than for the sake of Truth; and as *Oates* had dissembled so notoriously with God and Man, no one would hang a Dog upon his Evidence: That the whole Course of his Life gave no Colour to the Charge; he challenged any one to say he had been guilty of one disloyal Word or Act: He attended his Majesty in the late Wars, till his Family was reduced to great Straits thereby; whereas, had he gone over to the Rebels, he might have lived quietly, and saved his Estate, as others did.

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The Managers Observations on the Evidence.

Sir *William Jones* the Manager, who ſummed up the Evidence for the Commons, ſaid, he thought there were none now who would pretend to disbelieve the Plot, but thoſe who were Conſpirators in it, or wiſhed the Succeſs of it: That the Evidence was ſo ſtrong, it admitted of no Doubt, and the Crimes ſo foul, they needed no Aggravation. They were not only Offences againſt his Majeſty, but againſt the Proteſtant Religion; for the Extirpation of all Proteſtants out of theſe three Kingdoms, at leaſt all that dared to have continued ſo, muſt either have left their Country, or have been burnt in it.

Mr. *Powle*, another of the Managers, took upon him to anſwer the ſeveral Reaſons given by his Lordſhip of the great Improbability of his being in a Plot: And firſt, as to his Lordſhip's ſolemn Proteſtations of his Innocence, he ſaid, Whatever Regard their Lordſhips might have to the Proteſtations of a Peer in another Caſe; yet, now their Lordſhips ſat in the Seat of Juſtice, they would proceed according to the Evidence; and they hoped their Proofs were ſo clear, as to leave no room to believe his Lordſhip's ſolemn Proteſtations: And as to that Preſumption of his Innocence, that he did not fly for it, that might proceed as well from a Confidence of the Strength of his Party, as from a Confidence of his Innocence; and whether the Power and Prevaleney of the Popiſh Party at that Time, might not reaſonably create ſuch a Confidence in this Noble Lord, he left to their Lordſhips Judgment. That his Lordſhip had raiſed ſome Arguments from the whole Tenour of his Life, and had taken occaſion to mention his Own and his Anceſtors Services to his King and Country; but he deſired their Lordſhips, on the other hand, to conſider that the Lord *Stafford* was a Roman Catholick; and as a miſguided Conſcience could engage the beſt Men in the worſt Actions, ſo he thought the Principles of that Religion were ſuch as were more likely to pervert Men from their Duty and Allegiance, than any other Religion or Perſuaſion whatever. His Lordſhip had affirmed indeed that the Doctrine of King-killing, and depoſing of Princes, was but a private Opinion: Whereas the moſt celebrated Writers of the Church of *Rome*, had publickly avowed and maintained that Doctrine. Some private Writers, he acknowledged, did hold the contrary Opinion; but looked upon it as a Piece of Policy and Artifice in that Church, to leave this Point in ſome Meaſure undetermined, that they might make uſe of it as Occaſion ſerved. If it ſucceeded, then it was owned and juſtified; but if it miſcarried, then the Doctrine was ſaid to be a private Opinion, and the Plot, the Contrivance of particular Perſons, that were either deſperate or diſcontented; and concluded deſiring their Lordſhips to take the whole into their Conſideration, and do what ſhould be agreeable to Juſtice.

Exceptions of the Lord Stafford's, in Point of Law.

His Lordſhip then made ſome Objections in Point of Law, (*viz.*) 1. That there was no Precedent, that Criminal Proceedings ever continued from Parliament to Parliament, and this had continued three Parliaments.

2. That no Man ought to be proceeded againſt Capitally, but upon an Indictment found by ſome Grand Jury. 1680. 32 Car. II.

3. That there was no Overt-act laid in the Impeachment.

4. That the Witneſſes ſwore for Reward, and therefore were not competent Witneſſes.

5. That there were not too Witneſſes to any one Point.

Anſwered. 1. To the firſt it was anſwered, That what was once upon Record in Parliament, might at any Time be proceeded upon.

2. That in Impeachments of the Commons, an Indictment was not neceſſary.

3. To the Third, that it was charged, and had been proved, that he had received a Commiſſion, had been at ſeveral Conſults, and had hired Perſons to kill the King, which were ſufficient Overt-Acts.

4. To the Fourth, that it had been reſolved, That one Witneſs to one Overt-Act, and another Witneſs to another Overt-Act, of the ſame Species of Treaſon, was ſufficient.

5. As to the Objection, that a Maintenance was allowed the Witneſſes; this every Man did, though perhaps he did not give ſo large an Allowance as the King gave; and if his Majeſty had been bountiful to his Witneſſes, what was that to the Commons, who were Proſecutors? He could ſhew no Bribery in them.

Lord Stafford convicted.

The Trial having continued ſix Days, their Lordſhips Votes were taken by the Lord High Steward on the 7th, when his Lordſhip declared, that Thirty-one of the Lords thought the Priſoner *Not Guilty*, and Fifty-five had found him GUILTY: And the Lieutenant of the *Tower* being commanded to bring his Priſoner to the Bar, the Lord High Steward acquainted him, that their Lordſhips had found him Guilty of the Treaſons of which he was Impeached: After which, the Lords adjourning to their Houſe, and the Commons withdrawing to theirs, the Speaker of the Commons reſumed the Chair, and with the whole Body of the Houſe of Commons went up to the Lords Bar, and demanded Judgment againſt the Lord Viſcount *Stafford*.

Motion to alter the Sentence.

The Commons being withdrawn, it was moved, that the Lord *Stafford* might have Judgement to be beheaded only, but the Opinion of the Judges being demanded as to the Conſequence of ſuch a Sentence: They anſwered that the Judgement in High-Treaſon was to be drawn, hanged, and quartered, and the Courts below could not take Notice of any other Judgment for High-Treaſon. Sir *Creſwel Levinz* the Attorney General alſo, ſaid, that if any other Judgment was given, it would be prejudicial to his Majeſty, Whereupon the Lords reſolved, that the uſual Sentence in High-Treaſon ſhould be pronounced, and a Meſſage was ſent to the Commons, that their Lordſhips would go forthwith into *Weſtminſter-Hall*, to give Judgement againſt *William* Lord Viſcount *Stafford*.

Lord High Steward's Speech before Sentence.

The Lords and Commons being returned to their Places in *Weſtminſter-Hall*, and the Priſoner brought to the Bar, the Lord High Steward (Lord Chancellor *Finch*) made a Speech upon the Occaſion; wherein, having

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anſwered ſome trifling Objections Lord *Staffford* made in Arreſt of Judgment, he ſaid: "My Part, therefore, which remains, is a "a very ſad one; for I never yet gave Sentence of Death upon any Man, and am extreamly ſorry that I muſt begin with your "Lordſhip.

"Who would have thought that a Perſon "of your Quality, of ſo noble an Extraction, "of ſo conſiderable an Eſtate and Fortune, "ſo eminent a Sufferer in the late ill Times, "ſo intereſted in the Preſervation of the Government, ſo much obliged to the Moderation of it, and ſo perſonally obliged to "the King and his Royal Father, for their "particular Favours to you, ſhould ever have "entered into ſo infernal a Conſpiracy, as to "contrive the Murder of the King, the Ruin "of the State, the Subverſion of Religion, "and, as much as in you lay, the Deſtruction of all the Souls and Bodies in three "Chriſtian Nations? And yet the Impeachment of the Houſe of Commons amounts "to no leſs a Charge; and of this Charge "their Lordſhips have found you guilty.

"That there hath been a general and "deſperate Conſpiracy of the Papiſts, and "that the Death of the King hath been all "along one chief Part of the Conſpirators "Deſign, is now apparent, beyond all Poſſibility of doubting.

"What was the Meaning of all thoſe Treatiſes, publiſhed about two Years ago, a"gainſt the Oath of Allegiance, in a Time, "when no Man dreamt of ſuch a Controverſy? What was the Meaning of Father "*Conyers*'s Sermon, upon the ſame Subject; "but only becauſe there was a Demonſtration of Zeal, as they call it, intended a"gainſt the Perſon of the King, which the "Scruples ariſing from the Oath did ſomewhat hinder?

"To what Purpoſe were all the Correſpondencies with foreign Nations? The "Collections of Money among the Fathers "Abroad and at Home? What was the "Meaning of their governing themſelves "here, by ſuch Advices as came frequently "from *Paris*, and *St. Omers*? And how "ſhall we expound that Letter which came "from *Ireland*, to aſſure the Fathers here, "that all Things were in a Readineſs there "too, as ſoon as the Blow was given?

"Does any Man now doubt how *London* "came to be burnt? Or by what Ways and "Means poor Juſtice *Godfrey* fell? Is it not "apparent, by theſe Inſtances, that ſuch is "the frantick Zeal of ſome bigotted Papiſts, "that they reſolve, no Means to advance the "Catholick Cauſe ſhall be unattempted, "though it be by Fire and Sword?

"My Lord, as the Plot in general is moſt "manifeſt, ſo your Lordſhip's Part in it is "but too plain; what you did at *Paris*, and "continued to do at *Tixall*, ſhews a ſettled "Mind and Purpoſe againſt the King: And "what you ſaid at *London*, touching honeſt "*Will*, ſhews you were concerned in that "Conſpiracy againſt the King's Life, which "was carrying on here too: And in all this "there was a great Degree of Malice; for "your Lordſhip, at one Time, called the "King *Heretick, and Traytor to God*; and, at "another Time, you reviled him for miſplacing his Bounty, and rewarding none but "Traytors and Rebels.

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"And thus you ſee, what the Wiſe Man "forewarned you of, is come upon you, *Curſe "not the King, no not in thy Heart; for the "Birds of the Air ſhall reveal, and that which "hath Wings will declare the Matter.*

"Three Things I ſhall preſume to recommend to your Lordſhip's Conſideration. In "the firſt Place, your Lordſhip now ſees how "it hath pleaſed Almighty God to leave you "ſo far to yourſelf, that you are fallen into "the Snare, and into the Pit, into that very "Pit, which you were digging for others. "Conſider therefore, that God Almighty never yet left any Man, who did not firſt "leave him.

"In the next Place, think a little better of "it than hitherto you have done; what kind "of Religion that is, in which the blind "Guides have been able to lead you on, into ſo much Ruin and Deſtruction, as is now "like to befall you.

"In the laſt Place, I intreat your Lordſhip to conſider, that true Repentance never comes too late. A devout, penitential Sorrow, joined with an humble and "hearty Confeſſion, is of mighty Power and "Efficacy, both with God and Man.

"There have been ſome, of late, who have "refuſed to give God the Glory of his Juſtice, by acknowledging the Crimes, for "which they were condemned; nay, who have "been taught to believe, that it is a mortal "Sin to confeſs that Crime in publick, for "which they have been abſolved in private; "and ſo have not dared to give God that "Glory, which otherwiſe they would have "done.

"God forbid your Lordſhip ſhould reſt "upon Forms; God forbid your Lordſhip "ſhould be found amongſt the Number "of thoſe poor miſtaken Souls, whom the "firſt Thing that undeceives is Death itſelf.

"Perhaps, your Lordſhip may not much "eſteem the Prayers of thoſe, whom you "have long been taught to miſcall Hereticks: "But, whether you do or no, I am to aſſure "your Lordſhip, That all my Lords here, "even they that have condemned you, will "never ceaſe to pray for you, that the End "of your Life may be Chriſtian and Pious, "how tragical ſoever the Means are that muſt "bring you thither. And now, my Lord, "this is the laſt Time that I can call you my "Lord; for the next Words I am to ſpeak "will attaint you.

"The Judgment of the Law is, and this "Court doth award, That

You go to the Place from whence you came; from thence you muſt be drawn upon a Hurdle to the Place of Execution: When you come there, you muſt be hanged up by the Neck, but not till you are dead; for you muſt be cut down alive, your Privy-Members muſt be cut off, and your Bowels ripped up before your Face, and thrown into the Fire: Then your Head muſt be ſevered from your Body, and your Body di-

vided

1680. 32 Car. II. *vided into four Quarters; and those must be at the Disposal of the King.* And God Almighty be merciful to your Soul.

His Majesty being pleased to remit all the Punishment but the Beheading, Writs were issued out of *Chancery*, to the Lieutenant of the *Tower*, and the Sheriffs of *London* and *Middlesex*, for the Execution of his Lordship on *Tower-Hill*, on the 29th of *December*, 1680, by severing his Head from his Body: But the Lord *William Russel*, and some other Members of the Commons, questioning his Majesty's Power of remitting any Part of the Punishment, put the Sheriffs upon presenting the following Petition to the Temporal Lords, *Viz.*

A Petition for Directions as to Lord Stafford's Execution.

To the Right Honourable the Lords Temporal in Parliament assembled, The humble Petition of Slingsby Bethel, *Esq*; *and* Henry Cornish, *Esq*; *Sheriffs of* London *and* Middlesex.

Sheweth,

THAT your Petitioners have received a Writ, under the Great Seal of *England*, reciting, that Judgment had been given by your Lordships, against *William* Viscount *Stafford*, for High-Treason, and divers other Crimes and Offences, upon the Impeachment of the Commons in Parliament assembled, and commanding your Petitioners to cause the said Viscount *Stafford*'s Head to be severed from his Body, upon the 29th Day of this instant *December*, notwithstanding any Judgment, Law, Ordinance, or Command to the contrary.

That your Petitioner have not as yet received any Command from your Lordships for executing the said Judgment.

May it therefore please your Lordships to take the Premises into Consideration, and to make such Order therein, as shall be agreeable to Right and Justice: And your Petitioners shall always pray, *&c.*

Upon which Petition the Lords made the following Declaration, *Viz.*

Die Martis, 21 *Decembris*, 1680.

Upon Application from the Sheriffs of *London* and *Middlesex*, making some Scruples concerning the Execution of the late Lord Viscount *Stafford*, which were found by this House to be unnecessary, This House do declare that the King's Writ ought to be obeyed.

Notwithstanding which Declaration, the Sheriffs applied themselves to the House of Commons, for their Direction; whereupon the Commons passed the following Vote.

Die Jovis, 23 *Decembris*, 1680.

Resolved, *&c.* That this House *is content*, That the Sheriffs of *London* and *Middlesex* do execute *William* late Viscount *Stafford*, by severing his Head from his Body only.

1680. 32 Car. II. *Some Passages while Lord* Stafford *lay under Sentence of Death.*

Bishop *Burnet* relates, that he attended the Lord *Stafford* in the *Tower*, while he lay under Sentence of Condemnation, and that he made solemn Protestations of his Innocence. He had a Mind to live, if it was possible; but said, he could discover nothing relating to the King's Life, and protested, *That there was not so much as any Intimation, concerning it, ever passed amongst them.* That the Lords *Essex* and *Russel*, and Sir *William Jones*, afterwards sent him (*Burnet*) to acquaint the Lord *Stafford*, that if he would discover all he knew of the Papists Designs, and more particularly what he knew concerning the Duke of *York*, they would not insist on his confessing the Particulars, for which he was condemned: And on the Lord *Stafford*'s promising to discover all he knew, he was brought before the House of Lords, where he gave a long Relation of the Consultations of the Papists, after the Restoration; wherein they agreed, that their Religion could not be better brought in, than by procuring a Toleration; but upon naming the Earl of *Shaftesbury* among those who had undertaken to procure a Toleration, the Lords would hear no more, but ordered him to withdraw: And being sent back to the *Tower*, he prepared himself to suffer, which he did with a constant, undisturbed Mind. He supped and slept well the Night before his Execution, and died without any Shew of Fear or Disorder, denying all that the Witnesses had sworn against him. *Thus far Bishop* Burnet: But because some may desire to see the Speech entire, which the Lord *Stafford* made at his Execution, I have inserted it *verbatim.*

The Lord Viscount Stafford's *Speech on the Scaffold, the 29th of* December, 1680.

Lord Stafford's *Speech on the Scaffold.*

By the Permission of Almighty God, I am this Day brought hither to suffer Death, as if I were guilty of High-Treason. I do most truly, in the Presence of the Eternal, Omnipotent, and Allknowing God, protest upon my Salvation, that I am as Innocent, as it is possible for any Man to be, so much as in a Thought, of the Crimes laid to my Charge.

I acknowledge it to be a particular Grace and Favour of the Holy Trinity, to have given me this long Time to prepare myself for Eternity. I have not made so good Use of that Grace, as I ought to have done, partly by my not having so well recollected myself as I might have done, and partly because not only my Friends, but my Wife and Children have for several Days been forbidden to see me, but in the Presence of one of my Wardens. This hath been a great Trouble and Distraction to me; but I hope God of his infinite Mercy will pardon my Defects, and accept of my good Intentions.

Since my long Imprisonment, I have considered often, what could be the original Cause of my being thus accused, since I knew myself not culpable, so much as in a Thought: And I can not believe it to be upon any other Account, than my being of the Church of *Rome*. I have no Reason to be ashamed of my Religion; for it teacheth nothing but the right Worship

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Worſhip of God, Obedience to the King, and due Subordination to the Temporal Laws of this Kingdom. And I do ſubmit to all Articles of Faith, believed and taught in the Catholick Church; believing them to be moſt conſonant to the Word of God: And whereas it hath ſo much, and often, been objected, That the Church holds, that Sovereign Princes, excommunicated by the Pope, may, by their Subjects, be depoſed or murdered. As to the Murder of Princes, I have been taught, as a Matter of Faith in the Catholick Church, that ſuch Doctrine is diabolical, horrid, deteſtable, and contrary the Law of God, Nature, and Nations; and as ſuch, from my Heart, I renounce and abominate it. As for the Doctrine of depoſing Princes, I know ſome Divines of the Catholick Church hold it, but as able and learned as they have written againſt it: But it was not pretended to be the Doctrine of the Church, that is, any Point of Catholick Faith: Wherefore I do here, in my Conſcience, declare, that it is my true and real Judgment, That this ſame Doctrine of depoſing Kings, is contrary to the fundamental Laws of this Kingdom, injurious to Sovereign Power, and conſequently would be in me, or any other of his Majeſty's Subjects, impious and damnable. I believe and profeſs that there is one God, one Saviour, one Holy Catholick Church, of which, through the Mercy, Grace, and Goodneſs of God, I die a Member. To my great and unſpeakable Grief I have offended God in many Things, by many great Offences; but, I give him moſt humble Thanks, not in any of thoſe Crimes of which I was accuſed.

All the Members of either Houſe having Liberty, to propoſe in the Houſe, what they think fit for the Good of the Kingdom, accordingly I propoſed what I thought fit: The Houſe is Judge of the Fitneſs or Unfitneſs of it; and I think I never ſaid any Thing that was unfitting there, or contrary to the Law, and Uſe of Parliament; for certainly if I had, the Lords would, as they might, have puniſhed me: So I am not culpable before God or Man.

It is much reported of Indulgencies, Diſpenſations, and Pardons, to murder, rebel, lie, forſwear, and commit ſuch other Crimes, held and given in the Church. I do here profeſs, in the Preſence of God, I never learnt, believed, or practiſed any ſuch Thing, but the contrary; and I ſpeak this without any Equivocation, or Reſervation whatſoever: And certainly, were I guilty, either myſelf, or knew of any one that were guilty, of any of thoſe Crimes, of which I am accuſed, I were not only the greateſt Fool imaginable, but a perfect Madman, and as wicked as any of thoſe that have ſo falſly accuſed me, if I ſhould not diſcover any ill Deſign, I knew in any kind, and ſo upon Diſcovery ſave my Life; I have ſo often had fair Occaſions propoſed to me, and ſo am guilty of Self-murder, which is a moſt grievous and heinous Sin. And though I was at laſt impeached at the Lords Bar, yet I have great Grounds to believe, that I was firſt brought to Trial, on a Belief that to ſave my Life, I would make ſome great Diſcovery: And truly ſo I would, had I known any thing of an ill Deſign, or dangerous Plot, either of myſelf, or any other Perſon: But had I a thouſand Lives, I would loſe them all, rather than falſly accuſe either myſelf, or any other whatſoever. And if I had known of any Treaſon, and ſhould thus deny it, as I do now upon my Salvation, at this Time, I ſhould have no Hope of Salvation, which now I have, through the Merits of Chriſt Jeſus.

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I do beſeech God to bleſs his Majeſty, who is my lawful King and Sovereign, whom I was always, by all Laws, Human and Divine, bound to obey; and I am ſure that no Power upon Earth, either ſingly, or all together, can legally allow me, or any Body elſe, to lift up a Hand againſt him, or his legal Authority. I do hold that the Conſtitution of the Government of this Kingdom, is the only Way to continue Peace and Quietneſs, which God long continue.

Next to Treaſon I hold Murder in Abhorrence, and have ever done, and do; and I do ſincerely profeſs, that if I could at this Time free myſelf immediately, and eſtabliſh what Religion I would, and what Government I would, and make myſelf as great as I could wiſh, and all by the Death of one of theſe Fellows, that by their Perjuries have brought me to the Place where I am, I ſo much abhor to be the Cauſe of any Man's Death, that I would not any ways be the Cauſe of their Murder; how much leſs would I endeavour the Aſſaſſination of his Majeſty, whom I hold to be as gracious a King, as ever this, or any other Nation had, and under whom the People may enjoy their Liberties as much as ever any did: And if it pleaſe God to grant him Life and Happineſs, according as I have always wiſhed and prayed for, I am morally perſuaded that he, and all his Dominions, will be as happy and proſperous, as ever People were; which I beſeech God to grant.

I do moſt humbly ask Pardon of the Almighty, and All-merciful God, for all the great Offences I have committed againſt his Divine Majeſty; and I know he would not have the Death and Confuſion of a Sinner, but that he may repent and live: In that Aſſurance I hope, knowing he never deſpiſeth a contrite Heart; and though I have not ſo feeling a Contrition as I would, yet I have it as well as I can; and I doubt not but that God will accept of the good Will.

I do deſire all People will forgive me any Injury that I have done them, in any Thing, either wilfully, or by Chance; and I do heartily forgive all People in this World, that have injured me: I forgive even thoſe perjured Men, that have ſo falſly brought me hither by their Perjuries.

I do now, upon my Death and Salvation, aver, that I never ſpoke one Word either to *Oates* or *Turbervile*, or to my Knowledge ever ſaw them until my Trial: And for *Dugdale*, I never ſpoke to him of any Thing, but about a Foot-boy, or Foot-man, or Foot-race, and never was then alone with him: All the Puniſhment I wiſh them, is, that they may repent, and acknowledge the Wrong that they have

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have done me; then it will appear how innocent I am. God forgive them! I have a great Confidence that it will pleaſe Almighty God, in a ſhort time, to bring Truth to Light; then you and all the World will ſee and know what Injury they have done me.

I hope that I have made it appear that I have ſome Conſcience; for if I had none, certainly I would have ſaved my Life by acknowledging myſelf guilty; which I could have done, though I know I am not in the leaſt guilty. And I having ſome Conſcience, make very ill Uſe of it; for I throw my ſelf into eternal Pain, by thus plainly and conſtantly denying at my Death the Knowledge of what I am accuſed of.

I have ſaid thus much to diſcharge my Conſcience; and do aver, upon my Salvation, what I have ſaid to be really true.

I ſhall ſay little of my Trial; and whether it were all according to the known Law, I am too much a Party to ſay much of it: God forgive him or them that were the Cauſe of it.

My Judges were all Perſons of Honour, who were all as much bound to judge rightly, as if they had been upon Oath, upon what was legally proved; and not to vote but as in their Conſciences they were ſatisfied; and if any of them did otherwiſe, upon any Account whatſoever, I beſeech God to forgive him; I do heartily.

I ſhall end with my Prayers for the Happineſs of his Majeſty, That he may enjoy all Happineſs in this World and the World to come; and govern his People according to the Laws of God; and that the People may be ſenſible what a Bleſſing God hath ſo miraculouſly given them, and obey him as they ought. I ask Pardon with a proſtrate Heart of Almighty God, for all the great Offences that I have committed againſt his Divine Majeſty; and hope, through the Merits and Paſſion of Chriſt Jeſus, to obtain everlaſting Happineſs, into whoſe Hands I commend my Spirit, asking Pardon of every Perſon that I have done any Wrong to. I do freely forgive all that have wronged me: I do, with all the Devotion and Repentance that I can, humbly invoke the Mercy of our Bleſſed Saviour.

I beſeech God not to revenge my innocent Blood upon the Nation, or on thoſe that were the Cauſe of it, with my laſt Breath. I do with my laſt Breath truly aſſert my Innocency; and hope the omnipotent, all-ſeeing, juſt God will deal with me accordingly.

The Lord *Stafford* having ſpent ſome Time in his Devotions, undreſſed himſelf, and ſubmitted to the Block: And the Executioner ſevered his Head from his Body at one Blow. The Head was received into a black Silk Scarf by two of his Friends; but the Sheriffs ordered the Executioner to take it and hold it up to the View of the People, which he did at the four Corners of the Scaffold, crying out, *This is the Head of a Traytor.*

The Sun (according to one of the *Spectators*) which before was obſcured, on a ſudden broke out, and diſplayed his illuſtrious Beams; upon which Accident the different Parties made different Reflections. His Adverſaries ſaid, The Sun, which before frowned on Popiſh Guilt, ſeemed pleaſed when Juſtice was done: But the Papiſts would have it, That the Heavens mourned, and were aſhamed at the ſhedding his innocent Blood; but appeared in Joy and Splendour at the Reception of this Saint into the Celeſtial Manſions. But to leave theſe fond Conjectures; the Head being returned to his Relations, was laid in a Coffin with the Body, and carried from the Scaffold to the *Tower*, to be interred.

Such a Multitude of Witneſſes ſpringing up from all Quarters, and giving Evidence of the Popiſh Plot, enclined moſt Men to believe there was ſomething in it, for a conſiderable Time: But when it became manifeſt, that the Faction only trumped up this Plot to diſtreſs the Government, and conceal one of their own, againſt that very Life, and that very Conſtitution they charged the Papiſts with attempting to deſtroy; when it was conſidered, what extraordinary Rewards were offered to thoſe that would become Witneſſes of it, and what infamous People the Witneſſes in general were; when it was diſcovered how they were inſtructed and managed by *Shafteſbury* and his Emiſſaries, to deſtroy and aſperſe all that were true Friends to the Government and the Conſtitution; when it was obſerved how they contradicted themſelves, and each other, in their Evidence; and atteſted ſuch improbable and inconſiſtent Relations as the moſt Credulous could not believe: But above all, when it was found that the Party were actually arming themſelves, reviling the King and Royal Family; juſtifying the late Rebellion, and threatning publickly to bring the King to the Block, as they did his Father, (as appeared at the Time of the *Oxford* Parliament, and at *Colledge*'s Trial, which happened within a Year after this); when the People, I ſay, reflected on theſe Things, the Belief of the Plot vaniſhed at once; and was believed, or pretended to be believed, by none but thoſe whoſe Intereſt it was it ſhould be believed; and who endeavoured, by aſſerting the Truth of the Popiſh Plot, to conceal their own Guilt.

Remarks on Lord Stafford's Trial, and the Popiſh Plot.

Even Biſhop *Burnet*, in his Poſthumous Work, Vol. II. pag. 509. could ſay in his Remarks on *Colledge*'s Trial: "And now "*Dugdale* and *Turbervile*, who had been the "Witneſſes upon whoſe Evidence Lord *Staf*-"*ford* was condemned, being within a Year "detected, or at leaſt ſuſpected of this Vil-"lany; *I could not but reflect on what he had* "*ſaid to me, That he was confident I ſhould* "*ſee within a Year, That the Witneſſes would* "*be found to be Rogues.*

And indeed the Faction themſelves, and the Authors of *Rapin*, their avowed Advocates, ſeem ſtrangely inconſiſtent in their Accounts of the pretended Popiſh Plot: They firſt repreſent the King uſing all manner of Artifice, and even confederating with the *French* King to eſtabliſh Popery in *England*; and then, on a ſudden, make the *Engliſh* Papiſts, and all the Popiſh Powers in *Europe*, in a Plot, (even that very *French* King, by whoſe Means, they told us, King *Charles* would introduce

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troduce Popery here) to take away the Life of King *Charles* II. becauſe was a Heretick, and oppoſed their Schemes of introducing Popery: And when the Abſurdity of this was ſufficiently expoſed, then they turn about again, and tell us, that the King himſelf was more deeply engaged in the Plot than any Man: Not in a Plot to kill himſelf for a Heretick; (This was too abſurd, even for a Fanatick to ſay) but in a Plot to eſtabliſh Popery by a Standing Army, and the Aſſiſtance of the *French* King again. So that they ſeem contented, at length, that we ſhould believe no more of the Plot than that King *Charles* II. the Papiſts, and the Members of the Church of *England*, who are ever repreſented as Popiſhly affected, were in a Plot to bring in Popery: But then they would do well to conſider, what has been obſerved already, that if this laſt Pretence be admitted, all the People that were executed for being in a Plot againſt the King's Life were unjuſtly murdered under a Colour of Law; for they were all condemned *for conſpiring the Death of the King*. Had they been only charged with *Compaſſing and Imagining, or Conſpiring*, with or without the King's Concurrence, *to alter the Government and the Eſtabliſhed Religion*; This was not High-Treaſon by any Law then, or now, in being; provided they had no Deſigns againſt the King's Perſon, as this Scheme admits.

And becauſe it may ſeem impoſſible to Poſterity, that any Party of Men could have the Face, or the Folly, to affirm ſuch palpable Contradictions, I ſhall extract ſome Paſſages from *Rapin* (whoſe Authority they will never diſpute, his pretended Hiſtory being little elſe but a Collection of all the Lies and Forgeries the Faction have, from Time to Time, advanced to ſerve their Ends) that will ſufficiently manifeſt this Conduct.

Rapin, Vol. 13, Page 381, *Tindal*'s Tranſlation, ſays, "That the Papiſts, (*Anno* 1667) "had a great Influence in the Court: The "Earl of *Arlington*, the almoſt declared Pro"tector of the Papiſts, was made Secretary "of State, and in great Favour; while the "Earl of *Clarendon*, their Enemy, daily de"clined in Credit and Authority. This began "to produce Suſpicions little advantagious "to the King. Page 422, *Rapin* ſays of the "King, *Inſtead of being zealous for the Pro"teſtant Religion* (Anno 1670) *his Intent "was to overturn it*: Inſtead of having any "Thought of deſtroying the Presbyterians, "his Deſign was to be very indulgent to "them, in order to have an Opportunity and "Pretence to be ſo to the Papiſts: *He was "impatient to free himſelf from the Reſtraints "put upon him by his Parliament; and the "rather, as by the Augmentation of his Power "he ſhould be more able to countenance the "Papiſts, and introduce their Religion; which "was his own as well as his Brother's.*

Page 458, *Rapin* ſays, "One of the Branches "of the Project formed by the Cabal (*Anno* "1671) was, to render the King abſolute; "and this Branch comprehended under it "*The Extirpation of the Proteſtant, or, at leaſt, "the Introduction of the Popiſh Religion.*

Vol. 14, Page 41 and 42, *Rapin* ſays, "It "ſignified little for the King to proteſt his "Zeal for the Proteſtant Religion, (*Anno* 1673): "Theſe Proteſtations could not make the "Parliament forget ſo many Steps already "taken, which gave too juſt a Suſpicion of "his Sincerity: And they openly enough ex"preſſed their Fears and Diſcontents *of the "Growth of Popery, publickly encouraged by "the Court*; of the Management of Affairs "in *Ireland*, where the Act of Eſtabliſhment "was openly trampled upon, and *Papiſts "daily advanced or encouraged*; the King's "Proceedings in *England*, which were clear "Evidences of his Principles and Deſigns; "namely, his raiſing a Land Army without "any Neceſſity; his granting Liberty of "Conſcience by his ſole Authority; his ſhut"ting up the Exchequer; and *entering into a "ſtrict Alliance with* France, when he ſhould "have uſed his utmoſt Endeavours to oppoſe "the Encreaſe of her Greatneſs: The Pro"feſſion of the Popiſh Religion, in the moſt "open Manner, by the Duke of *York*; and "his Marriage with a Popiſh Princeſs, aber"ted by the King himſelf, contrary to ſo "many Remonſtrances of the Parliament. "Theſe were Subjects of Complaint, too real "to be ſilenced by Proteſtations from the "King, of his Deſign to maintain their Laws "and Religon.

Page 43, He tells us, "*The King had ab"jured the Proteſtant Religion, and had a "ſecret Chapel erected in his Palace, where he "every Day heard Maſs.*

Page 81, *Rapin* affirms, "That in the "Year 1677, the King had no Deſire to be"gin a War with *France*: *His private En"gagements with* Lewis XIV. *being too ſtrong "to allow him any ſuch Thought.*

Page 82, "The more powerful the King "of *France* rendered himſelf, the greater was "King *Charles*'s private Advantage; as it "was from the Aſſiſtance of *France*, he pro"miſed himſelf the Conqueſt of his own "Kingdom.

Page 88, *Rapin* ſays, "I do not think "it poſſible (*Anno* 1677) to account for the "King's Conduct, in a Manner ſatisfactory "to the Impartial, without ſuppoſing *he ex"pected Aſſiſtance from* France *to make him "abſolute, and change the Eſtabliſhed Re"ligion.*

And Page 116, he tells us, That *the King's "Conduct* (Anno 1678) *could only be aſcribed "to his Paſſion, for executing his darling "Scheme of rendering himſelf abſolute, and "introducing the Popiſh Religion in* England.

Theſe are ſome of the numerous Inſtances, that *Rapin* and his Party have given us, of King *Charles*'s repeated Deſigns, and Attempts to extirpate the Proteſtant Religion, and Introduce Popery; and yet in this very Year 1678, do they trump up a Plot, in which they pretend, that not only the *Engliſh* Papiſts, but all the Popiſh Powers in *Europe*; even his Ally the *French* King, as has been obſerved already, were engaged, *to deſtroy him, becauſe he was an Heretick, and would not eſtabliſh Popery in* England. And to that Degree were the People diſtracted, and infatuated by the

Artifices

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Artifices of *Shafiesbury* and the Faction, that great Numbers of People were executed for this pretended Plot; and though the King ſoon found it was a Sham, the Party had ſuch an Aſcendant, that they compelled him to ſuffer thoſe Executions; and among the reſt, that of the unfortunate Lord *Stafford*: And when the Forgery became Evident both to King and People, and the Credit of the Plot could be ſupported no longer, the Faction then had recourſe to their old Stratagem again, and very near ſpirited up the People into Rebellion a ſecond Time, *under Pretence the King himſelf was in the Plot to introduce Popery.*

Indeed *Rapin*, p. 119, endeavours to explain this Riddle, by making two Plots: He ſays, the King was engaged in a Plot to introduce Popery and Arbitrary Power; and the Jeſuits, and ſome few Deſperadoes of their Religion, were in another Plot, to take away his Life, as the readieſt way to introduce their Religion: But ſurely, if this was the Caſe, the Jeſuits never acted more unjuſtly, more ungratefully, or impolitically; for *Rapin* takes it for granted, that the King was actually a Papiſt, and heard Maſs every Day in his own Palace: That he encouraged and preferred none but thoſe who were Popiſhly affected at Home; and entered into Foreign Alliances, eſpecially with the *French* King, on Purpoſe to bring in Popery by Force, if it would not be affected otherwiſe; and continued, with all imaginable Application and Artifice, to labour the eſtabliſhing that Religion here for many Years: Can it then be ſuppoſed, that ever the Jeſuits, or any Papiſts, ſhould conſpire to cut off ſuch a Prince; eſpecially when they knew he did not want Skill and Addreſs, to effect what they ſay he ſo paſſionately deſired, and would loſe no favourable Opportunity for promoting their Superſtition? Would they kill him, becauſe he did not precipitate Matters, and defeat their Hopes, by raſh and unſeaſonable Attempts? This can never be ſuppoſed of that cunning Society of the Jeſuits, if they could be preſumed to have ſo little Juſtice, or Gratitude, as to murder a Prince, who was their Convert, and had left no Stone unturned to ſerve them.

But further, *Rapin* pretends, that the Deſign of killing the King, was carried on only by ſome few Deſperadoes, and that none elſe were acquainted with it; but, if we are to credit the Witneſſes the Faction produced to prove the Plot, the King's Death was reſolved on by *All* that were tried for the Plot; by *All* the Popiſh Lords; by the *Engliſh* Catholicks *in general*; and by the Courts of *Rome*, *Spain*, and *France*; and was become the Common Talk in every Roman Catholick Court in *Europe*, for ſeveral Years; and conſequently, if there was a Deſign to kill the King, it was not confined to a few Deſperadoes: The Papiſts in general were engaged in it, and it could not be concealed from the King himſelf. But it is evident the King never ſuſpected that any one of thoſe that were executed for conſpiring againſt his Life, were Guilty, by his Endeavours to ſave them, which is to me a ſtrong Preſumption of their Innocence; for no Perſon was ſo much concerned to ſee Juſtice executed upon them as his Majeſty, if they were Guilty. We may therefore very reaſonably conclude, that all that were executed for that Plot, were very unjuſtly put to death; and from the Trials that followed the Year after, it is no leſs evident, that the Faction only amuſed the Nation with this Plot, to conceal another of their own againſt the King's Life, and the Conſtitution in Church and State; treading in the Steps of their Fore-fathers, who depoſed and murdered his Father, ſubverted the Government, and eſtabliſhed Presbytery, and a Republican Form of Government by the very ſame Arts; namely, by alarming the Nation, with terrible Apprehenſions of Popery, Arbitrary Power, and a general Maſſacre: It is plain, the Biſhops and the Church of *England* were ſufficiently convinced of this Deſign, by their adhering to the Court ſo ſtrenuouſly, after the Roguery of the Popiſh Plot was detected, and by their aſſiſting the King in ſubduing that rebellious Spirit, which manifeſted itſelf ſoon after, in fanatick Plots and Conſpiracies to aſſaſſinate his Majeſty: And if the Biſhops and Clergy of the Church of *England* were of Opinion, that the Fanaticks and Republicans had a View to the ſubverting the Government and Religion eſtabliſhed (as *Rapin* admits) I ſhall make no Difficulty to believe they underſtood what Deſigns were on Foot, and what was the Intereſt of the Nation, as well as *Rapin*, or any of their Enemies. But it is remarkable, that this celebrated Writer himſelf, vol. 14, p. 299, acknowledges, that the Preſbyterians and Republicans of thoſe Times, had the Subverſion of the Conſtitution in View, which is ſo conſiderable and deciſive a Conceſſion in this Diſpute, that I ſhall recite his very Words.

"It was inſinuated (ſays *Rapin*) to the "Epiſcopalians, of whom the Majority were "Tories, that both Church and Monarchy "were in Danger; and that the Scene was "again opening, which had brought on "the Troubles of *Forty-one*. That the Preſ"byterians, under Colour of providing for "the Preſervation of Liberty, had only in "View the Deſtruction of the Church of "*England*, and the Introduction of Presby"terianiſm; in order to which they were purſuing the ſame Meaſures, that they had "taken in 1640, and the following Years, "by undermining the Foundations of Mo"narchy, the more eaſily to pull down the "Church. Theſe Inſinuations had the greater Effect, as what had once happened, and "whereof the Memory was ſtill freſh, might "happen again; *and I do not know whether it "can be juſtly doubted, that ſome of the Presby"terians had ſuch a Thing in View*: And in "the ſame Page, he ſays, The three laſt "Parliaments, compoſed of Men well-affected "to Presb terianiſm, proceeded not with "Caution enough; but *diſcovered too haſtily, "or too openly, their Deſigns, with regard to "Religion*

Will any Man, after ſuch Conceſſions made by *Rapin*, the great Advocate of the Presbyterians, doubt whether the King's Life, and the eſtabliſhed Religion, were not in more Danger

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Danger at that Time, from the Presbyterians and Republicans, than from the Papiſt? Will he not conclude, that this pretended Popiſh Plot was intended to conceal a real Presbyterian Plot?

So zealous were the Faction that this Artifice ſhould be diſcovered, that we find they made it one of the Articles of Impeachment againſt the Lord *Stafford*; that he deſigned to throw the Plot upon the Proteſtants, by whom they always mean the Presbyterians, and proſecuted all thoſe with the utmoſt Fury, that durſt ſuſpect their Knavery: And how did they compel the King to act contrary to his own Reaſon and Senſe of Things, when they obliged him to offer extravagant Rewards to Diſcoverers, to careſs thoſe Perjured Wretches and Witneſſes, and lodge them in his own Palace? And laſtly, what a Force did they put upon him, when they executed this Lord, and the reſt of the Sufferers, for this pretended Plot? Every one knows the King would have ſaved them, if he durſt: Which, as has been obſerved, is a ſtrong Inducement to believe they were not Guilty. For is it to be ſuppoſed, when King *Charles* had ſeen ſo many tried for this Plot, that he had not Penetration enough to diſcern, whether they were really Guilty? and, if he had thought them Guilty, can it be believed he would have endeavoured to ſave Men that had reſolved to Aſſaſſinate him; or have diſcharged thoſe Lords out of the *Tower*, who were impeached and charged with being in the ſame Conſpiracy?

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1680. 32 Car. II. Thompſon's *Caſe.* *Proceedings againſt* RICHARD THOMPSON, *of* Briſtol, *Clerk, before the Houſe of Commons, in the Month of* December, 1680. *Upon Complaint made of ſome* Words *he had* uttered in a Sermon, *preached on the* 30*th of* January, 1679, *at* Briſtol, *and at other Times and Places.*

SOME of the Witneſſes declared, they heard him ſay in the ſaid Sermon, That the Presbyterians were ſuch Perſons, as the very Devil bluſhed at them: That the Villain *Hampden*, made it more ſcruple of Conſcience, to give Twenty Shillings to the King for Ship-Money, which was his Right by Law, than to raiſe a Rebellion againſt him; and that the Presbyterians were far worſe (and far more intolerable) than either Prieſts or Jeſuits.

That he inveighed bitterly againſt the ſigning Petitions for the Sitting of a Parliament; ſaid it was the Seed of Rebellion, and likened it to *Forty-one.*

That he ſaid *Henry* VIII, did more Hurt in robbing the Abby-Lands, than he did Good by the Reformation.

That he ſaid, there was a great Noiſe of a Popiſh Plot, but there was nothing in it, but a Presbyterian Plot; and in the End they would bring the King's Head to the Block, as they had done his Father's.

Others depoſed, That *Thomſon* had uttered ſeveral Speeches, whereby he ſhewed he was Popiſhly Affected: That he commended the Romiſh Clergy for their ſingle Life, and was himſelf unmarried.

Said, That the King was of a ſoft Temper, might be led to any thing; but a *Solomon* in his Vices: The Duke of *York* was a Prince of a brave Spirit, and it was their own Faults he was a Roman Catholick; they forced him to fly into *France*, where he embraced that Religion.

Being examined before a Committee of the Houſe, as to his having ſpoken theſe, and Words of the like Import, ſome he confeſſed, and others he denied, or ſoftned, and the Committee making their Report thereupon to the Houſe, it was Reſolved, *Nemine contradicente*, That he had publickly defamed his Majeſty, vilified the Reformation, aſſerted Popiſh Principles, denied the Popiſh Plot, and turning the ſame upon the Proteſtants, endeavoured to ſubvert Liberty and Property, and was a Scandal to his Function.

And it was further Reſolved, to impeach the ſaid *Richard Thompſon*, on the Report of the ſaid Committee: However, upon his Petition, they ordered the Serjeant at Arms to take Security for his Appearance, to anſwer the ſaid Impeachment; and the Houſe being prorogued, the Matter was dropped.

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It is eaſy to diſcern what Stamp this Houſe of Commons were of, to prefer an Impeachment againſt a Perſon, chiefly for reflecting on the Presbyterians, and the Popiſh Plot: This extraordinary Reſolution ſeems to be made to terrify the People from ſpeaking, or thinking, otherwiſe than the Faction were pleaſed to preſcribe. They charged him indeed with reflecting on the King, but that was only to give them a Colour for the Proſecution; for it is evident the Faction did, at the ſame Time, publiſh all manner of ſeditious and ſcandalous Libels, reflecting on his Majeſty and the Royal Family, without any Animadverſion or Notice taken of them by the Houſe.

It ſeems to me alſo, a very great Hardſhip, and not agreeable to the good old Laws of this Land, (which requires that, in ordinary Caſes, every Man ſhould be tried by his Peers, or Equals) That a Perſon ſhould be Im-

1680. Car. II. impeached and tried before the Lords, when he is forth-coming, and ſubmits to be tried by the ordinary Courts of Juſtice; and this only for ſome looſe and unguarded Expreſſions, that were not agreeable to the Taſte of a prevailing Party. If the Words were criminal, they had Witneſſes that could have proved them in *Weſtminſter-Hall*, as well as at the Lords Bar; and if they were not, it was hard they ſhould be made the Foundation of an Impeachment. 1680. 32 Car. II.

1681. Car. II. # The Trial of EDWARD FITZHARRIS, Eſq; for *High-Treaſon*, before the Court of *King*'s-*Bench*, in *Eaſter* and *Trinity*-Terms. 1681. 33 *Car.* II. 1681. 33 Car. II.

Fitzharris's Trial. *EDWARD FITZHARRIS*, being committed for a Treaſonable Libel, reflecting on the King and Government, on the 28th of *February*, 1680; and the Parliament meeting at *Oxford*, on the 21ſt of *March* following, the Commons impeached *Fitzharris* of High-Treaſon, in general Terms: But the Lords finding no Reaſon for this extraordinary Way of proceeding, when he might be tried in the ordinary Courts of Law, rejected the Impeachment: Whereupon the Commons Reſolved, That it was the undoubted Right of the Commons to impeach any Peer, or Commoner, before the Lords; and that the Lords refuſing to proceed on this Impeachment of *Fitzharris*, was a Denial of Juſtice, and a Violation of the Conſtitution of Parliaments; an Obſtruction to the further Diſcovery of the Plot, and of great Danger to his Majeſty's Perſon, and the Proteſtant Religion: And that if any inferior Court ſhould proceed againſt *Edward Fitzharris*, or any other Perſon, lying under an Impeachment of Parliament, it would be a high Breach of Privilege: But the King diſſolving the Parliament the ſame Day, being the 28th of *March*, 1681, the Miniſtry directed *Fitzharris* to be tried at the *King*'s-*Bench* Bar.

is impeached generally. *Impeachment voted.* *Reſolutions of Commons thereon.*

On *Wedneſday*, the 27th of *April*, Mr. Attorney-General moved the Court of *King*'s-*Bench*, that ſome of the Grand Jury for the County of *Middleſex* might be preſent at the ſwearing the Witneſſes on the Indictment to be preferred againſt *Fitzharris*, then a Priſoner in the *Tower*, which was granted: And the Grand Jury having ſome Scruples about finding the Bill, Mr. Juſtice *Jones* ordered them to attend, and offer them the next Day, when the Court would be full.

Accordingly the 28th of *April*, the Grand Jury came to the Bar, and Mr. *Michael Godfrey* (Brother to Sir *Edmondbury Godfrey*) who was Foreman, deſired, before they proceeded on the Indictment, that *Fitzharris* might be examined about his Brother's Death, and then delivered in a Paper, in behalf of himſelf and the reſt of the Grand Jury, importing, That the Day before they had heard Sir *William Waller*, and others ſworn in Court, to give Evidence againſt *Fitzharris*, who, in the late Parliament at *Oxford*, was impeached by the Commons: And deſired the Opinion of the Court, whether it were lawful and ſafe for them to proceed to examine Witneſſes in relation to *Fitzharris*, or to meddle in that Matter, after the ſaid Impeachment, and Votes of the Commons.

The Grand Jury doubt, whether they may proceed on Indictment next againſt him.

To which the Lord Chief Juſtice anſwered, It was their Opinions, That notwithſtanding what they ſuggeſted, they were bound to enquire, by Vertue of their Oaths, if an Indictment ſhould be exhibited to them: They could not, nor ought to take any Notice of ſuch an Impeachment offered to the Lords, or of any ſuch Votes of the Houſe of Commons afterwards, if ſuch there were; for they would not excuſe them: Therefore, if they had Evidence enough given them, to ſatisfy them that the Indictment was true, they were to find it. And this, he declared, was the Opinion of all the Judges of *England*: Whereupon the Grand Jury withdrew, and having examined the Witneſſes, found the Bill. *They find the Bill.*

Fitzharris being brought to the Bar, from the *Tower*, by *Habeas Corpus*, on *Saturday* the 30th of *April*, and arraigned, exhibited a written Plea, which the Court ordered to be read, though they did not allow it; the Tenor whereof follows, *Viz.* That he ought not to be compelled to anſwer to this Indictment, becauſe, before the Indictment was found, at a Parliament held at *Oxford*, the 21ſt of *March* laſt, he was impeached by the Commons of High-Treaſon; and that this Impeachment remained in full Force before the Lords in Parliament, as appeared by the Records: And then avers, that the High-Treaſon mentioned in the Indictment, and the High-Treaſon in the Impeachment, are one and the ſame; and that he is the ſame *Fitzharris*, named in the Indictment, and mentioned in the Impeachment; and concludes to the Juriſdiction of the Court, whether upon the whole they will proceed further againſt him, on this Indictment. Fitzharris *arraigned.* *Pleads to the Juriſdiction of the Court.*

The Chief Juſtice acquainting the Priſoner, that ſuch a Plea muſt have a Counſel's Hand to it, he deſired they would aſſign Sir *Francis Winnington*, Mr. *Williams*, Mr. *Pollexfen*, and Mr. *Wallop*, for his Counſel, who were aſſigned accordingly, and Time was allowed him till the *Wedneſday* following, to put in his Plea; and a Rule was made, that his Wife, and his Counſel, ſhould have Acceſs to him. *Counſel aſſigned to argue it.*

On *Monday* the 2d of *May*, the Priſoner's Counſel moved, that the Time for putting in his Plea might be enlarged, and that they might have a Copy of the Indictment: But

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the Court refuſed to give further Time, and ſaid, a Copy of the Indictment, in Caſes of Treaſon and Felony, was never granted: But at the Priſoner's Requeſt, they added Sir *George Treby*, and Mr. *Smith*, to the Number of his Counſel, and allowed him a Solicitor.

Fitzharris being brought to the Bar again, on *Wedneſday* the 4th of *May*, produced the aboveſaid Plea, ſigned by Counſel, which the King's Counſel inſiſted was a frivolous Plea, only for Delay, and ought to be rejected immediately; but the Court declaring they would take Time to conſider of it, Mr. Attorney demurred to the Plea, and the Priſoner's Counſel joined in the Demurrer; after which, Mr. Attorney deſired the Judgment of the Court, That the Plea might ſtand over-ruled, for a plain fatal Error in it; for this he inſiſted was a particular Indictment, for framing a moſt pernicious and ſcandalous Libel againſt the King and Government; and they had pleaded generally, That the Priſoner was impeached of High-Treaſon: They ought to be ready with the Record, to juſtify their Plea: That to out the Court of their Juriſdiction, for a particular Treaſon, it was not a good Plea to ſay he was impeached or indicted generally of High-Treaſon: Nor could any Averment help it; and therefore he prayed the Judgment of the Court upon it.

The Plea demurred to.

The Priſoner's Counſel, on the other Hand, deſired Time to maintain their Plea, and were indulged till the *Saturday* following; but were again refuſed a Copy of the Indictment.

The Priſoner being brought to the Bar again, on *Saturday* the 7th of *May*, Mr. Attorney ſaid, he would lay his Finger upon the Points that would be the Queſtions between them, and 1. He inſiſted, That the general Allegation, that he was impeached of High-Treaſon, was too uncertain and general, and not helped by the Averment. 2. There was no Impeachment alledged to be upon Record; and as to the Matter, it was a Plea to the Juriſdiction of the Court; and the Point would be, Whether a Suit, depending in a ſuperior Court, can take away the Juriſdiction of an inferior Court, which had an original Juriſdiction of the Cauſe, of the Perſon, and of the Fact.

Arguments to maintain the Plea.

To this the Priſoner's Counſel anſwered, That by the Demurrer, theſe Things were admitted; 1. That the Priſoner was impeached by the Commons of High-Treaſon. 2. That this Impeachment was ſtill in being. 3. That this was according to the Law, and Cuſtom of Parliament; and 4. That the Treaſon, for which *Fitzharris* was impeached, and the Treaſon, for which he was indicted, was the ſame: That *Fitzharris*, who was indicted, was the ſame Perſon that was impeached, and that the Impeachment was before the Indictment.

And as to what Mr. Attorney ſaid, That an inferior Court, having original Juriſdiction of the Perſon and Cauſe, might proceed, notwithſtanding an Indictment in a ſuperior Court; they took the Caſe of an Impeachment to be different from that of an Indictment: An Impeachment was rather like an Appeal: As an Appeal was at the Suit of the Party, ſo an Impeachment was at the Suit of the Commons: The Commons were Proſecutors on an Impeachment, and not the King's Attorney; and it did not become the Juſtice of that Court, to weaken the Methods of proceeding in Parliament, as they would certainly do, if, after there was an Impeachment depending in Parliament, they admitted an Indictment here: This was to ſubject the Proceedings in Parliament to this Court, which did not ſtand with the Wiſdom of the Law, or the Conſtitution of the Government: That this was without Precedent alſo, and conſequently, according to Sir *Edward Coke*, there was no Law for it.

Another Miſchief, that would follow upon this was, That in Caſe of an Indictment, it was in the Power of the Prince to pardon; but in the Caſe of an Impeachment he could not, any more than in the Caſe of an Appeal.

That if this Court intermeddled in it, a Man might be put twice in Danger of his Life, for one Thing; for, if he was acquitted here upon this Indictment, that Acquittal would not bind the Lords in Parliament; he might ſtill be tried there for the ſame Fact.

And by the ſame Reaſon, that this Court proceeds, His Majeſty might appoint a High Steward, to try the Lords in the *Tower*, by a Jury of Peers; and had this been practiſed, the Lord *Stafford* had been ſtill alive: If *Fitzharris* ſhould be found guilty here, the Power of the Commons, in impeaching, and the Juriſdiction of the Lords, in Trial and Judgment, were taken away by an inferior Court.

As to the Objection of Mr. Attorney, That this Plea did not ſet forth any Record of an Impeachment, or the particular Matter of it, ſo as the Court might judge of the Reaſon of it, the Truth was in this Caſe, there was no Record to plead, and they muſt be governed here by the Rules and Methods of Parliament. The Commons had carried up an Impeachment to the Lords in general Terms, and were at Liberty to preſent their Articles in due Time. This was no Record, ſuch as might be had in the Caſe of *auter foriz convict*; for it was only entered in the Lords Journal, That ſuch a Day, ſuch a Perſon came from the Houſe of Commons, and impeached ſuch a one; here was not the ſame ſtrict Method, and Form of Proceeding, as in the Courts of *Weſtminſter-Hall*; and they had ſaid enough, and as much as could be ſaid in this Caſe, *That there was an Impeachment of the Commons before the Lords, which was in full Force, and according to the Law and Cuſtom of Parliaments, as appeared by their Rolls.* Which was as much, as if they had ſet forth the Record itſelf; and, as they took it, was a very full Plea, though it was not pleaded particularly; for in Parliamentary Matters, that Court was to judge according to the Methods of Parliament.

In the Caſe of the Lord *Shaftesbury*, who was committed for an high Contempt in the Houſe of Lords, the Reaſon given by the Judges, why they could not bail him, was, That as this Court takes Notice of the Courts in *Weſtminſter-Hall*, ſo they ought to take Notice

1681. 33 Car. II. Notice of the Law and Courſe of Parliaments, and of the Houſe of Lords: And if they were bound to do ſo in other Caſes, they ought to do ſo in this.

As to that Exception, that the King might chuſe his Court, there was no Doubt of it, in his own Action, or Suit; but this was an Impeachment of the Commons, and their Suit was to be tried no where but in Parliament.

It was urged further, as to the Plea being ſo general, that the Court could not judge of it; That *Fitzharris* had avered by his Plea, that he was impeached for the ſame Treaſon, for which he was indicted; and this Averment made the Matter as clear to the Court, as if the Impeachment had mentioned the particular Treaſon; and that Averments, conſiſtent with the Record, were good, and of Neceſſity, to clear the Fact to the Court: That Mr. Attorney might have pleaded *Nul. tiel Record.* and then they muſt have produced it; but he had demurred, and thereby confeſſed there was ſuch a Record, that the Averment was true, that he was impeached for the ſame Crime, and that he was the ſame Perſon.

That it ſeemed againſt natural Juſtice, That when the Commons, in the Name of themſelves, and of all the Commons of *England*, had lodged an Impeachment againſt a Man, any Commoners ſhould afterwards try or judge that Man for that Fact; every Commoner being a Party to the Accuſation, and conſequently could not be deemed indifferent. That Indictments were found againſt the Popiſh Lords, before there were any Impeachments againſt them; and yet there never was any Attempt to try them on the Indictments, though there had been ſeveral Intervals of Parliament ſince thoſe Impeachments, and the Parliament, wherein they were impeached, was diſſolved. They underſtood it was the Opinion of all the Judges, That, thoſe Impeachments being lodged in Parliament, no other Proſecution could be againſt them, till the Proſecution of the Commons was determined.

It was obſerved alſo, how ſcrupulous the Judges had ever been of meddling, where they had any Jealouſy, that either the Parliament had, or *pretended to have*, a Juriſdiction, *That they would always worſhip afar off, and never come near the Mount.* That if the Court retained that Cauſe, they would in Conſequence charge themſelves with the Blood of that Man, through which they muſt wade to come at the Cauſe.

That where there was as much Certainty ſet forth as the Caſe would admit, and was poſſible to be had, the Party was at Liberty to plead as he could, and help himſelf by Averment. Here was a General Impeachment; they could not make that Particular which was not; they had pleaded it as it was in the Record, from which they could not vary: They had avered it was the ſame Matter, and it was confeſſed ſo by the Demurrer: And if the Court would meddle with Proceedings in Parliament, they muſt take Notice of their Method of Proceeding, as they did of other Courts: That had they gone about to particularize the Treaſon, when the Impeachment was general, the other Side would have ſaid, *Nul. tiel Record*: And they ſhould have been condemned for failing in their Record; but having done according to the Fact, if that Fact was ſuch as would out this Court of its Juriſdiction, they did not ſee how it was poſſible they ſhould plead otherwiſe, or what Anſwer could be given to it. 1681. 33 Car. II.

Arguments againſt the Plea.

Mr. Attorney-General, and the reſt of the King's Counſel, anſwered, That this was a naughty Plea, as a Plea to the Juriſdiction of the Court; for there was no Matter diſcloſed therein that they could take Iſſue upon: They urged, indeed, that by their Demurrer it was admitted an Impeachment was depending; that the Impeachment was for the ſame Matter; and that they had admitted the Parliament was ſtill in Being; *but no Fact was admitted that was not well pleaded.* Indeed, had they admitted the Parliament was then in Being, it might have gone hard with them; but if this was not admitted, the whole Force of their Argument fell to the Ground; and affirmed, that the Beginning, Continuance, Prorogation, Adjournments, and Diſſolution of Parliaments, were of publick Cognizance, and the Court would, *ex Officio*, take Notice of them; they need not be avered. And, notwithſtanding thoſe many Cautions that had been given, no Conſideration-whatever ought to put Courts of Juſtice out of their ſteady Courſe; but they ought to proceed according to the Law of the Land.

Admitting there was a good Impeachment, and the Priſoner had been tried and acquitted upon it; if he had been afterwards indicted in this Court, and would not have pleaded this in Bar, but to the Juriſdiction of the Court, it would not have been a good Plea; but he had loſt his Advantage by miſ-pleading. If then an Acquittal, or Conviction on an Impeachment, was not a good Plea to the Juriſdiction; an Impeachment alone, wherein nothing was done, could not be a good Plea to the Juriſdiction. All the Caſes that had been cited, were of Matters not cognizable in that Court, and therefore did not affect the Matter in Queſtion: But where the Crime and the Perſon were abſolutely within the Juriſdiction of the Court, and the Court might originally take Cognizance of it, as was the preſent Caſe; nothing leſs than an Act of Parliament could out them of their Juriſdiction.

As to the Caſe of the five Popiſh Lords, they took Care that the Indictments againſt them ſhould be removed into the Houſe of Lords, foreſeeing that the King might have proceeded on thoſe Indictments, if they had not been removed thither. Beſides, the Lords had pleaded in full Parliament, where, by the Law of Parliament all the Peers were to be Judges, and could not be ouſted of that Right.

And as it was urged, They had pleaded according to the Law and Cuſtom of Parliament, they ought to have diſcloſed what that Law and Cuſtom was. Indeed, as to their Legiſlative Power, and Matters of Privilege, both Houſes proceeded according to the Law and Cuſtom of Parliament: But as to the Judicial Power, they had always been guided by the

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Laws of the Land: And in all Writs of Error, and Matters of Judgment, proceed *ſecundum legem terræ*; for there was not one Law in *Weſtminſter-hall*, as to Matters of Judgment, and another in the Court of the Lords above.

As to the Allegation being too general, the Books were expreſs, That when a Record was pleaded in Bar, or in Abatement, the Crimes ought to be ſet out ſo as to appear the ſame: The Record was not to be tried *per pais*, but by itſelf: The Court muſt judge of it: The particular Treaſon muſt appear in the Record, and no Averment could enlarge it: Should a Jury judge upon the Debates of the Houſe of Commons, Whether it was the ſame Treaſon or not?

They ſhould not inſiſt at this Time, That by *Magna Charta*, every Man ought to be tried by his Peers, or on the Stat. 4 *Ed.* 3. which ſaid, that the Lords ſhall not be compelled, or have Power, to give Judgment on a Commoner, and that thereby the Subject was ſecured from Impeachments; but obſerved that there was a wide Difference between an Appeal and an Impeachment; for an Impeachment concludes, *contra ligeantiæ ſuæ debitum, & Coronam & Dignitatem Domini Regis*: So it was in reality the King's Suit, and the King may pardon part of the Sentence, as was done in *Richard* IId's Time, and lately in Lord *Stafford*'s Caſe: But were it admitted to be done at the Suit of the People, that could not preclude the King from his Suit: Nor is an Acquittal, or Attainder upon an Indictment, a Bar to an Appeal; ſo that a Man is twice in Danger of his Life, in that Caſe as well as this. But this is not like the Caſe of an Appeal; for though formerly it was uſual to ſtay the Suit of the King, and prefer the Suit of the Subject, it was becauſe the Subject had the neareſt Concern, as the Son in the Death of his Father, and it moſt concerned him to proſecute it. But in the Caſe of an Impeachment, the Treaſon turned quite another way; for there was no Treaſon, but againſt the King, and the King himſelf has the neareſt Concern; the Wrong was primarily and originally to himſelf; the Subjects Danger was but a Conſequence of that, as all Hurt to the King tends to the Hurt of the People. The King's Suit therefore ought to be preferred here, as the Subjects was in the other Caſe of an Appeal.

Nor was this ſo dangerous a Caſe to determine, as was pretended. Much better would it be for the Court to anſwer, if ever they ſhould be required, that they had performed their Duty, and done Juſtice according to their Conſciences, and their Oaths, than to be afraid of any Threats, or Bug-bears from the Bar: How was it poſſible to judge, whether the Priſoner was impeached for the ſame Treaſon? It might be for Clipping or Coining, for ought appeared. The Intention of the Houſe of Commons could not be proved, when they were come to no Reſolution. The Queſtion was not, whether an Impeachment in the Houſe of Lords ſuperſeded an Indictment in the *King's-Bench*, but whether they had pleaded it ſo ſubſtantially, as to enable the Court to judge upon the Queſtion: But further, if upon ſuch a Plea pleaded, the Commons ſhould carry up Articles very different from what the Plea ſuggeſted, then the Plea would appear to be falſe, and the pleading, and allowing it, an apparent Delay of Juſtice: The Intention of the Houſe of Commons could never be averred, or tried, before they had declared it themſelves. 1681. 33 Car. II.

The Lord Chief Juſtice ſaid, As to thoſe Queſtions, whether the Commons could Impeach a Commoner for Treaſon in the Houſe of Lords, and whether an Impeachment, when the Lords were poſſeſſed fully of it, hindered the Proceeding of an inferior Court, did not concern them: But they had a Caſe that aroſe purely upon the Pleadings, and whether they had brought before them a ſufficient Plea, to take away the Juriſdiction of the Court, as they had pleaded it, was the ſole Point before them. They would give them Time to amend their Plea, he ſaid they ſhould not be ſurprized, but if they thought fit to abide by that Plea, they ſhould take a reaſonable Time to give them Judgment.

Fitzharris being brought to the Bar again, the 11th of *May*, and Mr. Attorney praying Judgment upon the Plea, the Chief Juſtice ſaid, That upon full Conſideration, and Deliberation of this Caſe, and upon Conference with other Judges, Mr. Juſtice *Jones*, Mr. Juſtice *Raymond*, and himſelf, were of Opinion, that the Plea was inſufficient (Mr. Juſtice *Dolben* doubting concerning it) and therefore the Court did order and award, that he ſhould anſwer over to the Treaſon. *The Plea over-ruled.*

Then the Priſoner deſired he might adviſe with his Counſel, before he pleaded; and being told he could have no Counſel as to Matter of Fact, he deſired he might finiſh his Confeſſion before the Lord Chief Juſtice, and ſome of the Counſel, before he pleaded: To which the Chief Juſtice anſwered, He had trifled with them ſo often, that he had nothing to ſay to that Matter at preſent, and again directed him to plead: Whereupon *Fitzharris* pleaded *Not Guilty*; and deſiring he might have Time to ſend for a Witneſs from *Holland*, before his Trial, the Court were pleaſed to put off the Trial till next Term; and a Rule was made, that in the mean Time his Wife, and his Solicitor, might come to him with his Papers (provided the Papers were firſt inſpected by the Lieutenant of the *Tower*) and *Subpœna*'s were ordered to bring in his Witneſſes. *He pleads Not guilty.*

The Priſoner was brought to the Bar again, the 9th of *June* 1681, being the firſt *Thurſday* in *Trinity*-Term, in order to his Trial, when Mr. *Thompſon* moved, that before his Trial he might give Evidence againſt Sir *John Arundel*, and Sir *Richard Bealing*, concerning the Murder of Juſtice *Godfrey*, for that there was an Attempt to prove the Murder himſelf. The Chief Juſtice anſwered, that what had been moved ſome Days before, had ſome Reaſon in it, namely, that he might give Evidence to a Grand Jury; but there being no Grand Jury ſworn, there was nobody to give Evidence to, unleſs they would have the *The Trial begins.*

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the Court take his Examination, and afterwards give it in Evidence to the Grand Jury.

Then the Priſoner moved, That his Wife and his Sollicitor might ſtand by him, with ſuch Papers as he had prepared to help his Memory: And it was granted, his Wife only ſhould; but ordered, If ſhe brought Papers drawn by Counſel for him, it ſhould not be allowed.

The King's Counſel informed the Court, that the Priſoner's Wife had brought him a Copy of the Pannel, with Directions whom he ſhould challenge; and that there were three Anabaptiſt-Preachers, and ſeveral other Fanaticks, returned upon the Jury; and inſiſted, that the Priſoner's Wife ſhould be removed farther from him: But the Priſoner returning the Papers, ſhe was permitted to remain where ſhe was.

A great many of the Jurors deſired to be excuſed ſerving, and ſeveral more were challenged, ſome by the Priſoner, and others for the King. Sir *Michael Heneage* ſaid, He was ill; Major *Wildman* ſaid, He had voted the Impeachment, and therefore thought he ought not to ſerve: Mr. *Beard* ſaid, he was ſeventy-five Years of Age; but was told, Since he had appeared, he muſt ſerve, if there were not enough; but if he had not appeared, he might have had a Writ of Privilege for his Diſcharge, in regard of his Age.

Two of the Jurors being challenged peremptorily for the King, the Priſoner inſiſted, That the King's Counſel ought to ſhew Cauſe: To which the Chief Juſtice anſwered, The King need not ſhew Cauſe till the Pannel was gone through; and at length the following Gentlemen were ſworn: *viz.*

Thomas Johnſon,	*William Withers*,
Lucy Knightley,	*William Cleeve*,
Edward Wilford,	*Thomas Goffe*,
Alexander Hoſey,	*Ralph Farr*,
Martin James,	*Samuel Freebody*, and
John Vyner,	*John Lockyer*.

Indict-ment.

Pen, Ink, and Paper, being allowed the Priſoner on his Requeſt, the Indictment was read; which charged the Priſoner with High-Treaſon, in compaſſing and imagining the Death of the King; and inciting one *Edmond Everard*, and others, to aſſiſt him therein: And that, the better to effect his traitorous Purpoſes, he did frame and make a treaſonable Libel; entitled, *The true* Engliſhman *ſpeaking plain* Engliſh. In which were the following Words: "If *James* (meaning the Duke of *York*) be conſcious and guilty, *Charles* (meaning the King) is "ſo too: Believe me, both theſe are Brethren in "Iniquity: They are in Confederacy with the "Pope and the *French*, to introduce Popery and "arbitrary Government, as their Actions demonſtrate. The Parliament's *Magna Charta*, and "the Liberty of the Subjects, are heavy Yokes, "they would willingly caſt off, to make themſelves as abſolute as their Brother of *France*: "And if it can be proved to be their Aim and "main Endeavour, why ſhould not every true "*Briton* be a Quaker thus far, and let the *Engliſh* "Spirit be up and move, as one Man, to Self-"Defence? Nay, and if need be, to open Action, "and fling off theſe intolerable Riders?" And, in another Place, "*J.* and *C.* (meaning the King "and Duke) both Brethren in Iniquity, corrupt "both in Root and Branch, as you have ſeen, "ſtudy to enſlave you to a *Romiſh* and *French*-"like Yoke. Is it not plain? Have you not "Eyes, Senſe, or Feeling? Where is that old "*Engliſh* noble Spirit? Are you become *French* "Aſſes, to ſuffer any Load to be laid upon you? "And if you can get no Remedy from the next "Parliament, as certainly you will not; and that "the King repents not, complies not with your "Advice; then up, all as one Man. O brave *Engliſhmen*, look to your own Defence, ere it be too "late! Rouſe up your Spirits!" In another Place, he ſays, "I will only add, that, as it is the un-"doubted Right of Parliaments to make a Law "againſt a Popiſh Succeſſor, who would prove "deſtructive to our Laws and Liberties; ſo it is "their undoubted Right to dethrone any Poſſeſ-"ſor, that follows evil Counſellors, to the De-"ſtruction of our Government." In another Place, "Then let all be ready: Then let the City "of *London* ſtand by the Parliament, with Offers "of any Money for maintaining their Liberties "and Religion, in any extreme Way, if Parliamen-"tary Courſes be not complied with by the King."

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Everard's Evidence.

The Witneſſes being called, Mr. *Everard* depoſed, That he came acquainted with the Priſoner *Fitzharris* in the *French* Service abroad; and renewing his Acquaintance with the Priſoner in *February* laſt, he told the Deponent, if he would re-ingratiate himſelf with the *French* and Popiſh Intereſt, he might be ſerviceable to himſelf and others: That there were ſeveral Parliament Men, and others, that did adhere to the *French* Intereſt, and gave the *French* Ambaſſador an Account of every Day's Proceedings. That the Priſoner deſired the Deponent to write another Pamphlet, reflecting on the King; to alienate the King from his People, and his People from him: (The Deponent being ſuppoſed the Author of a Pamphlet, called, *An Anſwer to the King's Declaration, concerning the Duke of* Monmouth.) That on *Monday* the twenty firſt of *February*, the Priſoner came to the Deponent, and gave him ſome Inſtructions for drawing up the Pamphlet; and appointing to come again, the Deponent concealed Mr. *Smith* in his Chamber, ſo as to over-hear their Converſation: That accordingly Mr. *Smith* came, and was concealed in the Deponent's Study; and *Fitzharris*, coming in ſoon after, aſked the Deponent what he had done in the Matter: Whereupon he ſhewed him ſomething he had drawn up, which he approved, and gave him further Inſtructions, appointing to come again the next Day, againſt which Time the Deponent got both Mr. *Smith* and Sir *William Waller* concealed in his Chamber; and a little while after, *Fitzharris* came in, and the Deponent gave him a Copy of what he had drawn up; and the Deponent read another Copy, and *Fitzharris* added ſome Things, and put out others; and ſaid it muſt be written over fair, becauſe it was not fit for the *French* Ambaſſador's Confeſſor to read, who was to preſent it to the Ambaſſador: That the Deponent ſaid, It ſhould be done; but theſe were very treaſonable Things, and *Fitzharris* anſwered, The more treaſonable the better: It would ſet the People together by the Ears, and keep them claſhing and miſtruſting one another, while the *French* King would gain *Flanders*; and then he would

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would make no Bones of *England*. That he bid the Deponent not be discouraged by the Danger; for when this was done, he should have forty Guineas, and a Pension afterwards of some thousand Crowns; for *his Master the* French *King* was not such a Niggard as the *Spaniard*.

Fitzharris demanded, If the Witness was not put upon this to trepan other People? To which *Everard* answered, He was put upon it by no body but *Fitzharris*; and that the Libel was drawn up in the Name of the Nonconformists, and to be put upon them.

Smith's Evidence.

Smith deposed, That he was concealed in *Everard*'s Chamber in *Grays-Inn*; and *Fitzharris* coming in, *Everard* produced a Paper, and read it to *Fitzharris*, who said, there must be some Things added: That he must represent the King a Papist, and might demonstrate it from several Instances; as his espousing the Duke of *York*'s Interest, and preferring his Creatures by Sea and Land, some of whom were known Papists: That it might be deduced also, from that Act the King procured, That it should be Treason to call him Papist; which he did, that he might the more easily introduce Popery. He directed Mr. *Everard* to charge King *Charles* I. with promoting the *Irish* Rebellion, and *Charles* II. with furthering of it: Said, The *Oxford* Parliament was but a Sham; and such a King was not to be trusted with the Lives, Liberties, or Religion, of a People; but the People ought to provide for themselves, and blow the Trumpet boldly: And, as it was the People's Right to make Laws, and oppose a Popish Successor, so they might depose a Popish Possessor. That he directed *Everard* to get an Interest in the Common Council, to put them upon addressing the Parliament; and promising to stand by them, with their Lives and Fortunes, against Popery, and arbitrary Power: And that if Parliamentary Ways failed, they would assist them any other Way; and if the King hindered the Duke of *York*'s coming to a Trial, they would take other Courses. That *Everard* promised to pursue his Instructions; but said he was in great Danger: *Fitzharris* answered, So was he and a great many more; and mentioned something of a Reward.

Sir William Waller's Evidence.

Sir *William Waller* deposed, That he also was concealed in *Everard*'s Chamber, and heard the Conversation between him and *Fitzharris*, being of much the same Tenor as *Smith* had deposed; adding, that *Fitzharris* told *Everard* he should be preferred, and have a Pension of three thousand Crowns from the *French* Ambassador; and that they had employed a great many more in Businesses of this Nature, to create Misunderstandings between the King and his People; by which Means the *French* would have an Opportunity of over-running *Flanders*, and then *England* would become an easy Morsel. *Fitzharris* demanding, If Sir *William* thought he had any treasonable Design in this; he answered, He could say nothing to that; he only spoke to Matter of Fact. Then *Fitzharris* demanded, If this was the same Paper (the Libel) for which he was impeached in Parliament? To which Sir *William* answered, Yes; it was a Copy of it: He read it in the House; and as soon as he had made his Report in the House of these treasonable Tranfactions, they immediately proceeded to the Impeachment.

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Mr. Solicitor replied, This Libel was spoken of in the House; but it did not appear upon the Impeachment, That he was impeached upon that Libel.

The Prisoner said, Had not Sir *William Waller* a Design to trepan me in this Matter? For I always looked upon him as my Enemy. Sir *William* answered, No indeed, not I.

Then the Libel was read, and the obnoxious Words compared with those laid in the Indictment, and appeared to agree.

Sir *Philip Lloyd*, and Mr. *Bridgman* deposed, That *Fitzharris* acknowledged Part of the Instructions he gave Mr. *Everard* to be his own Hand-writing.

Oates's Evidence for the Prisoner.

The Prisoner calling Mr. *Oates* as a Witness for him, *Oates* deposed, That discoursing with *Everard* about the Libel, he acknowledged he wrote it, and took a great deal out of the intercepted Letter to Sir *Roger L'Estrange*: And asking what the Design of the Book was, *Everard* said, It was to be sent by the Penny-Post to the protesting Lords, and the leading Men in the House of Commons, that they might be taken up and searched, and have it found upon them; and added, That the Court had a Hand in it; the King had given *Fitzharris* Money, and would give him more, if he had Success.

Cornish's Evidence.

Sheriff *Cornish* deposed, That acquainting his Majesty, the Prisoner *Fitzharris* was enclined to make a Discovery, his Majesty said, He had often had him before him and his Secretaries, and could discover nothing from him: That about three Months before, the Prisoner pretended he was in Pursuit of a Plot, and making great Protestations of Zeal for his Service, his Majesty said, He did countenance him, and gave him Money.

Mansel's Evidence.

Colonel *Mansel* deposed, That he was at the *Dog*-Tavern with Sir *William Waller*, and some other Company; and Sir *William* said, When he acquainted the King with the Discovery, his Majesty told him, he had done him the greatest piece of Service that ever he had done him in his Life; and gave Sir *William* a great many Thanks; but soon after he left the King, two worthy Gentlemen told him, that the King said, He (Sir *William*) had broken all his Measures, and he would have him taken off one way or other; and that Sir *William* said, The Design was against the Protestant Party.

Lord Howard's Evidence.

Mr. *Hunt* deposed to the same Effect; adding, that the King said, Sir *William Waller* was an insufferable Vexation to him.

Bethel's

Sheriff *Bethel* deposed, That *Everard* informed him he wrote the Libel himself.

Mrs. Wall's Evidence.

Mrs. *Wall*, Woman to the Dutchess of *Portsmouth*, being called as a Witness by *Fitzharris*, he demanded of her, If he had not conveyed treasonable Papers to the King by her Means; and if he did not receive two hundred and fifty Pounds upon that Account about *Christmas* was Twelve-month, when he gave her the Libel about the King and her Lady?

Mrs. *Wall* answered, Some such Sum was paid the Prisoner, but not for a Libel: He was a Kinsman of the Deponent's, and she took him for

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for an honeſt Man, and was willing to do him what Kindneſs ſhe could, his Family having ſuffered much for the King: That Mr. *Fitzharris* telling her he could bring over ſome conſiderable People to the King's Intereſt, ſhe ſpoke to the Secretaries of State, and to the Dutcheſs of *Portſmouth* for him; and within about ſix Months Time, ſhe did get the Money he mentioned.

The Priſoner demanding, If he did not come to her the *Wedneſday* before he was taken, and tell her he deſired to ſpeak with the King, for he had a Libel to preſent him; Mrs *Wall* anſwered, He came to her the *Thurſday* before he was taken, at nine at Night; and ſaid, He believed, if he might ſee the King, he could do him Service; but mentioned no Libel: That he was a Roman Catholick, and therefore they thought it dangerous to let him go near the King.

Mr. Attorney demanding if he was ever admitted to the King, Mrs. *Wall* anſwered, Never: He had indeed been with her in a Room when the King paſſed by; but his Majeſty never took any Notice of him, or ſpoke with him; nor did the King, or the Dutcheſs of *Portſmouth*, give him any other Money than that already mentioned.

The Chief Juſtice demanding, On what Account that Money was paid; Mrs. *Wall* anſwered, Since they preſſed her to declare it, it was for bringing in the Lord *Howard* of *Eſcrick*: That, and his Poverty, together.

Mr. Serjeant *Jeffries* demanding, What Character the Priſoner gave *Everard*; Mrs. *Wall* anſwered, He ſaid he was an honeſt Man, and asked if ſhe would be acquainted with him? but ſhe ſaid No; he was an Informer, and had a Knaviſh Reputation. That the Priſoner deſiring her to tell the Duke, he would firſt bring the Lord *Howard* to him, and then to the King; the Duke anſwered, the Priſoner was a Raſcal, and he would not meddle with him.

Then the Priſoner appealed to Lord *Howard*, if he did not ſpeak to the Lady *Portſmouth* for Money for him; and the Lord *Howard* anſwered, he did; and Mrs. *Wall* ſaid, My Lord did indeed ſecond her Lady, to get him ſome Charity.

Cowling depoſed, That Mrs *Wall* told him *Fitzharris* came to her, two or three Nights before he was taken up, and deſired Admiſſion to the King; and ſhe deſired he would write down what he had to ſay; which he would not, and ſhe perſiſted to refuſe him Admiſſion: Her Blood chilled; ſhe was afraid he was come to do the King ſome Miſchief.

Lord Howard's Evidence.

The Lord *Howard* depoſed, That in the Beginning of *October* laſt, *Fitzharris* applied himſelf to his Lordſhip in the Name of his Majeſty, deſiring he would wait on the King; but he declined it, leſt he ſhould be put upon declaring his Sentiments, which were not agreeable to his Majeſty's: That the Priſoner then deſired he would wait on the Dutcheſs of *Portſmouth*, who would be a good Inſtrument to the King, in perſuading him to a good Opinion of the approaching Parliament; and the Priſoner ſaid, He could aſſure him, ſhe was in the ſame Intereſt he looked towards; ſhe was no Friend to the Duke of *York*: And the Deponent was prevailed on to wait on the Dutcheſs, where he found his Majeſty; but if the 250 Pounds were given the Priſoner, for bringing him thither, his Majeſty, he believed, did not think he deſerved it at that Time: That he had an Opportunity of ſeeing the King again, about ten Days after, by *Fitzharris*'s Means; and after the Parliament, he waited on the Dutcheſs of *Portſmouth*, and told her, he was ſenſible ſhe had endeavoured, as much as lay in her Power, to perſuade the King to a good Opinion of the Parliament; and to give them Time for ſitting, and an Opportunity of explaining their Intentions for his Service: And when he took his Leave, he requeſted the Dutcheſs to repreſent the Priſoner's Condition to the King, ſince by his Means he had the Honour to be ſhewed the Way to her Grace's Lodgings.

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That the Night before the Lord *Stafford* was condemned, the Priſoner came to his Lordſhip, as from the King; and ſaid, His Majeſty would take it as a great Inſtance of his Reſignation to his Pleaſure, and he might promiſe himſelf all the Kindneſs a Prince could ſhew his Subject, if he would give his Vote next Day for the Lord *Stafford*: To which he (his Lordſhip) anſwered, He had all the Obligations of Blood and Nature, to diſpoſe him to favour the Lord *Stafford*; but, though he was wavering in his Thoughts before, now by the Grace of God he would go, though he was carried on Men's Backs, to the Houſe: He ſaw it was the Concern of the Proteſtant Cauſe; and if all the Relations he had were melted down into my Lord *Stafford*, if he had but Breath enough to pronounce his Doom, he ſhould die.

The Secretary's Evidence.

Mr. Secretary *Jenkins* appearing as a Witneſs for the Priſoner, he demanded, If the King did not own he had employed him: To which the Secretary anſwered, He did not remember the King ever owned he had made uſe of him: Then he aſked the Lord *Conway*, If he did not remember it: The Lord *Conway* anſwered, No; but he had heard his Majeſty ſay, he formerly employed him in ſome trifling Things: That the King never ſpoke to him, till the Day after he was taken up.

Dutcheſs of Portſmouth's Evidence.

The Dutcheſs of *Portſmouth* appearing, *Fitzharris* demanded of her, If he was not employed to bring ſeveral Papers to the King, particularly the Impeachment againſt her Grace; and if ſhe did not tell him, it was a great Piece of Service to bring ſuch Papers; and if he could find Men fit for that Purpoſe, he would do the King good Service; and if he did not acquaint her Grace, *he knew one* Everard, *who knew all the Clubs in the City, and could tell the Deſigns of the Lord* Shaftesbury *and all his Party*, and if her Grace did not encourage him to go on; and by her Means he came to ſpeak to the King about it.

The Dutcheſs anſwered, She was concerned in no Sort of Buſineſs with him; only he deſired her to give his Majeſty a Petition to get his Eſtate in *Ireland*; and ſhe did ſpeak to the King three or four Times about it: That ſhe never had any Papers from him; but the Money was given him in Charity: To which the Priſoner replied, He was ſorry her Grace was ſo much under the Influence of Mrs. *Wall*: The Dutcheſs ſaid, She did not come there to wrangle with him: If ſhe could do him any Good ſhe would; but ſhe did not ſee how ſhe could be further ſerviceable to him; and then went out of Court.

Fitzharris

1681. 33 Car. II. Fitzharris *proceeds in his Defence.*

Fitzharris proceeding in his Defence, ſaid, He could not forbear complaining of the hard Uſage he had received; greater Oppreſſions had not been known: He had been a cloſe Priſoner, and no manner of Helps allowed him to make his Defence: And though Lady *Portſmouth*, Mrs. *Wall*, and the reſt, were pleaſed to ſay, he was not employed, or received Money for ſecret Services, it was well known he did ſo: And though Mr. *Everard* would make a *French* Story of it now, he knew it was otherwiſe. He affirmed he was well acquainted with the Lords *Shaftesbury* and *Howard*, and knew all their Clubs and Intrigues in the City: And he *(Fitzharris)* told him, it would be of the greateſt Conſequence to continue his Diſcoveries: That he *(Fitzharris)* never was in the *French* Intereſt, though he humoured *Everard*'s Diſcourſe, that he might reduce the Paper he accuſed him of under ſome Heads; and he no ſooner had it, but he carried it to *White-Hall*: And whereas *Everard* ſaid, He was to have forty Guineas, it was but forty Shillings he deſired, in regard to his Poverty: That when he came to *White-Hall*, he ſhewed the Paper to a Gentleman, who was to have given it to the Lord *Clarendon*; but before that Lord had it, he was taken up. What he had done, was with a Deſign to ſerve the King, in diſcovering the Deſigns againſt him; and he was employed, though both the Secretaries were ſo unkind as to deny it: He was not aſhamed to ſay it, though his Life were loſt upon it: He hoped the Jury would conſider, theſe were great Perſons he had to do with; and in Matters of State, it was hard to get any thing out of them, but what was for their Advantage; and thus he was left in a ſad Condition: He ſaid, He muſt inſiſt upon it, if the Jury brought him in guilty, they ſhed his Blood, and overthrew the Law and Courſe of Parliaments; and deſired, he might deliver a Copy of the Impeachment, and of the Votes of the Houſe of Commons, to the Jury; but the Chief Juſtice told him, That could not be.

The Chief Juſtice's Directions to the Jury.

The Chief Juſtice, in ſumming up the Evidence, obſerved, That the Libel contained treaſonable Matter: That a more virulent and villanous Book was never written; which tended to defame the King and his Anceſtors, to blaſt all that came after him, and incite the People to Sedition and Rebellion: That this was a Piece of Art of the Jeſuits, which exceeded all they had done before; and they had found an apt Inſtrument, an *Iriſh* Papiſt, one who had been concerned with them in ſeveral Plots and Conſpiracies of this Nature: That the Evidence againſt the Priſoner, was as ſtrong as ever was given againſt a Traitor: It appeared by the Priſoner's Witneſſes, that the King had given him Money in Charity; and he inſinuated by way of Defence, That the King gave it him to trepan his Subjects againſt himſelf; to endanger his Crown, and all he had in the World; for which no colourable Deſign could be imagined: That as to the Impeachment, which the Priſoner ſo much inſiſted upon, that Matter had been pleaded to their Juriſdiction, and was over-ruled; they were to have no Conſideration of it now: They were ſworn to one Point, namely, Whether the Priſoner was guilty of this Treaſon, or not; and as to what he fondly talked of, concerning his Blood lying at their Doors, he thought ſuch Inſinuations would not weigh with Men of Underſtanding. 1681. 33 Car. II.

Some Scruples of the Jury.

Mr. *Johnſon*, the Foreman, ſaid, My Lord, there is a Vote of the Houſe of Commons, that ſays he ſhall not be tried by an inferior Court: We take ourſelves to be Judges of this Man: It is the Office of the Jury to acquit or condemn him according to the Evidence: Now, if we ſhould acquit him in this Caſe, what Aſſurance have we he ſhall be acquitted? We ſhall but forejudge a Parliamentary Cauſe; therefore I do not know how far we are compellable by Law, to give a Verdict in this Caſe.

The Chief Juſtice anſwered, As to the Juriſdiction of the Court, it is not at all before you; and as to the Vote of the Houſe of Commons, if there be any ſuch, That cannot alter the Laws of the Land, or juſtify any of us, in departing from our Duties, any more than a Letter or Mandate from the Prince; we are to take no more Notice of the one, than of the other: Beſides, this Doubt was moved to us by the Grand Jury: And, to take away all Scruples, all the Judges of *England* debated the Matter; and it was our unanimous Opinion, We had a Juriſdiction to try this Man.

The reſt of the Judges declared, that this was their Opinion.

Practices to terrify them.

While this Cauſe was trying, Papers were continually put into the Hands of the Jury, diſſuading them from finding the Priſoner guilty; threatning them if they did, and telling them they muſt anſwer it in Parliament; and, that the Nation would never deſiſt, till they had ruined them and their Families: And as they withdrew, ſome that ſtood by ſaid, *Find him guilty if you dare.*

The Priſoner convicted,

However, the Jury, having withdrawn about half an Hour, returned with their Verdict, That the Priſoner was GUILTY. Whereupon Mr. Attorney moved for Judgment; but the Court bid him move it another Day.

and condemned.

Fitzharris being brought to the Bar again the 15th of *June*, to receive Sentence, deſired he might be tranſported; but the Court acquainted him, they could not order that; and the Chief Juſtice pronounced the uſual Sentence in Caſes of High-Treaſon: And on the twenty-ſecond of *June*, a Writ was iſſued out of the *King's-Bench* to the Lieutenant of the Tower, reciting the Judgment, and commanding the Lieutenant to deliver the Priſoner to the Sheriff of *Middleſex*, the firſt of *July* following; and another Writ to the Sheriff to receive him, and cauſe him to be executed according to the Sentence: And in the mean time the Priſoner made the following Confeſſion, *viz.*

The Confeſſion of Edward Fitzharris *Eſq*; *written with his own Hand, and delivered to Dr.* Hawkins, *Miniſter of the Tower*, July 1. 1681, *being the Day of his Execution.*

" I *Edward Fitzharris* having been indicted
" of High-Treaſon, for endeavouring to
" dethrone the King, was thereupon found
" guilty, and Sentence of Death paſſed on me.
" I the aforeſaid *Edward Fitzharris*, do volun-
" tarily

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" tarily and freely, without any Hopes to ſave " my Life, but as a dying Man, and to diſ- " charge my Conſcience towards God, and for " the better Satisfaction of the World, make " this Declaration following, in the Preſence of " God, and unto Dr. *Francis Hawkins*, Chap- " lain of the *Tower* of *London*.

" I do profeſs and declare, my Religion in the " general, to be that which hath been truly and " anciently delivered in the firſt four general " Councils; and in particular, my Belief is, " that true Faith of a Chriſtian, briefly con- " tained in thoſe three Creeds, commonly call- " ed, The *Apoſtles Creed*, St. *Athanaſius*'s, " and, *The Nicene Creeds:* And I die a Member, " and in the Communion, of *Chriſt*'s Holy Ca- " tholick Church, hoping for Mercy, through " the alone Merits of the Paſſion of our Lord " and Saviour *Jeſus Chriſt*.

" I do alſo confeſs and declare, As to the " Crimes which I die for, I was no farther " concerned in the Libel, than as employed " to give the King Notice of what Libels, " or other Accuſations, there were againſt him; " and, to this Intent, and no other, I endea- " voured to get this Libel; which, at length, " I did from Mr. *Everard*, all written under " his own Hand, and carried it to Mrs. *Wall*, " by whoſe Means I conveyed all Matters of " this, or the like Nature, to the King. I " told her, I had a Buſineſs of great Conſe- " quence to acquaint the King with; but ſhe " anſwered me, That my Lord *Sunderland* be- " ing out, there would be no Money had for ſe- " cret Service, and adviſed me to go to the " Lord *Clarendon*, or *Hyde*; but before I could " do this, I was taken. As for that Part of " the Libel which I left with *Everard*, as " a Pledge to aſſure him I would not betray " him, I received it of the Lord *Howard:* " And the Money I received from the King, was " for bringing a Libel called, *The King un- " veil'd, and the Lady* Portſmouth's *Articles*. " I call God to Witneſs, I never had a Far- " thing Charity from the King.

" I do further confeſs and declare, That the " Lord *Howard* told me of a Deſign to ſeize " upon the King's Perſon, and to carry him " into the City, and there detain him, till he " had condeſcended to their Deſires. *Heyns* and " myſelf were privy to this Deſign, and had ſe- " veral Meetings with the Lord *Howard*; and " as an Encouragement, the Lord *Howard* " aſſured us of breaking the Settlement of *Ire- " land*, taking off the Additional Revenue of the " Biſhops, forty-nine Men and Grantees, whoſe " Eſtates were to be ſhared amongſt the Party.

" I do confeſs and declare, That while I was " in *Newgate*, the Sheriffs *Bethel* and *Corniſh* came " to me, with a Token from the Lord *Howard*, " which I knew to be true, and brought Heads " with them from *Everard*, wherein he accuſed " me of being a Court-Emiſſary, or *Yorkiſt*, ſet on " by the King, to put the Libel into Proteſtants " Houſes to trepan them: But I declare upon " my Death, I had no ſuch Intent; nor do I " know any ſuch Thing. The Sheriffs like- " wiſe told me, I was to be tried within three " or four Days: That the People would pro- " ſecute me, and the Parliament would impeach " me; and that nothing would ſave my Life,

" but diſcovering the Popiſh Plot; and then " the ſaid Sheriffs gave me great Encourage- " ment from my Lord *Howard*, that, if I " would declare, that I believed ſo much of the " Plot as amounted to the introducing the " *R. C.* (Royal *Charles*,) or, if I could find " out any that could criminate the Queen, R. " H. (Royal Highneſs,) or ſo much as make " a plauſible Story to confirm the Plot; that " the Parliament would reſtore me to my Fa- " ther's Eſtate, with the Profits thereof, ſince " his Majeſty's Reſtoration.

" I finding myſelf in the Condition I was in " *Newgate*; fettered, moneyleſs, and friend- " leſs; my Wife ready to lie in, without any " Subſiſtence; my Children in a miſerable " Condition, and muſt needs be in a worſe by " my Death; and I could ſee no other Refuge " for my Life, but complying with them: So " not with any ambitious Intent, but to ſave " my Life, I did comply. The Sheriffs " brought Inſtructions, which, they ſaid, came " from the Lords and Commons, who met " that Day, in order to addreſs the King in my " Behalf, (if I ſhould confirm the Inſtructions;) " and they made Uſe of the Lord *Shaftesbury*'s " Name, and others, what Advantage I " might have thereby. At the firſt I made a " formal Story concerning the Plot, which was " not prejudicial to any Body; but moſt re- " lating to general Heads, known publickly: " Upon which Mr. *Corniſh* told me, Theſe " were Things cried about the Streets two " Years ago. I replied, I could ſay no more: " Mr. Sheriff ſaid, He was ſorry for me with " all his Heart; but thought I could ſay more " if I would, and preſſed me hard to ſpeak " to ſeveral Heads; unto which, unleſs I ſpoke, " he ſaid, there was no Hope of Life. The " Heads I was to ſpeak to were, what " the Examination taken by Sir *Robert* " *Clayton* and Sir *George Treby* contains; and a " great deal more that I did not ſay then, relat- " ing to the Queen, R. H. Earl of *Danby*, de- " claring *French* Penſioners, Lords *Halifax*, *Hyde*, " *Clarendon*, *Feverſham*, *Seymour*, and others; " the burning the Fleet, Forts and Govern- " ments in *Popiſh* Hands; Meal-Tub Plot; " Prentices Plot; the Contrivance of the Li- " bel on Lady *Portſmouth*, being a *French* De- " ſign to deſtroy Proteſtants. Theſe and many " other Heads, were brought me by the She- " riffs.

" I do further confeſs and declare, That Sir " *Robert Clayton* and Sir *George Treby* coming " to me to examine me, Sir *Robert Clayton* " aſked me, What I could ſay, concerning " *Godfrey*'s Murder? I anſwered, Something. " He replied, It may be you are in Confuſion; " recollect yourſelf. And what I ſaid concern- " ing Father *Patrick* was forced out of me, and " is not true. Sir *George Treby* was with me " three Hours, or thereabouts, and preſſed me " to ſay ſomething concerning *Godfrey*'s Death; " and ſaid, unleſs I would ſpeak to that Mur- " der, I could ſay nothing: Whereupon I ſaid, " ſomething I had from others. He aſked me, " If I could ſay no more: I replied, Is not this " enough to ſave my Life? Am not I Rogue " enough? The Recorder (*Treby*) hereupon " ſwore, Zounds, What were you ever, but a

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" Rogue? Then the Recorder entered upon the " Heads of the Examination; which being " done, he told me, All this would not ſave " my Life, unleſs I would ſpeak to the Libel, " which was a Court Trick; and it was not for " nothing I had been ſo often ſeen at the Lady " *Portſmouth*'s. Lord *Shaftesbury* ſaid, You know " more of theſe Matters than any Man: Sir " *George* (*Treby*) would have me ſpeak to the " Conſult: That the Duke was at it, the Lords " *Bellaſis*, *Arundel*, and *Powis* were at it; you " have ſeen them go to it at *St. James's*; with- " out Doubt they were there: Do but you ſay " it, we have thoſe that will ſwear it.

" I do further declare and confeſs, That what " I ſaid againſt the Queen and the Duke, " I was put upon, in the Matter of *Godfrey*'s " Murder; and do farther declare, That what " I ſwore againſt the Earl of *Danby*, the threat- " ning Words that were uttered, I did (to the " beſt of my Remembrance) hear; but whom " they concerned, I could not well know, by " what my Lord himſelf ſaid: And what *de* " *Puis* told me, concerning my Lord of *Danby*, " I do believe was ſpoken out of ill Will; and " what I ſaid againſt him was, to ſtave off my " Trial till a Parliament; and they were " the more deſirous to accuſe the Lord *Danby* " of *Godfrey*'s Murder, becauſe the Crime of " Murder is not inſerted in his Pardon: I " am ſorry for what I ſaid againſt the Queen, " his Royal Highneſs, and the Earl of *Danby*: " I deſire God to forgive me the Wrong I did " them, and do heartily beg their Pardon.

" I do further declare and proteſt, That this " Confeſſion and Declaration of mine, I own " ſincerely, as a dying Man, and not to ſave " my Life; and I call God and all his Angels " to witneſs the Truth of it; and I renounce " Mercy at the Hands of God Almighty, if " this be not true.

" And I do further declare and proteſt, as " a dying Man, unto *James Walmeſly*, *Edward* " *Pattel*, and *Mary Walmeſly*, That I have " made this Confeſſion and Declaration unto " Dr. *Hawkins* freely, and of my own volun- " tary Accord, without any Manner of Promiſe " made, or Hopes given me, by him from the " King, of ſaving my Life by this Confeſſion; " I having given him to underſtand before- " hand, they were Matters of Conſequence, " and ſuch as chiefly concerned the Good of " the King and Kingdom.

" I give the Doctor my hearty Thanks, for " all his Prayers, Counſel, and charitable Of- " fices he hath done me; and I pray God to " bleſs him for ever for it. I forgive all the " World, and deſire all the World to forgive " me; and the Lord have Mercy on my " Soul.

EDWARD FITZHARRIS."

This Proteſtation was made by Mr. *Fitz-harris*, *July* 1. between the Hours of Seven and Eight in the Morning, in the Preſence and Hear-ing of us, whoſe Names are under-written.

James Walmeſly,
Edward Pattel,
Mary Walmeſly.

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" I do hereby declare, That Mr. *Fitzharris*, be- " fore he began to write any Part of this Nar- " rative, was more than once aſſured by me, " that there was no Hope of his Life, that I " knew of, whatever he ſhould ſay; nor of his " Salvation, if he ſhould ſay any thing he " knew to be falſe; of which he being tho- " roughly ſenſible, and perfectly convinced, " proceeded to write the Narrative aforeſaid: " And I continuing to admoniſh him upon e- " very Point that was material, not to ſay a- " ny Thing but what was exactly true; he " took occaſion at ſeveral Periods of this Nar- " rative to kneel down, and ſolemnly proteſt " the Truth of every Word therein contained: " And this I again declare, upon the Faith of " a Chriſtian, and the Word of a Miniſter of " the Goſpel.

FRANCIS HAWKINS."

The ſame Morning this Confeſſion was ſigned, *viz.* on *July* 1. 1681. the Sheriffs of *London* and *Middleſex*, *Slingsby Bethel*, and *Henry Corniſh*, re-ceived the Priſoner *Fitzharris* from the Lieutenant of the *Tower*; and having ſet him on a Sledge, he was drawn from the *Tower* to *Newgate*, where he overtook Dr. *Plunket* in another Sledge; and they were drawn both together, from thence to the Gallows at *Tyburn*, where when they were arrived, the Sheriffs demanded of *Fitzharris*, What he knew of the Popiſh Plot? But he referred them to the Paper he had left with Dr. *Hawkins*. Then they enquired of the Doctor, who attended the Execution, What Paper that was? But the Doctor, having an Intimation, they deſigned to ſuppreſs his Confeſſion, did not produce it: On the contra-ry, he deſired the dying Man to declare, *If all that he had left with him was true?* Whereupon the Sheriffs ſaid, He had nothing to do, to put Queſtions there: Dr. *Hawkins* replied, Shall I not bid the dying Man ſpeak the Truth? And *Fitzharris* turning to the People, ſaid, *Yes, it is true*; and then addreſſing himſelf to the People, ſaid,

Fitzhar-ris's Speech at his Exe-cution.

" GOOD People, this infamous Kind of " Death is more irkſome to me than " Death itſelf: Such Judgments as theſe, my " Sins againſt God may juſtly bring upon me; " and I do moſt humbly ſubmit to it: But as to " the Crimes which I now die for, I take God to " witneſs, I was no further concerned in that " Libel, than to diſcover to the King, what " Practices of that Kind were againſt him; " being employed to that End, though thoſe " that employed me, refuſed to do me Juſtice " at my Trial: And I call God to witneſs, I " never had a Farthing of Money of the " King in my Life, but on the Account of " the like Service: And as to the Witneſſes " that have ſworn againſt me, I do here ſolemnly " declare now at my Death, that I have not ſeen " the *French* Ambaſſador ſince the breaking out of " the Plot; neither have I had any Acquaintance " with him: And as to his Confeſſor, I never " ſpoke to him in my Life; neither have I had " any Dealings, either directly or indirectly, " in my Life, with them; though Sir *William* " *Waller*, and the reſt, ſwore moſt falſly to the

" contrary:

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"contrary: And how likely it is, the *French* "Ambaſſador would give 3000 Crowns for "writing that Libel, I leave the World to "judge. What I may further declare, I have "left with Dr. *Hawkins*. I forgive all the "World, and hope God will forgive me: I "beg the Prayers of all good People, for a "happy Paſſage into the other World."

Then having finiſhed his Devotions, in which he was aſſiſted by Dr. *Hawkins*, the Executioner did his Office.

Remarks on Fitzharris's Trial.

The Proceedings againſt *Fitzharris*, are generally looked upon as very myſterious, which is not to be wondered at; when *Shaftesbury*, and his Emiſſaries Lord *Howard*, *Clayton*, *Treby*, *Bethel*, *Corniſh*, and many more of that ſubtil Faction, uſed every Artifice to render them ſo. Upon due Conſideration of the whole, it appears to me, that *Fitzharris* was employed by the Court, to diſcover what Deſigns were carrying on againſt the Government; and more particularly by the City of *London*; and to bring the King ſuch ſeditious and traitorous Libels as they diſperſed, to render him odious to the People, and incite an Inſurrection; which *Fitzharris* found an Opportunity of doing, by renewing his Acquaintance with *Everard*, who had been with him in the *French* Service, and was at this Time employed by *Shaftesbury* and the Faction, in writing and diſperſing ſcandalous and treaſonable Papers, reflecting on the King and the Adminiſtration: And I make no Doubt, but *Fitzharris*, in order to inſinuate himſelf into the good Opinion of *Everard* and his Maſters, pretended to be no leſs diſaffected than they were; ſuggeſting that the Court neglected to reſtore him his Father's Eſtate, and had no Regard to the Sufferings of his Family for the Crown; and there is as little Doubt to be made, that they did for ſome Time confide in him, and make uſe of his Aſſiſtance in framing their Libels; and this gained him an Opportunity of diſcovering many of their dark Intrigues; but it being obſerved, that he was often at the Dutcheſs of *Portſmouth*'s Lodgings, they took the Alarm, and at length diſcovered he was a Court-Emiſſary: Whereupon they reſolved to be before-hand with him; and leſt he ſhould be made a Witneſs againſt them, cauſed him to be taken up, and charged with compoſing thoſe very treaſonable Libels, which they themſelves had framed; having firſt trepanned him, as he obſerved at his Trial, by placing ſome of their own Creatures in *Everard*'s Cloſet, to be Witneſſes of their Converſation, which might be treaſonable enough; as it was *Fitzharris*'s Buſineſs to perſonate the Malcontent, and pretend to be one of their Party, he might offer his Opinion of the Libel, the better to conceal his Intentions. But I am fully convinced, that the Libel was, in the main, drawn by Lord *Shaftesbury*, *Howard*, or ſome of the Faction; becauſe it contained little elſe but ſuch ſcandalous Reflections on the Government, as they had inculcated and publiſhed in their Writings and Converſation, for ſeveral Years paſt.

By charging *Fitzharris* with being the Author of this Libel, they did not only prevent his giving Evidence againſt their Party; but, by throwing him into *Newgate*, of which their Friends, *Bethel* and *Corniſh* the two Sheriffs, were Governors, they had an Opportunity of practiſing upon this unhappy Wretch, and ſuborning him to be a Witneſs of the Popiſh Plot, and *Godfrey*'s Murder; and hoped to prevail on him to accuſe the King himſelf, as well as the Queen and Duke; which, if they could have done, they would probably have ſpirited up the People immediately into another Rebellion, and depoſed the then *preſent Poſſeſſor* of the Throne: They would not have contented themſelves with *excluding the Succeſſor*; which appears evidently to be their Deſign, by that Part of the Libel recited in the Indictment; and by the Practices of that Party afterwards, ſeveral of whom were convicted and executed, within leſs than two Yerrs, for being in ſuch a Conſpiracy; and this very Lord *Howard*, ſuppoſed to be principally concerned in drawing up this Libel, only ſaved his Life by impeaching his Accomplices, and acknowledging his own Guilt.

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Some People have been pleaſed to doubt, Whether Lord *Shaftesbury* and his Emiſſaries, ever practiſed upon *Prance* and *Corral* in *Newgate*, to ſuborn them to be Witneſſes of the Popiſh Plot, and *Godfrey*'s Murder: But it ſeems to be a ſtrong Confirmation of the Truth of that Relation, that *Shaftesbury*, *Treby*, *Clayton*, and the Whig Sheriffs *Bethel* and *Corniſh*, uſed much the ſame Arts with *Fitzharris*, to make him an Evidence of the Plot and the Murder, while he lay in *Newgate*; and actually got an Indictment found againſt the Earl of *Danby* upon his Evidence; though *Fitzharris* retracted it before he died, which put an End to that Proſecution; and I believe there was ſcarce a Man condemned for the Popiſh Plot, who was not thus practiſed upon, and told he ſhould have his Pardon, if he would confeſs the Plot, and accuſe ſuch innocent People as they had marked out for Deſtruction; and yet it is certain, every one of them refuſed the Offer of Life, upon ſuch infamous Terms; and denied the Plot with their laſt Breath, as this Man alſo did, to the Confuſion of the Faction: But his Majeſty being apprized of the villanous Attempts, to make *Fitzharris* a Witneſs againſt himſelf and his Family, very prudently cauſed him to be removed from *Newgate* to the *Tower*, where thoſe two Saints, *Bethel* and *Corniſh* the Sheriffs, had not ſuch an Influence, as they had on the Keepers of *Newgate*; and thereby prevented their farther Deſigns againſt the Government, and the ſhedding more innocent Blood; for *Fitzharris* being removed from his Suborners, proved honeſt, and retracted all he had ſaid againſt the Queen, the Duke, the Earl of *Danby*, and the reſt, whom the Party had determined to ſacrifice to their Rage, if they could not reach the King himſelf.

But it may be objected, If *Fitzharris* was one of the Court-Emiſſaries, and acted in this Matter with a Deſign to ſerve them, how came the King not to give him a Pardon? To which I anſwer, Had he remained true to his Truſt, it is very probable he would have been pardoned and protected; but when the King found he would be made a Tool of, to murder his neareſt Relations, the Queen and the Duke, there is

no

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no Wonder he had but little Regard for him. Had he been discharged, he might have been wrought upon again to destroy his Friends, and distress his Government; and therefore, since it was proved he had some Hand in the treasonable Libel, he suffered the Law to take its Course; though I must say he had not Justice done him in this Point, as he himself observed at his Trial, since he had then no treasonable Design, but intended to serve the Government: And it should make all Men cautious, how they become Court Spies, lest they fall into the Snares they lay for others. *Everard* only got the Start of him, and by that Means procured *Fitzharris* to be condemned, for what he was innocent of, and for what he himself would have been hanged, if *Fitzharris* had impeached him first. As to the Struggle between the King and the Commons, about the Trial; it is evident there was a Faction in that House, that intended to make a Tool of *Fitzharris*, to distress the Government; and this was the only Reason for their impeaching him; which the Lords were apprized of, and therefore thought fit to dismiss the Impeachment. And, though in extraordinary Cases, where a great Offender cannot easily be come at in the ordinary Courts of Justice, it is admitted, the Commons may impeach such a one before the Lords; yet it is certainly against *Magna Charta*, and the Laws and Statutes of the Kingdom in general, to try a Commoner, in a common Case, before the House of Lords: And if a Vote of the House of Commons, in such Cases, could alter the Law, all the Causes in *Westminster Hall*, and the inferior Courts, might be superseded; and an intire Stop put to the Proceedings of the Courts of Justice, by the Vote of a Majority in that House, without, and even against the Consent, both of the King, and the House of Lords.

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1681. 33 Car. II. Plunket's Trial.

The Trial of Dr. OLIVER PLUNKET, Titular Primate of *Ireland*, for *High-Treason* committed in *Ireland*, at the *King's-Bench* Bar, 8 *June*, 1681. *Trin.* 33 *Car.* II.

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DR. *Plunket*, the Prisoner, being arraigned at the *King's-Bench* Bar in *England*, the third of *May*, 1681. objected, that he had been arraigned for the same Treason in *Ireland*; and on the Day appointed for his Trial there, no Witnesses appearing, he ought to have been discharged; and made a Question, Whether he could be tried for the same Fact in *England*. But the Court informed him, That by an *English* Statute, he might be tried in *England*, for Facts committed in *Ireland*; and that an Indictment and Arraignment, whereon there was no Conviction or Acquittal, could not be pleaded in Bar of an Indictment for the same Treason: Whereupon he pleaded *Not guilty*; and desiring Time to send for his Witnesses from *Ireland*, his Trial was put off, to the first *Wednesday* in *Trinity*-Term, being five Weeks after his Arraignment.

Facts committed in Ireland *tried in* England.

The Prisoner being brought to the Bar again, on *Wednesday* the eighth of *June*, said, That he had sent to *Ireland* for several Records, but the proper Officers had refused him Copies of them; and several of his Witnesses were afraid to come over, without the Protection of the Court; so that he was yet very much unprepared for his Trial; and desired he might have the Assistance of the Court, to bring over his Records and Witnesses, and the Trial put off some Time longer.

The Court answered, He had more Time than usual allowed him, to prepare for his Defence, already; and directed the Jury to be sworn: After which, the Indictment was read in *English*; setting forth, That the Prisoner, on the first Day of *December*, in the thirty-second Year of the King, and divers other Days and Times, at *Dublin*, in the Kingdom of *Ireland*, did traitorously compass and imagine the Death of the King, the Subversion of the Protestant Religion, and of the Government established there; and that the Prisoner, to accomplish his said traitorous Intentions, did assemble, consult, and agree, with divers other Traitors, to depose and murder his Majesty, levy War, and introduce the *Romish* Religion into the Kingdom of *Ireland*; and did agree with others, to contribute and pay divers Sums of Money to certain Persons, to kill the King, and introduce the *Romish* Religion; and did collect and pay several Sums of Money, for the traitorous Purposes aforesaid.

The Indictment.

The Witnesses being called, deposed, That the Prisoner was made Primate of *Ireland* by the Pope; and, that he sent *O Neale* his Page, to Monsieur *Baldeschi*, the Pope's Secretary, to the Bishop of *Aix*, and to Prince *Colonna*, to obtain foreign Forces to invade *Ireland*: That he employed Captain *O Neale* to the *French* King, on the like Errand: That he levied and exacted Money of the Clergy of *Ireland*, to bring in the *French*, and raise an Army of seventy thousand Men there: That he had caused Lists to be made of these Men; and particularly Friar *Duffey* had made a List of 250 Men for him, in the Parish of *Foghart*: That he had visited and viewed all the Forts and Harbours of *Ireland*; and fixed upon *Carlingford* Harbour, for the *French* to land at: That he had several Consults and Meetings with others, where Money was assessed and allotted, for bringing in the *French*: And lastly, that at an Assembly of 300 Gentlemen, in the County of *Monaghan*, ten or twelve Years before, he exhorted them to take Arms, to recover their Estates out of the Hands of the *English*.

The Evidence.

Dr.

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Dr. Plunket's Defence.

Dr. *Plunket*, in his Defence, ſaid, That he never ſent any Letter or Agent to the Pope, or to any Prince or Prelate, concerning any Plot or Conſpiracy againſt his King or Country: That he never raiſed any Sum of Money, great or ſmall, to maintain Soldiers; or ever heard the *French* were to land at *Carlingford*; and never knew of any Plot or Conſpiracy in *Ireland*.

That it was all Malice, and particularly in one of the Witneſſes, whom he had excommunicated; as he could have made appear eaſily, if he could have brought over his Records and Witneſſes; or if he had been tried in *Ireland*, where both he, and his Accuſers, were known: That he never received more than ſixty Pounds a Year in *Ireland*, which was for his own Maintenance: That the Roman Catholick Clergy in *Ireland*, were ſo poor, that they could not keep Clothes to their Backs; nor were able to raiſe Money enough, to maintain half a Regiment, much leſs 70,000 Men: That ſhould he have confeſſed the Charge, no Man of any Underſtanding in *Ireland*, would have believed the Thing poſſible; for all the Revenues of *Ireland*, ſpiritual and temporal, were not ſufficient to maintain ſuch an Army.

The Chief Juſtice's Directions to the Jury.

The Chief Juſtice, in his Directions to the Jury, ſaid, That he thought it very plain, that the Priſoner had a Commiſſion, or Grant, from the Pope, to be Primate of *Ireland:* That he had taken upon him to make Laws, as Provincial; and endeavoured to ſettle the Popiſh Religion in that Kingdom; and, in order to it, had invited over a *French* Army, and viewed the moſt convenient Places for their landing; and had ſet a Tax on the Clergy of his Province, for facilitating all this; and, if they believed the Witneſſes, That he had a Deſign to bring in a *French* Army, to eſtabliſh the *Romiſh* Religion; that he took upon him, to raiſe Money for that Purpoſe, and ſurveyed the Ports; and made ſuch other Proviſions as the Witneſſes ſpoke of; they muſt find him guilty: It was a pretty ſtrong Evidence, to which he only anſwered, his Witneſſes were not come over.

Plunket replied, He could only make his own Proteſtation, That there was not one Word of the Charge againſt him true; it was all Romance: He had never any Communication with any *French* Miniſter, Cardinal, or any other Perſon, about theſe Matters: However,

He is convicted.

the Jury, after a quarter of an Hour's Receſs, brought in the Priſoner GUILTY.

He ſhews the Improbability of his being guilty.

The Priſoner being brought to the Bar again, on *Wedneſday* the fifteenth of *June*, and it being demanded, What he had to ſay, why Judgment of Death ſhould not paſs upon him; he anſwered, He had been arraigned for this Fact in *Ireland*, and brought to his Trial there; but all the Witneſſes voluntarily abſented themſelves, when they found he had Records and Witneſſes to convict them, and ſhew what Men they were, and the prepenſe Malice they bore him; and they had ſince procured him to be brought to *England*, where he could not have a Jury that knew them, or him, or the Circumſtances of Places and Times: A Jury in *Ireland* would have known how impracticable it was for the *French* to land at *Carlingford*; how impoſſible it was to raiſe 70,000 Men there, or collect Money, ſufficient for that *Utopian* Army.

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That he could not get over his Witneſſes, within the Time allowed him; or the Records, without an Order from hence; which would have ſhewn, that ſome of the Witneſſes were convicted of notorious Crimes, others impriſoned for Robberies, and the reſt of them infamous People: And that now his Witneſſes were come over, and actually upon the Road; for Want of whom, he could not make a proper Defence; but was expoſed to the Malice of his Adverſaries, who were ſome of them his own Clergy, that for their debauched Lives he had corrected: That he had begged only for twelve Days Time more; when it would have appeared as plain as the Sun, what Kind of Men the Witneſſes againſt him were: That he had an Atteſtation, under the Earl of *Eſſex*'s Hand, of his good Behaviour in *Ireland*; and another under the Lord *Berkley*'s Hand, who was alſo Governor there; which he had ſhewn to Mr. Attorney: So that, if ever there was a Cauſe in the World that deſerved Compaſſion, he thought his did: It was never known, that one arraigned in *Ireland*, was tried here for the ſame Fact; and if his Petition for Time had been granted, he could have ſhewn the Malice of the Proſecution, and manifeſted his Innocence: But as it was, he muſt ſubmit to their Mercy.

Certificates of his good Behaviour, from the Lords Eſſex and Berkley.

The Chief Juſtice told him, He had been proved guilty, by ſuch Evidence, as there was no Room to doubt his Guilt; and had been allowed more Time to prepare for his Trial, than was uſual: That there were Precedents of trying Men here, for Offences committed in *Ireland*, and he had no Reaſon to complain of Hardſhips; and ſeemed to bear hard upon his Principles.

Offered a Pardon, he would diſcover others.

The Doctor anſwered, If he had been a Man of as little Conſcience as he had been repreſented, he might have ſaved his Life; for Offers had been made him, to procure him a Pardon, if he would have confeſſed his Guilt, and accuſed others; but he had rather die a thouſand Deaths, than accuſe any Man wrongfully.

Then the Chief Juſtice paſſed Sentence on him as a Traitor; and affording him ſome good Wiſhes afterwards, the Doctor ſaid, God Almighty bleſs your Lordſhip: And now, my Lord, as I am a dead Man to this World, and as I hope for Mercy in another, I was never guilty of any of the Treaſons laid to my Charge, as you will hear in Time. My Character you may have from my Lord Chancellor of *Ireland*, my Lord *Berkley*, my Lord *Eſſex*, and the Duke of *Ormonde*. But he was executed at *Tyburn*, according to his Sentence, on *Friday* the firſt of *July*; at the ſame Time that *Fitzharris* was executed there.

Appeals to the Iriſh Miniſtry for his Character.

His Speech at Tyburn.

Dr. *Plunket* being drawn to *Tyburn* with *Fitzharris*, on the firſt of *July*, 1681, made a Speech to the People, wherein he denied every Article he was charged with; and again declared, *That a certain great Peer ſent him Word, that he would ſave his Life, if he would accuſe others*; but he anſwered, He never knew of any Conſpiracy in *Ireland*; and that he would not falſly accuſe any one, to ſave his own Life: And having prayed for the King and Royal Family, proteſted upon his Salvation, that what he ſaid

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He is executed. Remarks on Plunket's *Trial.*

was true, without any Equivocation, Mental Reſervation, or ſecret Evaſion whatever, he was turned off.

I could never learn, for what Reaſon Dr. *Plunket* was brought over from *Ireland*, to be tried here; unleſs it was to ſupport the Credit of the pretended Popiſh Plot, and terrify him into ſuch a Confeſſion, as the Faction were pleaſed to preſcribe to him: For thus theypractiſed upon almoſt every Man, they got condemned for that pretended Conſpiracy. But here alſo they met with a Man of more Fortitude than they expected, who ſcorned to purchaſe his Life on ſuch baſe Terms. Even Biſhop *Burnet* is ready to grant, that the Doctor was perfectly innocent of what he was accuſed; for, ſpeaking of this Trial, he ſays, "Some leud Prieſts, and "other *Iriſh* Evidence, finding how good a "Trade Swearing was in *England*, came over, "and gave Evidence of a Plot in *Ireland*, to "bring over a *French* Army, and maſſacre all "the *Engliſh* there. That theſe Men were "much cheriſhed by the Lords *Shaftesbury* "and *Eſſex*; but that the latter told him *(Bur-net)* That *Plunket* was a wiſe, ſober Man, "choſe a quiet Life, and to live in due Sub-"miſſion to the Government: And that an In-"dictment having been preferred againſt *Plun-"ket* the Year before, in *England*, the Fore-"man of the Jury, a zealous Proteſtant, told "him, *(Burnet)* That the Witneſſes contradict-"ed one another ſo notoriouſly, they could not "find the Bill: But now (ſays *Burnet)* They "had laid their Story better together; and hav-"ing nothing but *Plunket*'s Denial to contend "with, he was condemned and executed."

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While he lay under Sentence of Death, the Earl of *Eſſex*, it is ſaid, informed the King, That the Evidence againſt *Plunket*, could not be true: To whom the King anſwered, *Why did not you atteſt this at his Trial? It would have done him Good then: I durſt pardon no Body: His Blood muſt lie upon your Head, and not upon mine.*

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Stapleton's *Trial.*

The Trial of Sir MILES STAPLETON, Bart. for *High-Treaſon*, at the Aſſizes for the County of *York*, the 18th of *June*, 1681. 33 *Car.* II.

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The Indictment.

THE Indictment charges him with High-Treaſon, in compaſſing and imagining the Death of the King; and that to accompliſh the ſame, the ſaid Sir *Miles*, with other falſe Traitors, did, on the thirtieth of *May*, in the 31ſt Year of the King, at the Pariſh of *Barwick*, in the Weſt-Riding of the County of *York*, aſſemble, conſult, and agree, to depoſe the King, to put him to Death, and introduce the *Romiſh* Religion; and did agree to pay certain Sums, to divers other falſe Traitors, to procure them to kill his Majeſty.

The Priſoner, and the King's Counſel, having challenged ſo many of the Jurors at the preceding *Lent* Aſſizes, that there were not left enough to try him, occaſioned the Trial to be put off to this Aſſizes; and it ſeems, Mr. Juſtice *Dolben* held it to be a good Exception, that the King's Counſel made to one of the Jurors, That he had diſparaged the Evidence of the Popiſh Plot, and given two of his Dogs the Names of *Oates* and *Bedloe*, the King's Witneſſes.

An odd Challenge to ſome Jurymen.

The Evidence.

The Witneſſes being called, *Smith* firſt depoſed, what he had heard of a Plot at *Rome*, and elſewhere; and that he had heard, Money was raiſed in *Yorkſhire*, for killing the King, and extirpating the Proteſtant Religion.

Bolron depoſed, That Sir *Miles Stapleton*, Sir *Thomas Gaſcoigne*, and others, held a Conſultation at *Barmbow-Hall* in *Yorkſhire*, about *Whitſuntide* 1677, for killing the King: That Sir *Miles* ſaid, He would give two hundred Pounds towards it; and, if the Duke of *York* did not pleaſe them, the Conſpirators ſaid, they would uſe him like his Brother; and that they would obtain the Duke's Conſent, to make Sir *Miles* a Privy-Councillor: And, that at another Conſult, the 13th of *June*, 1678, It was agreed to ſecure *Hull*, as the fitteſt Place for the *French* to land at.

Mowbray depoſed, That he was preſent, in the Year 1676, when *Ruſhton* gave the Oath of Secrecy to Sir *Miles Stapleton*, Sir *Thomas Gaſcoigne*, and others; and they diſcourſed of killing the King, and ſubverting the Government, bringing in Popery, and firing the City of *London*: And Sir *Miles* ſaid, he would venture his Life and Fortune for killing the King. He depoſed alſo, That he ſaw a Liſt of the Actors and Contributors, for killing the King, and Sir *Miles*'s Name was amongſt them.

Then Sir *Miles* called his Witneſſes, to invalidate the Teſtimony of the King's Witneſſes.

The Priſoner's Witneſſes.

Mr. *Lowther* depoſed, That *Bolron* came before him, and charged Sir *Thomas Gaſcoigne*, and others, with being in the Plot; and he asked him, if he knew any thing againſt Sir *Miles Stapleton*: To which *Bolron* anſwered, No: He believed he was very clear; but that *Mowbray* and others would ſwear he was at the Conſult.

Sir *Thomas Yarborough*, another Juſtice of Peace, depoſed, That aſking *Bolron* if he knew any thing againſt Sir *Miles Stapleton*, he anſwered, No: He only knew he had made a colluſive Conveyance of his Eſtate, as moſt Catholicks had, to ſecure them; but he believed he was innocent, and not any Ways concerned.

The Lady *Yarborough* alſo depoſed, That Sir *Thomas* ordering *Bolron* to be brought into his Chamber, when ſhe was in Bed, ſhe heard the Diſcourſe between *Bolron* and her Husband; which was to the Effect Sir *Thomas* had declared: And, that the Day following, ſhe heard *Bolron* ſay, He had nothing againſt Sir *Miles*; he was an honeſt Gentleman.

Thompſon

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Thompſon depoſed, That he was bound, with *Bolron*, to Sir *Thomas Gaſcoigne*; and that *Bolron* ſaid, if Sir *Thomas* was not kind to him, he would do him an ill Turn: And that he had heard *Bolron* ſay, there was never a Catholick in *Yorkſhire* concerned in the Plot.

Leggat depoſed, That he was at the *George* at *York*, when *Bolron* read his Information againſt Sir *Thomas Gaſcoigne*; and that he aſked *Mowbray*, if he knew any Thing of it; and he ſaid, he did not: That he had heard *Bolron* ſay, he knew nothing againſt Sir *Miles*.

Elizabeth Holmes depoſed, That ſhe had heard *Bolron* ſay, If he had known he ſhould have been no better rewarded, the Devil ſhould have been a Witneſs for him.

Cooper depoſed, That being intimate with *Mowbray*, he aſked him, if what *Bolron* had ſworn againſt Sir *Thomas Gaſcoigne* was true; and *Mowbray* anſwered, he might as well have ſworn it againſt any Man elſe; for that he, being in the Houſe, muſt have known it as well as *Bolron*; and he knew nothing of it.

Mrs. *Sherbourn* depoſed, That *Bolron* and *Mowbray*, under Pretence of ſearching for Prieſts, took ſeveral Pieces of Silver out of her Houſe; and Mr. Juſtice *Dolben* anſwered, They knew they had been bad Men.

Then the King's Counſel produced ſome Witneſſes, who depoſed, that they were tampered with, not to give Evidence againſt Sir *Miles*.

Sir *Miles* then concluded his Defence, and ſaid, He deſired the Jury would conſider what little Credit was given to the Witneſſes againſt him at other Trials; and proteſted, that he was never at any Conſult about theſe Things: He believed none that knew him would think ſo: He never thought any ill of the King, or had any Reaſon to do ſo.

Mr. Juſtice *Dolben* then ſummed up the Evidence, and gave his Directions to the Jury, informing them, that the Teſtimony of *Smith*, concerning what he had heard at *Rome*, or elſewhere, of the general Deſign, was no Evidence againſt Sir *Miles*: But *Bolron* and *Mowbray* had ſworn the Treaſon poſitively againſt him: And though Sir *Miles* had produced ſome Witneſſes that impeached their Credit, he had ſhewn no Record of any Conviction againſt them; and therefore they ſtill remained legal Witneſſes.

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Mr. Baron *Gregory* added, That there was nothing material proved againſt the King's Witneſſes: That, as to their concealing their Knowledge of Sir *Miles*'s being in the Plot, that was before they became Proteſtants; and beſides, a Man was not bound in Diſcourſe to tell his Neighbour all that he knew; and it was poſſible they might forget, when they were before the Juſtices of Peace, that Sir *Miles* was concerned in the Plot: Nor did they come before them as Magiſtrates, when thoſe Queſtions were aſked them: But notwithſtanding the Judges Directions, the Jury, after half an Hour's Receſs, brought in Sir *Miles*, *Not Guilty*.

He is acquitted.

The Credit of the Plot, it ſeems, was now fallen ſo very low, that the Witneſſes were no longer believed, though they had the Directions of the Judges to ſupport their Teſtimony: And, indeed, Mr. Baron *Gregory* ſeems extremely partial; whether it were that he was prejudiced in favour of the Faction, or was afraid of their Reſentment.

Remarks on Stapleton's *Trial.*

This, I think, was the laſt Perſon brought to his Trial for that pretended Conſpiracy; for the Miniſtry now began to reſume their Courage, and would no longer ſuffer themſelves to be made inſtrumental in deſtroying innocent Men: They would no longer connive at the offering Rewards and Protection to raſcally Knights of the Poſt to revile his Majeſty, and the Royal Family, and incite another Rebellion, by rendring them odious to the People; and the King, awakened out of his Slumber, by the frequent and formidable Attacks of the Faction, at length took the Reins of Government into his Hands, and ſhewed his Enemies, that when he was pleaſed to uſe Application, he had a ſuperior Genius, and knew how to defeat the Schemes of their moſt artful Leaders, who ſaw, not long after, that their Flight alone could ſecure them againſt his juſt Reſentment.

The Trial of GEORGE BUSBY, Clerk, for *High Treaſon*, at the Aſſizes for the County of *Derby*, 25 *July*, 1681. 33 *Car.* II.

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THE Indictment charges him with High Treaſon; for that, being a Subject of *England*, he remained at *Weſt-Hallam* in the ſaid County of *Derby*, after having accepted Popiſh Orders, contrary to the Statute of 1 *Eliz.*

The King's Council, in opening the Indictment, ſuggeſted, that the Priſoner was concerned in the Popiſh Plot; and, that they would do their Country more Service, by convicting one Prieſt, than twenty Felons.

The King's Witneſſes being called, five or ſix of them poſitively ſwore, they had ſeen the Priſoner ſay Maſs, give the Sacrament, chriſten, marry, give Abſolution, and perform other Parts of the Prieſtly Office.

The Priſoner, in his Defence, ſaid, That he was not born in *England*, but at *Bruſſels*, his Father and Mother going over thither at the Beginning of the Grand Rebellion; and produced Witneſſes, who depoſed, that they had ſearched the Regiſter of *Hallam*, and found ſeveral of the Priſoner's Brothers and Siſters born there; but his Name was not in the Regiſter.

The Priſoner's Defence.

In Anſwer to which, the Court obſerved, If it ſhould be admitted he was born at *Bruſſels*, that would not avail him, becauſe of the Statute that had naturalized all that were born of *Engliſh* Parents, beyond Sea, during the late Rebellion.

The

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The reſt of his Defence conſiſted in obſerving, That there was no poſitive Proof of his being a Prieſt, or of his officiating as ſuch; becauſe the Witneſſes did not underſtand *Latin*, and conſequently, could not tell whether he ſaid Maſs, or not. To which it was replied, That he had given no Anſwer to his Chriſtening and Marrying People, and ſeveral other Acts, which could be done only by Prieſts. And the Jury thereupon found him *Guilty*, as Mr. Baron *Street* had directed them; and the Judge afterwards pronounced Sentence on him as a Traitor: But informed him at the ſame Time, that he was commanded to reprieve him; and accordingly Mr. *Busby* was reprieved from Time to Time, and never executed.

He is convicted;

but reprieved.

Remarks on Busby's *Trial.*

The Popiſh Prieſts, in Queen *Elizabeth*'s Reign, having been very buſy in promoting and encouraging Conſpiracies againſt her, it was thought fit to make a Statute, That it ſhould be Treaſon for an *Engliſh* Prieſt to remain in the Queen's Dominions, after he had accepted Popiſh Orders; but this is generally agreed to be made *in terrorem*, and never deſign'd to be put in Execution, where they behaved themſelves loyally and peaceably. But we find the Saints in King *Charles*'s Reign endeavouring, directly contrary to the true Intent of the Act, to put it in Execution againſt thoſe who had been moſt eminent for their Loyalty, and the greateſt Sufferers for him and his Father; and though the King could not prevent their being tried, we find he ſkreened this Gentleman, and all thoſe that were tried at *London* upon this Act, from their Fury, by granting them Pardons, or at leaſt indefinite Reprieves: But ſome there were, in the more remote Parts of the Kingdom, that ſuffered purely for being Popiſh Prieſts, as it appears by ſome former Proceedings.

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Colledge's Trial.

The Trial of STEPHEN COLLEDGE, Carpenter, (called the *Proteſtant Joyner*,) for *High Treaſon*, by a Special Commiſſion of *Oyer* and *Terminer*, at *Oxford*, 17th of *Auguſt*, 1681. 33 *Car.* II.

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The Indictment.

THE Indictment charges, that the Priſoner did, on the 10th of *March*, in the 33d Year of the King, at *Oxford*, maliciouſly, and traitorouſly, compaſs and imagine the Death of his Majeſty: To incite a Rebellion, levy War againſt him, and ſubvert the Government: And that, to effect his ſaid traitorous Purpoſes, he did, on the ſaid 10th of *March*, at *Oxford* aforeſaid, prepare Arms, arm himſelf, and adviſed, and incited, one *Edward Turbervile*, and others, to arm themſelves againſt the King; declaring, he deſigned to ſeize the King's Perſon, at *Oxford*, aforeſaid: And, at the Time and Place aforeſaid, in the hearing of many of the King's Subjects, maliciouſly and traitorouſly declared, *That nothing of Good was to be expected from the King; and that the King minded nothing but Beaſtlineſs, and the Deſtruction of his People, and to eſtabliſh Popery and Arbitrary Power.*

A Diſpute about his Papers.

The Priſoner refuſed to plead, till his Papers were delivered him, which were taken from him as he came into Court; for this, he ſaid, rendered him incapable of making his Defence: But the Court inſiſting on his pleading, before they made any Order in the Matter, he, at length, pleaded, he was not guilty, in Manner and Form as it was laid in the Indictment.

Then the Chief Juſtice ſaid, If there were any Thing in thoſe Papers, that was neceſſary for his Defence, it would be hard to deny him them. Mr. Attorney anſwered, when he came to Priſon, he had no Papers; and, he was informed, *Aaron Smith*, the Solicitor, had delivered them to him.

The Priſoner replied, There were Directions in the Papers, how to govern himſelf in his Defence; and Inſtructions, to tell him what the Law allowed him.

Mr. Attorney informed the Court, That there was a Liſt of the Jurors among the Papers, with Marks ſet upon them, who were good Men, who were bad, and who were moderate Men; and there was a Liſt of the Witneſſes the Party had picked up for him: Then the Chief Juſtice ordered, that the laſt Paper ſhould be delivered him immediately; and he thought the reſt of the Papers ſhould be put into ſome ſafe Hand, that the Priſoner might make uſe of them.

Mr. Attorney ſaid, That was the ſame Thing as to allow him Counſel, if his buſy Solicitor had procured the Advice of Counſel, and then communicated it to him.

Colledge replied, If they took away all his Helps, they might as well condemn him without a Trial.

Then Mr. Attorney deſired his Lordſhip would look upon the Papers, which he did; and there was one, called the Speech, which, the Chief Juſtice ſaid, ought to be ſuppreſſed, and Enquiry made, how it came to his Hands: And *Aaron Smith* being called, it was demanded of him, if he delivered thoſe Papers to the Priſoner? To which *Smith* anſwered, No-body was bound to accuſe himſelf: Whereupon the Chief Juſtice ordered him to enter into a Recognizance, to be forth-coming during the Seſſion. Whereupon *Smith* ſaid, It was Time to have a Care, when their Lives, their Eſtates, and all were beſet; which the Court reſented, and ſaid, he reflected on the Juſtice of the Nation.

Colledge inſiſting ſtill, that he might have his Papers, the Chief Juſtice ſaid, they had ordered

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dered him the Liſt of the Witneſſes; and, as for the Inſtructions in Point of Law, he might have had them, if they had been written in his own Name, in the firſt Perſon; but when they appeared to be written by another, and directed him what to do, This was to allow him Counſel in an indirect Way, which the Law did not allow: However, they had rather allow him too much, than too little; and the Chief Juſtice ordered him a Copy of the Inſtructions, leaving out what was ſcandalous.

The King's Counſel calling their Witneſſes, Mr. *Dugdale* was firſt ſworn, who had been one of the principal Witneſſes againſt Lord *Stafford*; and whoſe Credit *Colledge* endeavoured to ſupport at that Trial, by teſtifying, he was an honeſt Man.

Dugdale's Evidence againſt him.

Dugdale depoſed, That the Priſoner ſeemed, at ſome Times, to be mightily bent againſt Popery; and would ſay, when the King did not proſecute Papiſts according to his Mind, *That the King was a Papiſt himſelf, and as deep in the Plot as any of them all, and had a Hand in* Godfrey's *Death*: And that he told the Deponent, at *Oxford*, *That there was nothing to be expected from the King, but the introducing Popery, and Arbitrary Government*: And that, preſently after the King went out of *Oxford*, *Colledge* went to a Barber's Shop, within the *Angel-Inn*, and, as he was charging his Piſtols, ſaid, *Rowley is gone: The Rogue was afraid of himſelf, and has ſhirked away*: And that *Rowley* was the Name he uſually gave the King: That the Priſoner ſaid, at other Times, *There was no Truſt to be put in the King; it was the People they muſt truſt to: They muſt look to arm themſelves; he would arm himſelf*: And in *Oxford*, he ſaid, *he had ſeveral ſtout Men that would ſtand by him in it: Their Intention was to root out Popery; by which he always meant the Eſtabliſhed Church.* And, when Dr. *Tongue* was at his Houſe, he ſaid, he was forced to be at great Charges, and to neglect his Buſineſs, to keep him in Order; for, if he had not, *the Rogue had a Mind to fling all upon the Proteſtants, that is, the Diſſenters; for he did not count the Church of* England *ſo.*

It being demanded, who was to be concerned with *Colledge*? *Dugdale* anſwered, That *Colledge* told him, he brought Capt. *Clinton*, Capt. *Brown*, and Don *Lewis*, to Town with him, expecting there would be a Riſing: That they would defend the Proteſtant Religion againſt the King, and all his Adherents: That, if the King did not yield to the Parliament, he ſhould be forced to it. This he ſaid at *Oxford*: And, at *London*, he heard him ſay, he expected there would be ſomething done at *Oxford*; and he would go thither with his Horſe and Arms; and the Gentlemen he already mentioned would go with him; and, let them begin when they would; he did not care how ſoon his Party was the greateſt Party.

That the Priſoner gave the Deponent as much Ribbon, at *London*, as came to forty Shillings, with the Words, *No Popery*, *No Slavery*, wrought in it, to diſtribute among their Friends, the Diſſenters, in the Country, that they might know one another: That the Deponent promiſed to come to *Oxford* with the Priſoner, and did ſo: And being with ſome Members of the Commons at *London*, a little before the Parliament met at *Oxford*, who were talking of ſome Diſturbance that might happen there, it was agreed, that in every County where the Parliament had the beſt Intereſt, a Member ſhould be left to manage the People.

That the Priſoner gave him the intercepted Letter to Sir *Roger L'Eſtrange*, and told him, he was the Author of it; (which, Mr. Attorney obſerved, was the Libel out of which *Fitzharris* took great Part of his:) That he received another Libel of the Priſoner, with Pictures in it, where all the Biſhops were changing their Hats for Cardinals Caps. It was entitled, *The Raree-Show*. This *Dugdale* produced in Court, and depoſed, he heard *Colledge* ſing it at *Oxford*, and at Lord *Lovelace*'s in the Country; where Sir *Robert Clayton*, Sir *Thomas Player*, and Mr. *Rouſe* were in Company.

Here the Chief Juſtice obſerved, that Lord Lovelace *was in Court*; but his Lordſhip did not think fit to contradict the Witneſs.

Then Mr. Attorney demanded, how *Colledge* deſcribed the Cutt to him? *Dugdale* anſwered, the Figure with the Pack was the King, and the Pack were the Parliament, and all the King's Retinue; and then, there was the King in the Mire again: Mr. Serjeant *Jeffries* obſerved, that one Part of the Cutt repreſented the Biſhops, whom they thruſt into the Pack, when they had got him down in the Mire; and then they hooted them all the Way, as it is in the Song.

The Chief Juſtice demanded, if *Colledge* explained it thus? *Dugdale* anſwered, Yes, he did, at *London*: Theſe were the King and the Clergy; and by *Louſe-Hall* was meant *White-Hall*, becauſe of its Poverty.

Here the Clerk of the Crown read the Ballad, Raree-Show, *&c. to the Tune of,* I am a Senſeleſs Thing——

Mr. Serjeant *Jeffries* demanded, what *Colledge* meant by the two Faces? *Dugdale* anſwered, that the King was half Proteſtant, and half Papiſt.

And when he found the King would not yield to the Demands of the Commons, at *Oxford*, he ſaid, Let him begin as ſoon as he would, he did not care; for their Party (meaning the King and his Party) was but a Handful to him and his Party, who were the true Proteſtants; the other were but Proteſtants in Maſquerade: He hoped the Deponent would be true to his Side, and deſired, he would get Arms for himſelf; for the King had a Deſign to introduce Popery and Arbitrary Power: He expected they would begin; the ſooner the better.

The Priſoner told him, at *London*, that Captain *Brown*, (who had been an Officer in the Rebels Army) and the other Gentlemen, intended to come down: And he told him, at *Oxford*, that Captain *Brown*, and about forty more were come down; and the Deponent was with Captain *Brown*, Don *Lewis*, and ſeveral others of that Gang, at *Oxford*.

Here *Colledge* obſerved, that *Dugdale* ſwore before Sir *Leoline Jenkins*, that theſe Words were ſpoken at *London*; but the Grand Jury there were ſo wiſe and honeſt, that they would not find the Bill; and, the Deſign againſt him failing there,

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they changed the Scene to *Oxford*. Then he demanded, where he ſaid the Words, *The King was a Papiſt, and deſigned Arbitrary Government?* *Dugdale* anſwered, He ſaid them at *Combes*'s Coffee-Houſe, in *Oxford*, when no Body was by; and at the *Angel*-Inn, there, when there were ſeveral; and there were many People by, when he ſpoke them at *London*; particularly, *Starkey*, *Boſom*, and *Baldwin*; and they all reproved him for it. The Priſoner then demanded, what Arms he had at *Oxford?* *Dugdale* anſwered, he had a Pair of Piſtols before him, and ſome Pocket-Piſtols: *Colledge* replied, he did not deny he had a Pair of Piſtols in his Holſters; but he had no more than one Pocket-Piſtol, which he borrowed of *Dugdale*. Mr. Serj. *Jeffries* thereupon obſerved, that Chiſſels had been more proper Tools for a Joyner, than Piſtols.

Dugdale depoſed farther, That *Colledge* told him, Captain *Brown* had a good Allowance; and he would ſpeak, that he might have a better; for he was able to do good Service, when the Time came.

Colledge demanded, from whom was that Allowance? *Dugdale* anſwered, there were ſeveral Gatherings among them, that he was privy to; but they did not tell him how the Money was diſtributed: And Mr. Attorney obſerved, that the Priſoner confeſſed, at his Examination, he gave a Guinea; which *Colledge* did not deny.

Dugdale depoſed alſo, That the Priſoner ſhewed him another Libel, which he produced in Court, with Cuts, that was entitled, *The Character of a Popiſh Succeſſor*, &c. and, in explaining it, he pointed at a Parcel of *Tantivy-Men* riding to *Rome*, and the Duke of *York*, half Man, half Devil, trumpeting before them: That in one Place of the *Raree-Show*, it was in the Manuſcript, *Now, now, the Rogue is down*; but Serjeant *Jeffries* obſerved, it was in the Print, *Now, now, the Giant is down*. The Priſoner then demanded, If the Song, he ſung at Lord *Lovelace*'s, was the ſame as that in the *Raree-Show?* *Dugdale* anſwered, Generally it was: He ſung it half a dozen Times, and the Muſick played to him. *Colledge* demanded, If any Body was by at the explaining the Pictures? *Dugdale* anſwered, Yes, Mr. *Baldwin*; and reproved him for being ſo open.

Mr. Attorney demanded, If *Colledge* did not endeavour to ſupport his Credit at Lord *Stafford*'s Trial?

The Priſoner anſwered, He acknowledged, he was examined there upon Oath; but what he ſaid was by Hear-ſay; he knew nothing of him of his own Knowledge; but he believed him another Man than he found him.

Mr. *Stevens*, the Meſſenger, depoſed, That ſearching the Priſoner's Houſe, by Order of Council, with Mr. *Atterbury*, they found the Original of the *Raree-Show* in his Bed-Chamber, and alſo thoſe that were printed.

Atterbury depoſed, They found the Original, drawn with a Pencil on *Dutch* Paper, on a Table in *Colledge's* Chamber.

Sewell depoſed, They found the Papers, produced in Court, in a Bag, in the Poſſeſſion of *Colledge's* Wife.

Smith's Evidence.

Mr. *John Smith*, (another of the Witneſſes againſt the Lord *Stafford*) depoſed at this Trial, That going with *Colledge* to dine at Alderman *Wilcox*'s, *Colledge* told him, that *Wilcox* was as true as Steel, and was a Man that would endeavour to root out Popery: And the Deponent anſwering, That may eaſily be done, if the King could be prevailed upon to paſs the Bill againſt the Duke of *York*: *Colledge* replied, No, You are miſtaken; *Rowley* (the King) is as great a Papiſt as the Duke of *York*, and every way as dangerous to the Proteſtant Intereſt; as is too apparent, by his arbitrary Ruling: That the Alderman not being come home, the Deponent asked *Colledge*, what kind of Man he was? Who anſwered, He was one that lived at his Country-Houſe, and gave freely to ſeveral People, to buy Arms and Ammunition, in order to bring the King to Submiſſion to his People: And he wondered *Old Rowley* did not conſider, how eaſily his Father's Head came to the Block; which, he doubted not, would be the End of *Rowley* at laſt: That *Colledge* afterwards ſhewed him his Arms, his Piſtols, Blunderbuſs, Great Sword, and his Armour, Back, Breaſt, and Head-piece, and ſaid, theſe were the Things that would deſtroy *Rowley*'s pitiful Guards, which were kept up, contrary to Law and Juſtice, to ſet up Popery and Arbitrary Power: That a little before the Parliament met at *Oxford*, *Colledge* and the Deponent fell into Diſcourſe, concerning the Preparations the City were making; and how they were provided with Powder and Bullets; and *Colledge* ſaid, for his Part, he would go down to *Oxford*; for he expected a little Sport there, upon the Diviſions that were like to be between the King and Parliament: Adding, *We expect the King will ſeize on ſome of the Members; and we are as ready as he: And, for my Part, I will be there, and be one that ſhall ſeize him, if he ſecure any Members.*

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That after *Colledge* returned from *Oxford*, he told the Deponent, he went down in Expectation of ſome Sport; but *Old Rowley* was afraid, like his Grandfather *Jamy*, and ſo ran away, like to beſhit himſelf. He ſaid alſo, he had a Quarrel with *Fitzgerald* at the Door of the Houſe of Lords, at *Oxford*: That *Fitzgerald* called him Rogue, and made his Noſe bleed; but before long, he hoped to ſee a great deal more Blood ſhed for the Cauſe. And when there was a Diſcourſe of Lord *Feverſham*'s diſarming the City, *Colledge* ſaid, he was well provided; and if *Feverſham*, or any Man, nay, if *Rowley* himſelf, ſhould attempt any ſuch Thing, he would be the Death of him, before any ſhould Man ſeize his Arms.

That he deſired the Deponent would get Arms; he did not know how ſoon he might make uſe of them, he ſaid; and the Deponent had Armour from him; but it being too big, he returned it, and bought new.

That the Priſoner alſo ſaid, The Parliament had agreed to ſecure the King; and, in order to it, the Parliament-Men were to come down with their Servants armed. *Colledge* demanding what Religion he was of? *Smith* anſwered, He was a Proteſtant, and in Orders: *Colledge* replied, He was a Prieſt, and had his Orders from the Church of *Rome*.

Mr. Attorney demanded, if he was not a Witneſs at Lord *Stafford*'s Trial? *Smith* anſwered, he gave a general Account of the Deſign of the Papiſts; and his Reputation was not

then

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Haynes's Evidence.

then queſtioned. *Colledge* replied, He was the falſeſt Man that ever ſpoke with a Tongue.

Bryan Haynes depoſed, That there being a Warrant out againſt him, he came to adviſe with *Colledge*, the Priſoner, about it; and he told him, The Parliament would ſit at *Oxford* ſoon, and he need not value the King of a Pin, for the King was in a worſe Condition than he (the Deponent); and he ſhould ſee him called to an Account for his Actions: That the World ſaw he reſolved to bring in Arbitrary Power and Popery; and, unleſs he let the Parliament ſit at *Oxford*, they would ſeize him there, and bring him to the Block, as they did the Logger-head his Father: The Parliament ſhould ſit at *Guild-Hall*, and redreſs the Subjects Grievances; and they ſhould ſee, that no King of his Race, ſhould ever reign in *England* after him.

And demanding of *Colledge*, How this was poſſible, though the Duke of *Monmouth* was a fine Prince, and ſtood up for the Proteſtant Religion; *Colledge* anſwered, They made but an Idol of him, to cover their real Deſigns: Did he ever think, the wiſe People of *England*, would ever make a Baſtard upon Record, King of *England?* No; though they praiſed his Actions, they could not endure him, becauſe he was againſt his own Father: And *Colledge* added, Unleſs the King expelled from his Council; the Earl of *Clarendon*, cunning *Lory Hyde* and the Earl of *Halifax*, that great Turn-coat Rogue, who was once ſo much againſt Papiſts, they would make *England* too hot for him.

Colledge obſerving, It was impoſſible he ſhould ſay theſe Things, to a Man he had ſcarce any Acquaintance with; *Haynes* anſwered, *Colledge* knew his Principles, and his Circumſtances; he was at this Time, as much for Treaſon and Villany, as the Priſoner was: And when he objected, there were no Preparations equal to ſuch a Deſign, and that Gentlemen would hardly quit their Eaſe for a Civil War; *Colledge* replied, You are miſtaken; we have 1500 Barrels of Powder, and 100,000 Men, ready at an Hour's Warning; we have prepared every Thing, againſt the ſitting of the Parliament at *Oxford*, and you ſhall ſee *England* the moſt glorious Nation in the World, when we have cut off that beaſtly Fellow *Rowley*; he came of a Race of Buggerers, for his Grandfather, King *James*, buggered the old Duke of *Buckingham*: Then he railed at Judge *Pemberton*, and ſaid, Let him try *Fitzharris* if he durſt; he ſhould ſee him go to *Tyburn* for it, he hoped, a Turn-coat Rogue.

That at another Time, *Colledge* put the Deponent upon charging the King with firing the City, and murdering *Godfrey*; and ſpeaking of the Libel *Fitzharris* was condemned for, ſaid, The Devil take me, every individual Word is as true as God is in Heaven; and if you do not join with *Fitzharris*, and charge the King home, you are a baſe Fellow, for he makes you Slaves and Beggars; and it is Charity to charge him home, that we may be rid of ſuch a Tyrant.

That *Colledge* gave him, and others of the Party, blue Ribbons, to diſtinguiſh them, and ſhew that they were Proteſtants, and not Biſhop's Men; which they were to wear when the King was ſeized.

That when *Colledge* returned from *Oxford*, the Deponent told him, The King had made a Fool of them; and he anſwered, They had not done with him yet; that no Body ſuſpected he would have diſſolved the Parliament that Day, as he did; he took Coach, and went away, before the Parliament could get down, otherwiſe they ſhould have been too hard for him; for there was not a Parliament-Man, but had ſeveral armed Men to wait on him, and he himſelf had a Blunderbuſs, and a Man to wait on him: And, upon cloſing his Evidence, *Haynes* produced the Ribbon *College* gave him, as a Mark of Diſtinction, to know their Party by. 1681. 33 Car. II.

Turbervile's Evidence.

Then *Turbervile* (who had alſo been a Witneſs againſt Lord *Stafford*,) was ſworn, and depoſed, That when the Parliament ſat at *Oxford*, he dined with *Colledge*, Captain *Brown*, and Don *Lewis*, at the *Chequer*-Inn there; and that after Dinner, Don *Lewis* being gone out, and *Brown* aſleep on the Bed, *Colledge* and the Deponent fell to diſcourſing of the Times; and the Deponent ſaying, he thought it would not be a long-lived Parliament, *Colledge* anſwered, There was no Good to be expected from the King; he and all his Family were Papiſts, and had ever been ſuch: To which the Deponent replying, Perhaps the King would ſurprize the Parliament, or uſe ſome Stratagem to bring them to his Terms; *Colledge* ſaid, he wiſhed he would begin; but if he did not, they would ſecure him, till he came to their Terms; for there were ſeveral brave Fellows about Town, and many more were coming, that would join them: That he had got a Pair of Piſtols, and a very good Sword; and the Deponent believed he had Armour on, but he could not be poſitive. Mr. Attorney demanding, if *Colledge* told him he came down on purpoſe to ſeize the King, *Turbervile* anſwered, Yes; and gave them blue Ribbons, to put in their Hats to diſtinguiſh them, if there ſhould be any Diſturbance; and when the Deponent ſaid, He had never a Horſe, and nothing but a Caſe of Piſtols, *Colledge* bid him not trouble himſelf; he would get him an Horſe.

Colledge demanding, Why the Deponent did not inform againſt him ſooner; *Turbervile* anſwered, That *Dugdale* told him, The Grand Jury of *London* would not find the firſt Bill, which he wondered at; for every one that converſed with *Colledge*, might have been an Evidence againſt him, he was ſo laviſh of his Tongue, againſt the King and Government.

Then Mr. *Maſters* was ſworn, who depoſed, He had been acquainted with *Colledge* many Years, and often reproved him for being ſo violent; but a little before the Parliament met at *Oxford*, they were diſcourſing of the Government, and he juſtified the Actions of the long Parliament in 1640; and the Deponent aſking him, how he could have the Impudence to juſtify their Proceedings, who raiſed that Rebellion againſt the King, and cut off his Head; *Colledge* anſwered, They did nothing, but what they had juſt Cauſe for, and the laſt Parliament that ſat at *Weſtminſter* was of the ſame Opinion; and ſeeing him very buſy afterwards at *Guild-Hall*, when a Common-Council was held there, the 13th of *May*, the Deponent ſaid to him, Colonel *College*, what do you make all this

Buſtle

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Buſtle for? To which he anſwered, Mock not; I may be a Colonel in a little Time.

Sir *William Jennings* depoſed, He had only a Coffee-Houſe Acquaintance with the Priſoner, before he came to *Oxford*; but obſerving a great many People looking at a Picture, he crouded in among the reſt; and after the Crowd was gone, *Colledge* took a Picture out of his Pocket, and ſaid, he would give him one, and there was written *Mac a Top* on it. *Here the Picture was produced in Court.*——That at another Time, he ſaw *Colledge* bring a Parcel of Ribbons into a Coffee-Houſe, with the Words, *No Popery, No Slavery*, wrought twice in every Quarter of a Yard; and ſaw him ſell a Yard of it for two Shillings, to one, he took to be a Member of Parliament, who tied it upon his Sword.

That the Day the *Oxford* Parliament was diſſolved, *Colledge* came to the Deponent, and told him, He had been in a Quarrel; Mr. *Fitzgerrald* had ſpit in his Face, and he ſpit in his Face again, and ſo they went to Loggerheads; and the Deponent telling him, his Noſe bled, he anſwered, *He had loſt the firſt Blood in the Cauſe; but it would not be long, before more was loſt:* And he obſerved, he never met the Priſoner, but he had been in ſome Quarrel.

Here *Colledge* deſired Sir *William* to recollect himſelf, as to the above-ſaid Words: He ſaid, He acknowledged, he had been vindicating the Commons, and Dr. *Oates*, whom *Fitzgerald* had abuſed, and upon that the Quarrel began; and meeting Sir *William*, who told him, his Noſe bled; he ſaid, *He had loſt the firſt Blood for the Parliament, and he wiſhed it might be the laſt:* Sir *William* replied, That to the beſt of his Memory, the Words were as he firſt related them, and nothing of the Parliament mentioned.

Col-ledge's *Defence.*

Then the Chief Juſtice telling *Colledge* he might enter upon his Defence, he deſired to know, if there had been any Conſpiracy proved againſt him; or any thing, but Words.

The Chief Juſtice anſwered, If the Witneſſes ſpoke true, there was plain Proof of a Conſpiracy: As his making, and publiſhing Libels and Pictures, to render the King odious and contemptible to the People: His preparing Arms, and ſhewing of them; declaring at the ſame Time, He would go down to *Oxford*, and if there ſhould be a Diſturbance, he would ſecure the King: And he did come to *Oxford* accordingly, and behaved himſelf there, in the Manner *Dugdale* and *Turbervile* had atteſted; which was a ſtrong Evidence againſt him. And he informed the Priſoner, that an Endeavour to ſeize the King's Perſon, had been always held to be Treaſon, by 25 *Edw.* III: *For King's were never made Priſoners, but in order to their Death.* That the Statute of the 13th of this King, was ſtill ſtronger againſt him; which ſays, If a Man ſhall, by any Words, or malicious ſpeaking, ſhew the Imagination of his Heart, that he hath ſuch an Intention, That was Treaſon.

The Priſoner demanded, If there ought not to be two Witneſſes to the ſame Words?

The Chief Juſtice anſwered, If there was one Witneſs to prove one Fact, and another to another Fact, being an Evidence of the ſame Treaſon, they were two Witneſſes ſufficient, to ſupport the Indictment, as was held in Lord *Stafford*'s Caſe; and, if one Witneſs proved what was ſaid at *Oxford*, and another proved what was ſaid at *London*, if they related to the ſame Treaſon, it was ſufficient: But in his Caſe, there were two Witneſſes, beſides Sir *William Jennings*, who ſpoke fully to the Facts at *Oxford*.

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Colledge then proceeded in his Defence, and ſaid, He ſhould prove this to be a moſt helliſh Conſpiracy, to deſtroy all the Proteſtants in *England*, that had the Courage to oppoſe the Popiſh Plot, in which he had ſignalized himſelf: It was highly improbable, he ſhould talk ſuch Things with Papiſts, Prieſts, and *Iriſhmen*, who had broke their Faith with their own Party, and been concerned in Plots and Treaſons, to cut the Throats of Proteſtants: He confeſſed, he did hear there was a Deſign of deſtroying the Parliament at *Oxford*, and all Proteſtants; *and he was reſolved, if he lived, to come along with the Parliament, and if there was any ſuch Deſign, to live and die with them*; but his Arms were only a Sword, and a Caſe of Piſtols: That before the laſt Parliament at *Weſtminſter*, he began to be popular, and called, *The Proteſtant Joyner*; and the Duke of *Monmouth*, and ſome other Lords, employed him to ſearch under the Parliament-Houſe, that there might be no Tricks played them by the Papiſts; and the Lord *Lovelace* went with him, and ſome of the Houſe of Commons, to ſearch; and he received their Thanks: That there was not only an Oath made, of a Deſign to deſtroy the Parliament at *Oxford*, but it was the general Belief, ſome Evil was intended them; and People generally armed themſelves with Sword and Piſtol, leſt they ſhould be attacked by the Papiſts; and he came down, two Days after the Parliament ſat, with the Lords *Howard*, *Clare*, *Huntingdon*, and *Paget*; and went to Town again with the Lord *Lovelace*, Sir *Thomas Player*, and Sir *Robert Clayton*, who were in great Fear, that *London* would be ſurprized by the Papiſts; but no one ever heard of ſeizing the King, till theſe Witneſſes came, and atteſted it; and it was a moſt wicked Falſhood: He knew of no Man that would have ſtood by him in ſuch a Deſign; and it could not be ſuppoſed, he ſhould have made ſuch an Attempt alone: He declared, he never knew of any Deſign againſt the Government, or ſpoke one of the treaſonable Words he was charged with: This, indeed, was not the firſt Time the Papiſts had a Deſign againſt his Life; but this was the firſt Time they went about to take it away by Law.

The Chief Juſtice ſaid, He did not know there was one Papiſt, a Witneſs againſt him.

Colledge anſwered, Every Man of them had been Papiſts, except Sir *William Jennings*: Mr. Attorney demanded, If Mr. *Maſters* was? *Colledge* ſaid, He only teſtified ſome merry Diſcourſe: The Court demanded, If he made merry with the blackeſt Tragedy, the horrid Rebellion, and Murder of the King?

Then *Colledge* called his Witneſſes, and ſome of them depoſed, That the Witneſſes againſt the Priſoner had ſaid, they were tampered with, to throw the Plot on the Proteſtant Diſſenters; but his principal Witneſs was *Oates*, who had ſomething to teſtify againſt every one

Oates's Evidence for Colledge

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of the King's Witneſſes, particularly, That *Turbervile* told him, He had nothing to ſay againſt *Colledge*; but meeting him afterwards at *Oxford*, he ſaid, He had; for the Proteſtant Citizens had deſerted them, and *God damn him, he would not ſtarve.*

To this *Turbervile* anſwered, That he did meet *Oates* indeed, who invited him to come over to his old Friends, and told him, he ſhould be received with abundance of Kindneſs; but abſolutely denied he ever ſaid any thing to him about his Evidence; for he always looked upon *Oates* as an ill Man, and never converſed much with him.

Oates depoſed further, That ſome provoking Language, having paſſed between *Smith* and *Colledge* at a Coffee-Houſe, *Smith* ſaid, *God damn him, he would have his Blood*; and, when *Oates* ſaid, Theſe Words did not become a Miniſter of the Goſpel, *Smith* replied, *God damn the Goſpel.*

He alſo depoſed, That converſing with *Dugdale*, he ſaid, there was great Talk of his being an Evidence againſt Lord *Shaftesbury*, and other Proteſtants; but he took God to witneſs, he knew nothing againſt any Proteſtant in *England:* And *Oates* telling him, he doubted he had gone againſt his Conſcience, *Dugdale* replied, It was all along of Colonel *Warcup*; for he could get no Money elſe. Whereupon Mr. Attorney obſerved, That *Oates* was a thorough-paced Witneſs, againſt all the King's Evidence; and Serjeant *Jeffries* took notice, that *Oates* had ſtood alone, in ſome Matters, if it had not been for theſe Witneſſes.

Oates proceeded in his Evidence, and ſaid, That *Dugdale* had an old Clap, and gave out he was poiſoned; and this Sham paſſed through the Kingdom in the weekly Papers; but he could make it appear, by the Phyſician that cured him. (*And ſo ſaid Biſhop* Burnet, *it ſeems.*)

Dugdale however denied it, upon his Salvation; and ſaid, If any one would come and ſay, he cured him of a Clap, he would own himſelf guilty of what was imputed to him.

Mr. Attorney obſerved again, That it was very unhappy, that *Oates* ſhould come in againſt theſe Men, who ſupported his Evidence at other Trials.

The Chief Juſtice ſaid, It was improbable that theſe three Men ſhould come to *Oates*, and own themſelves Rogues and Villains; and obſerved, That all three of them denied upon their Oaths, what this one Man affirmed on his bare Word.

Then a Witneſs for *Colledge* depoſed, That he had known him three Years, and he uſually rode with a Brace of Piſtols before him: He had borrowed his Horſe and his Piſtols ſeveral Times, and ſeen a Suit of Silk Armour of his, which he ſaid, he provided againſt the Papiſts; for he expected a Bruſh with them.

Colledge alſo proteſted, They were only intended againſt the Papiſts; and truly, by the Grace of God, he ſaid, He ſhould not have been the laſt Man againſt them; but he perceived, whatever was provided for that Purpoſe, was believed to be provided againſt the King and Government: But he hoped the Jury would obſerve, there were no new Arms provided; only thoſe he had a great while ago.

Then *Bolron* and *Mowbray* depoſed, That *Smith* would have ſuborned them to ſwear a Proteſtant Plot; and *Colledge* obſerved thereupon, That there was a Deſign of the Papiſts, to turn the Plot upon the Proteſtants: That they had begun with him; and, if they had his Blood, who might feel the Effects of it next, he could not tell.

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The Priſoner calling ſome Witneſſes to his Reputation, they ſaid, He was a Native of *Watford*, in *Hertfordſhire*; and that about eighteen Years before, he lived at that Town, and uſed to go to Church, and had a good Character there, and at *Black-friars*, in *London*, where he lived when he was taken up.

Peter Norreys depoſed, That he was at the *Hercules' Pillars*, in *London*, with Sir *William Waller*, *Macnamarra*, Mr. *Lewis*, and Mr. *Smith*; and ſpeaking of the Parliament to be held at *Oxford*, Sir *William Waller* ſaid, Moſt Parliament-Men were afraid to go to the Parliament; and Mr. *Smith* replied, He hoped they would be provided to go, if they did go: Whereupon Sir *William Waller* ſaid, He and his Friends ſhould be provided; and *Colledge* anſwered, He would be provided too, and would go with them.

Then *Colledge* ſaid, As to the Pictures and Papers he was charged with, he knew nothing of them, nor ever drew a Picture in his Life; and called his Servant, *Elizabeth Hunt*, to prove how the Paper called, *The Raree-Show*, came to his Houſe.

Elizabeth Hunt depoſed, That a Porter brought three Bundles of Papers to her Maſter's, when he was abroad, and ſhe paid the Porter Sixpence for bringing them; and they were in the Houſe ſeven or eight Weeks before they were ſeized by the Meſſengers. She depoſed further, That being ſent to Mr. *Dugdale* for ſome Money he borrowed of her Maſter, ſhe told *Dugdale*, ſhe thought it was hard he ſhould keep her Maſter's Money, and ſwear againſt his Life too. And *Dugdale* anſwered, there was a great deal to do about his ſwearing againſt her Maſter; but, as he hoped for Salvation, he did not believe Mr. *Colledge* had any more hand in the Conſpiracy againſt his Majeſty, than the Child unborn.

Dugdale appearing again, anſwered, He could not ſay he had nothing againſt her Maſter: She aſked him to write down what he had ſaid; but he told her, He knew not what was Treaſon; That muſt be referred to the Court.

Then Mr. *Colledge* made his Obſervations on the Evidence, and ſaid, My Lord, I have nothing but Innocence to plead; no Flouriſhes to ſet off my Defence: I cannot take the Jury or the Court with Oratory: But I declare, in the Preſence of God Almighty, That what is ſworn againſt me, concerning providing Arms, or a Deſign to ſeize his Majeſty, or to rebel againſt the eſtabliſhed Government, is all a Fiction; I never had ſuch a Thought: It is true, they have ſworn againſt me deſperately; but I think it appears, they have contradicted one another: It has been proved, this was a Deſign; and that they have been tampered withal: That they complained of their Poverty, and wanted a Maintenance; and confeſſed they were tempted to come over, and ſwear againſt Proteſtants, and they have begun with me; but I hope the Jury obſerve, I have ſufficiently contradicted their Evidence: Is it poſſible to imagine, if I had a Grain of Senſe, that I ſhould diſcover myſelf to ſuch a one as *Haynes*, an *Iriſhman*,

Colledge's *further Defence, and Obſervations on the Evidence.*

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and ſpeak all that Treaſon, he has gallopped through, the firſt Time I ſaw him? Every Witneſs, I think, has been confuted by Men of Principles, Perſons of Integrity and Honeſty; (though moſt of them were unknown to me,) and who have offered their Teſtimony voluntarily. There is no Probability they ſhould come and atteſt a Falſhood for me, who am a Stranger to them, for nothing. My Lord, I am a Proteſtant, and have been a Lover of the Church of *England*, and profeſs the ſame Faith; and *never had a Prejudice againſt any Churchman, but ſuch as promote the Intereſt of the Papiſts; for ſuch there are among them.* I confeſs, I have heard ſome Diſſenters, and have found them honeſt, juſt, and pious, free from Oaths and Debauchery, and unlike ſome, who call themſelves of the Church of *England*; and lead ſuch Lives, that no Credit can be gained to the Church by them. My Lord, I have been a hearty Man againſt the Papiſts, and for the Parliament, and am ſorry any Man ſhould create Miſunderſtandings between the King and Parliament: I always thought I ſerved my King, when I ſerved the Parliament; I had the Honour to be entruſted by them, and upon that Account, I came voluntarily down hither, at my own Expence; and ever ſince the Diſcovery of the Plot, have done my utmoſt to come at the Bottom of it; and have encouraged thoſe that diſcovered theſe Villanies, againſt the Life of the King, and againſt our Religion and Government: And, *Theſe Men who ſwear againſt me, are thoſe that uſed to follow me for Bread: They uſed to ſay, they thought it hard, when they came to ſave our Lives, we ſhould let them want Bread; and I have collected Money for them; and ſometimes they thought fit to petition the Common-Council for Relief; and pretended to me, they would make further Diſcoveries of the Popiſh Plot.*

The firſt Time I ſaw *Haynes*, was upon ſuch an Account, in *March* laſt: He ſaid, He would diſcover a Piece of Roguery, againſt Lord *Shaftesbury*'s Life; and I went with him and Captain *Brown*, from *Richard*'s Coffee-Houſe to the *Hercules' Pillars*; where he told us of the Deſign to deſtroy the Parliament at *Oxford*, and of an Army that was to land in the North, and another in *Ireland*, and the Duke of *York* was to head them. At another Time, *Haynes* came to me, under Pretence of diſcovering the whole Deſign, concerning *Godfrey*'s Murder; and ſaid, If Lord *Shaftesbury* would engage to get his Pardon, he would diſcover the whole Truth. When I acquainted Lord *Shaftesbury* with it, ſays he, Theſe *Iriſhmen* have confounded all our Buſineſs: Thou and I muſt have a Care, they do not put a Trick upon us: This may be a Trick of the Papiſts to ruin us. Afterwards they brought Mrs. *Fitzharris* to my Houſe, to confirm what they had told me; and *Haynes* ſaid in my Yard, that he ſaw Lord *Danby* come to the Chappel of *Somerſet-Houſe*, when *Godfrey*'s Body lay under the Altar.

Here the Court told him, He rambled from the Matter, and told long Stories, of what there was not a Jot proved, and was not at all pertinent.

Colledge anſwered, He thought it was to the Point, when that Man pretended a Familiarity with him, to ſhew how their Acquaintance began.

The Court bid him apply himſelf to ſum up the Evidence, and anſwer what had been proved againſt him; but ſaid, He muſt not be allowed to tell Stories, to amuſe the Jury, that were not proved. 1681. 33 Car. II.

Colledge ſaid, He did not know why his Oath, being an *Engliſhman* and a Proteſtant, ſhould not be taken, as well as his, that was an *Iriſhman* and a Papiſt.

The Chief Juſtice anſwered, He went upon a wrong Ground; that his Word was to be taken, but no Juſtice could be had againſt Malefactors, if their Words were to go for Proof of their Innocence.

Colledge demanded, How *Dugdale* knew, that by the Word *Rowley* he meant the King?

Whereupon *Dugdale* ſtood up again, and ſaid, That the firſt Time he heard what *Rowley* meant, was from the Priſoner, who told him, *Rowley* was the King, and *Mac* the Duke of *York*.

Colledge aſked, upon what Picture it was he explained *Rowley* to him? *Dugdale* anſwered, He had ſo many Pictures he could not remember; he received Pictures from him at *Richard*'s Coffee-Houſe, and at the *Green-Dragon* he thruſt one into his Pocket. *Colledge* demanding, What Picture it was he gave him then? *Dugdale* anſwered, He ſuppoſed, it was one about the Biſhops, where he made Biſhop *Mew* kiſſing the Pope's Toe; and told him, That was Biſhop *Mew* that had the Patch on.

Colledge denying he made the Libel, *Dugdale* avered, he told him, he was the Author of it.

Colledge then proceeded in his Defence; and ſaid, He denied he had that Diſcourſe with *Smith*, that he teſtified: And, as for his being in Company with Captain *Brown* and Don *Lewis*, they were Friends of the Lord *Howard*'s, with whom he came down to *Oxford*, and they lay at the *Chequer* where he did; and it had not been ſhewn they were in a Conſpiracy. His Defence continued.

The Court anſwered, He told the Witneſs at *London* they were ſuch Perſons. *Colledge* replied, He was not acquainted with either of them, a Fortnight before he came down: However, he deſired the Opinion of the Court, Whether what was done at *London*, could maintain an Indictment at *Oxford*?

The Chief Juſtice anſwered, That what he ſaid in *London*, was Evidence to maintain the Indictment at *Oxford*, and proved what his Intention was in coming down.

Colledge ſtill inſiſted, That what was done at *Oxford*, was ſupported only by a ſingle Teſtimony. The Court anſwered, That *Dugdale* and *Turbervile* both ſwore the ſame Thing; namely, That they had a Deſign to ſeize the King at *Oxford*: But if it was neceſſary, the ſame Thing ſhould be proved to be ſaid at the ſame Time, before two Witneſſes, the King would be very unſafe; for a Conſpirator would take Care, not to ſay the ſame Thing, before two Witneſſes, at the ſame Time.

Colledge replied, If the King was not ſafe in that Caſe, no private Man could be ſafe the other Way; all Society and Converſation was at an End: However, he thought the Teſtimony of theſe Witneſſes was invalidated, by ſubſtantial Perſons. He deſired the Jury would do him Right, as they would anſwer it at the great Day; and

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and conſider, whether there had not been ſome Occaſion for talking of late; and, whether, a Slip of the Tongue ought to be conſtrued a malicious and adviſed Speaking: He expected a Storm of Thunder from the learned Counſel, he ſaid: He was unlearned, and muſt defend himſelf without any Counſel; and queſtioned, whether this was the Practice of any other Nation: It was hard, that he, an illiterate Man, ſhould ſtand there alone all Day, and they, being many, and learned in the Law, ſhould take all Advantages againſt him: He took God to Witneſs, he was innocent, and hoped the Jury would neither be frightned nor flattered, but act according to their Conſciences: They were Judges, both of Law and Fact, and might acquit or condemn him; but his Blood would be required at their Hands: Concluding with a Prayer, that God Almighty would direct them to do him Juſtice.

Mr. Solicitor's Reply to his Defence.

To this Defence Mr. Solicitor replied, That the Fact charged upon Mr. *Colledge* was, a Deſign to kill the King: The Manifeſtation of that Deſign was, his preparing Arms for that Purpoſe; and coming down to *Oxford* to ſeize the King.——*Then Mr. Solicitor having ſummed up the Evidence, proceeded, and ſaid:* As to that Objection of the Priſoner's, that he had his Arms long before; they were not provided for this Purpoſe; Gentlemen, we do not pretend to know when this traitorous Deſign began, and how long it has been hatching: But, whether he prepared them againſt the Time, or not, is not material; for, if he had them firſt innocently, if he afterwards deſigned them for ſuch a Purpoſe, and ſhewed them in a Readineſs for it, That is Evidence ſufficient to prove the Treaſon. And it is proved, he ſaid, *He came down in Expectation ſomething would be done*; *and came down accordingly*, in an Equipage not ſuitable to his Profeſſion, armed, on Horſeback, with a Brace of Piſtols; Things that did not become a Carpenter or Joyner to travel with.

Here *Colledge* interrupted the Solicitor, and deſired he might not be overborne; for that there was ſcarce a Carpenter, or Poulterer, in *London*, but had Piſtols when he rode out.

But the Court telling him, he muſt not interrupt the Counſel, Mr. Solicitor proceeded, and ſaid,

As *Colledge* came down with an Intent to ſeize the King, and expected, what he called, *ſome Sport*; ſo he did endeavour to begin the Sport, by that Quarrel in the Lobby of the Houſe of Lords with *Fitzgerald*; for, from little Matters ſometimes great Things ariſe: And when Men, (as he himſelf ſaid,) were *poſſeſſed with an Expectation, that the Parliament would be attacked*, a little Matter might have begun the Commotion; and what End it might have had, no Man knew. As to that Objection, that this was a Popiſh Deſign to throw the Plot upon the Proteſtants; the Witneſſes who proved this Treaſon, were the Witneſſes that proved the Popiſh Plot; and ſtill ſtood to that Evidence: They were Men the whole Nation had given Credit to. Upon the Credit of *Dugdale* and *Turbervile*, the Commons impeached the Lord *Stafford*; and after a moſt ſolemn Trial, where all the Objections that could poſſibly be made, were made, the Lord *Stafford* was found guilty by his Peers, and died upon the Credit of theſe Men: And the Priſoner muſt not pretend to blow all off with that frivolous Objection, that theſe Perſons were engaged in a Deſign to throw the Plot upon the Proteſtants: And what ſort of a Proteſtant he was, (though he would have it believed he was ſo popular as to have obtained the Name of *The Proteſtant Joyner* for his Zeal) his Actions beſt diſcovered. If the Proteſtant Religion allowed a Man to vilify the King, to arraign the Government, and throw of all manner of Allegiance; then was the Priſoner a Proteſtant: But if Papiſts could wiſh no greater Infamy to the Proteſtant Religion, than that its Diſciples ſhould juſtify the late horrid Rebellion, and ſuch Principles as this Man, in his many ſcurrilous Libels, ſeemed to do; and wiſhed nothing more than to ſee this Kingdom in Confuſion, and the Church of *England* deſtroyed; Mr. *Colledge*, while he was acting this Part, had no Pretence to call himſelf a Proteſtant.

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As to *Oates*'s Teſtimony, who came to vilify the Credit of thoſe Men who ſupported his own Credit, by the Teſtimony they gave of the Popiſh Plot, that He ſhould urge theſe Calumnies, and take up thoſe very Arguments the Papiſts had maliciouſly made uſe off, and were never able to make out, looked as if the Doctor was returning to *St. Omers* again. Mr. Solicitor obſerved further, That the Priſoner, to prove himſelf a Proteſtant, had produced ſome Witneſſes to teſtify he went to Church ſixteen or eighteen Years ago; but he had not brought any of his Neighbours at *London*, to ſhew he went to Church there: But if he had ſhewn his Conformableneſs to the Church never ſo fully, yet, if he had been guilty of ſuch Practices, they muſt take leave to ſuſpect his Profeſſion; for they were ſuch as all good Men abhorred; and he could not but reflect upon his Condition, whoſe only Hopes were, that the Jury would now forget themſelves, and become as ill Men as he was: But, as that could not be preſumed, he ſhould only ſay, They were Men of that Conſideration, that they could judge between Things and the Appearances of them; and knew very well how to give the due Weight to the Evidence they had heard, as well as to the Objections that had been made by the Priſoner; and therefore left it to them.

Mr. Serjeant Jeffries's Obſervations.

Mr. Serjeant *Jeffries*, in his Obſervations on the Evidence, ſaid, That notwithſtanding what the Priſoner had ſuggeſted to the contrary, the Judges were Judges of the Law, as the Jury were of the Fact: And the Judges had told them, where Treaſon was committed in ſeveral Counties, if their Teſtimony concerned the ſame Treaſon, it was ſufficient; as had been reſolved in the Caſe of *Gavan*, who was tried in *London*, and Evidence given of Facts both in *London* and the Country: And, he left it to their Conſciences, Whether, upon the bare Affirmation of Mr. *Oates*, they would convict three Men of Perjury, upon whoſe Teſtimony ſo many Lives had been taken away; and juſtly too, as Proteſtants believed: That they had not only the poſitive Teſtimony of thoſe three Men to encounter, but the higheſt Improbabilities: For, it could never be

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be ſuppoſed, theſe Men ſhould all come voluntarily to Mr. *Oates*, and tell him, that they were forſworn, and ſuborned, to throw the Plot upon the Proteſtants, as *Colledge* would have them believe.

He hoped, the whole Proteſtant Intereſt was not involved in the Fortune of the Priſoner at the Bar: The Queſtion was not, Whether there was a Preſbyterian, or Proteſtant Plot; (they declared they knew of none:) But the Queſtion was, whether the Priſoner at the Bar had ſpoken ſuch Words, and done ſuch Things, as were ſworn againſt him.

And though ſuch a Stir had been made about Popiſh Witneſſes, and *Iriſh* Witneſſes, there had been but one *Iriſh* Man, and not one Papiſt, examined in the Cauſe; but if there had, God forbid, that the Country ſhould be any Objection to any Man's Teſtimony; or Truth confined to Places and Perſons.

The reſt of the Serjeant's Arguments, being much the ſame with thoſe of the Solicitors, are deſignedly omitted; it being intended to avoid Repetitions, as much as poſſible.

The Chief Juſtice's Directions to the Jury.

Then the Chief Juſtice directed the Jury, and told them, That the Charge againſt the Priſoner was, his compaſſing the Death of the King, and conſpiring to ſeize his Perſon; which was the ſame Thing in Effect: For, even by the Common Law, and upon the Interpretation of the Statute of 25 *Edw.* III. whoever ſhould imagine to depoſe the King, or to impriſon him, was guilty of imagining the Death of the King; for, never was any King depoſed, or impriſoned, but with an Intention to be put to Death.

That, as to the Proof of this Treaſon, there had been ſix Witneſſes: As to two of them, Sir *William Jennings* and Mr. *Maſters*, though they did not ſpeak directly to the Treaſon, yet their Teſtimony inferred a Probability of it: For Sir *Will. Jennings* telling him, he bled at the Noſe, after his Quarrel with *Fitzgerald*, the Priſoner ſaid, *He had loſt the firſt Blood, and it would not be long ere there would be more loſt:* Which ſhewed, there were ſome extraordinary Thoughts in his Heart, concerning ſome Quarrels and Fighting that he expected: And that which Mr. *Maſters* depoſed, concerning his juſtifying the Long Parliament; and, when he called him Colonel, ſaying, he might be a Colonel in Time, ſhewed there were ſome extraordinary Thoughts in his Heart.

Here *Colledge* demanded, If thoſe Words could not bear a more favourable Conſtruction?

The Chief Juſtice ſaid, He would have done well to have explained which way he expected to be a Colonel.

Colledge replied, He thought he had called him Couſin; and his Anſwer was, that Mocking was catching.

The Chief Juſtice proceeded, and ſaid, As to the other four Witneſſes, they were all of them very full, as to the Treaſon, if what they ſaid was true: And, he thought, the Queſtion would lie purely upon the Credit of theſe Witneſſes: And, as to *Dugdale* and *Turbervile*, who were the two moſt material Witneſſes of what was ſpoken and done in *Oxfordſhire*, he thought there was not any Thing material proved againſt them; and both they, and *Smith*, denied upon their Oaths, all that *Oates* had affirmed of them; and inſiſted ſtrongly on the Improbability, that theſe three Men, without any Inducement, ſhould come to *Oates*, and acknowledge themſelves perjured.

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Colledge then deſired his Lordſhip to look in his Notes, and he would find much more Evidence againſt *Dugdale* and *Turbervile*, than he had repeated: But the Chief Juſtice ſaid, he could remember no more; he muſt refer it to the Memory of the Jury.

Then *Colledge* deſired, that Nobody might be with the Jury; and was anſwered, Nobody ſhould come near them, till they were agreed on their Verdict; and a Bailiff was ordered to keep them; but before they went out of Court, they were ordered two Bottles of Sack for their Refreſhment, in the Preſence of the Priſoner: And after half an Hour's Receſs, the Jury returned with their Verdict, that he was GUILTY. At which there was a great Shout; and one Perſon was committed for hollowing, but diſcharged next Morning on his Submiſſion.

He is convicted.

It being about three in the Morning when the Court broke up, it was adjourned till ten the ſame Morning, when *Aaron Smith*, *Colledge*'s Solicitor, was bound in a Recognizance of 500*l.* to appear in the *King's-Bench* the next Term: After which, *Colledge* being asked, what he could ſay, why Judgment ſhould not paſs upon him, he ſtill made great Profeſſions of his Innocence.

The Chief Juſtice's Speech, before ten.

The Chief Juſtice anſwered, It was now too late to inſiſt upon his Innocence: But, becauſe he perſiſted in it, he thought it was neceſſary to ſay ſomething in Vindication of the Verdict. He obſerved, there were ſufficient Proofs to warrant it; and that the Jury had done juſtly: That, as the Priſoner had managed his Defence, a ſmall Proof would have ſerved to induce the Jury to believe him guilty: He thought it ſtrange, when he had called ſo many Witneſſes to his Religion and Reputation, that none of them gave an Account of his receiving the Sacrament for many Years; or had ſeen him at Church; or what kind of Proteſtant he was: If they obſerved his Words, indeed, they ſhewed, that he was mighty violent and zealous in crying out againſt Popery, and the Papiſts; but if they looked into his Actions, they promoted the Deſigns of the Papiſts. For the Papiſts were beſt extirpated, and ſuppreſſed, by a ſteady Execution of the Laws againſt them: Not by violent Outcries; by inflaming the People; by Tumults and Confuſions; for this was what the Papiſts drove at: They had no Hopes of creeping into the Kingdom any other way than by ſuch Confuſions; and after that Church ſhould be deſtroyed, which was, next under God, the beſt Bulwark againſt them.

In his loud Outcries againſt Papiſts, it had been proved alſo, who he meant by Papiſts: He had the Boldneſs to ſay, *The King was a Papiſt, the Biſhops were Papiſts, and the Church of* England *Papiſts*; which ſhewed, what kind of Proteſtant he was; and, if they ſhould look into his Politicks, it was proved, by unexception-

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1681. 33 Car. II. able Witneſſes, that he juſtified the late horrid Rebellion, and the Conſequence of that was, the Murder of the beſt King in the World: *He that would juſtify the Proceedings of that Parliament, and affirm, they did nothing but what they had juſt Cauſe to do, would do the ſame Thing, in the ſame Circumſtances.*

And how had he managed his Defence, as to that Part of the Charge, of his coming down armed to *Oxford* to ſeize the King? He expected he would have ſaid, he only wore thoſe Things for his own Defence, upon the Road, as a Gentleman travelling; or, that he went with his Friends, to accompany them out of Town, and defend them from Robberies; but to ſay, as he did in his Defence, *That he went to guard the Parliament*, he did not underſtand what he meant by it. He did not believe the Parliament ſent for a Guard, or intended to have a Guard: He did not believe, any of them in their Hearts thought they needed a Guard; for they ſaw, when the King diſmiſſed the two Houſes, on Account of their Differences, they all departed quietly; not a Man of them was diſturbed: And how it ſhould come into the Priſoner's Head, who was but a private Man, to go and guard the Parliament, he much wondered. *If all Men of his Condition, ſhould have gone down to guard the Parliament, what an Aſſembly had there been? What Confuſion might have happened on a ſudden?* He had urged indeed, that he was not a Man of Quality, nor was it likely, he ſhould be able to attack the King or his Guards; yet, if all of his Quality had gone upon the ſame Deſign, he did not know, what might have been the Conſequence; for *Maſſaniello*, a mean Man in another Country, had effected ſtrange Things, as *Wat Tyler* and *Jack Straw* had in our own.

When he obſerved theſe Things therefore, (he ſaid) and conſidered the Complexion of his Defence, it made a ſlender Proof have Credit: And though there was full Proof in this Caſe; yet, if there had been a great deal leſs, the Jury might, with Juſtice, have found him guilty: And, becauſe the Priſoner yet declared himſelf innocent of all he was charged with, he thought himſelf bound to take notice, in Vindication of the Country, and of the Juſtice of the Court, That it was a Verdict well-given, and to the Satisfaction of all the Judges on the Bench. This he ſaid out of Charity, that the Priſoner might incline his Mind to a Submiſſion to the Juſtice that had overtaken him, be in Charity with all Men, and prepare himſelf for another Life.

Then the Chief Juſtice pronounced the uſual Sentence in High-Treaſon; and he was drawn to the Place of Execution, before the Gate of the Caſtle at *Oxford*, on *Wedneſday* the 31ſt of *Auguſt*, 1681; where he made a very long Speech to the People: In which, he told them, He was *a Proteſtant of the Church of* England, *according to the beſt Reformation of it, from all Idolatry and Superſtition*, or any thing that was contrary to the Goſpel of our Bleſſed Saviour.

As to what he died for, he ſaid, He was never in any Plot, or knew of any, but the Popiſh Plot; nor had he any Deſign to have ſeized his Majeſty, either at *London* or *Oxford*, as had been ſworn againſt him; neither did he know any one Man, that would have ſtood by him, in ſuch an Attempt: He complained, he had been cloſe confined in the *Tower*, no one ſuffered to come at him, (though the Popiſh Lords had that Favour ſhewn them); and thus was rendered incapable of making a proper Defence.

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He took God to witneſs, he had ſought him ſeveral Times with Tears, to inform him, if he had tranſgreſſed at any Time, but in Word; declaring, That he had never heard of the Things ſworn againſt him, till he heard them from the Witneſſes Mouths at the Bar.

Then he took great Pains, to convince the World he was no Papiſt in Diſguiſe, as ſome had ſuggeſted; and ſaid, That *Haynes* the Witneſs, and ſome other *Iriſhmen*, did diſcover to him, *That the Parliament was to be deſtroyed at* Oxford; *and, That there was a Deſign to murder the Lord* Shafteſbury, *by* Fitzgerald *and his Party*: He wiſhed the Commons of *England* as well as he wiſhed his own Heart; and he did not underſtand but, when he ſerved the Parliament, he ſerved his Majeſty too; and let them be miſerable, that made the Difference between them; for his Part, he never did: He came to *Oxford* with Lord *Howard*, whom he looked upon to be a very honeſt worthy Gentleman, with Lord *Clare*, Lord *Paget*, and Lord *Huntingdon*; and Captain *Brown* and Don *Lewis* were in their Company, being Lord *Howard*'s Friends.

He took God to witneſs, he never had the Value of Six-pence to carry on any Deſign; *nor could he charge any Man living with a Deſign againſt the Government, his Majeſty, or any other Perſon.*

As to what Arms he and others had, they were for their own Defence, in caſe the Papiſts ſhould attempt a Maſſacre, or any Invaſion, or Rebellion. If this was a Plot, he was in one; but in no other; nor did he ever know of any Numbers, or Times, appointed for meeting; but they ſaid one to another, that the Papiſts had a Deſign againſt the Proteſtants, when they did meet, and in caſe they did riſe, they were ready: *This was his Buſineſs, and this was the Buſineſs of every good Subject, that loved the Laws of his Country and his King.*

The Sheriff demanding, What he meant by being of the beſt reformed Church in the World, the Church of *England?* and, Whether he died a Preſbyterian, an Independant, or a Churchman? He anſwered, He was under a Preſbyterian Miniſtry for twenty Years; namely, till the Reſtoration, and then he conformed; but afterwards ſeeing the Diſſenters hardly uſed, he went over to them again: However, he ſometimes went to Church.

The Priſoner having concluded his Speech and his Prayers, forgiven his Enemies, and eſpecially the Witneſſes, was executed according to the Sentence.

Remarks on Colledge's *Trial.*

The ſeizing a Priſoner's Papers, and denying him Counſel, I always held to be very great Hardſhips, very great Injuſtice: But it ſeems, all that were neceſſary for his Defence were returned, or put into a third Hand, by the Direction of the Court, that he might have the Benefit of them at his Trial; only a Speech that had been drawn up for him, and repleniſhed with Sedition and Slander, was ſuppreſſed.

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The Law, indeed, did not allow him the Advice of Counſel, either oral or written; and yet, it ſeems, the Court indulged him the Uſe of thoſe Papers, which directed him how to manage his Defence; a Favour, that I believe the Faction never allowed their Adverſaries, when they had any Influence on Affairs.

I muſt confeſs, I ſee no Reaſon, why a Priſoner ſhould not be allowed Counſel, Sollicitors, and all the Aſſiſtance imaginable, to defend himſelf; when the greateſt Lawyers are always employed to run him down, and make him appear as black as Hell, be he never ſo innocent.

The Preamble to the Act, which allows a Priſoner Counſel at this Day, obſerves, *that this was reaſonable*; and, as one obſerved, who was tried the Day before the Act took Place, If it would be reaſonable the next Day, it was reaſonable then; and indeed, if it was once reaſonable, it was always ſo: Nor could it be any more the Intereſt of the King and Government, that an innocent Man ſhould be put to Death, than that a Traitor ſhould be acquitted. All poſſible Means ought to be allowed, to come at the Truth, whether it make for, or againſt the Priſoner; and as the King's Council are ever employed to ſet the Priſoner's Words and Actions in the worſt Light; unleſs he be allowed Counſel, on the other hand, to put the beſt Conſtruction upon them, and prevent the Laws being ſtretched and wreſted to his Ruin, he ſeems to have but an indifferent Chance for his Life.

I am very ready to admit, that all thoſe Witneſſes againſt *Colledge*, who had been Witneſſes of the pretended Popiſh Plot, were a Pack of mercenary Raſcals, as well as *Oates*, *Bolron*, *Mowbray*, and ſeveral others, who appeared for the Priſoner at this Trial: But as their Teſtimony was confirmed by other Gentlemen, of unqueſtionable Credit; as *Colledge* actually came down to *Oxford* with others, who had *armed themſelves*, *to defend the Parliament*, as the Priſoner himſelf declared; as thoſe ſcandalous Ballads, Pictures, and Libels, were ſeized in his Houſe; and as he ſung thoſe Ballads, and explained the Deſign of the Pictures, in the moſt publick Places: As he diſtributed Ribbons, with the Motto, *No Popery*, *No Slavery*; plainly intimating, that the King and Court were about to ſubvert the eſtabliſhed Religion and Government: As he declared, that they armed themſelves againſt the Papiſts; and in the Pictures and Ballads, evidently ſhewed, that by Papiſts, they meant the King, the Miniſtry, the Biſhops, and all the Members of the eſtabliſhed Church: As the Witneſſes that ſwore againſt the Priſoner, had been his moſt intimate Acquaintance; Men, whom he had ſuborned to ſupport the Credit of the Popiſh Plot; and to ſupport whoſe Evidence, he actually appeared, as a Witneſs at Lord *Stafford*'s Trial: If all this be conſidered, no Man can make any Doubt of his Guilt; though many Particulars, the Witneſſes ſwore, ſhould be admitted to be falſe.

Far be it from me, to traduce any Man's Memory, or load him with Guilt, where his Crimes are not manifeſt to every impartial Man; nor would I endeavour to make him more criminal, than he really was: I am ready to admit, in Favour of this Man, that it is a Queſtion, Whether *he knew* himſelf guilty of High-Treaſon? He could not be ignorant indeed, of his ſaying and doing many Things, which the Law conſtrues Treaſon; but his Maſters, who ſet him to work, had furniſhed him with a Set of Notions for their Purpoſe, which proved the Ruin of the unhappy Priſoner: As, that it was lawful, nay, the Buſineſs and Duty of all private Men, *to arm themſelves in Defence of the Parliament*, againſt the King, even without their Orders, and before they declared themſelves to be in any Danger; notwithſtanding a late Act of Parliament then in Force, which declared, That if any one ſhould compaſs, imagine, or intend, the Death of the King, his Deſtruction, or any bodily Harm, any Reſtraint of his Liberty, or Impriſonment of him; or, if any ſhould deſign to levy War againſt him, and ſignify, and declare this, by writing, preaching, printing, or adviſed malicious ſpeaking; this ſhould be adjudged High-Treaſon: And, notwithſtanding another Act of Parliament, which declared, That it was not lawful for both, or either of the Houſes of Parliament; nor for the People, collectively or repreſentaively, to take up Arms againſt the King: And, if theſe Arms were not intended againſt the King, the Adminiſtration, and the eſtabliſhed Religion and Government; I muſt confeſs, I am at a Loſs to know, againſt whom they were intended; for all theſe were declared, by *Colledge* and the Faction, to be *Popiſhly affected*. *The Preſbyterians*, *and other Sectaries*, *were deemed the only true Proteſtants*; *nay*, *the only true Church of* England: *All the reſt were but Proteſtants in Maſquerade*, according to the frequent and publick Declarations of *Colledge* and the Faction. And as to that Objection of the Priſoner's, *What could he*, *a ſingle Man of no Figure*, *do towards ſeizing the King's Perſon*, *or attacking his Guards?* He has, in a great Meaſure, anſwered the Objection himſelf, when he acknowledges, many more armed themſelves, and came down to *Oxford*, with the very ſame View he did, namely, to guard and defend the Parliament, againſt the Encroachments of the Crown; nay, he avers at his Trial, that almoſt all Men had furniſhed themſelves with Arms at that Time; and that ſcarce a Carpenter or a Poulterer rode out of *London*, without a Caſe of Piſtols before him: And though he enlarged a little here, few Mechanicks *riding with Piſtols before them*; yet, this I can ſay, That, the Faction having alarmed the Nation with an Expectation of a general Maſſacre by the Papiſts; the Diſſenters, and a great many others, that did not ſee through the Artifice, had furniſhed themſelves with Pocket-Piſtols, and Bayonets, or Daggers; and even carried them to Church with them, to defend themſelves, in caſe of an Attack: And one of theſe deluded Men, when the Fright was over, actually preſented the Writer of theſe Sheets with a Brace of Pocket-Piſtols, which he had provided on this Occaſion; inſomuch, that I queſtion whether there were leſs than an hundred thouſand Men thus armed, as ſome of the Witneſſes depoſed. Let me add further, that it was the Opinion of *Colledge* and the Faction, That if his Majeſty refuſed to model his Miniſtry, as they directed, and make Laws for the Excluſion of a Popiſh Succeſſor, and ſecuring what they called *the Proteſ-*

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Proteſtant Religion; they might ſeize the King's Perſon, and compel him to ſubmit to their Demands.

And, ſuppoſing ſome thouſands of theſe Men, thus armed, and thus principled, had come down to *Oxford*, under Pretence of defending the Parliament, and the Proteſtant Religion, againſt *Papiſts*; and who had been taught, that the King, the Adminiſtration, and all the Friends of the Government, were of that Number; and in that Situation any Tumult, or Quarrel, had happened, and the *Whig-Leaders* had given out, that the Papiſts were about to fall upon them, and cut their Throats; whether the King's Life and the Government, had not been in imminent Danger; and whether any Thing leſs could have been expected, than another general Rebellion, equal at leaſt to that of 41. wherein many innocent People muſt have been involved, who did not yet ſee through the traitorous Deſigns of the Faction; and who, having drawn their Swords againſt the King, would have found it impracticable to deſert the Rebels, and return to their Allegiance with Safety; as was the Caſe of many in the former Rebellion.

It is not, therefore, only the Laws of this Realm, which make it High-Treaſon, in private Men, to aſſemble in Arms, to ſecure and reform the State, without the King's Authority, (much leſs againſt his Conſent); but it is impoſſible for any Government to ſubſiſt, if this be allowed: Nor is there a Republick in Chriſtendom, but would have condemned ſuch Subjects as Traitors, who ſhould have taken Arms with ſuch Views as theſe.

If it be ſaid, It was hard to hang a Man for ſuch Facts, when he did not know them to be Treaſon; it may be anſwered, If this were an Excuſe, then no Man could ever be convicted of Treaſon: Every Man might pretend, that he did not know what Treaſon was. Here were Acts of Parliament lately made, declaring, That no Perſons whatſoever, had any Coercive Power over the King; and his not knowing it, did not make the Fact ever the leſs treaſonable. That very Perſuaſion, that he acted according to Law and Goſpel, in compelling the King to yield to the Demands of the Faction, rendered it neceſſary to make an Example of him: If ſuch Attempts had been ſuffered to go unpuniſhed, it would have been impoſſible to preſerve the Government, or prevent another Rebellion. And I make no manner of Doubt, but the ſteady Proſecution of this Man, and thoſe of his Principles, at that Time, did actually prevent their breaking out into open Rebellion; for the Malcontents were never better prepared for one; no, not in 41.

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I ſhall conclude with obſerving, that even the Uſurpers, in the Year 1649, made it High-Treaſon to traduce and arraign their Adminiſtration: And if ſo, ſurely the Faction can never have the Face to ſay, That their Champion, *Colledge*, had hard Meaſure in being condemned for High-Treaſon, who made it his *Buſineſs* to calumniate and aſperſe his lawful Sovereign, in order to render him odious and contemptible to his People, and incite another Rebellion; and actually took up Arms againſt him.

The Words of the Uſurper's Ordinance, which paſſed in the Year 1649, were, *That* "Whereas "the Parliament had aboliſhed Kingly Govern- "ment, and reſolved that the People ſhould be "governed by their own Repreſentatives; *It was thereby enacted, That whoſoever ſhould maliciouſly publiſh, by writing, printing* &c. *that the ſaid Government was tyrannical, uſurped, or unlawful, and not the Supreme Authority; or ſhould plot, or endeavour to ſtir up, or raiſe Forces againſt the preſent Government, for the Subverſion thereof, or againſt the Keepers of the Liberties of* England, *or the Council of State, or any of them, ſhould be deemed guilty of High-Treaſon.*"

1681. 33 Car. II. Bethel's Trial.

The Trial of SLINGSBY BETHEL, Eſq; for an *Aſſault and Battery* on ROBERT MASON, at the *Bridge-Houſe* in *Southwark*, *October* the 5th, 1681, 33 *Car.* II.

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The Charge.

THE Indictment charged the Defendant, *Slingsby Bethel*, Eſq; with an Aſſault and Battery on the ſaid *Robert Maſon*, on the 12th of *March* laſt, and with uſing theſe threatening Words to the ſaid *Maſon*, (viz.) *Sirrah, I will have your Coat pulled off your Back.*

Opened by the King's Counſel.

The King's Counſel, Mr. *Holt*, in opening the Indictment, obſerved, That in *March* laſt there was an Election for two Burgeſſes to ſerve in Parliament for this Borough of *Southwark*; and, that the ſaid *Robert Maſon* was deſired to come from *Lambeth*, to ſee if any of that Pariſh came to poll, who had not a Right to vote: That the Candidates were Sir *Richard Howe*, Capt. *Rich*, the ſaid *Slingsby Bethel*, and *Edw. Smith*, Eſq; That *Bethel* ſtruck ſeveral Perſons that acted againſt him, and particularly this *Maſon*; and knowing him to be the King's Waterman, ſaid, He deſerved to have his Coat plucked over his Ears; and had the Waterman ſtruck him again, a great Tumult had enſued; but he prudently refrained, and had taken his Courſe in a legal way: And though *Bethel* was a great Man, lately Sheriff of *London*, and *Robert Maſon* but a poor Waterman, he did not queſtion, but an *Engliſh* Jury would do him Right.

The Evidence.

The Witneſſes being called, *Robert Maſon* depoſed, That as he was ſtanding on the Stairs, going up to the Poll, the Defendant ſtruck him twenty Blows, at leaſt, with his Cane, and told him, he would pluck his Coat over his Ears; and that he replied, ſo he would his Maſter's if he could: That he afterwards ſtruck him (*Maſon*) ſeveral Blows with his Fiſt, on the Breaſt.

Adams,

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Adams, a Conſtable, alſo depoſed, That he ſaw the Defendant ſtrike *Maſon* three Shugs (or Blows) on the Breaſt, and heard him ſay, *Sirrah, I will have your Coat off your Back*; and that *Maſon* anſwered, *Ay*; *and ſo you would my Maſter's, if you could*: And that, when *Bethel*'s Party came in, they cried out, *No Abhorrers, No Abhorrers.*

Walbroke, a third Witneſs, made Oath, That he ſaw *Bethel* thruſt the ſaid *Maſon* down the Stairs, and give him two or three Puſhes on the Breaſt.

Smith, another Witneſs, depoſed, That *Bethel* brought a Multitude of People with him; bid *Maſon* come down the Steps, and puſhed him on the Breaſt: And two or three Witneſſes more depoſed to the ſame Effect.

Bethel's Defence.

Bethel, the Defendant, on the other Hand, brought ſeven or eight Witneſſes, who depoſed, That they were at the Election, and ſaw no Blows given by Mr. *Bethel*; but that he ſaid to *Maſon*, *Friend, what haſt thou to do here? Haſt thou any Right to poll? Pray go about your Buſineſs*; and gently led him down the Steps: Which the Defendant's Counſel inſiſted, was lawful; *Maſon* having no Right to poll; and only coming to hollow, and make a Diſturbance, in Behalf of the other Candidates. But the Court obſerving to the Jury, that the Battery was well proved, they found the Defendant *Guilty*.

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Bethel's Counſel afterwards moving in Arreſt of Judgment, That no Indictment lay for the Words; the Court ſtayed the Judgment, as to that Part of the Indictment: And as to the Aſſault and Battery, fined the Defendant five Marks, which he paid before he went out of Court: The King's Counſel moving, that he ſhould be taken into Cuſtody, till it was paid.

He is convicted, and fined.

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Lord Shaftesbury's Caſe.

Proceedings againſt ANTHONY Earl of *Shaftesbury*, for *High Treaſon*, at the *Seſſions* at the *Old Baily*, *Nov.* 24th, 1681. 33 *Car.* II.

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THE Grand Jury being ſworn, among whom were Sir *Sam. Barnardiſton* (Foreman) *Tho. Papillon*, *John Dubois*, *Humphry Edwyn*, *Michael Godfrey* (Brother to Sir *E. Godfrey*) *Thomas Shepherd*, and ſeveral more of the ſame Stamp, the Lord Chief Juſtice *Pemberton* gave them their Charge. Wherein he obſerved, That the Statute of 25 *Edw.* III. had aſcertained what ſhould be deemed Treaſon: But that the Statute of the 13th of his preſent Majeſty, had gone ſomething farther, being levelled particularly againſt the Principles and Practices of ſuch Perſons as had cut off his Father's Head, and maintained a dangerous War againſt himſelf, to the utter Ruin and Extirpation almoſt of his Majeſty, the Royal Family, and his faithful Subjects.

The Charge of the Chief Juſtice to the Grand Jury.

That, by this laſt Act, the very *Intention* of levying War was made Treaſon; which was not ſo before: And the very *Deſigning* to deſtroy the King, to put a Force upon him, or reſtrain him of his Liberty, though not manifeſted by Overt-Acts, were made High-Treaſon, if this was evident from Words only; which was not held to be ſo before: And this was done, to prevent ſuch ſeditious and licentious Diſcourſes, as were the Occaſion of the late Confuſions.

That, as to the Bills to be brought before them, they were to conſider, if the Matter in them were Treaſon within either of the aboveſaid Statutes: And if there were two Witneſſes to treaſonable Words, ſpoken at one, or different Times; and if, by the Evidence produced, there was *probable* Grounds, to call the Perſons accuſed to an Account, That was as much as the Law required, to induce them to find the Bill.

That it was equally a Crime to acquit the Guilty, as to charge the Innocent: That they were under a double Obligation of doing Right, 1. As they were Members of one great Body, or Society, of which the King was the Head: And 2. as they were under an Oath, to go according to their Evidence.

Then a Bill of High Treaſon being exhibited againſt the Earl of *Shaftesbury*, the King's Counſel moved, that the Evidence to the Grand Jury might be given publickly in Court.

Moved, That the Evidence might be given openly in Court.

To which the Chief Juſtice anſwered, That this, being deſired to prevent any falſe Reports concerning the Evidence for the King, could not be denied: Whereupon the Jury deſired a Copy of their Oath, and withdrew; and being returned, the Foreman inſiſted, that it was *their Right* to examine the Witneſſes in private: And beſides, they were ſworn to keep the King's Secrets; which, he obſerv'd, they could not do, if the Examination was publick.

Oppoſed by the Grand Jury.

The Chief Juſtice replied, This was not their Right: The original Practice was otherwiſe; and it was ſtill every Day's Practice in Term Time: The Evidence to the Grand Jury was heard in Court, if deſired: He never knew it denied. As to their keeping their Counſels, that related to their Debates; and, where the King himſelf diſpenſed with the Privacy, and deſired the Examination might be publick, they could be under no Manner of Obligation to conceal it.

Their Objection answered.

The Jury ſtill objecting, That a publick Examination might prejudice the King's Affairs, and give Delinquents an Opportunity of getting out of the Way; the Court anſwered, The King's Counſel, who had already examined the Witneſſes, beſt knew that; and if they were not ſatisfied, it could be no Prejudice to the King's Affairs, they would not have deſired the Examination to be publick.

Laſtly, the Jury deſiring, that it might be recorded, that *they inſiſted on their Right of Examining*

1681. Car. II. *mining Witneſſes privately*; the Court anſwered, they were not to record what every Man deſired. However, they need not fear but there would be Witneſſes enough of their Demand.

Mr. Sheriff *Pilkington* then deſiring, that the Witneſſes might be kept out of Court, and called in one by one; the Court told him, A Sheriff had nothing to do to move Things of that Nature: However, the King's Counſel were not afraid of having their Witneſſes ſeparately examined.

The Bill of Indictment. Then the Indictment was read in *Engliſh*, which ſet forth, That *Anthony* Earl of *Shafteſbury*, late of *St. Martin's in the Fields*, in the County of *Middleſex*, did, on the 18th of *March*, in the 33d Year of his preſent Majeſty, and at divers other Days and Times, at the Pariſh of St. *Mary le Bow*, in the Ward of *Cheap*, *London*, traitorouſly compaſs and imagine the Death of the King, and the Subverſion of the Government, and to levy War againſt his Majeſty; and, to effect the ſame, did provide and prepare ſeveral armed Men; and did traitorouſly meet and conſult with *John Booth*, and others, the King's Subjects, how to effect the ſame; and did adviſe and perſuade them, to be aiding and aſſiſting to him in his ſaid traitorous Purpoſes: And that, he did, at the Day and Place aforeſaid, traitorouſly and maliciouſly, aſſert and declare, That in a ſhort Time the Parliament was to meet at *Oxford*; and he, having inſpected the Elections, and conſidered the Diſpoſitions of the Generality of the Members, was ſatisfied the Parliament would inſiſt upon three Matters; namely, The Bill of Excluſion againſt the Duke of *York*; the aboliſhing the 35th of *Elizabeth*; and the paſſing a New Bill, for the uniting Proteſtants; with divers other good Bills: To which he, the ſaid Earl, ſaid, he was certain the King would refuſe his Aſſent; and, therefore, he expected there would be a Diviſion between the King and Parliament: and, that many Noble Lords, and worthy Members of the Lower Houſe, did concur in the ſame Opinion; and were reſolved to inſiſt on paſſing thoſe Bills: And, if the King refuſed, they had provided a Strength to compel the King to grant them. And, for his Part, he (the ſaid Earl) had provided ſtout Men to be commanded by Capt. *Wilkinſon* (of whom the ſaid *John Booth* was to be one): And, that the ſaid Earl did, at the Time and Place aforeſaid, declare, That the King was a Man of no Faith; there was no truſting him; he deſerved to be depoſed, as well as *Richard* II. And, that he, the ſaid Earl, would never deſiſt, till he had brought this Kingdom of *England* to a Commonwealth, without a King: They would live as in *Holland*; and the King and all his Family ſhould be rooted out: Adding, That the King was falſe, unjuſt, and cruel to his People; and if he would not be governed by his People, he, the ſaid Earl, and the ſaid other falſe Traitors, would depoſe him.

The Witneſſes being called, The Clerks of the Council, and the Secretaries of State, firſt proved, that an Aſſociation was found, locked up in the Earl of *Shaftesbury*'s Study, of the following Tenor (*viz.*)

" I *A. B.* do, in the Preſence of God, ſolemn-
" ly promiſe, vow, and proteſt, to maintain

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" and defend, to the utmoſt of my Power,
" with my Perſon and Eſtate, the true Prote-
" ſtant Religion, againſt Popery, and all Po-
" piſh Superſtition, Idolatry, or *Innovation*,
" and againſt all thoſe who do or ſhall endea-
" vour to ſpread or advance it within this King-
" dom. I will alſo, as far as in me lies, main-
" tain and defend his Majeſty's Royal Perſon and
" Eſtate; *as alſo the Power and Privilege of*
" *Parliaments*; *the lawful Rights and Liberties*
" *of the Subject*, *againſt all Encroachments of Ar-*
" *bitrary Power whatſoever*; *and endeavour en-* *They vote, to disband the Kng's Guards.*
" *tirely to disband all ſuch mercenary Forces as*
" *we have reaſon to believe were raiſed to ad-*
" *vance it*; *and are ſtill kept up in and about the*
" *City of* London, *to the great Amazement and*
" *and Terror of the good People of the Land*".

By the next Clauſe, they declare, " They *To exclude the Duke of* York.
" will, by Force, exclude the Duke of *York*,
" and all that are popiſhly affected, from the
" Crown: And laſtly, they ſay, *We do promiſe*
" *and vow*, *before God*, *with our joint and parti-* *They transfer their Allegiance to a Majority of the Conſpirators.*
" *cular Forces*, *to follow ſuch Orders as we ſhall*
" *from Time to Time receive from this preſent Par-*
" *liament*, *while it ſhall be ſitting* (*or the major*
" *Part of the Members of both Houſes*, *ſubſcrib-*
" *ing this Aſſociation*, *when it ſhall be prorogued*
" *or diſſolved*); *and obey ſuch Officers as ſhall by*
" *them be ſet over us*, *in the ſeveral Counties*, *Ci-*
" *ties*, *and Boroughs*, *until the next Meeting of*
" *this*, *or another Parliament*; *and then will ſhew*
" *the ſame Obedience and Submiſſion to it*, *and*
" *thoſe who ſhall be of it*."

The aboveſaid Aſſociation having been read in open Court, Mr. *Booth* was called, and depoſed,

Booth's Evidence againſt Lord Shafteſbury. That he was introduced to the Lord *Shafteſbury*, in *January* laſt, by his Friend, Capt. *Henry Wilkinſon*. The Captain had been an old Royaliſt, and ſerved his Majeſty, and his Father, in the late Wars; but miſſing the Preferments and Rewards he expected from the King, was become a Malcontent, as he (the Witneſs) alſo was; and they often diſcourſed, *at Lord Shaftesbury*'s, of the proroguing of the Parliament, the Diſappointments of the People, and their Fears of Popery, and Arbitrary Power: And that they had a continual Club; and converſed together near three quarters of a Year: That his Lordſhip uſed to inveigh ſharply againſt the Times; and did not think himſelf regarded and preferred, as he ought to have been; and expreſſed his Fears of Popery, and Arbitrary Power.

That, when the Elections came on, they had a weekly account of ſuch Members as were choſen, and conſidered their Inclinations, and Diſpoſitions: And his Lordſhip ſaid, The Parliament that was to ſit at *Oxford*, would inſiſt on the ſame Things the other Parliaments had done; particularly, they would never grant the King Money, or aſſiſt him, unleſs he gave the People Satisfaction in thoſe Things they inſiſted on before, (*viz.*) The Bill of Excluſion: The Repeal of the 35th of *Elizabeth* (againſt Conventicles); and paſſed a new Act, to exempt Diſſenters from the Penal Laws.

If the King would paſs ſuch Acts, and ſome other wholeſome Laws for their Security, he believed they would grant him Money for his neceſſary Occaſions: But, if he refuſed this, his

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Lordſhip believed there would be a Breach between the King and Parliament.

That the Reaſon of appointing the Parliament to meet at *Oxford*, was, that the Court might over-awe them: That his Lordſhip and ſeveral other Peers, judged it dangerous to go to *Oxford*, where the Guards, the Retinue of the Court, and the Scholars, who uſually inclined to the Crown, might over-awe them; and therefore they thought it was fit they (the Parliament) ſhould have Guards ſent down thither; and accordingly, his Lordſhip had eſtabliſhed about fifty Men, Perſons of Quality, that he believed would have Men along with them: That he had entruſted Captain *Wilkinſon* with the Command of theſe Men, and they were to be at *Oxford* at a certain Time; and, if there happened to be a Breach between the King and Parliament, or any Violence offered to the Members, theſe Men, and others that were provided by other Lords, were to repel Force by Force, and purge the Guards of all the Papiſts and Tories: They were likewiſe purge the King's Council; and particularly to remove the Earl of *Worceſter*, the Lords *Clarendon*, *Halifax*, and *Feverſham*, and Mr. *Hyde*, as dangerous Perſons, who were ſuppoſed to adviſe the King againſt what the Parliament urged him to: And it was reſolved to bring the King to *London*, and have Things ſo eſtabliſhed, as might preſerve them from Popery and Arbitrary Power.

That after theſe Debates, Captain *Wilkinſon* deſired the Deponent to be one under his Command, and to provide himſelf, and his Man, with Horſe and Arms, which the Deponent did in *March* laſt, before the Parliament met at *Oxford*: That enquiring at *London* afterwards, how Things went on at *Oxford*, they found it to be as Lord *Shaftesbury* had foretold; but did not imagine, they would have been ſo ſoon diſſolved: That on the *Thurſday* before the Parliament was diſſolved, Captain *Wilkinſon* told the Deponent, he expected a Summons that very Week, to go to *Oxford*, with thoſe Men that were liſted under him: But News coming to Town on *Saturday*, of the Diſſolution of the Parliament, nothing was done.

The King's Counſel demanding, If he had any Diſcourſe with Lord *Shaftesbury*, after Captain *Wilkinſon* ſpoke to him; Mr. *Booth* anſwered, That the firſt Motion for fifty Men to be Lord *Shaftesbury*'s Guard, came from Captain *Wilkinſon*; but afterwards, he heard the Lord *Shaftesbury* diſcourſe of it himſelf, at his own Houſe.

Turbervile's *Evidence.*

Turbervile depoſed, He heard Lord *Shaftesbury* ſay, There was little Good to be had of the King, while his Guards were about him: That if it was not for them, they would ſoon go down to *White-Hall*, and obtain what Terms they ſaw fit.

Smith's *Evidence.*

Smith depoſed, He had been often at Lord *Shaftesbury*'s, and frequently heard him ſpeak irreverently of the King; ſaying, He was a weak, inconſtant Man, and led by the Noſe, as his Father was, by a Popiſh Queen: That his Lordſhip once ſent Captain *Manley* for the Deponent, and the Captain found him at Mr. *Bethel*'s Club, at the *Queen's-Arms* in *Newgate-Street*; and that he, (the Deponent) immediately attended my Lord, who deſired him to manage the *Iriſh* Witneſſes, and perſuade them not to go near that Rogue *Fitzgerald*, who was maintained by the King; and that he went accordingly to thoſe Witneſſes, who promiſed they would not go near *Fitzgerald*.

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That a little before the Parliament met at *Oxford*, he heard Lord *Shaftesbury* ſay, They were more reſolute than ever; for they ſaw plainly, the King aimed at bringing in Popery; and they had this Advantage, if he offered them any Violence, (as they expected he would,) that they had the Nation for them: They might lawfully oppoſe him, and he would meet with a very ſtrong Oppoſition; for all that came out of the Country, would be well horſed, and armed; and that, old as he was, he would oppoſe it to his Power: That the Deponent obſerving, this would engage the Nation in another Civil War; and that they ſhould either make an End of Monarchy, or enſlave the Nation to Popery for ever; his Lordſhip anſwered, No Doubt of one; but they were ſure the Nation was on their Side: Adding, That the Deponent knew how the City were; and wherever they ſtruck, he were ſure the Nation would. Some other Witneſſes depoſed, They had heard Lord *Shaftesbury* ſpeak ſcandalouſly of the King: That he took the ſame Courſes, which brought his Father's Head to the Block; and they would bring his thither: That he deſerved to be depoſed, as much as ever King *Richard* II. did, *&c.* Theſe laſt Witneſſes were *Iriſhmen*, who depoſed, they had been a great while maintained and ſupported by the Lord *Shaftesbury*, (who would have made them Witneſſes of the Popiſh Plot, and *Godfrey*'s Murder.)

Queſtions put by the Grand Jury, to the Court and the Witneſſes.

The Evidence for the King being concluded, the Grand Jury withdrew, to conſider what Queſtions they ſhould ask the Witneſſes: And being returned, demanded, on what Statute the Indictment was founded; and were told, that it was founded both on the 25 *Edw.* III. and the Thirteenth of his preſent Majeſty; and upon all other Statutes that made it High-Treaſon to conſpire againſt the King; for it concluded *contra formam Statut'*, which might be underſtood, *Statuti*, or *Statutorum*.

Then the Jury demanded, If the Witneſſes were indicted; but were told, the Proofs concerning the Credibility of the Witneſſes, were not properly before them: That was to be conſidered by the Petty Jury, at the Trial; where the King might be heard, to defend the Credit of his Witneſſes, if any thing was objected againſt them: They were only to conſider, whether there was treaſonable Matter atteſted by two Witneſſes, who, *prima facie*, were to be deemed credible; unleſs they, of their own Knowledge, knew the contrary.

The Jury afterwards endeavoured to confound the Witneſſes, by putting ſeveral captious Queſtions to them; but they ſtood to their Teſtimony, and anſwered very clearly and pertinently: Whereupon they were ſo inſulted and abuſed by the factious Mob, that they were ſeveral Times forced to deſire the Protection of the Court; and the Chief Juſtice let Sheriff *Pilkington* know, that if they received any Hurt, he ſhould be anſwerable for it; but he did not ſeem very ready to afford them any Aſſiſtance.

At length *Papillon*, and the reſt of the Malcontents upon the Grand Jury, having browbeaten and baited the King's Witneſſes, as long

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as they ſaw fit; the Lord Chief Juſtice *North* told them, They had beſt go and conſider of their Evidence, Whether it was fitting for the King to call the Lord *Shaftesbury* to Account for Treaſon? Obſerving, that one of the Ends of the Aſſociation, found in his Study, was, to deſtroy the mercenary Forces about *London* and *Weſtminſter*, and to put the Government into the Hands of a Majority of the Members of Parliament, without the King: Nor was this to be done by Act of Parliament, according to the Tenor of that Paper.

The Jury return Ignoramus.

The Jury withdrawing, returned ſome time afterwards into Court, with an IGNORAMUS; at which the factious Mob hollowed and ſhouted, as if they had gained a notable Victory. The ſame Night, Bonfires were made in the City, and the Air rung with the Cries of, A MONMOUTH, A SHAFTESBURY, A BUCKINGHAM.

Remarks.

The Sheriffs, being of Lord *Shaftesbury*'s Faction, had taken care to have a Grand Jury of their own Party; Men, they were morally ſure, would ſcreen and favour the Earl, if they were not Accomplices in his Treaſons.

The Chief Juſtice ſeems to have forgot himſelf, when he ſays, a Conſpiracy to levy War, or to impriſon the King, and put Reſtraints upon him, were not Treaſon, before 13. *Car.* II; for the Reader will obſerve, that at ſeveral Trials in this Work, the Judges have been of Opinion, That a Conſultation or a Conſpiracy to levy War, or put any Reſtraint upon the King, are, either of them, an Overt-Act of compaſſing and imagining the King's Death, by 25 *Edw.* III.

The true Reaſon why the Grand Jury would have examined the Witneſſes privately, it is evident, was, to cover their own Diſaffection; and that the World might not ſee what Grounds there were for charging the Earl and his Faction with High-Treaſon: The Aſſociation found in his Study, in which the Party agree to ſeize on the King's Guards; to transfer their Allegiance to others, and compel the King to model both Church and State, as the Faction ſhould direct, was certainly Foundation ſufficient for them to have found the Indictment, and put the Earl upon his Trial, had the Jury themſelves been entirely innocent; but what could be expected from Men that were involved in the ſame Crimes?

Booth's Evidence, who had been a Malcontent, and engaged in the Conſpiracy, to ſeize and put a Force upon the King, was unanſwerable; and ſhews, that the Deſigns of the Party were conformable to what had been vowed in the Aſſociation found in the Earl's Study. And we find there were five or ſix Witneſſes more, which charge him home with levying Forces, and appointing them to rendezvous at *Oxford*; and of his threatning to depoſe his Majeſty, if he refuſed to be governed by them, which was Treaſon, by the Thirteenth of this King, if it was not by the Statute of 25 *Edw.* III: And all this Evidence is a ſtrong Confirmation of *Colledge*'s Guilt, who was convicted and executed for the ſame Treaſons.

As to that Objection, that ſome of the Witneſſes were of the *Iriſh* Nation, it may be anſwered, that ſeveral of them were not: And moſt of the Witneſſes, even thoſe of *Ireland*, were ſuch as the Lord *Shaftesbury* himſelf had picked up, ſubſiſted and maintained, to make them Evidence againſt other Men, of their being concerned in the Popiſh Plot and *Godfrey*'s Murder; in which Service, their being of the *Iriſh* Nation was no Objection to their Credit; and if the Party did really think they ought not to be credited, they can never excuſe their putting to Death Dr. *Plunket*, and ſeveral more upon the like Evidence: But further, as theſe Men were Dependants and Agents of Lord *Shaftesbury*, no Wonder they ſhould have heard him talk freely of the King and Government: He muſt uſe ſome Freedoms with them, in order to debauch them from their Allegiance, and form them for the ſeditious and traitorous Purpoſes he deſigned them. And, would any Grand Jury at this Day, refuſe to find a Bill, where Treaſon was poſitively ſworn by ſeven or eight Men, *Engliſh* as well as *Iriſh*, becauſe ſome of the Witneſſes were of the *Iriſh* Nation? Is Truth confined to any one Nation or Set of People? Or could the Faction lay a better Claim to our Belief, than the *Iriſh*? If the Saints had any Reaſon to reject the Teſtimony of thoſe Gentlemen, it muſt be, becauſe they knew they had ſuborned them to ſwear falſly againſt other Men they knew to be innocent; at leaſt, much more innocent than they knew their Friend the Earl to be. And, as the Court rightly inſiſted, if the Evidence had not been ſufficient to have induced his Peers to have convicted him upon Trial, it was however abundantly ſufficient to put him upon his Trial, and ſee what he could ſay in his Defence: And indeed we find, his Lordſhip, after his Friends the *Whig* Sherriffs, were out of Office, and he could not expect another packed Grand Jury, durſt not abide a freſh Enquiry into his Conduct; but fled to *Holland*, from the Hand of Juſtice.

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Nor were the City, or the Nation in general, even at that Time, entirely ſatisfied of the Earl's Innocence, notwithſtanding this Grand Jury had returned an *Ignoramus*; for, it appears, that Addreſſes immediately came from all Parts, expreſſing their Deteſtation of this Aſſociation; and promiſing to ſtand by his Majeſty, with their Lives and Fortunes, againſt theſe Enemies of Monarchy and the Conſtitution.

The Juſtices of Peace for *Middleſex* particularly take Notice, That his Majeſty's Enemies were neither ſo numerous, or ſo formidable, as they were by ſome pretended to be; and deſired his Majeſty, ſince he had now no Cauſe to fear them, he would never be prevailed on to truſt them again.

In the Addreſs from the Lawyers of the *Temple*, they ſay, They thought themſelves obliged by their Profeſſion, to declare their Senſe of that execrable Paper (found in Lord *Shaftesbury*'s Study,) purporting a traitorous Aſſociation: That it was their Opinion, it contained groſs and apparent Treaſons, more manifeſtly tending to the Ruin of his Majeſty's Dominions, than the old hypocritical SOLEMN LEAGUE AND COVENANT.

The City of *Briſtol*, in their Addreſs, declare their Abhorrence of all *Covenants and Aſſociations* whatever, without his Majeſty's Approbation; eſpecially that Treaſonable one found in the

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Earl of *Shaftesbury*'s Closet: Wherein *The securing the Protestant Religion, and the Defence of the King, was the Pretence; but the Subversion of the Established Religion, and the final Destruction of his Majesty, and his lawful Successors, was the real Design.*

I shall conclude my Remarks on this Proceeding, with observing, That the *Whigs* of those Days thought the King's Guards alone, though not near so numerous as they were in succeeding Reigns, an unlawful Force, and destructive to the Constitution; as appears by the abovesaid Association, and their repeated Conspiracies about that Time, to disband and break them, in Defiance of their Sovereign.

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Argyle's Trial.

The Trial of ARCHIBALD Earl of *Argyle*, for *High-Treason*, at *Edinburgh*, the 12th of *December*, 1681. 33 *Car.* II.

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A Test having been established in *Scotland*, to be taken by all Persons on their Admission to any Office or Place in the Government, the Earl of *Argyle* took it as a Privy-Councillor, the third of *November*, having first declared his Sense, and given this Explanation of it, *(viz.)* "That he had considered the *Test*, "and was very desirous to give Obedience as "far as he could. He was confident the Par-"liament never intended to impose contradic-"tory Oaths; therefore he thought, no Man "could explain it, but for himself; and ac-"cordingly he took it, as far as it was "consistent with itself, and the Protestant Re-"ligion: But he meant not to bind up himself "in his Station, and in a lawful Way to wish "and endeavour any Alteration, he thought to "the Advantage of Church and State, or re-"pugnant to the Protestant Religion, or his "Loyalty. And this I understand as a Part of "my Oath.

His Explanation of the Test.

The Earl coming the next Day, to take the Test again, as one of the Commissioners of the Treasury, produced a Paper; containing the Explanation, with which he had taken the Test the Day before; and refusing to take it simply, without that Explanation, he was committed to the Castle of *Edinburgh*, and ordered to be prosecuted, as the Author of that Paper, by his Majesty's Advocate: And an Indictment was preferred against him; setting forth, That notwithstanding his Majesty had bestowed on the said Earl a vast Estate, which was forfeited to his Majesty by the Earl's Father; and also had pardoned and remitted to the present Earl, the Crimes of Leasing-making, and misconstruing his Majesty's and the Parliament's Proceedings, for which he had been condemned to die; raised him to the Dignity of an Earl, *&c.* yet he had not only refused to take the Test in the genuine Sense, but had declared against and defamed the Act that required the taking of it; and to corrupt others, had drawn up his Sense of it in a Libel, and dispersed Copies thereof, in order to make ill Impressions on the People: That by his declaring in that Libel, *He had considered the* Test, *and was desirous to give Obedience, as far as he could; he insinuated, he was not able to give full Obedience:* By his saying, *He was confident, the Parliament never intended to impose contradictory Oaths*, he would induce the People to believe the Parliament had been so impious and ridiculous as to impose contradictory Oaths: That by affirming, *Every Man must explain it for himself, and take it in his own Sense*, all Oaths and Laws were rendered useless. And by his saying, *He took the* Test *so far only, as it was consistent with itself, and the Protestant Religion*, he maliciously intimated to the People, That the Oath was inconsistent with itself, and the Protestant Religion; thereby misrepresenting his Majesty and the Parliament, in the highest Degree: And by declaring, *That he did not mean, by taking the said* Test, *to bind up himself from wishing and endeavouring any Alteration in a lawful Way, that he should think fit, for advancing of Church and State*, he did, by his Example, invite others to think themselves loosed from that Obligation, and teach them to make any Alteration, either in Church or State, as they should think fit. And, that by his Conclusion, *(viz.) This I understand as a Part of my Oath*; he invaded the Royal Legislative Power, making an Act of Parliament to himself; for he who could make any Part, might make the Whole.

The Charge against him.

The Earl being brought to his Trial, before the Earl of *Queensberry*, Lord Justice-General, and the Lords *Nairn*, *Collingtoun*, *Forret*, *Newtoun*, and *Kirkhouse*, Lords of the Justiciary, on the 12th of *December*, Sir *George Lockhart*, his Advocate, entered upon his Defence, and said, The Words laid in the Indictment, being offered before a publick Judicature, only to explain the Earl's Meaning, could not be interpreted a Leasing-making with any seditious Intent; or infer any Crime, although he was mistaken in his Opinion concerning the Act of Parliament; whether his Scruples were just, or groundless, they cast no Reflection on the Act of Parliament: That, in the Explication, he did no where directly charge the Oath and Test with Inconsistency and Contradiction; this was made out only by Implication and Inference, and violently wresting his Words: That his asserting, *The Parliament never intended to impose contradictory Oaths*, was an high Vindication of the Honour and Justice of the Parliament: And these Words, *He was ready to give Obedience as far as he could*, did not import, the Parliament had imposed an unlawful Oath; but only shewed the Earl's Doubtfulness and Scrupulosity in the Matter. As to those Words, *I think Nobody can explain it but for himself*; they imported no more than, that every Man ought to take it in that Sense,

His Defence by Counsel.

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The King's Advocate's Anſwer to it. His Majeſty's Advocate, in Anſwer to this Plea, ſaid, That to ſecure the Government againſt the Rebellious Principles of the laſt Age, and the unjuſt Pretext of this; and to ſecure the Proteſtant Religion, and the Crown, the King had called a Paliament, wherein this excellent Teſt was made, as a Security againſt the old juggling Principles of the COVENANT; wherein they ſtill ſwore to ſerve the King in their own Way. But the Earl, by his Paper, had diſcovered a Way to evade the Teſt, ſo as no Man ſhould be bound by it: For, if a Man ſhould ſwear to obey only as far as he could, and as far as he conceived it conſiſtent with the Proteſtant Religion, and with itſelf, and reſerved to himſelf a Power of making any Alteration he ſhould think conſiſtent with his Loyalty, what Man could be bound? The Government muſt be as inſecure as before the Act was made: The Taker was no farther obliged than he pleaſed; but every Man's Conſcience (which in this Age included Humour and Intereſt) muſt be the Rule of the Taker's Obedience.

It was the Opinion of all Lawyers, and Divines, That every Oath was to be taken according to the Intention of him to whom it was made; nor was there any Danger to a tender Conſcience, in this Caſe, ſince there was no Force put upon the Earl: He took it to qualify him for a Place; and might have abſtained.

That the Earl was plainly guilty of contravening the Act of the 10th of *James* VI. which prohibited the writing of any Thing whereby his Majeſty's Government might be reproached, or his Proceedings miſconſtrued, ſo as to create a Diſlike between the King and his People. For, by ſaying, *He took the Oath only, as far as it was conſiſtent with itſelf, and the Proteſtant Religion*; it muſt neceſſarily be concluded, that in ſeveral Inſtances, it was inconſiſtent with itſelf, and the Proteſtant Religion; and nothing could be a greater Reproach to the Parliament, or a greater Ground of Miſlike among the People: And, whereas, it was ſaid, theſe were only Inferences; it was anſwered, There were ſome Offences, which the Law could only forbid in general; and there were many Inferences as ſtrong and natural, and which reproached more effectually than the plaineſt Defamations in the World. Direct Reproaches had not wounded the King ſo deep, as the many ſeditious Inſinuations of this Age and the laſt. 1681. 33 Car. II.

From the Earl's Paper, it muſt be inferred, That the Parliament had made a very ridiculous Oath, inconſiſtent with itſelf, and the Proteſtant Religion: That was the natural Tendency of the Words; they would admit of no other Senſe. And ſhould a Man be permitted, under Pretence of exonerating his Conſcience, to defame the Government? Had they not ſeen the King moſt defamed by COVENANTS, entered into on Pretence to make him A GREAT AND GLORIOUS KING? by Remonſtrances, on Pretence of preſerving the Proteſtant Religion, and his ſacred Perſon? Thoſe of the laſt Age declared, *They thought themſelves bound in Duty to obey the King, as far as that could conſiſt with their Regard for the Proteſtant Religion, and their Laws and Liberties:* Which rendered all the reſt ineffectual.

And, as it was Treaſon to endeavour any Alteration of the Government, either in Church or State, by a private Perſon; This the Earl was juſtly charged with: For he did not ſay, ſuch Alterations as the King ſhould think fit; or were conſiſtent with the Laws and Statutes of the Realm; but, *ſuch as he ſhould conceive to be lawful:* So that he was the ſole Judge, and his Loyalty to be the Standard. Nor did the Covenanters of the laſt Age, or the Rebels executed in this, deny they ought to obey the King: But they inſiſted, they ought to obey him no farther, than as his Commands were conſiſtent with the Laws of God and Nature, and with the COVENANT: And, when they were aſked, Who ſhould be Judge of this? They ſtill made themſelves the Judges; and there lay the Treaſon. They ſeemed to tread in the Steps of their rebellious Progenitors; whoſe great Error was, that they thought themſelves, and not the King, Judges of what Reformation was wanting in Church and State.

Reply of the Earl's Counſel. Sir *John Dalrymple*, another of the Earl's Advocates, replied, Where a Man was bound to take an Oath, if he gave in an Explication of the Senſe which he in his private Judgment apprehended to be the genuine Meaning; if his private Senſe did not agree with the Legiſlator's Senſe, then he that had Power to adminiſter the Oath, ought to reject him, as not fulfilling the Intent of the Law: But the Party could incur no other Penalty, than what was impoſed on the Refuſer; which, in this Caſe, was no more than the Loſs of his Office. It was admitted, that the aſſuming a Power to make Laws, was treaſonable; but though the Earl declared his Explanation to be Part of his Oath, he never meant to impoſe it as Part of the Law.

As to thoſe Words, *I do not mean to bind up my ſelf in my Station, and in a lawful way to wiſh and endeavour any Alteration*, &c. This Clauſe was ſo far from being treaſonable, that every good Subject ought to ſay as much. The Words, *lawful Way*, ſhewed, that by Alterations could not be underſtood treaſonable Alterations; but ſuch Alterations as the Frailty of

1681. 33 Car. II. human Affairs and Conſtitutions, and the Viciſſitude of Things conſtantly require in the moſt complete Forms of Government.

It was a rational Proſpect; for, if every Thing were done, at preſent, that could be done for the Security of Religion, or Government, there might occur Caſes hereafter that might require new Remedies, and Alterations.

And what Affront was it to the Government, that the Parliament had impoſed an Oath which the Earl was not able to take ſimply? He had not written or ſpoken againſt it; but only was not able to diſcern the Grounds on which it might be ſimply taken; which rather implied want of Senſe, than any Crime: As to the laſt Words, *So far as it is conſiſtent* &c. he meant no more, than that the Parliament did not deſign to impoſe Contradictions; and therefore ſaid, I take the Teſt as conſiſtent: And it muſt be conſiſtent, if the Parliament did not impoſe Contradictions; as certainly they did not.

King's Advocate rejoins.

The King's Advocate replying again upon the Earl's Counſel, ſaid, He was not to be puniſhed for refuſing, but for defaming the Oath: If he had ſimply refuſed it, the Government had been in no Hazard: But he would retain his Places, and take the Teſt in ſuch Words as gave the Government no Security: It was his defaming the Law, as ridiculous and inconſiſtent with the Proteſtant Religion, and creating Miſunderſtandings between the King and his People, that put the Earl in a worſe Condition than he that ſimply refuſed. Had the Earl only reſerved a Power of propoſing to his Majeſty any Alterations, or of concurring with his Majeſty in any Alterations, he might have done this very innocently; but giving himſelf that general Liberty, of *wiſhing and endeavouring any Alteration he ſhould think fit*, was the Crime: Nor, would the Word *lawful* make the Matter better; for the greateſt Rebel in *Scotland* would bind himſelf to a lawful Obedience, *provided he might be judge of the Lawfulneſs*. The Covenant itſelf had not only the Words above-cited; but they called the World to be the Witneſſes of their Loyalty and Sincerity.

As to riſing in Arms, or oppoſing a lawful Succeſſor, not a Covenanter in *Scotland* but would ſay, *He would not do either, but in a lawful Way; and in his Station; and as it was conſiſtent with his Loyalty*: But when they came to explain this, they would only do it as they thought fit: They would be Judges themſelves; declaring, that defenſive Arms were lawful; and, that no Prince ought to ſucceed to the Throne, unleſs he ſubſcribed the Covenant.

And whereas it was ſaid, the Earl did not deſign to add to the Law, but to his Oath only; he anſwered, Since the Oath was Part of the Law, adding to the Oath was adding to the Law.

The Court agree the Fact to be Treaſon. A Jury ſworn.

The Court ſuſtaining the Libel, or Indictment, as to the Treaſon, the Jury were ſworn, conſiſting of the *Marquis of* Montroſe, *(Foreman) the Earls of* Middleton, Airlie, Perth, Dalhouſie, Roxburgh, Dumfries, Linlithgow; *the Lords* Lindoors, Sinclair, Bruntiſland; *and the Lairds of* Goosford, Claverhouſe, Balnamoon, *and* Park-Gordon.

The Witneſſes being called, depoſed, that they ſaw the Earl give in the aboveſaid Explanation of the Teſt in Writing, which he refuſed to ſubſcribe: And then the Aſſiſe, or Jury, withdrawing, to conſider of the Evidence, returned ſoon after, and unanimouſly (or with one Voice, according to the *Scots*) found the Earl GUILTY of the Crimes of Treaſon, Leaſing-making, and Leaſing-telling. 1681. 33 Car. II. *The Evidence.* *The Earl convicted.*

The Sentence, however, being deferred till his Majeſty's Pleaſure was known; the Earl made his Eſcape in the mean Time, and went up to *London incognito*; and from thence into *Holland*; from whence returning to *Scotland* in a hoſtile Manner, in the next Reign, he was taken in the Field in actual Rebellion, and beheaded: For the Lords of Juſticiary had paſſed Sentence of High-Treaſon on him ſoon after he fled, *viz.* on the 23d of *December* 1681. And he was executed, in purſuance of that Sentence, on the 30th of *June*, 1685, at *Edinburgh*. *He makes his Eſcape.* *Sentence paſſed on him in his Abſence.*

Inſtead of any Remarks of my own, I ſhall entertain the Reader with the Account Doctor *Sprat*, late Biſhop of *Rocheſter*, gives of this Tranſaction, in his *Narrative of the* Rye-Houſe *Plot*; who ſays, "No ſooner was the Parliament of *Scotland* adjourned, but the Earl of *Argyle*, firſt at *Edinburgh*, next in traverſing ſeveral Shires, made it his chief Buſineſs to inſinuate every where, the moſt malicious Prejudices imaginable, againſt the whole Tenor of the Teſt; and, on his Return to *Edinburgh* again, declared, he would either not take it at all, or, with a Reſerve of his own Explanation, which he put in Writing, and diſperſed: The Contrivance of it being ſuch, as diſſolved all the Obligations of the Oath; and made his own preſent Fancy, and private Opinion, the only Standard whereby he meant to be guided, in all the publick Duties of his Loyalty and Allegiance. *Remarks on Lord Argyle's Trial, by Biſhop Sprat.*

"At length, his Majeſty's High Commiſſioner, the Duke, and the Privy Council of that Kingdom, having been well informed of the Earl's ſeditious Carriage, in City and Country, and being fully confirmed, in their Judgments and Conſciences, of his traitorous Purpoſes, in that fallacious and equivocating Paraphraſe on the Teſt, which he owned in their Preſence, perverting thereby the ſound Senſe, and eluding the Force of his Majeſty's Laws, in order to ſet the Subjects looſe from their Obedience; and to perpetuate Schiſm in the Church, and Faction in the State: Upon theſe Grounds he was deſervedly proſecuted before the Sovereign Juſtice Court; and, after a full and equal Trial, found guilty of Treaſon by the learned Judges, and a Jury, not only of his Peers, but many of them his neareſt Relations: And, although the King was far from any Thought of taking away his Life; and no farther Prejudice was deſigned him, but the Forfeiture of ſome Juriſdictions, and Superiorities, which he and his Predeceſſors had ſurreptitiouſly acquired, and moſt tyrannically exerciſed; beſides the Diſpoſal of Part of his Eſtate to pay his Creditors, and ſome few Donatives to thoſe, he and his Father had formerly ruined for their Fidelity to his Majeſty; the Surpluſage was de-

"ſigned

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" ſigned to return and deſcend to his Family : " But the Earl, abuſing the great Freedom that " was indulged him in Priſon, which he enjoyed " as largely after Conviction as before, fled from " his Majeſty's Mercy ; the Knowledge of his " Guilt not ſuffering him to venture on that " Clemency, whereof he had participated ſo " plentifully, when he was under a former Sen- " tence of High Treaſon.

" The King, however, notwithſtanding this " new Provocation, ſtill retained the ſame be- " nign Thoughts of favouring his Wife and " Children ; and, before it was known that the " ſaid Earl had more Debts on his Eſtate than " the full Value amounted to (which really was " his Caſe), his Majeſty was pleaſed to give " three Times as much of the Inheritance to his " Poſterity, as his Father could lawfully have " done, if it had never been forfeited.

" But how ill he deſerved or requited ſo ma- " ny Acts of Grace and Bounty, appeared by " his future Conduct, after his Eſcape: For, in- " ſtead of doing what his Accomplices and Depen- " dants gave out he intended, *viz.* That he would " humbly caſt himſelf at his Majeſty's Feet, and " implore his Pardon ; he was no where to be " found, but aſſociating with his Majeſty's im- " placable Enemies : In the Head of new " treaſonable Conſpiracies : Employing his Li- " berty Abroad, in maintaining traitorous Cor- " reſpondencies at Home : With reſtleſs Ma- " lice exciting the Malcontents, of both King- " doms, to a fatal Union againſt the Life, Go- " vernment, and Family of his Sovereign and " Benefactor.

" All which might be proved againſt him by " Arguments as clear as the Sun ; by his own " authentick Letters ; and by the Depoſitions " of his principal Agents. (*The fatal Effects " whereof, to himſelf, have been already men- " tioned*)."

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1681. 34 Car. II. Coningſmark's Trial.

The Trial of CHARLES-GEORGE BOROSKI, CHRISTOPHER VRATZ, JOHN STERN, and CHARLES-JOHN Count CONINGSMARK, for *Murder*, at the *Old Baily, London, Feb.* the 28th, 1681. 34 *Car.* II.

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The Indictment.

THE Indictment charged the three firſt, with making an Aſſault on *Thomas Thynn*, Eſq; on the 12th of that inſtant *February*, when the ſaid *Boroski* ſhot the ſaid *Thynn* with a Blunderbuſs, loaded with four Bullets, giving him thereby four mortal Wounds in his Body, of which he languiſhed till the 13th inſtant, and then died ; and the ſaid Count was charged, with procuring the ſaid three Perſons to commit the ſaid Murder.

A Jury of Aliens and Denizens.

The Priſoners, being all Foreigners, were tried by a Jury, half *Engliſh* and half Foreigners ; and the Indictment and Evidence interpreted to them.

The Evidence againſt the Principals.

The Evidence being called, *William Cole*, Mr. *Thynn*'s Footman, was ſworn, and depoſed, That as his Maſter was riding in his Coach from the Counteſs of *Northumberland*'s, on *Sunday*, about eight in the Evening, being the 11th or 12th of this Inſtant *February*, he (the Deponent) ran before the Coach with a Flambeaux in his Hand ; and, at the lower End of *St. Alban*'s-*Street*, hearing a Blunderbuſs go of, he looked back, and ſaw a great Smoke ; and heard his Maſter, Mr. *Thynn*, cry out, he was murdered ; and ſeeing three Horſemen riding away from the Right Side of the Coach, he (the Deponent) purſued them, crying out Murder, to the upper End of the *Hay-Market*.

William Ellers, Mr. *Thynn*'s Coachman, depoſed, That driving his Maſter from the Lady *Northumberland*'s, in *St. James*'s-*Street*, three Men came riding by the Right Side of the Coach, at the End of *St. Alban*'s-*Street*, and one of them turned about, and ſaid, Stop, you Dog : And as the Deponent was looking about, the Fire was let into the Coach, upon his Maſter ; and the Men ran away.

Hobbs, the Surgeon, depoſed, He was ſent for to Mr. *Thynn*, about nine on *Sunday* the 12th of *February* in the Evening, and found him ſhot with four Bullets, which entered his Body, tore his Guts, wounded his Liver, Stomach, and Gall, broke one of his Ribs, and the great Bone below ; and that he died of thoſe Wounds, every one of them, as he believed, being mortal.

The Coroner alſo depoſed, That he ſat on the Body of Mr. *Thynn*, and found it wounded with Bullets, as the Surgeon had ſworn.

The three Principals confeſs the Fact.

This Evidence being interpreted to the Priſoners, *Boroski* ſaid, he could not tell how many Bullets were in the Blunderbuſs ; he did not charge it, though he fired it ; he received it from Capt. *Vratz*.

Vratz acknowledged his giving the Blunderbuſs to *Boroski*, and *Stern* confeſſed he bought it by the Order of *Vratz* : That they both aſſiſted in loading it, and were preſent when *Boroski* fired at Mr. *Thynn*.

Vratz being aſked, What Affront Mr. *Thynn* had given him ; he ſaid, He heard he had ſpoken ſcandalouſly of the Count, who was his Friend, and a Man he had many Obligations to ; and therefore he (*Vratz*) took the Quarrel upon himſelf, and challenged Mr. *Thynn* to fight, which he refuſed ſeveral Times ; whereupon he (*Vratz*) took the other two Men with him, to oblige him to fight ; and to make his Eſcape afterwards : He confeſſed alſo, he ſtopped the Coach ; but ſaid, *Boroſki* fired by Miſtake ; for he bid him not fire, unleſs he ſhould be hindered from fighting, or making his Eſcape.

Boroſki, on the other hand, ſaid, *Vratz* ordered him to fire, as ſoon as he ſtopped the Coach.

Stern

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Stern confeſſed *Vratz* told him, he had a Quarrel with a Gentleman, and if he would aſſiſt him, he would make his Fortune: That the Captain told him alſo, he would give two or three hundred Crowns, to find a Man that would kill Mr. *Thynn*; and before *Boroſki* came over, the Captain deſired him to get an *Italian* to ſtab a Man.

The Evidence againſt the Count.

Then the Witneſſes againſt Count *Coningſmark* were called: And firſt *Hanſon*, Tutor to the young Count, depoſed, That the Count (the Priſoner) came into *England* about a Month before, and lodged firſt at a Corner-Houſe in the *Hay-Market*; where he ſtaid a Week, keeping his Chamber all the Time: Nor was he known to the Family where he lodged; but went by the Name of *The Stranger*: That he took a ſecond Lodging, two or three Streets from the former, where he ſtaid but two Days, becauſe the Chimnies ſmoked; and removed from thence to *St. Martin's-Lane*, where he kept himſelf private, as in his other Lodgings: That he ſaw Captain *Vratz* at the Count's Lodgings ſometimes, who came into *England* with him.

The Counſel demanding, If he did not carry a Meſſage from the Count, to the *Swediſh* Envoy? *Hanſon* anſwered, No direct Meſſage: But the Count having told him, he heard Eſq; *Thynn* had ſpoken abuſively of him, he would fain know, what would be the Conſequence, if he ſhould call him to an Account; and ſeemed deſirous to have the Opinion of the *Swediſh* Envoy; whereupon he, (the Deponent) mentioned it to the *Swediſh* Envoy; who anſwered, If the Count meddled with Mr. *Thynn*, he would have but bad Living in *England*; but what the Law was, in that Caſe, he could not ſay.

The Counſel then aſked him, If there was any thing in that Meſſage, about marrying my Lady *Ogle*: *Hanſon* anſwered, The Count enquired, If he ſhould call Mr. *Thynn* to an Account, and have an Advantage of him; whether the Laws of *England* would be any Bar to his or Pretenſions on my Lady *Ogle*.

Then the Counſel aſked *Hanſon*, when he ſaw *Boroſki* firſt? He anſwered, He came to him at the *French* Academy, to enquire for Count *Coningſmark*, the *Friday* before the Accident happened: That the Count expected him ſometime before, and thought he had been caſt away in a Storm: He ſaid, he was an able Man, and underſtood Horſes; and he had a Mind to buy *Engliſh* Horſes, and deſigned this *Boroſki*, the *Polander*, ſhould look after them, and dreſs them after the *German* Way.——That *Boroſki* came to the Deponent again the next Day, being *Saturday*, and he went with him to the Count's Lodgings; who aſking him where he had been, *Boroſki* anſwered, He had been toſſed about upon the Sea; and the Deponent left him at the Count's Lodgings.

The Counſel demanded, What Directions he had about providing *Boroſki* with a Sword? *Hanſon* anſwered, He had Directions the ſame Day, to get him a great Coat and a Sword; and he provided them accordingly.

John Wright being ſworn, the Counſel aſked him, When *Boroſki* the *Polander* came to *England*? He anſwered, On *Friday*, the Tenth of this Month; and that he went with him to the young Count (Brother of the Priſoner)'s Lodgings at the Academy, where *Boroski* delivered a Letter to Mr. *Hanſon*; and he was ordered to have the *Polander* thither again next Morning, which he did, and never ſaw him afterwards. 1681. 33 Car.

Dr. *Frederick Harder* being ſworn, depoſed, That Captain *Vratz* lived with Count *Coningſmark*, and came over to *England* with him; and that, about a Month ago, *Vratz* came to the Deponent, and told him, The Count want-to ſpeak with him; and he went to him at his firſt Lodgings, the Corner of the *Hay-Market*. The Counſel demanding, if the Count went by his own Name, or was in a Diſguiſe; the Doctor anſwered, He deſired to be private, becauſe he was taking Medicines, and would not have it known: He deſired therefore, to be called by the Name of *Carlo Cuski*; and as for a Diſguiſe, he had a black Whig on. *(I think the Count uſually wore his own Hair.)*

Several Witneſſes depoſed, That the Count lived privately in his Lodgings: That Captain *Vratz* lodged with him ſometimes; and Dr. *Harder* uſed to viſit him.

Watts, a Boy, depoſed, That he came to live with the Count ten Days before the Death of Mr. *Thynn*: And that *Sunday* Evening the Fact was done, Captain *Vratz* came to his Lord's Lodgings, as he was waiting below Stairs, and did not come down again, before he, (the Deponent) went Home, for he lay at his Father's

That the *Polander* was at his Lord's Lodgings, on *Saturday* before the Murder, and dined with the other Servants; and on *Sunday* a Sword was delivered to him, and he went away that Morning, with a Pair of Boots and the Sword under his Arm, having a new Coat on; and it appeared, the *Polander* had a Buff Coat under his Great Coat.

Watts the Boy farther depoſed, That he came to his Lord's Lodgings, the *Monday* Morning after Mr. *Thynn* was killed, and he was packing up his Things; and his Father, who was a Porter, carried away two Portmanteaus for him; and that the Count had a black Peruke on, when he went away.

Watts, the Father, depoſed, That he carried two Portmanteaus to the *Windſor* Coach for the Count, about nine on *Monday* Morning, being the Day after Mr. *Thynn* was killed.

Raynes a *Swede*, depoſed, That the Count lay at his Houſe at *Redriff*, from the *Monday* after Mr. *Thynn* was killed, to the *Thurſday* following; when he was carried by a Skuller to *Deptford*, the next Day to *Greenwich*, and the Day after to *Graveſend*.

Then two of the King's Meſſengers were ſworn, who depoſed, That they took the Count as he was landing at *Graveſend*, the *Sunday* after the Murder; and that, when they ſeized him, he gave a ſudden Start, and his Whig fell off: That they carried him before the Mayor of *Graveſend*, and afterwards to an Inn in the Town; where he ſhewed himſelf under great Concern, when he was told, the Captain and the *Polander* had confeſſed ſome Particulars; and ſaid, It was a Stain upon his Blood; but one good Action in the Wars, or lodging on a Counterſcarp, would waſh all that away.

Count

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The Count's Defence.

Count *Coningsmark* ſaid in his Defence, That he came into *England* with a Deſign to raiſe a Regiment to ſerve the King againſt the *French*: That he had already ſerved the King at *Tangier*, when this *Polander* attended him; and that he deſigned, at that Time, to bring him to *England*, to dreſs his Horſes after the *German* Way; and had actually ſent over a thouſand Piſtoles to buy Horſes, which the young Count atteſted.

That he had a Diſtemper broke out in his Arms and Breaſt, which obliged him to live privately, till he was cured: And beſides, his Equipage was not come over, and he could not appear like a Man of Quality, till it arrived.

That he never had any Quarrel with Mr *Thynn*; or ever ſaw him, to the beſt of his Remembrance: That he provided the *Polander* with a Coat, becauſe he was in Rags; and the broad Sword was no more than what Servants of his Bulk and Make uſually wore: And for his Buff Coat, he had it before.

That the Reaſon he withdrew, was, becauſe he was afraid the People would pull him to Pieces; they ſeeming to ſuſpect he was concerned in the Fact.

Obſervations of the Counſel on the Evidence.

Sir *Francis Wimington* then made his Obſervations on the Evidence for the King, and ſaid; As to the Principals, they had confeſſed the Fact: But could any rational Man believe, from the Account they gave themſelves, that they had any Delight in killing that innocent Gentleman? There muſt be ſome other Reaſon for committing that barbarous Murder: And the Count was a very unhappy Man to have ſuch a Relation to the Principals; two of whom, *Vratz* and the *Polander*, were of his Lordſhip's Family; and *Vratz* was with him on that very Evening the Fact was committed, even after it was done. And it made it the more ſuſpicious, that the Count ſhould provide *Boroski* with a Sword and Boots that very *Sunday* Morning he murdered Mr. *Thynn*; and that the *Polander* ſhould go from the Count's Lodgings with a Buff Coat under his Great Coat, and never return till the Fact was committed.

The Court and the Jury might obſerve what a kind of Creature *Boroski* was; how likely to do any thing of that kind, being at the Command of ſo great a Perſon. It was obſervable alſo, the Witneſſes were moſt of them the Count's Friends, unwilling to declare the Truth, till it was with Difficulty drawn from them: And where ſhould a Man go for the Original of this Buſineſs? Could any one think it was contrived by the three Principals? To what End or Purpoſe? What Advantage could it be to them? He muſt ſay, he knew no where to go for the Author of this villainous Fact; nor whom to accuſe as the prime Contriver of it, but the Count. *At which the People ſhouted.*

Mr. *Williams* alſo made his Obſervations on the Evidence; and, beſides the Remarks made by Sir *Francis*, took Notice, That *Hanſon*, his Brother's Tutor, acknowledged that the Count talked of requiring Satisfaction of Mr. *Thynn* on the Lady *Ogle*'s Account; and enquired what might be the Conſequence of it: Nor had the Count given any rational Anſwer, as to his lurking and hiding himſelf, ever ſince he came to *England*. He pretended, indeed, to labour under a Diſtemper which he would not have diſcovered; and yet, the next Morning after the Fact was done, he valued neither Diſeaſe nor Phyſick, but went by Water, and attempted to fly beyond Sea. And could any Man believe, when *Vratz* came over with him, lodged with him, and was every Day in familiar Converſation with him; and came the Morning before, and in the Evening immediately after the Murder, and ſtaid with the Count a conſiderable Time, that his Lordſhip could be perfectly innocent? Would not any Man conclude him acceſſary to the Murder? And as to his pretended Fears of the People to excuſe his Flight, he knew he might, without Danger, have ſurrendered himſelf to a Magiſtrate, and been protected, if he had been innocent.

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Directions of the Chief Juſtice to the Jury.

The Chief Juſtice then gave his Directions to the Jury; and obſerved, That where one Man ſhoots another, and two are with him, who came on Purpoſe to countenance the Fact, it was Murder in them all. That *Vratz* and *Stern* acknowledged themſelves to be at the Murder; but ſaid they only came to fight a Duel with Mr. *Thynn*: For *Vratz* made that his Excuſe, *That he intended to kill him fairly*; and the other two were to ſtand by to ſee him make the beſt of it. So that they all came with a murderous Intent, and a Murder followed, and conſequently the three Principals were all guilty of Murder.

As to Count *Coningsmark*, the Queſtion was, Whether he commanded, or gave any Direction, to have the Murder committed? for without that he could not be an Acceſſary.

If a Gentleman has an Affront given him, which he ſeems to reſent; and any of his Servants officiouſly, without acquainting him with it, will go and kill the Perſon they apprehend has affronted their Maſter, without his Knowledge, he is not guilty: And if they believe he did not know of it, till after it was done, they muſt acquit him.

The Principals convicted.

Whereupon the Jury, after half an Hour's Receſs, brought in the three Principals GUILTY; but acquitted the Count, who was ordered, however, to enter into a Recognizance with three Sureties, to appear the next Seſſions, and anſwer any Appeal that might be brought by Mr. *Thynn*'s Relations.

The Count acquitted.

The Principals condemned, and executed.

The other three being brought to the Bar again, and asked what they had to ſay why Sentence of Death ſhould not be paſſed upon them; *Vratz* inſiſted, he had not had a fair Trial: And *Stern* ſaid, it was for Captain *Vratz*'s Sake he was concerned in the Fact. And as to *Boroski*, he did not pretend to make any Apology for the Murder, looking upon himſelf to be under an Obligation of obeying his Superiors without reſerve. Whereupon Sentence of Death was pronounced upon the Principals by the Recorder, the Judges being gone off the Bench. They were all three hanged in *Pall-Mall*, the tenth of *March* following: And *Boroski*, who fired the Blunderbuſs, was afterwards hanged in Chains near *Mile-End*.

1681. 34 Car. II. *Remarks.*

As Mr. *Thynn* was looked upon to be of Lord *Shaftesbury*'s Party, they gave out, at first, that this was another Branch of the Popish Plot, and that a general Massacre was still to be expected from the Papists: But the Matter soon appeared to be no more than a Love-Affair; and that Mr. *Thynn* had been murdered by some of the Servants or Dependants of Count *Coningsmark*, who had been his Rival when he courted the Lady *Ogle*, of which Mr. *Echard* gives us the following Account, (*viz.*)

Joscelin late Earl of *Northumberland*, of the Family of *Percy*, dying in the Year 1670, left no Issue but the Lady *Elizabeth*, his Daughter and sole Heir (at the time of his Death, about four Years of Age) who being a great Fortune, was, in her Minority, married to *Henry* Earl of *Ogle*, Son and Heir to the Duke of *Newcastle*; who dying soon after, left her a Virgin Widow. After which, many People of the first Quality made their Addresses to her; and among the rest Count *Coningsmark*, whose Pretensions, it is said, were countenanced by the King: But the young Lady, by her Grandmother's Contrivance, was married privately, the Summer before this Accident happened, to Mr. *Thynn*, a Gentleman of ten thousand Pounds a Year Estate; who had been a Member of several Parliaments, and made some Figure both within the House, and out of it: But, whether the Lady herself did not approve of the Match, or was put upon it by others, she privately went over to *Holland* in *Michaelmas Term*, 1681, before Mr. *Thynn* had ever been in a Bed with her.

Whereupon it was said a Suit would be commenced, concerning the Validity of the Marriage; and that the best Civilians were retained in the Cause, on one Side or other. And in the mean time Count *Coningsmark* came over *incognito* into *England* (as appears by the preceding Trial) and Mr. *Thynn* was murdered by his Servants, in the Manner above related, about a Month after his Arrival: And the King ordering the Ports to be stopped, and strict Search made for the Murderers, the three Principals were traced to their respective Lodgings, and apprehended there; and six Days after the Count was taken at *Gravesend*; and they were all tried, in the Manner above related. 1681. 34 Car. II.

The Historian adds, That *Stern* and the *Polander* died very penitent, though their Notion had for some time been, That Obedience to the Orders of their Superiors would clear any Man from Guilt: But Capt. *Vratz* seemed to continue in his first Opinion, that God had a greater Regard to Gentlemen than to require Punctilio's of Humiliation at their Hands: And that it was absurd to think, that so many thousand Gentlemen in the World, who stood upon their Honour and Reputation as well as he, should be for ever damned, because they could not stoop to Things that would spoil the Figure they made.

Some however, according to this Historian, who deals pretty much in Judgments, looked upon this Misfortune as a Judgment on Mr. *Thynn*, for his treacherous Behaviour to another Lady, remarkable for her Modesty and Vertue, who had bravely resisted the Duke of *Monmouth*'s Attacks, as being a married Man. Whereupon the Duke, to revenge this Disappointment, applied himself to Mr. *Thynn* to effect what he himself despaired of accomplishing; and *Thynn* found Means, under Pretence of making honourable Love to the Lady, to debauch her, and then shamefully abandoned her; which was reflected on after his Death: And it became a common Saying, *If he had married the Lady he had bedded; or bedded the Lady he had married, he had never come to that untimely End.* As to the Lady *Ogle*, she was afterwards married to the Duke of *Somerset*; and soon shewed the World (says the same Author) that her Worth and Reputation was above all Blemish.

The

1682. 34 Car. II.

The Trial of NATHANIEL THOMPSON, WILLIAM PAIN, and JOHN FARWELL, for printing and publiſhing ſeveral Libels, *June* 20, 1682. 34 *Car.* II.

Trial of Thompſon, &c.

The Charge.

THE Attorney-General preferred an Information againſt them, wherein he ſet forth, That the Defendants, to reflect on the Juſtice of the Nation, and ſcandalize the Witneſſes who gave Evidence at the Trial of *Green*, *Berry*, and *Hill*, of *Godfrey*'s Murder, had written and printed ſeveral ſcandalous Libels; one whereof was entitled, *A Letter to* Miles Prance, *concerning the Murder of Sir* Edmundbury Godfrey: Wherein it was ſuggeſted, That the ſaid *Godfrey* was *Felo de ſe*, and did reflect on the Witneſſes and the Coroner, as though he had bribed the Jury. And that in another Libel, printed by *Thompſon*, called his *Proteſtant Intelligence*, he ſaid, He would make it out, by a Cloud of Witneſſes, that *Godfrey* murdered himſelf; whereby they had defamed the Juſtice of the Nation, *&c.*

Confeſſed.

The Defendants confeſſing themſelves guilty of the Charge, and ſubmitting to the Mercy of the Court,

Sentenced to be pilloried, and fined.

Thompſon and *Farwell* were ſentenced to ſtand in the Pillory in the *Palace-Yard*, and to pay each of them a Fine of One hundred Pounds: And *Pain* was only adjudged to pay a Fine of One hundred Pounds, and to be impriſoned till paid.

1682. 34 Car. II.

The Trial of FORD Lord GREY of *Werk*, ROBERT CHARNOCK, ANNE CHARNOCK, DAVID JONES, FRANCES JONES, and REBECCA JONES, for certain *Miſdemeanors*, at the Bar of the Court of *King*'s-*Bench*, *November* 23, 1682. 34 *Car.* II.

Lord Grey's Trial.

The Charge.

AN Information was brought againſt the Defendants, in the Name of the Attorney-General, Sir *Robert Sawyer*, ſetting forth, That the Defendants, the 20th of *Auguſt* then laſt paſt, at *Epſom*, in the County of *Surrey*, did conſpire the Ruin and Deſtruction of the Lady *Henrietta Berkeley*, Daughter of the Right Honourable *George* Earl of *Berkeley*, and to that End did ſeduce her from her Father's Houſe, being then under the Age of 18 Years, and in the Cuſtody and Government of her ſaid Father; ſoliciting her to commit Whoredom and Adultery with the ſaid Lord *Grey*, who was before married to the Lady *Mary*, her Siſter: And that, after they had carried the ſaid Lady *Henrietta* from her Father's, they obſcured her in ſecret Places, ſhifting her from Place to Place, and continued that Courſe of Life ever ſince; to the Ruin of the young Lady, and Grief of her Friends.

The Evidence.

The Witneſſes being called, the Lady *Arabella Berkeley* depoſed, That ſhe intercepted a Letter from her Siſter *Harriet*, to the Lord *Grey*; wherein ſhe ſaid, *My Siſter* Bell *did not ſuſpect our being together laſt Night, for ſhe did not hear the Noiſe. Pray come again on* Sunday, *or* Monday: *If the laſt, I ſhall be very impatient.* That my Lord *Grey* afterwards, told the Deponent, He had no Love, no Conſideration for any Thing upon Earth, but for the dear Lady *Henrietta*: And that he would be revenged on all the Family, if they expoſed her.

The Lady *Berkeley* depoſed, That when ſhe firſt diſcovered the Lord *Grey*, her Son-in-Law, was in Love with his Siſter, ſhe ſent to ſpeak with him; and told him, he had done baſely and treacherouſly, in holding an Intrigue of Criminal Love with his Siſter: He had better have murdered her. To which he anſwered, He confeſſed he had been falſe and baſe; but deſired her to conſider (and then ſhed abundance of Tears) what it was that made him guilty: And ſhe demanding, Whether he was, indeed, in Love with his Siſter-in-Law? He fell a weeping again, and ſaid he was unfortunate; and if ſhe told my Lord, her Father, and his Wife of it, it might make him deſperate, and put ſuch Thoughts into his Wife's Head, as might occaſion their parting; and he being deſperate, he knew not what he might do; he might neither conſider Family or Relation. She replying, this would make him look very black in Story, he ſaid, That was true; but he could not help it: He was miſerable; and if ſhe knew how miſerable, ſhe would pity him; and was very importunate ſhe would keep it ſecret.

That when ſhe acquainted her Daughter *Harriet*, that my Lord *Grey* had confeſſed the Intrigue, ſhe fell into Tears, begged Pardon for what ſhe had done, and promiſed never

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never to have any Converſation with her Brother-in-Law any more; but Lord *Grey* coming down to *Durdans*, my Lord *Berkeley*'s Houſe, in *Surrey*, afterwards, on Pretence of a Viſit, and going away again on *Saturday* in the Afternoon, her Daughter ran away after him the ſucceeding Night.

Then ſeveral Witneſſes proved, That *Charnock* and his Wife aſſiſted the Lady *Harriet* in her Flight, and took Lodgings for her, *&c.* That ſhe lodged at *Jones*'s at *Charing-Croſs*; and was attended and taken care of by *Jones* and his Wife: And that my Lord *Grey* came to viſit the Lady *Harriet* there, and at other Lodgings, in a Diſguiſe.

Mr. *Craven* depoſed, That my Lord *Grey* ſaid, he would acquaint him with the whole Intrigue between him and the Lady *Harriet* (as they were a Shooting), and acknowledged he had a great Affection for her, ever ſince ſhe was a Child: That when he firſt wrote to her about it, ſhe was very angry, and threatned to diſcloſe it to her Father and Mother: But one Day, when they were walking together, ſhe took his (Lord *Grey*'s) Hand, and ſqueezed it to her Breaſt, which was the firſt time he perceived ſhe loved him; and from that Time, for a Twelvemonth before ſhe went away, he ſaw her almoſt every Night: Though my Lady *Berkeley* put a *French* Woman to lie with her, yet ſhe roſe from the *French* Woman, and came to him. That it was not to be imagined what he ſuffered, to come into her Company: He had been two Days locked up in her Cloſet, without Meat or Drink, but only ſome Sweetmeats. That he had done all he could to divert his Paſſion, and would fain have avoided the bringing ſo much Infamy on his Family and his Lady's. He endeavoured to cool his Flame, by making Love to two other Ladies, whom he courted and enjoyed; but all ſignified nothing, he could not ſubdue it. And when the Deponent ſuggeſted the Danger he might be in from the Law; he ſaid, he had conſidered of that, and they could not do any thing againſt him for it, if they examined the Caſe of Mrs. *Heneage* and Lord *Cavendiſh*. He ſaid he could not perſuade her, and he would not betray her; he owned he had her in his Power; but he would not part with her never to ſee her again.

Lord *Cavendiſh* being in Court, ſaid, Mr. *Craven* had very impertinently mentioned his Name; and deſired to know, Why his Name was mentioned any more than the two Ladies? *Craven* replied, My Lord *Grey* did not mention the two Ladies Names to him.

Lord *Grey* thereupon ſaid, No, nor Lord *Cavendiſh*'s neither: It was all a Lie; and deſired he might ſpeak for himſelf. He proceeded, and ſaid, No Man ever lay under a more infamous Accuſation: His Honour was at Stake; and if his Life was ſo too, he ſhould not be more concerned to ſave it, than he was to clear his Reputation. Was he guilty of the Villany laid to his Charge, he needed no other Puniſhment; he was ſure he could not have a worſe than the Reflection of his own Conſcience for it; and he ought to be baniſhed the Society of Mankind. He confeſſed he was ſo unhappy as to have a very great Kindneſs for the unfortunate Lady, though not a Criminal one, as the Witneſſes would have it believed. He proteſted he was no way aſſiſting to her Eſcape or privy to it: Nor had he ever detained her from her Father, though he had ſuffered a Fortnight's cloſe Confinement for it. That one Day, when he was at a Coffee-houſe in *Covent-Garden*, indeed, the young Lady called in a Coach at the Door, and ſent for him; and when he came to the Coach ſide, ſhe gave him a tedious Hiſtory of her ill Uſage at home, which made her come away. He obſerved, That he acquainted his Lordſhip (the Chief Juſtice) when the Warrants were out to ſearch for her, that ſhe ſought only for Protection, and was willing to return home, if ſhe might be ſecured ſhe ſhould not be ill treated again: And then, when his Lordſhip ſaid, he (Lord *Grey*) could not protect her againſt her Father; he anſwered, She was not in his Houſe, or in his Cuſtody; and his only Crime was, that he knew where ſhe was: And if he deſerved Puniſhment for keeping his Word and Faith with her, which he gave her upon her Importunity in a Letter, *That he would not betray her*, he muſt ſubmit to it, he could not do otherwiſe in Honour.

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The Lady *Harriet* herſelf, being ſworn, at the Deſire of Lord *Grey*'s Counſel, depoſed, That my Lord *Grey* had no Hand in her Eſcape; ſhe had no Advice from him, or any Body about him, to go away; nor did he ſo much as know of it: Nor did ſhe ſee Lord *Grey* till a great while after ſhe went from her Father's; the firſt time was in a Hackney-Coach, at a Coffee-houſe Door in *Covent-Garden*: Nor did any of thoſe mentioned in the Information, aſſiſt her to eſcape from *Durdans*. *Lady Harriet herſelf allowed to give Evidence.*

Then ſhe deſired to clear her Reputation, and tell the Reaſon of her coming away from her Father's: But the Chief Juſtice ſaid, he ſaw no Reaſon to indulge her ſo far, unleſs ſhe had appeared more ingenuous in her Evidence. She had injured her own Reputation, and proſtituted her Body and her Honour, and was not to be believed. (*For ſeveral Witneſſes had proved that* Charnock *aſſiſted her in her Eſcape: That he and his Wife took Lodgings for her; and that ſhe lodged at* Jones's *at* Charing-Croſs, *where the Lord* Grey *came to ſee her in Diſguiſe.* *The Chief Juſtice's Reflections on her.*

The Lord Chief Juſtice proceeding to give his Directions to the Jury, ſaid, The Queſtion before you is, Whether there was any ſuch unlawful Solicitation of this Lady's Love, as is laid in the Information? And whether ſhe was inveigled to withdraw herſelf, and run away from her Father's Houſe? And whether my Lord *Grey* did frequent her Company afterwards? The Evidence that has been given you is very plain, if you believe thoſe Witneſſes that ſpeak from my Lord's own Mouth; That he hath a long time ſolicited her to unlawful Luſt: There is nothing elſe in it, Gentlemen (that is the plain *Engliſh* of it all) He has enticed her to unlawful Luſt: And the Queſtion is, Whether my Lord *Grey* had any Hand in carrying her away? As to that, it is pretty manifeſt *He directs the Jury.*

1682. 34 Car. II. manifeſt, that his Coachman *Charnock* did carry her away, who was in his Company that Night, and pretended to go to *Up-Park* with his Lord; but was ſeen in *London* next Morning at Nine o'Clock: There is full Evidence of the Guilt of *Charnock* and his Wife, who were the Solicitors in this Buſineſs, and took Lodgings for her. *Jones* and his Wife are as guilty as the reſt, who contrived to keep her ſecret, eſpecially after *Jones* had promiſed Captain *Fitzgerrard* to let him ſee her: And whether Lord *Grey* was not as guilty as *Charnock*, or any of the reſt; nay, indeed, the chief Mover of this ill thing, they were to conſider. If they believed the Evidence for the King, moſt certainly they were all guilty of the Charge, unleſs *Rebecca Jones*, againſt whom there is no Evidence.

Earl of Berkeley demands his Daughter.

She declares ſhe is married.

The Jury being about to withdraw, the Lord *Berkeley* deſired he might have his Daughter again: And the Chief Juſtice ſaid he muſt have her: But ſhe ſaid ſhe would not go to her Father; ſhe was married to one Mr. *Turner*, Son to Sir *William Turner*, the Advocate, who was there in Court: And thereupon Mr. *Turner* declared he was married to her. Serjeant *Jeffries* then repreſented, That this was all a Trick, and one of the fouleſt Practices that ever was uſed: They could prove that Mr. *Turner* was married to another Perſon before, who was ſtill alive, and had Children by her. Mr. *Turner* denying this, Serjeant *Jeffries* demanded, If he did not live at *Bromley* with a Woman as her Husband, and had Children by her; and being queſtioned for it, they did not own themſelves to be Man and Wife? *Turner* again denied it, and averred, that the Lady *Harriet* was his Wife; and he had Witneſſes in Court to prove it.

The Lord *Berkeley* anſwered, This Court had not the Cognizance of Marriages; they would not determine that, how ready ſoever he was to make it out by Witneſſes; and deſired his Daughter to be delivered to him, and they might take their Remedy.

The Chief Juſtice ſaid, He ſaw no Reaſon why Lord *Berkeley* might not take his Daughter: But Judge *Dolben* anſwered, They could not diſpoſe of another Man's Wife: They ſaid they were married, and the Court had nothing to do with it. 1682. 34 Car. II.

The Lady *Harriet* inſiſting ſtill ſhe would go with her Husband, the Earl of *Berkeley* ſaid, Huſwife, you ſhall go with me; and deſired again he might have his Daughter. The Chief Juſtice ſaid, they did not hinder him; he might take her: But ſhe anſwering ſhe would go with her Husband, the Earl ſaid, *Then all that are my Friends ſeize her, I charge you*: And there was a great Scuffle about the Lady, and Swords drawn in the Hall: Whereupon the Lord Chief Juſtice coming by, ordered his Tipſtaff to take the Lady *Harriet* into Cuſtody, and carry her to the *King*'s-*Bench*: And *Turner* deſiring to be committed with her, they were both carried over to the *King*'s-*Bench Priſon*. It was reported, *Turner* lay with the Lady that Night at the Marſhal's Houſe; but ſhe was releaſed out of Priſon by Order of the Court, the laſt Day of the Term.

A great Conteſt about the Lady, in the Hall.

She and her pretended Husband ſent to the King's-Bench.

The Lord *Grey*'s Counſel moving the Court that his Lordſhip might be diſcharged from his Confinement, now the Lady was produced,

The Attorney-General anſwered, They deſired the Lord *Grey* might be forth-coming, in Caſe he ſhould be convicted, to receive the Judgment of the Court.

Mr. Juſtice *Dolben* ſaid, The King's Counſel did not do well, to preſs them to do what could not be done: They had, perhaps, gone further than ordinary in committing him, as he was a Peer; but they did it to reſtore the young Lady to her Liberty: And now ſhe appeared, and ſaid ſhe was under no Reſtraint, they could do no more. She was properly the Plaintiff in the Writ *de Homine replegiando*, which had been brought; and they could not now detain his Lordſhip in Cuſtody: Whereupon the Lord *Grey* was admitted to Bail, at the Suit of the Lady *Henrietta Berkeley*.

Lord Grey *admitted to Bail.*

The Jury having given a private Verdict the over Night, (*viz.*) *That all the Defendants were guilty, except* Rebecca Jones, *whom they acquitted*, confirmed their Verdict in open Court the next Morning. But the Matter being amicably compromiſed the next Vacation, no Judgment was ever prayed, or given, againſt any of the Defendants.

Lord Grey, *and three more of the Defendants, convicted.*

The Matter accommodated.

1683. 35 Car. II. *Trial of* Pilkington, *&c.*

The Trial of THOMAS PILKINGTON and SAMUEL SHUTE, Sheriffs, HENRY CORNISH, Alderman, FORD Lord GREY of *Werk*, Sir THOMAS PLAYER, Knt. Chamberlain of *London*, SLINGSBY BETHEL, Esq; FRANCIS JENKS, JOHN DEAGLE, RICHARD FREEMAN, RICHARD GOODENOUGH, ROBERT KEY, JOHN WICKHAM, SAMUEL SWINNOCK, and JOHN JEKYLL, Sen. for a *Riot*, *&c.* at *Guild-Hall*, *London*. 8 *May* 1683. 35 *Car.* II.

The Charge AN Information was preferred againſt the Defendants, by Sir *Robert Sawyer*, Attorney-General, ſetting forth, That on the 24th of *June* then laſt paſt, a Common-Hall was ſummoned by Sir *John Moore*, Knt. Lord Mayor of *London*, and thereupon held for the Election of Sheriffs, for the Year enſuing; and that on the ſaid 24th of *June*, the ſaid Sir *John Moore* adjourned the ſaid Court, till the *Tueſday* following, by Proclamation, and commanded all Perſons to depart: But the Defendants, intending to diſturb the Peace, after the ſaid Adjournment, did unlawfully, with many other Perſons, continue together, and riotouſly aſſault the Lord Mayor: And the ſaid *Pilkington* and *Shute*, by Colour of their Office, as Sheriffs, with the reſt of the Defendants, did continue the Poll, declaring to the People, that Sir *John Moore*, the Lord Mayor, had no Power to adjourn the Poll, and continued this great Tumult for two Hours, to the Terror of the King's Subjects, *&c.*

The Evidence. The great Queſtion being, Whether the Sheriffs had a Right to call, or adjourn the Common-Hall? it appeared, even by Sir *Robert Clayton* and the Defendants own Witneſſes, that the Lord Mayor always called thoſe Halls, for the Election of Sheriffs, and adjourned them; and that no Sheriffs had ever done either.

Proof alſo was made, that the Lord Mayor actually adjourned the ſaid Court, held on the 24th of *June* laſt, from *Saturday* to *Tueſday* following; and when the Cryer ſaid, *God ſave the King*, the diſaffected Mob hiſſed: And as the Lord Mayor came out of the Hall, he was thrown down by them, and his Hat ſtruck off; and that he was in great Danger of his Life. That when he was got out, he commanded the People to go Home; but *Shute* and *Pilkington*, and the other Rioters, continued the Poll a great while after, notwithſtanding: And ſome of their Aſſociates cried out, *No God bleſs the King*; *Down with the Sword*; *No Lord Mayor*; *Preſs on, preſs on*; *God ſave the Sheriffs*. And all the Defendants, above-named, were proved to be among the Rioters.

The Defence made by the Defendant's Counſel. The Counſel for the Defendants, Mr. *Williams* and Sir *Francis Winnington*, obſerved, That it was not proved, any of the Defendants ſpoke the Words mentioned; and ſhould it be admitted that the Lord Mayor had the Right of adjourning the Poll, and the Sheriffs had not, but were in the Wrong in continuing the Poll after his Lordſhip had adjourned it; yet it would be hard to make a Riot of it, ſince they only proceeded on a Miſtake of their Right.

Mr. Attorney's Reply. Mr. Attorney-General obſerved on the other Side, That now the Right of the Lord Mayor, to call and adjourn theſe Aſſemblies, evidently appeared: And that it was as much a Riot to continue the Multitude together, after they were legally diſmiſſed, as it would have been to call them together, when they had no Authority to do it: It was uſurping an Authority in the City, contrary to the King's Charter. As the chief Magiſtrate made a Proclamation for them to depart, and they ſtaid together afterwards, and Diſorders happened, this was a Riot; and if no Diſorder had happened, it would have been a Rout, and unlawful Aſſembly, if they had continued together: And ſhould it be admitted, the Defendants themſelves committed no particular Outrage; yet their being there, and countenancing the Riot, made them guilty of it.

The Chief Juſtice's Direction to the Jury. The Chief Juſtice, in his Directions to the Jury, ſaid, It was no Excuſe to ſay they were ignorant of the Law; it was never the leſs a Riot: If the Defendants were really ignorant, that was to be conſidered when they came to ſet the Fines; but theſe Gentlemen could not be ignorant of this, becauſe it was the conſtant Practice, before their Eyes, for the Lord Mayor to adjourn theſe Aſſemblies: But though it was ſo before, they would not have it ſo now. They would have *No Tory Mayor*, *No God Bleſs the King*; but would bleſs only their *Proteſtant Sheriffs*. The King muſt be put out of his Throne, to put the two Sheriffs into it. And though it was not proved that any of the Defendants ſaid theſe Words, yet they were the Men that kept this Rabble together three Hours.

The Jury's Verdict. The Jury withdrawing, after a ſhort Receſs, found all the Defendants, above-named, *guilty* of the Riot: Whereupon *Pilkington* was fined 500 *l.* *Shute* 1000 Marks, Lord *Grey* 1000 Marks, *Player* 500 Marks, *Bethel* 1000 Marks, *Corniſh* 1000 Marks, *Jenks* 300 Marks,

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Marks, *Freeman* 300 Marks, *Goodenough* 500 Marks, *Deagle* 400 Marks, *Key* 100 Marks, *Wickham* 100 Marks, *Swinnock* 500 Marks, and *Jekyll* 200 Marks.

The Judgment reverſed at the Revolution.

As many of the Defendants, as were living at the Revolution, and the Executors of thoſe that were dead, procured this Judgment to be reverſed by Writ of Error in Parliament: They alſo preſented a Petition to King *William*, ſuggeſting that they were convicted of this pretended Riot, by the Contrivance of Sir *John Moore* Lord Mayor, Sir *Dudley North*, Sir *Peter Rich*, and Sir *Edmond Saunders*, late Chief Juſtice of the *King's-Bench*; and prayed they might be excepted out of the Act of Grace. 1683. 35 Car. II.

The greateſt Inducement for reverſing this Judgment, poſſibly, was the pretended Zeal of the Defendants for the Revolution.

1683. 35 Car. II. Ward's Trial.

The Trial of Sir PATIENCE WARD, for *Perjury*, in the Court of *King's-Bench*, the 19th of *May*, 1683. 35 *Car.* II.

1683. 35 Car. II.

The Charge.

AN Information was brought by Mr. Attorney-General, Sir *Rober Sawyer*, againſt Sir *Patience Ward*, ſetting forth, That whereas the moſt illuſtrious *James* Duke of *York*, the King's only Brother, had brought an Action *de Scandalis Magnatum* againſt *Thomas Pilkington*, for ſpeaking the following ſcandalous Words, *Viz. He* (meaning the Duke) *hath burnt the City, and is come to cut our Throats.* The ſaid Sir *Patience* did falſly and corruptly ſwear, at the Trial between the Duke and the ſaid *Pilkington*, *That there was no mention of the Duke of* York, *or of cutting of Throats, while the ſaid* Pilkington *was in the Room, where thoſe Words were charged to have been ſpoken: That the Diſcourſe about the Duke of* York *was over, before* Pilkington *came in, and that the Duke of* York *was not named.* Whereas in Truth there was mention made of the Duke of *York*, and of cutting of Throats; and the Diſcourſe concerning the Duke of *York*, was not over, when the ſaid *Pilkington* came into the ſaid Room.

The Evidence.

The Witneſſes being called, Mr. *Hatch* depoſed, That Sir *Patience* did *poſitively* affirm, upon his Oath, at the ſaid Trial between the Duke and *Pilkington*, *That* Pilkington *did not come in, till all the Diſcourſe was over about the Duke*: And did further depoſe, That there was a Diſcourſe about burning the City by the *Papiſts*; and *Pilkington* ſaid, *He hath burnt the City*: Whereupon *he* (Sir *Patience*) *took him by the Shoulder, ſaying, explain yourſelf: You mean* Hubert (the Perſon that was hanged for firing the City); and *Pilkington* anſwered, *Yes*: And that Sir *Patience* did poſitively depoſe further, *That there was no Mention made of cutting of Throats.*

Mr. *Wood* depoſed, That Sir *Patience*, at the ſaid Trial, did affirm poſitively, or upon his Oath, *That the Diſcourſe concerning the Duke of* York *was over, before* Pilkington *came in; and that there was no Mention of cutting of Throats.*

Sir *James Smith*, Alderman, depoſed, That Sir *Patience* did poſitively, or upon his Oath, ſay, at the aforeſaid Trial, *That Mr.* Pilkington *was not there, while they were diſcourſing concerning going to St.* James's (the Reſidence of the Duke); *declaring the Duke was not talk'd of*: Whereupon the Chief Juſtice *Pemberton* applying himſelf to Sir *Harry Tulſe*, Sir *Harry* made anſwer, *I am very ſorry to ſay it; he was there all the while.*

Sir *John Peake* depoſed, That Sir *Patience* affirmed, either poſitively, or upon his Oath, *That Mr.* Pilkington *was not by, while the Duke of* York *was mentioned.*

Sir *Thomas Field* depoſed, That Sir *Patience* did ſay, *That Mr.* Pilkington *was not in the Room, when any Thing was ſpoken relating to the Duke of* York.

Sir *Francis Butler*, who was Foreman of the Jury, at the Trial between the Duke and *Pilkington*, depoſed, That the great Queſtion at that Trial was, *Whether the Words (firing the City) related to the Duke of* York, *or not?* And Sir *Patience* depoſed, They did not relate to the Duke of *York*, and would prove that Alderman *Pilkington* was not in the Room, while they diſcourſed of the Duke of *York*; that this he ſwore poſitively, to the beſt of his Remembrance; he heard no Qualification: That after the Jury went out of Court, they debated the Matter among themſelves; and they ſhould have laid a little more Weight on the Evidence of Sir *Patience*, if he had not ſworn, *That when Sir* William Hooker *took ſome Exceptions at* Pilkington's *Words, and asked, What do you mean? He (Sir* Patience) *laid one Hand upon* Pilkington's *Mouth, and the other upon his Breaſt, and demanded alſo, What do you mean? And Anſwer was made, Hubert.* This made the Jury believe his Evidence ought to be ſet aſide.

Sir *Harry Tulſe*, Alderman, depoſed, That on the 10th of *April*, according to an Order of Court made the Day before, they (the Aldermen) met at *Guildhall*, where were preſent Sir *William Hooker*, Sir *Patience Ward*, Sheriff *Pilkington*, and himſelf: And Alderman *Pilkington* ſaid, *He burnt our City, and is come (or will come) to cut our Throats.* This Evidence he (Sir *William Tulſe*) gave at the Trial between the Duke and *Pilkington*; and now averred that it was true. He teſtified further, That he was asked at that Trial, What was the preceding Diſcourſe? He anſwered, It was concerning an Order for going

to

1683. 35 Car. II. to St. *James*'s, or to the Duke of *York*; ſome complained of that Order, and would have had it re-debated: Whereupon he (Sir *Harry*) anſwered, It was too late now, for the Court had agreed it; and then *Pilkington* ſaid thoſe Words, *He hath burnt our City, and is come, or will come, to cut our Throats.*

It being demanded of Sir *Harry*, if the Duke was named? He anſwered, he could not poſitively ſay he was named at that Time; for the Debate was about the Order made, to congratulate the Duke of *York*, or of going to St. *James*'s; one of them he was ſure was named.

The Chief Juſtice demanding of Sir *Harry*, who he underſtood *Pilkington* meant, when he ſaid, *He is, or will, come to cut our Throats?* Sir *Harry* anſwered, In his Opinion it was the Duke of *York*.

Sir *William Hooker* depoſed, That *Pilkington*, ſtanding at the End of the Table, in the Room where the Aldermen were met, did ſay, *Hath he burnt the City? and is he come to cut our Throats?*

It being demanded, If the Duke of *York* was named? Sir *William* anſwered, he (Sir *William*) did name the Duke of *York* to *Pilkington*, after thoſe Words were ſpoken: And being further asked, If it was plain, *Pilkington* meant the Duke of *York*, when he ſaid thoſe Words? Sir *William* anſwered, Nothing could appear more plain; for the Diſcourſe was about that Matter, and nothing elſe; and that Sir *Patience Ward* was there all the Time.

The Defence. The Defendant's Counſel urged in his Behalf, That Sir *Patience* did not ſwear any Thing poſitively, at the Trial between the Duke and *Pilkington*; but qualified his Evidence, by ſwearing, *As he believed*, or *according to the beſt of his Memory*, and conſequently could not be perjured; and brought ſeveral Witneſſes, and ſome that took Notes at that Trial, who teſtified, That Sir *Patience* frequently made uſe of qualifying Expreſſions at that Trial, *(Viz.) As he believed, or remembered.*——They brought alſo a great many Witneſſes to ſwear, That Sir *Patience* was a Gentleman of a fair Character, and not likely to perjure himſelf. 1683. 35 Car.

Evidence for the Defendant.

But after the Defendant's Counſel had produced all their Witneſſes, the King's Counſel called Sir *Francis Lee*, who was upon the Jury between the Duke and *Pilkington*; and Sir *Francis* being ſworn, gave the following Account of the Matter, *(Viz.)* That Sir *Patience* did ſwear at that Trial, *That Mr.* Pilkington *was not in the Room, when the Diſcourſe concerning the Duke of* York *was mentioned:* And did afterwards ſwear, *That when Mr.* Pilkington *ſaid, he hath burnt the City, he* (Sir *Patience*) *clap'd one Hand on his Mouth, and the other on his Breaſt, and bid him explain himſelf, who he meant? Hubert?* That Sir *Francis Butler*, the Foreman, thereupon jogged him (*Lee*), and bid him take Notice of that: And that they did infer Mr. *Pilkington* muſt mean the Duke of *York*; for elſe why would Sir *Patience* have ſtopped his Mouth?

The Chief Juſtice having ſummed up the Evidence, the Jury withdrew, and, after ſome Time, brought the Defendant in GUILTY; *He is convicted.* who, having ſome Intimation that it was intended to ſet him in the Pillory, thought fit to abſcond.

Remarks. I ſhall make no other Obſervations on this Trial; but that Sir *Patience* was evidently perjured, in the Teſtimony he gave at the Trial between the Duke and *Pilkington*; by depoſing, in one Part of that Trial, That *Pilkington* did not come in, till the Diſcourſe concerning the Duke was over; and in another, that he ſtopped his Mouth for reflecting on the Duke, and asked what he meant?.

The Trial between the King and the City of *London*; on an Information in the Nature of a *Quo Warranto*, in the Court of *King*'s-*Bench*, in the Years 1682 and 1683. 35 *Car.* II.

1682-3. 35 Car. II. *The King and the City.*

THIS Cauſe was argued firſt in *Hillary*-Term, 1682-3, by Mr. Solicitor *Finch*, (afterwards Earl of *Aylesford*) for the King; and by Sir *George Treby*, Recorder of *London*, for the City. And in *Eaſter*-Term, 1683, by Sir *Robert Sawyer*, Attorney-General, for the King; and by Mr. *Pollexfen*, for the City. And in *Trinity*-Term, 1683, 35 *Car.* II. Judgment was given againſt the City.

The Information. The Information ſets forth, That the Mayor and Commonalty, and Citizens of the City of *London*, by the Space of a Month, and more, before the Information preferred, uſed, and yet did claim to have and uſe, without any lawful Warrant or Regal Grant within the ſaid City of *London* and Liberties, the Liberties and Privileges following: 1*ſt*, To be of themſelves a Body Corporate and Politick, by the Name of Mayor and Commonalty, and Citizens of the City of *London*. 2*dly*, To conſtitute Sheriffs of the ſaid City and County of *Middleſex*: And 3*dly*, That the Mayor and Aldermen of the ſaid City ſhould be Juſtices of Peace there: All which Liberties, Privileges, and Franchiſes, the ſaid Mayor, Commonalty, and Citizens, did uſurp on the King.

Plea. To which the ſaid Mayor, Commonalty, and Citizens appear by their Attorney, and plead. 1*ſt*, That the ſaid City hath been a Body Corporate and Politick time out of Mind; and that their Liberties and Franchiſes have been

1682-3. 35 Car. II. been confirmed by the Statute of *Magna Charta*, and many ſubſequent Statutes there enumerated: And by this Warrant they claim to be, and are, a Body Politick, *&c.* and traverſe their uſurping on the King. *2dly*, As to their conſtituting Sheriffs, they plead, That King *John*, on the 5th of *July*, in the firſt Year of his Reign, granted them the Power of electing and conſtituing Sheriffs of *London* and *Middleſex*, *in perpetuum*. *3dly*, As to the Mayor and Aldermens being Juſtices of Peace, they plead, That King *Charles* I. by his Letters Patents, dated 18 *Oct.* 14 *Car.* I. granted, that the Mayor and ſuch Aldermen as had been Mayors, ſhould be Juſtices of Peace.

Reply. To this Plea Mr Attorney-General replied: And as to their being a Body Politick and Corporate, takes Iſſue, that they never were a Body Corporate —— And then pleads over, That the Mayor, Commonalty, and Citizens, aſſuming to themſelves to be a Body Politick and Corporate; and by Reaſon thereof, to have Power to aſſemble, and make Laws and Ordinances, not contrary to the Laws of the Kingdom, for the better Government of the City and Citizens, and for preſerving the King's Peace under Colour thereof; but reſpecting only their private Gain, and againſt the Truſt in a Body Corporate, aſſumed an unlawful Authority to levy Money on the King's Subjects, to their own Uſe, by Colour of Laws, by them *de facto* made; and in Proſecution of ſuch unjuſt Power, did, on the 17th of *September*, 26 *Car.* II. make a certain Law for levying ſeveral Sums of Money on all the King's Subjects, coming to the publick Markets within the City, to ſell their Proviſions, *viz.* For every Horſe Load of Proviſions brought to be ſold, 2 *d. per* Day: For every Dorſer of Proviſions, 6 *d. per* Day: For every Cart Load, drawn with three Horſes, 4 *d. per* Day; and if drawn with more than three Horſes, 6 *d. per* Day: And that theſe Sums ſhould be paid to the Uſe of the City. And if any refuſed to pay, to be removed from his Place in the Market: And that by Colour of this Law, the Mayor, *&c.* had, for ſeven Years after the making it, received divers great Sums, amounting to 5000 *l.* in Oppreſſion of the King's Subjects.

And further, Whereas a Seſſion of Parliament was holden by Prorogation, and continued to the 10th of *January*, 32 *Car.* II. and then prorogued to the 20th of *January* then next; the Mayor, Commonalty, and Citizens, 13 *January*, 32 *Car.* II. in their Common-Council, unlawfully, maliciouſly, adviſedly, and ſeditiouſly, and without any lawful Authority, aſſumed to themſelves an Authority of Cenſuring and Judging of our ſaid Lord the King, and the Prorogation of Parliament, ſo made by him; and did vote and order a Petition to be preferred to the King, ſetting forth, That by the ſaid Prorogation, the Proſecution of the publick Juſtice of the Kingdom, and the making neceſſary Proviſion for the Preſervation of the King, and of his Proteſtant Subjects, had received Interruption: And that the ſaid Mayor, *&c.* in Common-Council aſſembled, did unlawfully, maliciouſly, adviſedly, and ſeditiouſly, and with Intention that the ſaid Petition ſhould be diſperſed among the King's Subjects, to induce an Opinion in them, that the King, by proroguing the Parliament, had obſtructed the publick Juſtice; and to incite the King's Subjects to a Hatred of his Perſon and Government, and to diſturb the Peace of the Kingdom, did order the ſaid Petition to be printed; and the ſame was printed accordingly, to the Intent and Purpoſe aforeſaid. 1682-3. 35 Car. II.

By which the Mayor, Commonalty, and Citizens aforeſaid, the Privilege, Liberty, and Franchiſe of being a Body Politick and Corporate, did forfeit: And afterwards, for the Time in the Information ſpecified, that Liberty and Franchiſe of being a Body Politick, did uſurp upon the King, *&c.* And as to the other two Pleas, (*viz.*) The having Sheriffs, and Juſtices of Peace, the Attorney-General imparles to *Michaelmas* Term. *Nor did he ever proceed on this Part of the Information.*

Rejoinder. The Mayor, Commonalty, and Citizens, thereupon rejoin, and ſay, That the Pleas by the Attorney pleaded, are inſufficient to exclude them from being a Corporation.

That no Act, or By-Law of the Common-Council, is the Act of the Body Corporate.

That they never took upon them, by any unlawful Authority, to tax the King's Subjects.

That there have been, Time out of Mind, publick Markets in the ſaid City, of which the Mayor and Commonalty were ſeized in Fee; and have at all times, at their own Coſts, provided Stalls, Standings, and other Accommodations for the Market-People; and received reaſonable Tolls and Rates of Perſons reſorting to the ſaid Markets, for their Stalls, Standings, *&c.* That theſe Cuſtoms, Liberties and Privileges, have been confirmed to them by *Magna Charta*, and other ſubſequent Statutes.

That by Reaſon of the burning the City in 1666; and the Alterations in the Market-places occaſioned thereby, for the eſtabliſhing and re-ſettling the Markets within the ſaid City, the Common-Council did, 17 *September*, 26 *Car.* II. make an Ordinance, That the Rates and Sums in the Replication mentioned, ſhould be paid to the Uſe of the ſaid Mayor, Commonalty, and Citizens; or, upon Refuſal, to be removed out of the Market: And aver, that theſe are all the Rates and Duties paid, and were reaſonable Sums; and theſe they had demanded and received, to defray the Charges of erecting Stalls, Shelters, and other Neceſſaries, for the Market-People; and the Amendment, Paving and Cleanſing the ſaid Market-places, as was lawful for them to do.

As to the other Matter alledged by Mr. Attorney, That there had been an helliſh and execrable Plot proſecuted by the Papiſts, to deſtroy the King and Government, and the Proteſtant Religion: That Juſtice *Godfrey*, who took the Examination of the Witneſſes, and of the burning the City, had been murdered by the Conſpirators, for which Murder *Green* and others had been hanged: That *Coleman* had been executed for the Conſpiracy; and five Popiſh Lords impeached, and ſent to the *Tower* for the ſame: That the King, in his Speech to the Parliament, had recommended

1683. 35 Car. II. to them the further Examination of that Conſpiracy, declaring, He thought neither himſelf or them ſafe, till that Matter was gone through; and therefore, that it was neceſſary that the ſaid Lords in the *Tower* ſhould be brought to their Trials, that Juſtice might be done. And the Parliament had addreſſed the King, declaring their deep Senſe of the ſad Condition of the Realm, occaſioned by the Conſpiracies of the Papiſts; and that a ſolemn Faſt might be kept thereupon, which was kept accordingly, by Virtue of his Majeſty's Proclamation. And divers Bills were prepared for Preſervation of his Majeſty's Subjects.

That theſe Impeachments and Bills being thus depending, the Parliament was prorogued the ſaid 10th of *January*; by Reaſon whereof the Citizens were much diſquieted with the Senſe of the Danger threatning the King and Government, by Reaſon of the Conſpiracies aforeſaid, affirmed and declared both by the King and Parliament: And conceiving no better Means to prevent them, than by the Sitting of the Parliament; and it being lawful to petition his Majeſty.

The Mayor, Sir *Patience Ward*, and the Aldermen and Commons in Common-Council aſſembled, did cauſe the Petition mentioned, to be drawn; and after it was preſented to the King, cauſed it to be printed, for the Satisfaction of the troubled Minds of the Citizens; and traverſe the Writing, or making any other Petition; or making this to any other End or Intent than they had pleaded.

Sur rejoinder. Mr. Attorney ſur-rejoins, and ſays, That the Mayor, *&c.* were not ſeized of the Markets; nor provided Stalls, *&c.* at their Charges: And that the ſaid Rates were not reaſonable.

And for Plea, ſays, That by a Statute of 22 *Car.* II. it was enacted, That Places for Markets ſhould be ſet out, and 2 *d. per* Chaldron upon Coals, for the Charges of that, and many other Things, was given; and they received great Sums out of that Duty, for the Purpoſes aforeſaid; and yet, for their own private Lucre, they took the Money impoſed by the ſaid Ordinance: And traverſes, that the Mayor and Citizens have, Time out of Mind, taken Tolls, Rates, *&c.*

As to the Plea of the Mayor, Commonalty, and Citizens, pleaded to the Reſidue of the Attorney's Matter, aſſigned for a Forfeiture; the Attorney, by Proteſtation, ſaith, That the aforeſaid Prorogation of the Parliament was for urgent Cauſes, concerning the Good of the Kingdon; and that the Proſecution of publick Juſtice was not interrupted thereby — And demurrs to the ſaid Plea of the Mayor, *&c.* pleaded to the Petition.

Rejutter. The Mayor and Commonalty, as to the making the ſaid Ordinance, for the Payment of Money by thoſe that come to the ſaid Markets, ſay, as before, That they had, Time out of Mind, been accuſtomed to receive reaſonable Tolls, *&c.* And for this they put themſelves upon the County, *&c.*

And as to the Plea pleaded by the Mayor, *&c.* to the Reſidue of the Matter, by the Attorney-General, and aſſigned for a Forfeiture, they join in Demurrer.

The firſt Argument was in *Hillary-Term*, 1682-3, 35 *Car.* II. by Mr. Solicitor, who obſerved, That there were theſe four Queſtions in the Caſe, 1. Whether any Corporation could be forfeited? *And he held it might.* 1683. 35 Car. II. *Argued by the Solicitor.*

2. Whether the City of *London* differed from other Corporations, as to Point of Forfeiture? *And he held it did not.*

3. Whether any Act of the Mayor, Aldermen, and Common-Council, be ſo much the Act of the Corporation, as it could make a Forfeiture? *And he held it might.*

4. Whether the Acts by them done, in making the By-Law, and receiving Money by it: Or in making the Petition, and cauſing it to be printed and publiſhed, be ſuch Acts as would make a Forfeiture of the Corporation? *And he held they were.*

The Recorder, Sir *George Treby*, who argued for the City, endeavoured to ſhew, 1. That a Corporation could not be forfeited, and that *London* had greater Privileges than any other Corporation. 2. That no Act of the Mayor, Aldermen, and Common-Council, could occaſion a Forfeiture; and 3. That neither by levying Tolls and Rates on the Market-People; nor by their petitioning the King, had they incurred a Forfeiture. *Sir George Treby.*

Theſe Points were argued again in *Eaſter-Term*, 1683, 35 *Car.* II. by Mr. Attorney for the King, and by Mr. *Pollexfen* for the City; but the Arguments being drawn out to an immoderate Length, I ſhall only recite the Judges Opinion of them, when they gave Judgment for the King, in *Trinity-Term* following. *Mr. Attorney.* *Mr. Pollexfen.*

Mr. Juſtice *Jones*, Mr. Juſtice *Raymond*, and Mr. Juſtice *Wythens*, being in Court, Mr. Juſtice *Jones* pronounced the Judgment, declaring that the Lord Chief Juſtice *Saunders* (who was then ill) and the whole Bench were of the ſame Opinion, and had all agreed. *The Judges Opinion.*

1. That a Corporation, Aggregate, might be ſeized. That the Statute of 28 *Edw.* III. Cap. 10. was expreſs, That the Franchiſes and Liberties of the City, upon ſuch Defaults, ſhould be taken into the King's Hands. And that Bodies politick may offend, and be pardoned, appeared by the general Article of Pardon, 12 *Car.* II. Whereby Corporations are pardoned all Crimes and Offences. And the Act for regulating Corporations, 13 *Car.* II. which provides, That no Corporation ſhall be avoided, for any Thing by them miſdone, or omitted to be done; ſhews alſo, that their Charters may be avoided for Things by them miſdone, or omitted to be done.

2. That the Exacting, and taking Money, by the pretended By-Law, was Extortion, and a Forfeiture of the Franchiſe of being a Corporation.

3. That the Petition was ſcandalous and libellous, and the making and publiſhing it, a Forfeiture.

4. That the Act of the Common-Council, was the Act of the Corporation.

5. That the Matter ſet forth in the Record, did not excuſe, or void thoſe Forfeitures, ſet forth in the Replication.

6. That the Information was well founded.

And

1683. 35 Car II. *Judgment against the City.*

And gave Judgment, THAT THE FRANCHISE SHOULD BE SEIZED INTO THE KING'S HANDS; but the Entry thereof reſpited, till the King's Pleaſure was known.

And as to the Iſſue joined, to be tried by the Country, *(Viz.)* The claiming to have and conſtitute Sheriffs; and as to the Mayor and Aldermen's being Juſtices of the Peace, the Attorney-General declared, he would not proſecute that Part of the Charge.

Proceedings ſubſequent to the Judgment.

Some few Days after Judgment was given againſt the City, a Common-Council aſſembled, and drew up a Petition to his Majeſty; in which they expreſſed their hearty Sorrow for the Miſgovernment of the City, of late Years; whereby the Citizens had fallen into his Majeſty's Diſpleaſure, which had occaſioned a *Quo Warranto*, and Judgment againſt them; and that they were thankful the Judgment was not yet entered up, and begged his Majeſty's Pardon for all their Offences, promiſing conſtant Loyalty, and a regular Adminiſtration of the Government of the City for the Future.

This Petition, being preſented to his Majeſty, at a Council held at *Windſor*, the 18th of *June*, by the Lord Mayor, Sir *William Pritchard*, attended by ſome other Loyal Aldermen and Citizens, they were anſwered, That for the ſake of ſo many of the preſent Magiſtrates, and other eminent Citizens, that were of undoubted Loyalty, his Majeſty would ſhew the City all the Favour they could reaſonably deſire; and, though Judgment had been obtained on a *Quo Warranto*, he did not intend to prejudice them in their real Properties, or Cuſtoms; and ſhould not reject their Suit, if they agreed to the following Terms, *(Viz.)* That no Lord Mayor, Sheriff, Recorder, Common Serjeant, Town-Clerk, Coroner, or Steward of the Borough of *Southwark*, ſhould be admitted to exerciſe their reſpective Offices, before his Majeſty approved them; and if they were diſapproved, the City ſhould proceed to another Choice; which if the King diſliked, he might appoint the ſaid Officers himſelf; with ſome other leſs material Alterations: That theſe Regulations being ſubmitted to, his Majeſty would not only pardon the City, but confirm their Charter. And on the other Hand, if they did not acquieſce in this, his Majeſty had ordered the Attorney-General to enter the Judgment on the *Saturday* following.

A Common-Council being called at *Guild-hall*, two Days after, the Queſtion was put, Whether they ſhould comply with his Majeſty's Regulations? And upon a Diviſion, 108 were for it, and 86 againſt it: Whereupon the Sheriffs attended his Majeſty the next Day, and acquainted him, that they ſubmitted to his Regulations. However, the City neglecting to ſign the ſaid Submiſſion, and Regulations; and a great many Citizens being found deeply engaged in the Conſpiracy againſt his Majeſty; and that the Malcontents relied chiefly on their Aſſiſtance, the King was in a Manner compelled, in his own Defence, and to preſerve himſelf upon the Throne, to take Advantage of the Judgment on the *Quo Warranto*, and cauſe it to be entered up: After which the Lord Mayor, Sheriffs, and other Officers, received their Commiſſions from the King, without an Election; and his Majeſty, by his ſole Authority, changed the Magiſtrates of the City, whenever he ſaw fit: And in this Situation the Magiſtracy of the City remained, till the Year 1688; when King *James* II. being alarmed by the Preparations made by the *Dutch*, to invade the Kingdom, thought fit to reſtore them their Charter, and the Liberty of electing their Officers, and Magiſtrates, as formerly; and thereupon Sir *George Treby*, the Recorder, and the reſt of the Officers, were reſtored.

1683. 34 Car. II.

The Judgment entered.

Lord Mayor, &c. appointed by the King.

The Charter reſtored.

By a Statute of 2 *W.* and *M.* Cap. 3. Reciting that a Judgment had been given in the *King*'s-*Bench*, in *Trinity-Term*, 35 *Car.* II. on a *Quo Warranto*, againſt the City of *London*, That the Franchiſe of the ſaid City ſhould be ſeized into the King's Hand, as forfeited: It is thereby declared, that the ſaid Proceedings were illegal and arbitrary; and enacted, that the ſaid Judgment ſhould be Reverſed, and made Void.

An Act for Reverſing the Judgment.

And that the Mayor, Commonalty, and Citizens of *London*, ſhould remain a Body politick, by the Name of the Mayor, *&c.* without any Seizure, or Forejudger, of the ſaid Franchiſe, upon Pretence of any Forfeiture, or Miſdemeanor; and ſhould enjoy all their Rights, Charters, *&c.* which they had at the Time of Recording the ſaid Judgment. And that the City-Officers ſhould be reſtored, that were diſplaced after the ſaid Judgment.

The

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The Trial of Captain THOMAS WALCOT, for *High-Treaſon*, at the *Old-Baily*, *London*, *July* 12, 1683. 35 *Car.* II.

The Indictment. THE Indictment charged the Priſoner with High-Treaſon, in compaſſing, and conſpiring the Death of the King, to raiſe a Rebellion, and to ſubvert the Government; and to that End, meeting and conſulting with divers other Traitors, to accompliſh the ſaid Treaſons, promiſing to be aiding and aſſiſting to them, and providing Arms for that End.

Col Rumſey's *Evidence.* The Witneſſes being called, Colonel *Rumſey* was ſworn, who depoſed, That the latter End of *October*, or the Beginning of *November* laſt, he was with Lord *Shaftesbury* late at Night, who told him, that the Duke of *Monmouth*, Lord *Ruſſel*, Lord *Grey*, and Sir *Thomas Armſtrong*, were at Mr. *Shepherd*'s, a Merchant, near *Lombard-Street*, and he deſired this Witneſs to go to them, and know what they had done about the Riſing at *Taunton*: That he went accordingly, and Mr. *Shepherd* carried him up to them: And they told him Mr. *Trenchard* had failed them about the Men, and they could proceed no farther at that Time: That he returned to Lord *Shafteſbury* next Day, and told him what they ſaid; whereupon he prepared to go for *Holland*, ſaying, There was no Dependance on thoſe Gentlemen that met, and he would leave *England*.

A Fortnight after, there was a Meeting at Mr. *Weſt*'s Chamber in the *Temple*, (Captain *Walcot* was in *Holland* then) and there it was ſaid, nothing could be done by a general Riſing: There was no ſurer Way than to take off the King and the Duke; and that could not be carried on without Mr. *Ferguſon*, who was then in *Holland*: Whereupon a Letter was ſent him, and he came over with Capt. *Walcot*: And there was a Meeting ſoon after, at which it was concluded, That nothing could be effected without taking off the King and the Duke: And there were two or three Meetings to find out a Number of Men, without which, *Rumbold* would not undertake it; at which Meetings Mr. *Walcot* was not preſent; but to the third or fourth Meeting Mr. *Walcot* came, and reſolved, at laſt, to join in the Matter: He would not, indeed, have a Hand in attacking the Coach; but would command a Party that ſhould charge the Guards. There were to be ſeveral Parties; one ſmall Party was to have killed the Poſtilion and the Horſes; Mr. *Rumbold*, with a certain Number, was to ſet upon the Coach; and Capt. *Walcot* on the Guards: And this was to have been executed at Mr. *Rumbold*'s Houſe, commonly call'd the *Rye-Houſe*, near *Hodſdon* in *Hertfordſhire*, as the King came laſt from *New-market*: Mr. *Rumbold*, and thoſe who attacked the Coach, were to fire Blunderbuſſes into it; and, if they had miſſed, they were to have done it with their Swords.

This Reſolution was taken laſt Spring, at Mr. *Weſt*'s Chamber, before the King came from *New-market*; and was the firſt Meeting Capt. *Walcot* was at. There were ſeveral Meetings afterwards at Mr. *Weſt*'s Chamber, to conſult whether they could raiſe the Number reſolved upon; and Notes were brought by *Goodenough* and *Rumbold*, that they might not be deceived in their Number: And at that Time Capt. *Walcot* was there, and undertook to go to *Rumbold*'s Houſe (the *Rye*) and he thought did go down to that Place: And *Rumbold* inſiſted on having fifty Men for this Enterprize.

That he was alſo at the *Salutation* Tavern in *Lombard-ſtreet*, and at the *Green-Dragon* on *Snow-Hill*, with Capt. *Walcot*, and other Conſpirators; where they diſcourſed of dividing the City into twenty Parts; and how many Men could be raiſed out of every Part; and they were to be divided into Fifteenths, and every Man to lead a Fifteenth. *Goodenough*, *Wade*, and *Weſt*, were entruſted with this: *Goodenough* gave an Account of ſeven Parts of the twenty; and ſaid, out of theſe would be raiſed 2900 Men; but that the other thirteen, as he computed, would not raiſe as many more.

The Chief Juſtice demanding, Why the Deſign was not executed as the King came from *New-market*? *Rumſey* anſwered, The Fire happened there, and brought the King from *New-market* before the Men could be got ready: They talked of doing it the *Saturday* before *Eaſter*; but he came back the *Tueſday* before. The News coming to Town on *Friday*, of the Fire at *New-market*, they were all in Confuſion, and could not get their Men ready by *Tueſday*. *Ferguſon* then lodged in *Covent-Garden*, and ſent for ſeveral of the Men to come to him, to ſee if they could be got together before *Tueſday*, when the King was to come back; but it could not be done, and it was laid aſide for that Time: But there was a Meeting immediately after, where *Walcot*, *Weſt*, *Rumbold*, and *Goodenough* were preſent; and it was reſolved, that Money ſhould be raiſed to buy Arms, that they might not be diſappointed again; and *Rumbold* undertook to provide them.

The Chief Juſtice demanding, If they had any further Deſign upon the King at this Meeting? *Rumſey* anſwered, Yes, it was to be done at his coming from *Windſor* to *London*; or from *Windſor* to *Hampton-Court*, or at the Playhouſe; and theſe Arms were to be in Readineſs againſt any Opportunity that ſhould happen: That Mr. *Weſt* alſo undertook to provide Arms; and told the Deponent he had bought them; but did not get his Money in ſix or ſeven Weeks after, and then he was paid an hundred Pounds by *Ferguſon*.

Mr.

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Mr. Solicitor demanding when their laſt Meeting was? *Rumſey* anſwered, He thought it was the very *Thurſday* before the Diſcovery, at the *Salutation-Tavern* in *Lombard-ſtreet*, where were preſent *Walcot*, *Weſt*, *Wade*, the two *Goodenoughs*, *Nelthrop*, and himſelf. They had ſome Intimations it was diſcovered, the *Friday* or *Saturday* before; and did meet at the *George* on *Ludgate-hill*: They went thither to know of *Goodenough*, what was done about the other thirteen Parts, being reſolved to carry on the Deſign ſtill. He told them he had no Account; but thought they ſhould have a Meeting on *Saturday* in the Afternoon, at the *George* on *Ludgate-hill*, where they ſhould have an Anſwer; but the Diſcovery happening in the mean time, but few of them met there. The *Monday* after, there was a Meeting at Capt. *Tracy*'s; where were preſent Capt. *Walcot*, Mr. *Weſt*, *Wade*, *Nelthrop*, the two *Goodenoughs*, and *Ferguſon*; and they exclaimed againſt *Keeling*, who made the Diſcovery, and took Reſolutions to be gone.

Capt. *Walcot* demanding, If he ever met at Mr. *Weſt*'s Chamber till his Majeſty's Return from *New-market*? *Rumſey* anſwered, There was one Meeting at the *Five Bells* in the *Strand*; where only *Ferguſon*, *Rumbold*, *Weſt*, *Goodenough*, and himſelf, were preſent; but *Ferguſon* had informed them Capt. *Walcot* would be there: However, Capt. *Walcot* came to their next Meeting at Mr. *Weſt*'s Chamber, at the time the King was at *New-market*: The King was at *New-market* when Captain *Walcot* and Mr. *Ferguſon* came from *Holland*.

Keeling's Evidence.

Then *Keeling* was ſworn, and depoſed, That meeting *Rumbold* and *Goodenough* at the *Sun-Tavern*, ſome time before the King went to *New-market*, *Goodenough* enquired of him then, and ſeveral times afterwards, What Men he could procure to go down to *New-market* to kill the King? That he had ſome Diſcourſe with *Burton* and *Thompſon* on the ſame Subject; and that *Burton* told him, *Barber* and *Thompſon* would be concerned in it: That the *Friday* after the Fire happened at *New-market*, *Rumbold* came to the Deponent's Houſe, to ſee what Men he could procure; and deſired to ſee them next Day: That the Deponent, *Rumbold*, *Burton*, *Thompſon* and *Barber*, met at the *Mitre-Tavern*, without *Aldgate*, next Day, and diſcourſed of going down to *Rumbold*'s Houſe, called the *Rye*; and *Rumbold* ſaid, there could not be a better Place for executing their Deſign, it ſtanding remote from Neighbours: And as an Argument to prevail with them, he ſaid, It would be keeping one of the Commandments to kill the King and the Duke of *York*, for it would ſave abundance of Bloodſhed; and acquainted them with the Manner they deſigned to effect it. That they afterwards went to the *Dolphin* in *Bartholomew-lane*, (where were preſent *Rumbold*, *Weſt*, *Goodenough*, and *Hone* the Joyner) and diſcourſed of the Time the King was expected home: And *Weſt* asked how many Swan-quills, Gooſe-quills, and Crow-quills, and what Sand and Ink were wanting? And it was anſwered, Six Swan-quills; twenty Gooſe-quills; and twenty or thirty Crow-quills. That Swan-quills were Blunderbuſſes; Gooſe-quills, Muskets; Crow-quills, Piſtols; and Sand and Ink, Powder and Bullets. That as to Capt. *Walcot*, the Priſoner, he was at the *Salutation-Tavern* with them when *Weſt* called him *Culing*; and ſaid, He hoped to ſee him at the Head of as good an Army at *Wapping*, as *Culing* was at *Cullen*; which he ſuppoſed Capt. *Walcot* remembered very well.

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That ſome time before the Deſign was diſcovered, *Goodenough* gave the Deponent a Paper, wherein he told him, he had divided the City into twenty Parts, and one of them was for himſelf; and bid him to communicate it to nine or ten Perſons he could truſt; and direct them to go to ſeveral other Perſons, and ask them, *Suppoſing the Papiſts ſhould riſe, or there ſhould be a* French *Invaſion, Are you in a Poſture of Defence?* This was all we were to communicate; and this was to feel them, and ſee how many Men they could raiſe. That *Goodenough* ſaid, they had a Deſign to kill the King at the *Bull-Feaſt*, and would have theſe Men in Readineſs: That it was to be laid upon the Papiſts; and to draw in the poor People, they were to declare they ſhould be eaſed of Chimney-Money. The Deponent underſtood, he was intended to go down to *Rumbold*'s Houſe with the Men he raiſed; but he did not remember he was asked the Queſtion. He confeſſed alſo, he ſuffered himſelf to be made a Special Bailiff, and actually arreſted the Lord Mayor; but ſaid he was put upon it by *Goodenough*, the Under-Sheriff.

Bourn's Evidence.

Zachary Bourn being ſworn, depoſed, That *Ferguſon* lodged at his Houſe; and Capt. *Walcot*, the Priſoner, uſed to come thither. That he met Capt. *Walcot*, and ſeveral more of the Conſpirators, at the *Dragon* on *Snow-Hill*; and their Buſineſs was to raiſe Men, and divide the City into twenty Diviſions, in order to the ſecuring his Majeſty and the Duke of *York*, and ſetting up the Duke of *Monmouth*; he thought they never expreſſed it, *Killing them*, at thoſe Meetings. That they were to raiſe as many Men as they could in their Diviſions, but were not to tell them their direct Buſineſs; but only ſay, *If there ſhould be Occaſion*; or, *If the Papiſts ſhould riſe?* That they might know their Strength. That *Goodenough* brought an Account of about four thouſand he could raiſe, when Capt. *Walcot* was preſent: And the Captain was at three of their Meetings, if not at all.

That they were to have ſeized the Lord Mayor, the two Sheriffs, the Chief Miniſters of State, and ſome of the Aldermen: And *Weſt* ſaid, it ſhould be his Buſineſs to ſecure the Lord Keeper; he would call him to Account, and put him in mind of *Colledge*.

That the Conſpirators met at Capt. *Tracy*'s the *Saturday* before the Diſcovery; and that Evening they had ſome Intimation of it. That on *Monday* Morning following, he was at a Meeting with Capt. *Walcot*, Mr. *Ferguſon*, *Goodenough*, *Weſt*, *Norton*, *Rumſey*, and one Capt. *Pottle*. They reſolved on nothing then; but he left them debating on killing of *Keeling*, becauſe he had made a Diſcovery. And they ſaid, they thought they had better ſtand to

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Capt. *Walcot* demanding, If the Witneſs ever heard him ſay any thing of aſſaſſinating the King? *Bourn* anſwered, He never did; but the Diſcourſe was about ſecuring the King when Capt. *Walcot* was there; though it was ſaid, at ſeveral Meetings, *There was no Way like lopping them*; by which they underſtood, the taking off the King and Duke of *York*: That was the uſual Phraſe; and he ſuppoſed the Captain had heard it.

West's *Evidence.* Mr. *Weſt* being ſworn, depoſed, That one Morning Capt. *Walcot* came to his Chamber, and diſcourſing of the Election of the Sheriffs in the City, carried on contrary to Juſtice, as they thought, the Captain ſaid, *Will People do nothing to ſecure themſelves?* Adding, *There was an Inſurrection deſigned within three Weeks or a Month, that would make us free, or worſe.* A little after, the Captain told him that he was engaged in ſuch a Deſign; and Lord *Shaftesbury* had engaged him in it: That he expected to be a Colonel of Horſe; and asked the Deponent, If he would have a Command under him? And that he told him then, to the beſt of his Remembrance, that Lord *Shaftesbury* had another Deſign upon the King and Duke, as they came from *New-market* in *October*; but he abhorred any ſuch Thing; and would only be concerned in the general Inſurrection: And he asked the Deponent to lend him a Suit of Silk Armour he bought about four or five Years before, when the Popiſh Plot broke out. That he deſired the Deponent alſo to provide him a good ſtiff Tuck, which he did.

That he underſtood the Deſign was put off by the Failure of Mr. *Trenchard*, who had, about a Fortnight before, talked of great Forces he could raiſe in the Weſt; but the Duke of *Monmouth* ſending for him, his Heart failed him, and he ſaid he could not raiſe any Men; upon which my Lord *Grey* called him Coxcomb. This was about the 19th of *November*.

That after this he underſtood, by Captain *Walcot*, that *Ferguſon* had the Conduct of the Aſſaſſination intended in *October*; and when that Deſign had miſcarried, to the beſt of his Remembrance, Capt. *Walcot* told him, there was another Deſign of attacking the King and the Duke at my Lord Mayor's Feaſt in the Hall, or in their Return home in *Paul's Church-Yard*, or at *Ludgate*; and Mr. *Ferguſon* told him the ſame thing: But the King not dining there, they were diſappointed. At other times it was propoſed to do it as the King and Duke went down the River; or at the Play-houſe; or coming from thence: And Colonel *Rumſey* ſaid, He wondered the Lords and Great Men who were ſo fond of the Thing, did not raiſe a Purſe, and buy ſomebody an Office, who ſhould rail at the Duke of *Monmouth* and the Whigs, and by that Means find an Opportunity of getting Acceſs to the King's Perſon. After theſe Diſcourſes, when Lord *Shaftesbury* retired to *Holland*, Mr. *Ferguſon* did ſo too, and Capt. *Walcot* with them. After Capt. *Walcot* and *Ferguſon* returned from *Holland*, the Captain did ſay, at the Deponent's Chamber, he was to command the Party of Horſe that were to attack the Guards at *Rumbold*'s Houſe: They were to lie there perdue, till the King came juſt down upon them; and there being a Gate to paſs through, it was to be ſhut upon the Horſe-Guards, that they could not come to his Relief; and *Rumbold* ſaid he would bring them off over the Meadows by *Hackney-Marſh*: But the Method the Captain approved of was, to retire within the Wall, and there remain till Night, it being a Place they could defend againſt any Force for a Day's time. And here he remembered, that at his firſt Diſcourſe with Capt. *Walcot* in *November*, the Captain told him Lord *Shaftesbury* was preparing a Declaration to be publiſhed in Caſe of an Aſſaſſination or Inſurrection; and would have ſeveral People employed in drawing it, that they might pick one good one out of them all: And that the Captain ſhewed him a Paper, which was a Collection of all the Paſſages in the Reign of King *James* I. *Charles* I. and his preſent Majeſty's, which he called, *Attempts to introduce arbitrary Power; and concluded with charging them with ſome perſonal Vices; declaring, that the Government was diſſolved, and they were free to ſettle another Government.*

That after their Diſappointment by the Fire at *New-market*, the Conſpirators, among whom was Capt. *Walcot*, met at the Deponent's Chamber, and conſulted how it might be done another Day: But it being ſaid the King would be at home next Day, it was laid aſide. That they met next Week (not at his Chamber, Colonel *Rumſey* was miſtaken in that) but at the *George and Vulture*; and diſcourſing of the late Diſappointment, it was obſerved, one Reaſon of it was, becauſe they had not Arms in Readineſs; and they agreed, that ten Blunderbuſſes, twenty or twenty-two Inches in the Barrel; thirty Carabines, twenty-eight Inches; and thirty Caſes of Piſtols, fourteen Inches, ſhould be bought; and the Deponent was put upon providing them, becauſe he had a Pretence for it, having a Plantation in *Carolina*: That he bought the Arms accordingly, and Mr. *Ferguſon* paid him for them a great while after. That it was agreed, the Lord Mayor and Sheriffs, and as many of the Lieutenancy as they could take, ſhould be killed; and the principal Miniſters of State, particularly the Lords *Halifax* and *Rocheſter*, and the Lord Keeper: Theſe they would hang for the Murder of *Colledge*, on the ſame Poſt he was hanged. That Sir *John Moore* was to be hung up in *Guild-Hall*: Their Lordſhips the Judges were to be flead and ſtuffed, and hung up in *Weſtminſter-Hall*; and *ſeveral of the Penſionary Parliament were to be hanged, as Betrayers of the Peoples Rights.*

The Attorney-General demanding, If *Walcot* was preſent at theſe Diſcourſes? *Weſt* anſwered, He was not at his Chamber ſo often as the reſt; but he was there ſometimes, when theſe Things were diſcourſed of: And that upon the News of the Fire at *New-market*, the Captain ſaid, *I believe God ſhews his Diſapprobation of the Thing*: And *Ferguſon* anſwered, *I believe he reſerves them for worſe Puniſh-*

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Puniſhment: And the Captain ſaying, he deſired his Name might be concealed; *Ferguſon* anſwered, *Why ſhould you be aſhamed? It is a glorious Action; ſuch an Action as I hope to ſee publickly rewarded by Parliament. I queſtion not but you will be famed for it; and Statues erected for you, with the Title of* LIBERATORES PATRIÆ.

That *Ferguſon*, who was an Independent Parſon, ſaid, He had told ſome Nonconformiſt Miniſters of it, and they deſired him to forbear; they were a ſilly Sort of People, he ſaid, and did not know how to diſtinguiſh between killing a Prince for Difference of Opinion in Religion, and deſtroying a Tyrant for Preſervation of the Rights and Liberties of the People.—— It was an Action, he ſaid, would make all the Princes in the World tremble, and teach them to uſe their Subjects kindly.

It being demanded, What they ſhould do with the King's Natural Sons? *Ferguſon* anſwered, They were good luſty Lads, they would keep them for Porters and Watermen: And as to the Lady *Anne* (afterwards Queen *Anne*) they might marry her to ſome Country Gentleman, for a Breed to keep out Foreign Pretenders.

Weſt further depoſed, That there was a Treaty between the *Scots* and Chiefs of the Faction in *England*: And that the *Scots* inſiſted on ten thouſand Pounds to buy Arms, but came down at laſt to five thouſand; and the Earl of *Argyle* was to command them: But this Treaty was broke off, becauſe the *Scots* would not declare at firſt for a Commonwealth, the extirpating of Monarchy, and the Family of the *Stuarts*. That at a Meeting at the *Young Devil-Tavern*, where *Walcot*, the Priſoner, was preſent, *Holloway* propoſed, ſince the *Scotch* Buſineſs was at a Stand, they ſhould try what Forces they could raiſe in *England*: And *Ferguſon* ſaid, He believed, if three thouſand Men could be had, the Duke of *Monmouth* and Lord *Ruſſel* would appear at the Head of them. That the City was to be divided into twenty Parts, as the other Witneſſes had depoſed: And that *Lobb* (an Independant Preacher) ſaid, he would try what his Congregation would do. That after they had an Intimation of the Diſcovery of the Conſpiracy, they procured *Keeling* to come to one of their Meetings in the City, and there *Rumbold* charged him with betraying them; and he uſed a great many Imprecations, denying he had made any Diſcovery: Then they had ſome Diſcourſe of killing him, and others propoſed his going out of Town; but he refuſed to go. And had not *Keeling* deceived them by his Proteſtations at the Tavern, he had been killed there. *Wade* ſaid at this time, If the Duke of *Monmouth* would go into the Weſt, they might try a Puſh for it: *Walcot* anſwered, He was ſatisfied God would deliver the Nation, though he did not approve of the preſent Inſtruments.

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Walcot confeſſes, and offers to be an Evidence.

Mr. *Blathwait* being ſworn, depoſed, That *Walcot*, the Priſoner, after the Diſcovery of the Conſpiracy, ſent a Letter to Mr. Secretary *Jenkins*, wherein he acknowledged his Guilt; laid himſelf at his Majeſty's Feet, and promiſed to diſcover all he knew relating to the Plot in *England*, *Scotland*, and *Ireland*: ſaid, That his Intimacy with a *Scotch* Miniſter occaſioned his knowing very much; and aſſured his Majeſty, the Buſineſs (the Conſpiracy) was laid very broad.

His Defence.

Capt. *Walcot*, in his Defence, ſaid, That he was not ſuch a Natural and a Fool, to think, that if he charged the Guards, while another killed the King, he was leſs guilty than the Man that killed him: And as to the aſſaſſinating his Majeſty, it never entered into his Thoughts. Here were four Gentlemen, Witneſſes againſt him, who, by their own Confeſſion, were guilty; and to wipe off their own Stains, were reſolved to ſwear him out of his Life: That Mr. *Weſt* had told a long Story, ſometimes naming one Gentleman, and ſometimes another; and he was afraid the Jury might apply it all to him who was leaſt concerned; for he had the Gout all that Month the King was at *Newmarket*, and Mr. *Weſt* came to ſee him ſeveral times: He was not able to draw on a Boot; and was never out of his Lodgings but once, when he went to *Stepney* to dip his Foot in the Wells there.

Another partial Confeſſion.

He acknowledged he had been at ſome Conſults, and knew of an Inſurrection that was intended; which he held was but Miſpriſon of Treaſon, as he was to have no Hand in it; and abſolutely denied he knew of any Deſign againſt the King's Life.

The Chief Juſtice demanding, What he did in *England*, when his Dwelling was in *Ireland*? The Priſoner anſwered, He was invited over by Lord *Shaftesbury*, to go Governor to *Carolina*; but that Poſt being diſpoſed of to another before he came, he went with Lord *Shaftesbury* to *Holland*; and when that Lord died, he returned to *London*, where he fell ill of the Gout: And this, and the making ſome Proviſion for his Children, occaſioned his Stay in Town.

The Chief Juſtice directs the Jury.

The Chief Juſtice then proceeded to direct the Jury: And obſerved, *That the Priſoner confeſſed his having been at ſeveral treaſonable Conſults; and that the being at ſuch Conſults, and meeting for that Purpoſe, was down-right Treaſon, and not Miſpriſion of Treaſon*, as the Priſoner apprehended. There was no Doubt but the meeting ſeveral times upon this Deſign, and concealing it, was Treaſon, though it had not been proved he ſaid any thing there; but that in Truth, the Proof was ſtronger than could have been expected in ſuch a Caſe. Whereupon the Jury, after a very ſhort Receſs, brought in the Priſoner GUILTY.

He is convicted.

The

1683. 35 Car. II. Hone's *Trial.*

The Trial of WILLIAM HONE, for *High-Treaſon*, at the *Old-Baily*, *London*, the ſame 12th and 13th of *July*, 1683. 35 *Car.* II.

1683. 35 Car. II.

The Indictment. THE Indictment charged the Priſoner with Compaſſing and Conſpiring the Death of the King; to ſubvert the Government, and raiſe a Rebellion: And with Meeting and Conſulting with other Traitors; and providing Arms for that Purpoſe.

Hone *confeſſes he conſented to murder the King.* The Priſoner pleading *guilty*, The Chief Juſtice demanded, What Part he was to have acted in this Matter? The Priſoner anſwered, Mr. *Richard Goodenough* deſired him to go with him; and he (*Hone*) asking, Whither? *Goodenough* would not tell him the Place; but *he underſtood it was to kill the King and the Duke of* York.

Mr. Serjeant *Jeffries* ſaid, Since he did not confeſs fully, he deſired he might be tried; and accordingly the Jury were ſworn: *Witneſſes however examined.* And *Keeling* depoſed, That the firſt time he ſaw the Priſoner, was at the *Dolphin-Tavern*, when Arms were agreed upon; and they diſcourſed of the King's coming from *Newmarket:* And *Rumbold* demanded how many Swan-quills, Gooſe-quills, *&c.* would be wanting: The Priſoner muſt remember the Diſcourſe, for he was by, and heard it all. And that he told this Witneſs, *That he was to be one of them that was to go down to the* Rye, *to aſſaſſinate the King.* And afterwards, at a Coffee-Houſe in *Swithin's-Alley*, the Priſoner ſaid, It would never be well till the *Blackbird* and *Goldfinch* were knocked on the Head, by whom he meant the King and Duke of *York.*

Hone anſwered, *As to the Blackbird, he owned it*; but he never heard of the *Goldfinch* till then.

Mr. *Weſt* depoſed, That the Priſoner was at the Conſult at the *Dolphin-Tavern*, but did not come in till the Diſcourſe of Arms was over: But that he thought he ſaid, If the Duke of *Monmouth* would be true, and appear, he could bring fifty or ſixty Men from the other Side the Water, to do the Buſineſs. That he was baſely deluded in this Buſineſs, by *Goodenough*, being a pretty honeſt Fellow before.

Here the Court reproved *Weſt* for endeavouring to palliate the Priſoner's Offence: And Serjeant *Jeffries* ſaid, He was not worthy the Mercy the King had ſhewn him.

Sir *Nicholas Butler* depoſed, That the Priſoner and others conſpired to kill the King and the Duke with Croſs-Bows, coming to the Lord Mayor's Show, ſome Years ago; and the Deponent acquainting his Majeſty with it, the Priſoner confeſſed their Deſign: And that, ſince he was taken laſt, he had told him, and ſeveral others, *He was to be one of thoſe that were to kill the King, and was to have twenty Pounds.*

Capt. *Richardſon* depoſed, That he was preſent when Sir *Nicholas* examined the Priſoner, concerning his being in the Conſpiracy to kill the King and the Duke; and the Priſoner confeſſed he was to be one of them: And he ſaid he was for killing the King, and ſaving the Duke; but *Goodenough* was for both. That he told them alſo the whole Buſineſs of the *Rye*; and ſaid, he did not know the Houſe; but it was the Place where the King was to be murdered. He was not willing at firſt to ſtir in it; but *Goodenough* promiſed him twenty Pounds; and confeſſed what Sir *Nicholas* had teſtified of the Croſs-Bows.

The Chief Juſtice demanding, *What he had to ſay, as to his undertaking to kill the King? He anſwered, He was drawn into it by Mr.* Goodenough. But that he had never any Deſign to kill the King by Croſs-Bows; but was only told another had ſuch a Deſign, with which he acquainted Sir *Nicholas.*

The Chief Juſtice demanding, What Religion he was of? He anſwered, He heard ſeveral Sorts of Men; ſometimes Baptiſts, ſometimes Independents, and at others, Preſbyterians.

Then the Chief Juſtice obſerving there was full Evidence againſt him, the Jury found him GUILTY, without going from the Bar. Hone *is*

The

1683. 35 Car. II. Rouſe's Trial.

The Trial of JOHN ROUSE, for *High-Treaſon*, at the *Old-Baily*, *London*, the 13th of *July*, 1683. 35 *Car.* II.

1683. 35 Car. II.

The Indictment. THE Indictment charges the Priſoner with Compaſſing and Conſpiring the Death of the King, and the Subverſion of the Government; and to that End meeting and conſulting with other Traitors to provide Arms, ſeize the *Tower*, &c.

Leigh's Evidence againſt him. *Rouſe* being brought upon his Trial, *Thomas Leigh*, a Dyer, was ſworn as an Evidence againſt him; and depoſed, That in *June* laſt the Priſoner carried him to a Club of the Conſpirators at the *King*'s-*Head* Tavern in *Swithins-Alley*: That *Goodenough* was there, and acquainted the Deponent with the Deſign to ſet up the Duke of *Monmouth*, and kill the King and Duke of *York*: That he (the Witneſs) acquainted the Priſoner with what *Goodenough* ſaid; but he found he knew it before. And the Priſoner told this Witneſs, he could provide Arms for an hundred Men; but ſaid, nothing was to be done, unleſs the King was ſeized; for they remembred Forty-one, when the King ſet up his Standard: *Therefore* (ſays the Priſoner) *We will ſeize them, that they ſhall not ſet up their Standard*: But he was not for ſhedding their Blood.

That the Priſoner alſo propoſed the playing for a Golden Ball upon *Black-Heath*; and he would engage ten Sea-Captains to manage that Affair; ſo that, when the Play was over, every Captain ſhould take his Party, and go with Long-boats, and Arms, and ſeize the *Tower*: And ſeveral ſuch Diſcourſes the Priſoner had with ſeveral Men, at the *King*'s-*Head* Tavern, in the Hearing of the Deponent.

That after Oath was made of the Deponent's being in the Conſpiracy, he lay at the Priſoner's Houſe, who cut off his Hair, and gave him a Wig, to diſguiſe him; and that he, the Priſoner, and Mate *Lee*, went ſeveral Times to view the *Tower*; and Mate *Lee* ſaying, he would undertake to attack the *Tower* at *Traitors-Bridge*, with an hundred Grenadiers, Mr. *Rouſe* ſaid, he had been at *Wapping*, and ſpoke with ſome Sea-Captains, and they were ready to undertake the Work.

That the Priſoner bid the Deponent not be diſcouraged, becauſe Warrants were out againſt him; and entertained him well, while he was at his Houſe; and they had ſeveral Meetings at Mr. *Blague*'s, and elſewhere: And he was aſſured they had a Thouſand Horſe ready in the Country, and Five Hundred in *London*; and that they contrived to ſend them Arms in Trunks to private Houſes, and were to arm themſelves in the Night-time, propoſing to ſet upon the King and Duke, as they came from *Windſor*; for they were both to be taken off. *Rouſe* ſaid, *Take them off, and then no Man can have a Commiſſion to fight for them*: Adding, that the King had been ſworn in *France* and *Spain*, to bring in Popery and Arbitrary Power, in ſo many Years; and therefore it was no Sin to take him off.

The Priſoner demanded, whether ever he ſpoke to the Witneſs, of a Deſign againſt the King and Government, and where? And whether the Witneſs did not begin the Diſcourſe?

Leigh anſwered, He could not be poſitive, whether *Rouſe* came to him, or he to *Rouſe*; or which of them diſcourſed of it firſt: But *Rouſe* was very zealous to get ten Captains, to have the Ball played for, and the *Tower* taken.

Mate *Lee* depoſed, That the Priſoner enquired of him, if he could not get ſome Seamen fit to be Commanders of Ships: And the Deponent demanding, where he would have thoſe Ships? he anſwered, He could have ſome of the King's Men of War, that lay at *Deptford* and *Woolwich*; and that they muſt ſecure both the *Tower* and *Whitehall*, or they could do nothing. And the Deponent ſaying, Where is your Oath of Allegiance then to the King? The Priſoner anſwered, *We will ſecure the King, that he come to no Damage; and he ſhall remain King ſtill*: And deſired to know, if Mr. *Rouſe* had any thing to object to his Evidence; for he ſpoke nothing but Truth: *But the Priſoner did not think fit to ſay any thing to it.*

Thomas Corbin depoſed, That ſome few Days before the Members of the City of *London* went to the Parliament at *Oxford*, the Priſoner ſaid, he foreſaw it would be a very ſhort Seſſions; but theſe frequent Prorogations, and Diſſolutions of the Parliament, would not avail: *For whatever the King had, the Parliament gave him, and might take away when they pleaſed.* And when one bid him have a Care what he ſaid, he replied, *The King hath forfeited his Crown, and has no more Right to it than I have.* And this was the ſame Evidence (the Witneſs declared) he gave in Court, in the Year 1681, *When Grand Juries returned all Bills* IGNORAMUS, *that were preferred againſt the Chiefs of the Faction, for High-Treaſon; and particularly one againſt* Rouſe *the Priſoner.*

Rouſe's Defence. The Priſoner in his Defence ſaid, That *Leigh* the Dyer came to him ſeveral Times about this Buſineſs; but he oppoſed it: That *Leigh* asking him, whether he would oppoſe a Foreign Invaſion? He (the Priſoner) demanded what he meant? And he ſaid, our Rights and Liberties were invaded, and they only made a Foreign Invaſion a Pretence to hook in People; and asked, if he did not know the Perſons engaged in the Deſign? Whereupon he concluded *Leigh* was of the Cabal, and was pretty confident there was ſuch a helliſh Deſign; but thanked God he had no Hand

1683. 35 Car. II. in it. That *Leigh* alſo communicated the Deſign of taking the *Tower*, &c. to him, and ſaid they did not want Money; *Goodenough* aſſured him there was 40,000 *l.*

The Chief Juſtice here obſerved, That the Priſoner only charged the Witneſs with what had been ſworn againſt himſelf; and that Mate *Lee* was another ſhrewd Evidence againſt him.

Rouſe anſwered, *Leigh* had turned it upon him; but he had nothing to ſay againſt Mate *Lee*: He had a Deſign to diſcover the Thing, and only was led to know the Bottom of it.

The Chief Juſtice demanding of *Leigh*, If he never diſcourſed with *Rouſe*, the Priſoner, of theſe Things in Company? *Leigh* anſwered, They uſed to diſcourſe ſingly with one Man at a Time. *Rouſe* and *Goodenough* went into a Room, and diſcourſed of theſe Things half an Hour.

The Chief Juſtice asking how he knew what Diſcourſe they had? *Leigh* anſwered, *Rouſe* told him. 1683. 35 Car. II.

Rouſe asked *Leigh*, What he ſaid when he was told one had ſworn againſt him? *Leigh* anſwered, When he heard *Keeling* had ſworn againſt him, he ſaid, if he did light of *Keeling*, he would kill him.

The Chief Juſtice demanded of the Priſoner, What he meant by putting Mate *Lee* upon enquiring out Men to make Maſters of Ships? *Rouſe* anſwered, To get at the Bottom of the Deſign, that his Majeſty might come to no Damage.

Then the King's Counſel obſerved, That the Priſoner had confeſſed Treaſon enough to convict him; and the Chief Juſtice having ſummed up the Evidence, the Jury found him GUILTY, without much Deliberation. *Rouſe convicted.*

1683. 35 Car. II. Blague's *Trial.*

The Trial of Captain WILLIAM BLAGUE, for *High-Treaſon*, at the *Old-Baily*, *London*, *July* the 13th, 1683. 35 *Car.* II.

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The Indictment.

THE Indictment was of the ſame Tenor, as the former againſt *Rouſe*, charging the Priſoner with compaſſing and conſpiring the King's Death, the Subverſion of the Government, &c.

Leigh, the Dyer, depoſed, That Captain *Blague* was at ſeveral Conſultations about ſeizing the *Tower*, and had promiſed to aſſiſt at it with his own Ship: But Mate *Lee*, the other Witneſs, not atteſting any thing poſitively againſt the Priſoner, he was acquitted, by the Direction of the Chief Juſtice. *He is acquitted, there being but one poſitive Witneſs.*

The Remarks of the Trials of the Rye-Houſe *Conſpirators will be found at the End of the Lord* Ruſſell's *Trial.*

1683. 35 Car. II. *Lord* Ruſſel's *Trial.*

The Trial of WILLIAM RUSSEL, Eſq; (uſually called Lord RUSSEL) for *High-Treaſon*, at the *Old-Baily*, *London*, the 13th of *July*, 1683. 35 *Car.* II.

1683. 35 Car. II.

The Indictment.

THE Indictment ſet forth, That *William Ruſſel*, late of *London*, Eſq; on the ſecond Day of *November*, in the 34th Year of his preſent Majeſty King *Charles* II. and divers other Days and Times, as well before as after, at the Pariſh of St. *Michael Baſſiſhaw*, in the Ward of *Baſſiſhaw*, *London*, did maliciouſly, and traitorouſly, with divers other Traitors, conſpire, compaſs, imagine and intend, not only the ſaid King, his Supreme Lord, of his State, Title, Power and Government, to deprive; but his ſaid Lord the King to kill, and put to Death, and the ancient Government of this his Kingdom of *England* to change, and wholly ſubvert; and a miſerable Slaughter of the ſaid King's Subjects to cauſe and procure; and Inſurrection and Rebellion againſt our ſaid Lord the King, to move and ſtir up: And to accompliſh the ſaid horrible Treaſons, traiterous Compaſſings, Imaginations and Purpoſes, He, the ſaid *William Ruſſel*, with other falſe Traitors, *did meet, conſult, and conclude, Inſurrection and Rebellion againſt our ſaid Lord the King, within this Kingdom of* England, *to move and ſtir up: And the Guards for the Preſervation of the King's Perſon, to ſeize and deſtroy.*

My Lord *Ruſſel* being arraigned, and pleading Not Guilty, moved to put off his Trial, alledging, he thought a Priſoner had never been arraigned and tried at the ſame Time; ſuggeſting that he had been a cloſe Priſoner, and had no Opportunity of preparing for his Defence.

The Chief Juſtice, Sir *Edmond Saunders*, anſwered, It was uſual, for Crimes of this Nature, to arraign and try the Priſoner the ſame Day.

Sir

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Sir *Robert Sawyer*, the Attorney-General, alſo obſerved, That his Lordſhip had no Reaſon to complain for want of Notice; becauſe he had Notice given him of his Trial the *Monday* Seven-night before, and the Matters he was charged with: That he had had the Liberty of Counſel to adviſe him, and no ſort of Liberty denied him, which was fit for a Subject to have in his Condition. And the Chief Juſtice ſaid, Theſe were Privileges never before granted to any Man in his Lordſhip's Circumſtances.

Lord *Ruſſel* replied, There were only ſome general Queſtions put to him; and that he had ſome Witneſſes that could not be in Town till Night; and therefore thought it hard he could not have one Day more.

The Attorney-General ſtill averred, The Priſoner did know the Matter, he was charged with, the *Monday* Seven-night before; for he himſelf, he ſaid, was with his Lordſhip, and heard him examined to thoſe Points.

My Lord *Ruſſel* then ſaid, He had not had a Copy of the Pannel: To which the Court anſwered, He had had a Copy of the Names of the Perſons intended to appear as Jurors, and there could no other Copy be given him; for the Priſoner might challenge 35, and therefore there was generally a Return of Three or Fourſcore. This was not like a Pannel made up by the Sheriff, in ordinary Caſes, between Man and Man, from whence they could not depart when it was once returned; and if they were to give him a new Liſt of Names, they could only give him ſuch another.

Then the Priſoner deſired that his Trial might be put off till the Afternoon, which the Chief Juſtice ſeemed inclined to; but Mr. Attorney inſiſting that he ſhould be tried immediately, the Chief Juſtice ſaid, He could not put it off, without the Conſent of the King's Counſel.

The Clerk proceeding to call the Jury, his Lordſhip deſired he might have Pen, Ink, and Paper, and that he might make uſe of ſuch Papers as he brought into Court with him; which was granted.

He alſo deſired he might have one to write for him, and aſſiſt his Memory; and the Attorney-General anſwered, he might have two. My Lord ſaid his Wife was there, and would do it: The Chief Juſtice anſwered, his Lady might, if ſhe would give herſelf the Trouble.

Challenge for want of Freehold over-ruled.

John Martin being called to ſerve on the Jury, the Lord *Ruſſel* challenged him, objecting that he had not Forty Shillings a Year Freehold, and therefore could not ſerve: Which Point his Counſel, Mr. *Pollexfen*, Mr. *Holt*, and Mr. *Ward*, were permitted to argue, and were anſwered by the King's Counſel; and the Challenge was over-ruled by all the Judges on the Bench, being ſeven in Number; for that at Common Law, the want of Freehold was no Exception in a City; and the Statute of 1 *Mary* declared, that all Trials for Treaſon ſhould be according to the common Law: Nor had this Challenge, for want of Freehold, been ever allowed in the City.

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The Lord *Ruſſel* afterwards challenged one and thirty peremptorily, and the following Jury were ſworn.

The Jury.

John Martin,	*William Butler*,
William Rouſe,	*James Pickering*,
Jervis Seaton,	*Thomas Jeve*,
William Faſhion,	*Hugh Noden*,
Thomas Short,	*Robert Brough*,
George Torriano,	*Thomas Oneby*.

Mr. Attorney opens the Evidence.

Mr. Attorney-General, in opening the Indictment and the Evidence, obſerved, That the Lord *Ruſſel*, the Duke of *Monmouth*, Lord *Grey*, Sir *Thomas Armſtrong*, and Mr. *Ferguſon*, were a kind of Council of State, to direct and manage the general Riſing, that was intended on the 17th of *November*, then laſt paſt: That theſe Gentlemen had frequent Meetings in *October* and *November*, and there conſulted how to manage the Inſurrection, and to ſeize the King's Guards: That at ſeveral Meetings they received Meſſages from Lord *Shaftesbury*, concerning theſe Riſings; but not being able to prepare Matters againſt the Day appointed, Lord *Shaftesbury* went over to *Holland*, and *Ferguſon* with him: Whereupon their Council was new modeled, Sir *Thomas Armſtrong* was left out, as was alſo the Lord *Grey*; *for they put on the Face of Religion*; and my Lord *Grey* was eſteemed ſo ſcandalous, (on Account of his living in Adultery with his Lady's Siſter) that they were aſſured his being one of them would leſſen their Reputation among the Saints.

The Council of Six.

The Members of this new Council were, the Lord *Ruſſel*, the Duke of *Monmouth*, Lord *Howard*, the Lord *Eſſex* (who had that Morning prevented the Hand of Juſtice), Colonel *Sidney*, and Mr. *Hampden*. This was the great Council, that moved all the reſt; and they met frequently at the Lord *Ruſſel*'s Houſe, to prepare Things for an Inſurrection. There was alſo an inferior Council, or Cabal, conſiſting of Seven, who managed the Buſineſs of the Aſſaſſination.

That it was determined, by the firſt Council, That before they fixed upon a Time for the Inſurrection in *England*, they ſhould get Intelligence of the Time and Method of the intended Riſing in *Scotland*; and thereupon *Aaron Smith* was diſpatched to that Kingdom, to invite the *Scots* to act in Concert with them; and ſeveral Perſons came from *Scotland*, to treat with the Conſpirators here, who demanded 30000 *l.* to enable them to make a Diverſion here: However, they fell in their Demands to 10000 *l.* and at laſt to 5000 *l.* But the Treaty was broke off the very Week the Plot was diſcovered.

Colonel Rumſey's Evidence.

Then the Witneſſes were called, and firſt Colonel *Rumſey* was ſworn, who depoſed, That he was at Lord *Shaftesbury*'s Lodgings in *Wapping*, the latter End of *October*, or the Beginning of *November* laſt, and his Lordſhip told him, there were met at Mr. *Shepherd*'s Houſe, the Duke of *Monmouth*, Lord *Ruſſel*, Lord *Grey*, Sir *Thomas Armſtrong*, and Mr. *Ferguſon*; and that he deſired him (the Witneſs) to ſpeak to them, and know what Reſolution

1683. 35 Car. II. lution they were come to, about the Riſing at *Taunton*. That he went to them accordingly; and their Anſwer was, That Mr. *Trenchard* had failed them, who had promiſed to raiſe a Thouſand Foot, and Three Hundred Horſe, but could not perform it; and his Lordſhip muſt be content. The Chief Juſtice demanding, who gave this Anſwer? he anſwered, Mr. *Ferguſon* ſpoke moſt of it, though he thought Lord *Grey* ſaid ſomething to the ſame Purpoſe; the Lord *Ruſſel*, and Duke of *Monmouth*, being preſent.

It being demanded of Colonel *Rumſey*, If there was any Diſcourſe happened, while he was at Mr. *Shepherd's*? he anſwered, There was ſome Diſcourſe about ſeeing what Poſture the Guards were in, that they might ſurprize them. And being asked, If it was diſcourſed by *all* the Company? he anſwered, *All the Company did debate it*: And he thought the Duke of *Monmouth*, Lord *Grey*, and Sir *Thomas Armſtrong*, undertook to view them, *it being intended to ſurprize them, if the Riſing went on.*

The Attorney-General asked, if he (the Witneſs) was to be concerned in the Riſing? The Colonel anſwered, Yes, he was engaged in it by Lord *Shaftesbury*, and was to have gone down to *Briſtol*.

Mr. Serjeant *Jeffries* demanding, whether the Priſoner was averſe to, or agreeing to their Reſolution? Colonel *Rumſey* anſwered, *agreeing to it.* The Court asking, What my Lord *Shaftesbury* ſaid, when he carried back their Anſwer? the Colonel anſwered, He ſaid he would be gone, and accordingly did go: And that this was about a Fortnight before the Time appointed for the Riſing.

The Court then told the Lord *Ruſſel*, he might ask the Witneſs any Queſtions.

His Lordſhip anſwered, He knew little of the Matter; it was the greateſt Accident in the World he was there, and when he ſaw what Company was there, he would have been gone again: But there was no Diſcourſe of ſurpriſing the Guards, or undertaking to raiſe an Army: And deſired to know if he gave any Anſwer about the Riſing. And the Chief Juſtice demanded of the Witneſs, If my Lord *Ruſſel* ſaid any thing there, and What? the Colonel anſwered, *The Lord* Ruſſel *did diſcourſe of the Riſing at* Taunton.

The Chief Juſtice then demanded, *If Lord* Ruſſel *gave his Conſent to the Riſing?* Colonel *Rumſey* anſwered, *Yes, my Lord, he did.*

Then Mr. *Shepherd*, a Merchant in *Abchurch-Lane*, at whoſe Houſe the Conſultation was held, was ſworn.

Shepherd's Evidence. He depoſed, That in *October* laſt, Mr. *Ferguſon* came to him, in the Duke of *Monmouth's* Name, and deſired the Conveniency of his Houſe, for him and ſome other Perſons of Quality to meet there: And as ſoon as he had granted it, in the Evening, the Duke of *Monmouth*, Lord *Grey*, Lord *Ruſſel*, Sir *Thomas Armſtrong*, Colonel *Rumſey*, and Mr. *Ferguſon*, came in: And Sir *Thomas Armſtrong* deſired that none of his Servants might come up; but they might be private: So he (the Witneſs) went down for Wine, and what they wanted: *That the Subſtance of their Diſcourſe was, to ſurprize the Guards; and in order to that, the Duke of* Monmouth, Lord Grey, *and Sir* Thomas Armſtrong, *went one Night to the* Mews, *or thereabout, to view the Guards,* as he remembered. *And the next Time they came to his Houſe, he heard Sir* Thomas Armſtrong *ſay, The Guards were very remiſs, and not like Soldiers; and the Thing was very feaſible, if they had Strength to do it.* 1683. 35 Car. II.

It being demanded, if they met by Chance, or the Witneſs had Notice of it? Mr. *Shepherd* anſwered, He had Notice that the Duke of *Monmouth*, Lord *Ruſſel*, Sir *Thomas Armſtrong*, and Mr. *Ferguſon*, would be there: That they did not come together, but one after another; and he did not know whether they came in their Coaches, or on Foot.

Mr. Serjeant *Jeffries* demanding, *If my Lord* Ruſſel *was there both Times? Mr.* Shepherd *anſwered, Yes, as he remembred.* And being asked, If Lord *Ruſſel* had any particular Buſineſs with him? He anſwered, No, not at that Time; but ſince he had, about the Affairs of Lord *Shaftesbury.* Being asked, If any Paper was read at that Time? He ſaid *Somewhat was read, in the Nature of a Declaration, ſetting forth the Grievances of the Nation, in order to a Riſing.* He would not ſay Lord *Ruſſel* was there then; but he was, when they talked of ſeizing the Guards.—— The Chief Juſtice demanded again, *If the Lord* Ruſſel *was preſent at both the Meetings?* Mr. *Shepherd* anſwered, *I think ſo; but it was eight or nine Months ago, and I cannot be poſitive.*

The Lord *Howard* being ſworn next, Mr. Attorney demanded, What he knew of the Riſing deſigned before the Lord *Shaftesbury* went away; and how it was continued on?

Lord Howard's Evidence. His Lordſhip having obſerved the Ferment the Town was in at the Election of Sheriffs, ſeems to date the Original of the Plot from thence: And then gives an Account of his introducing Capt. *Walcot* to Lord *Shaftesbury*, and his attending Lord *Shaftesbury* when he abſconded; who complained to him, he ſaid, that their Deſigns were much obſtructed by the unhandſome Deportment of the Duke of *Monmouth* and Lord *Ruſſel*; who had not only withdrawn themſelves from his Aſſiſtance, but acted contrary to their Engagements; for when he had got ſuch a formed Force in *London*, and expected to have it anſwered by them in the Country, They told him they were not in a Condition to concur with him; which he looked upon as an Excuſe, and an Inſtance of their Intentions to deſert him. However, there were ſuch Preparations made in *London*, that if they were willing to *loſe the Honour* of concurring with him, he ſhould be able to do it himſelf, and intended ſpeedily to put his Deſign in Execution: *There were ten thouſand briſk Boys, ready to follow him whenever he held up his Finger.*—— That he (Lord *Howard*) went to *Moor-Park* to the Duke of *Monmouth*, and acquainted him with Lord *Shaftesbury's* Complaints: And the Duke anſwered,

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answered, He thought he was mad. He was so far from giving him Encouragement, that he told him from the beginning, and so did Lord *Russel*, There was nothing to be done by them in the Country at that time. That he returned to Lord *Shaftesbury*, and told him, the Duke disowned they ever gave him any Encouragement: And *Shaftesbury* answered, It was false; and he had Reason to believe, *There was some artificial Bargain between his Father and him, to save one another:* They had different Prospects. *We*, says he, *are for a Commonwealth; and he has no Design but his own Personal Interest, and that will not go down with my People.* That the Duke of *Monmouth* afterwards told him (Lord *Howard*) that the Lord *Russel* had been with Lord *Shaftesbury*, and put off the Day of Rendezvous, upon Condition that those Lords, and some others, should be in a Readiness to raise the Country within a Fortnight after: And, *That the Duke added, He had been at* Wapping *all Night, and never saw a Company of bolder and brisker Fellows in his Life.* That he had also viewed the Avenues to the *Tower*, and did not think it difficult to possess themselves of it.

Here the Lord *Russel* complained he had very hard Measure, that so much Hear-say Evidence was given.

Whereupon the Chief Justice declared to the Jury, That this did not affect his Lordship.

Lord *Howard* proceeded in his Evidence, and said, About the 17th or 18th of *October* last, *Capt.* Walcot *told him, they were positively resolved to rise; and did believe, that a smart Party might meet some great Men:* Whereupon he acquainted the Duke of *Monmouth* there was some dark Intimation of an Attempt upon the King's Person: And the Duke thereupon struck his Breast, and with great Emotion, said, *God-so, kill the King! I will never suffer them.* That the Day the King came from *New-market*, they had a Notion conveyed amongst them, that there was a Design upon the the King: And Lord *Grey* said, *By God, if they do attempt such a Thing, they cannot fail.* And they were in great Anxiety of Mind, till they heard the King's Coach was come in.

This failing, it was next resolved to be done on the Anniversary of Queen *Elizabeth*, the 17th of *November:* Which failing also, by their not being ready in the Country, Lord *Shaftesbury* took Shipping and got away; and from that Time he (Lord *Howard*) heard no more of Lord *Shaftesbury* till he died.

After this, they considered they had gone so far, and communicated the Affair to so many, that there was no retreating; and that to manage so great a Design, a general Council was necessary to take care of the Whole: About the Middle of last *January* therefore they constituted a Cabal, consisting of six Persons; namely, The Duke of *Monmouth*, Lord *Essex*, Lord *Russel*, Mr. *Hampden*, jun. *Algernon Sidney*, and himself (Lord *Howard*), who met about the same time at Mr. *Hampden*'s House, where it was debated, Whether it was most proper to begin the Insurrection in *London*, or in the Country? And the Duke of *Monmouth* observed, That it would be impossible to resist a formed Force, with a Rabble hastily got together; and that, whatever Numbers could be gathered in the City, would be dispersed before they could form themselves: Concluding therefore, that it would be better to rise at such a Distance from the Town, as they might have an Opportunity of forming themselves; and not here, where every slight Rumour might intimidate their Friends; and one Half Hour would convey the News to those Forces, that in another Half Hour, would be ready to suppress them: Whereas, if they should begin at a Distance from *London*, the King would be under this *Dilemma*, either to send down his Forces, and leave the City naked; or, if he did not send, he would give them an Opportunity of forming themselves into Bodies in the Country. Then they considered, what Towns and Counties were most disposed to Action; and what Arms and Money would be wanting: And the last and greatest Consideration was, How they might draw the *Scots* in to join them.— That about ten Days after, the same Persons had a Meeting at Lord *Russel*'s House; and there it was resolved to send some Persons to Lord *Argyle*, to settle a Correspondence with him, and get Intelligence of the State of *Scotland*, and to invite some Persons hither, that were supposed to understand the Situation of their Affairs: And the Persons agreed to be invited were, Sir *John Cockram*, Lord *Melvile*, and, as he thought, one of the *Campbels*.

The Council of Six.

Their Debates.

That Colonel *Sidney* had the Care of this Business; who told him (Lord *Howard*) he had sent *Aaron Smith* to *Scotland*, and given him sixty Guineas for his Journey: And they agreed not to meet any more till the Return of that Messenger, who was gone near a Month before they heard any thing of him, and they were afraid their Letter had miscarried: But it could have done no great Hurt, if it had; for it carried only a kind of Cant in it, being under the Disguise of a Plantation in *Carolina*.

Mr. Attorney demanding, *If my Lord* Russel *was at these Meetings? Lord* Howard *answered, Yes: He wished he could say he was not:* And being asked, If he sat as a Cypher amongst them, and said nothing? Lord *Howard* answered, Every one knew Lord *Russel* was a Person of great Judgment, and not very lavish in Discourse. And it being asked, If Lord *Russel* consented? He answered, They did not put it to the Vote, it went without Contradiction; and he took it, *That all there gave their Consent.*

Then the Court told the Prisoner, That was his Time, if he would ask the Witness any Questions: Whereupon Lord *Russel* said, The most this Witness had testified of him, was only Hear-say; *The two times they met was upon no formed Design; only to talk of News, and Things in general.*

The Court replied, He testified, that after Lord *Shaftesbury* went off, the Party concerned with him, made Choice of the Duke of *Monmouth*, Lord *Russel*, *&c.* to carry on the

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Design of an Insurrection, or Rising in the Kingdom.

The Lord *Russel* asked, By what Party that Council was chosen, for he knew of no Party? Lord *Howard* answered, *They erected themselves into this Society, by mutual Agreement.* Lord *Russel* replied, They were People that did meet very often; and though, he said, they met upon a formed Design, they met about no such Thing.

Then the Chief Justice observed, That Lord *Howard* had testified, *They did consult among themselves about raising Men, and where the Rising should first be; whether in* London, *or more distant Parts: That they had several Debates about it; and mentioned some of the Duke of* Monmouth's *Arguments for its being begun in Places distant from the City. That they did all agree, not to do any thing further, till they had considered how to raise Money and Arms, and engage the Kingdom of* Scotland *in the Business: And that it was agreed amongst them to send a Messenger to* Scotland. *This Lord* Howard *testified, of his own Knowledge.*

Lord Russel *again acknowledged they met*; but said, there was no Debate of any such Thing, nor putting any Thing in Method; but Lord *Howard* was a Man of a voluble Tongue, talked well, was full of Discourse, and they were delighted to hear him.

Evidence that the Agents invited, came up from Scotland.

Here Mr. Attorney called Mr. *Atterbury*, the Messenger, to prove Sir *Hugh Campbell* came up from *Scotland*, to *London*, in pursuance of the Message sent him: And *Atterbury* deposed, That Sir *Hugh Campbell* was in his Custody, both he and his Son being taken as they were making their Escape out of a Woodmonger's House: That Sir *Hugh* acknowledged he had been in Town four Days, and came up with his Son, and one *Bailey*.

Mr. Attorney then called Mr. *West*, and demanded, Whether he, and the rest of those that intended to rise, looked upon any of the Lords, above-mentioned, as concerned in it?

West deposed, That they always said Lord *Russel* was the Man they most depended on; because he was a Person looked upon as of great Sobriety.

Lord *Russel* answered, He could not hinder People from making use of his Name; but he thought it hard to have this brought to influence the Jury, and inflame them against him.

Mr. Attorney replied, It was not Evidence to convict a Man, if there was not plain Evidence before; but it confirmed what the rest had sworn.

Then the Chief Justice acquainted the Prisoner, That the King's Counsel had done with their Evidence; and said, he would put him in Mind of the most material Things that had been proved against him.

The Chief Justice puts Lord Russel *in Mind of what had been testified against him.*

And first; That Colonel *Rumsey* had deposed, he was sent to them on a traitorous Errand, to know what had been done concerning the designed Insurrection at *Taunton*: And that he (Lord *Russel*) being at that Meeting, Answer was made, Mr. *Trenchard* had failed them; and my Lord *Shaftesbury* must be contented as to that time. That Mr. *Shepherd* also deposed, his Lordship was at that Meeting; and that a Paper was read, purporting a Declaration designed to be published on their Rising; setting forth, the Oppressions and Grievances of the Nation. That the Lord *Howard*, after having given a long Account of the Lord *Shaftesbury*'s Designs, deposed, That six of them did undertake, as a Council, to manage the intended Insurrection, and surprise the King's Guards, which was Rebellion: And deposed they had several Consults concerning it; and had mentioned several Particulars debated at those Consults. 1683. 35 Car. II

Lord Russel's Defence.

The Lord *Russel* then proceeding in his Defence, said, I think my self mighty unfortunate to stand here, charged with a heinous Crime; and that intermixed with Treasons, and horrid Practices and Speeches of others; the King's Counsel taking all Advantages, improving and heightening Things against me. I am no Lawyer; a very unready Speaker; a Stranger to Things of this Nature; alone, and without Counsel. I am very sensible I am not provided to make a just Defence: But my Lord, you are equal; and the Gentlemen of the Jury, I think, are Men of Conscience: They are Strangers to me, and I hope they value innocent Blood; and will consider, *That the Witnesses against me swear to save their own Lives*: However they may be accounted legal Witnesses, they cannot be credible. For Colonel *Rumsey*, who had been so highly obliged by the King and Duke, to be capable of a Design to murder the King; I think, no Body will wonder, if, to save his own Life, he will endeavour to take away mine. Neither does he swear enough to do it; and if he did, the Time, by the 13th of this King, is elapsed; the Prosecution ought to be within six Months. And by the 25th of *Edw.* III. a Design to levy War was no Treason, unless some Overt-Act appeared: And desired to know what Statute he was tried upon.

The Attorney-General answered, They went upon the 25th of *Edw.* III. And this has been constantly so adjudged in all Trials since the Revolution, *To prepare Forces to fight against the King, was a Design to kill the King within that Statute: That a Design to depose the King, to imprison him, or raise his Subjects against him, were within that Statute, and Evidences of a Design to kill the King.*

Lord *Russel* said, He heard nothing of Col. *Rumsey*'s Message; nor did he say he spoke to him, or that he gave any Answer: And Mr. *Shepherd* remembered nothing of it; so there was but one Witness, and that would not convict him of Treason: Besides, a Conspiracy to levy War was no Treason; and desired he might have Counsel to argue that Point.

The Chief Justice answered, Thus the Law also is held to be at this Day: *That it had been resolved, that there need not be two Witnesses to the same individual Act: If there were several Acts manifesting the same Treason, and one Witness to each of them, they were two Witnesses within the Statute of* Edw. VI. And as to the other Point, Whether a Conspiracy to levy War was Treason? The Fact must be admitted, That he had consulted to levy War, before they could speak to it.

Mr.

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Mr. Attorney obſerved, *That in my Lord* Stafford's *Caſe, there was but one Witneſs to one Act in* England; *and another, to another Act in* France.

Lord *Ruſſel* anſwered, It was to the ſame Point.

Mr. Attorney replied— To the general Point, the *Lopping Point:* (The taking off the King.)

Then Lord *Ruſſel* demanded again, Whether Colonel *Rumſey* could ſwear poſitively that he heard the Meſſage, and gave any Anſwer to it?

Colonel *Rumſey* anſwered, When he came in, they were ſtanding by the Fire-ſide; but they all came from the Fire-ſide to hear what he ſaid.

Lord *Ruſſel* then averred, That he came in with the Duke of *Monmouth*, and *Rumſey* was there before: And called Witneſſes to prove, that Lord *Howard* ſaid he knew nothing againſt him; or of any Plot.

Lord Ruſſel's Witneſſes.

And firſt, the Lord *Angleſey* ſtood up and declared, That hearing the Lord *Bedford* was in ſome Affliction for his Son, he made him a Viſit, when my Lord *Howard* came in, and began to comfort my Lord, ſaying, You are happy in a wiſe Son, and a worthy Perſon; one that can never, ſure, be in ſuch a Plot as this, or ſuſpected for it: I know nothing againſt him, or any Body elſe, of ſuch a barbarous Deſign; and therefore your Lordſhip may be comforted in it.

Mr. *Howard* alſo depoſed, That the Lord *Howard*, upon his Honour, his Faith, and with as much Solemnity as if he had taken an Oath before a Magiſtrate, denied he knew of any Man concerned in the Plot; and particularly of my Lord *Ruſſel*, whom he vindicated with all the Honour imaginable; ſaying, He did not only ſuffer unjuſtly, but he thought him the worthieſt Perſon in the World.

Doctor *Burnet* declared, Lord *Howard* was with him the Night after the Plot broke out; and with his Hands and Eyes lift up to Heaven, ſaid, That he knew nothing of any Plot, or believed any; and treated it with great Contempt.

Lord *Cavendiſh* declared, He always thought Lord *Ruſſel* to be a Man of great Honour; too prudent and wary to be concerned in ſo deſperate a Deſign; and had expreſſed ſo ill an Opinion of Colonel *Rumſey*, that it was not likely he would truſt him with ſuch a Secret.

Doctor *Tillotſon* ſaid, He took the Lord *Ruſſel* to be a Perſon of great Virtue and Integrity; and could not but think him very far from any ſuch wicked Deſign.

Doctor *Burnet* and Doctor *Cox* ſaid, They had heard Lord *Ruſſel* declare himſelf againſt all Inſurrections.

The Duke of *Somerſet* ſaid, He had known Lord *Ruſſel* two Years, and never heard any thing from him but what was honourable, loyal, and juſt.

Then the Jury deſired to know, What the Lord *Howard* ſaid, as to what the Lord *Angleſey* teſtified.

Lord Howard vindicates himſelf.

Lord *Howard* anſwered, He confeſſed he did frequently ſay there was nothing of Truth in the Plot: He was at that time to out-face the Thing, both for himſelf and his Party; and he did not intend then to have acted this Part.

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He did not think that the Religion of an Oath was tied to a Place; but received its Obligation from the Appeal made to God: And if he called God and Angels to witneſs to a Falſhood, he ought not to be believed now: But their Lordſhips knew, *Every Man was committed for a Deſign to murder the King.* And he laid hold on this; for he was to carry his Knife cloſe between the Paring and the Apple. And he did ſay, *If I were an Enemy to my Lord* Ruſſel *and the Duke of* Monmouth, *and were called to be a Witneſs, I muſt have declared, in the Preſence of God and Man, that I did not believe either of them had a Deſign to murder the King.*

Several other Witneſſes appeared, and gave Lord *Ruſſel* the Character of a virtuous Man; and good in all Relations.

Lord Ruſſel concludes his Defence.

Then the Lord *Ruſſel* concluded his Defence, and ſaid, I declare to your Lordſhip, I have always had a Heart ſincerely loyal and affectionate to the King and Government, the beſt Government in the World. I pray as ſincerely for the King's happy and long Life, as any Man alive: And for me to go about to raiſe a Rebellion, which I looked upon as wicked and impracticable, is very unlikely. I was always for the Government; I never deſired any thing to be redreſſed, *but in a Parliamentary and Legal Way:* Gentlemen, I am now in your Hands eternally, my Honour, my Life, and all; and I hope the Heats and Animoſities amongſt you, will not ſo byas you as to incline you to find an innocent Man guilty. I call Heaven and Earth to witneſs, I never had a Deſign againſt the King's Life; nor ever ſhall have. I think there is nothing at all proved againſt me: I am in your Hands; God direct you.

Mr. Solicitor's Obſervations on the Evidence.

The Solicitor-General then proceeded to ſum up the Evidence, and make his Obſervations on it for the King; wherein he ſhewed, That nothing was more common than to indict a Man for conſpiring the Death of the King; and to aſſign a Conſultation for levying War againſt the King, as an Overt-Act or Evidence of it. And that, *a Deſign to bring the King into their Power, till he had conſented to ſuch Things as ſhould be moved in his Parliament, was equally Treaſon, as if they had agreed directly to aſſaſſinate him.* But the reſt of his Argument comprehending only what had been already urged in the Courſe of the Trial, is deſignedly omitted.

The Chief Juſtice's Directions to the Jury.

The Chief Juſtice, in his Directions to the Jury, ſaid, The Queſtion before you will be, Whether, upon the whole Matter, you do believe my Lord *Ruſſel* had any Deſign upon the King's Life? To deſtroy the King or take away his Life? for that is the material Part here. Tis uſed, and given you by the King's Counſel, as an Evidence of this, That he did conſpire to raiſe an Inſurrection, and to cauſe a Riſing of the People, to make, *as it were*, a Rebellion within the Nation, and to ſurprize the King's Guards, which, ſay they, can have no other End than to ſeize and deſtroy the King: And tis a great Evidence (if my

1683. 35 Car. II. my Lord *Ruſſel* did deſign to ſeize the King's Guards, and make an Inſurrection in the Kingdom) of a Deſign to ſurprize the King's Perſon. It muſt be left to you, upon the whole Matter: You have not Evidence in this Caſe, as there was yeſterday againſt the Conſpirators to kill the King at the *Rye:* There was direct Evidence of a Conſult to kill the King; that is not given you in this Caſe; *This is an Act of contriving Rebellion and an Inſurrection within the Kingdom, and to ſeize his Guards, which is urged as an Evidence: And ſurely it is in itſelf an Evidence, to ſeize and deſtroy the King.* Upon this whole Matter, this is left to you: *If you believe the Priſoner at the Bar to have conſpired the Death of the King; and in order to that, to have had theſe Conſults that the Witneſſes ſpeak of, then you muſt find him guilty of this Treaſon that is laid to his Charge.*

Lord Ruſſel *convicted.* Then the Court adjourned till Four in the Afternoon; when the Jury brought the Lord *Ruſſel* in GUILTY of High-Treaſon.

The next Day being *Saturday*, the 14th of *July*, the Lord *Ruſſel* was brought into Court to receive Sentence. And it being demanded of him, What he had to ſay, why Judgment ſhould not paſs upon him? He deſired the Indictment might be read in *Engliſh*; and the Clerk having read the Words, which charged him with *conſpiring the King's Death*, *He moves in Arreſt of Judgment.* He ſaid, he thought he had not been charged with conſpiring the Death of the King; for the Witneſſes had only ſworn a Conſpiracy to levy War againſt him; and therefore he thought Judgment could not paſs upon him for conſpiring the King's Death: To which Mr. Recorder anſwered, That was an Exception proper to be made before Verdict; and he thought he did make it. Whether the Evidence did ſupport the Charge, was proper to be obſerved to the Jury; for if it came ſhort of the Indictment, they could not find it to be a true Charge; but when they had found it, their Verdict paſſed for Truth.

The Lord *Ruſſel* replied, He thought it very hard he muſt be condemned upon a Point, that there was not one thing of it ſworn; and therefore thought he might legally demand an Arreſt of Judgment.

His Exceptions anſwered. The Recorder ſaid, he hoped his Lordſhip would conſider, it was not the Court that could give a Verdict, it muſt be the Jury; and he believed there was no Body in the Court delighted in giving ſuch Judgments, eſpecially againſt his Lordſhip. The Verdict was found; and the King's Attorney-General, in behalf of the King, did demand it: And thereupon, after a ſhort Preface, the Recorder *He is condemned.* proceeded to paſs Sentence upon the Lord *Ruſſel*, as is uſual upon a Conviction of High-Treaſon.

Walcot, *&c. called to hear Judgment.* Then Capt. *Walcot*, *Hone*, and *Rouſe*, were ſet to the Bar; and it was demanded of them reſpectively, What they could ſay, why Judgment ſhould not be pronounced againſt them?

Rouſe anſwered, That the Words mentioned in the Indictment againſt him, were laid to have been ſpoken the ſecond of *March*; and by the Evidence, they appeared to be ſpoken in *June*; and therefore he thought it ſtrange the Jury ſhould find him guilty of them: But neither he, nor either of the other two, offering any thing material in Arreſt of Judgment, the uſual Sentence in High-Treaſon was pronounced on them all three. 1683. 35 Car. II. *Sentence pronounced againſt them.*

The Execution of Capt. *Walcot*, *John Rouſe*, and *William Hone*, being appointed on *Friday* the 20th of *July*, they were that Day drawn on Sledges from *Newgate* to *Tyburn*; and there being put into a Cart, Dr. *Thomas Cartwright* Dean of *Rippon*, and Mr. *Smith* Ordinary of *Newgate*, exhorted them to make an ingenuous Confeſſion of what they knew of the Conſpiracy. Capt. *Walcot* anſwered, He had ſome Papers in his Pocket, which he had prepared, his Memory being bad, and deſired he might read them; and the Sheriffs conſenting, he looked upon one of his Papers, and began his Speech: Wherein he ſaid, That to the End he might not be thought an Atheiſt, he declared he believed in the Trinity, and hoped to be ſaved by the Merits of Chriſt alone: That he alſo believed the Scriptures to be written by Men inſpired, and ought to be the Rule of Faith: That Chriſt was the Head of the Church, and it was not in the Power of Councils or Cardinals, or any Power on Earth, to ſet up the Traditions of Men, and make them of equal Validity with the Word of God. As to the preſent Occaſion, he ſaid, I do neither blame the Judges, the Jury, or the King's Counſel. *I only blame ſome Men, that in Truth were deeper concerned, and more engaged than I, that came in as Witneſſes againſt me; and ſwore me out of my Life to ſave their own.* *Walcot's Speech at the Place of Execution.*

I confeſs I was ſo unfortunate as to be invited by Colonel Rumſey, *one of the Witneſſes againſt me, to ſome Meetings, where ſome Things were diſcourſed of, in order to the aſſerting our Liberties and Properties, which we looked upon to be violated and invaded; but it was he and Mr.* Weſt, *and ſome Gentlemen that are fled, that were the great Promoters of thoſe Meetings. I was near a Quarter of a Year ill of the Gout, and during that Time, Mr.* Weſt *often viſited me; and ſtill his Diſcourſe would be concerning* LOPPING THE TWO SPARKS; *that was the Word he uſed, meaning* THE KING AND THE DUKE; *and propoſed it might be done at a Play; for he ſaid,* THEN THEY WOULD DIE IN THEIR CALLING. *He bought Arms to do it, without any Direction of mine: I never ſaw the Arms, nor I never ſaw the Men that were to do it, though they ſaid* THEY HAD FIFTY EMPLOYED FOR THAT END. *I told ſeveral of them, that the killing the King would carry ſuch a Blemiſh and Stain with it, as would deſcend to Poſterity: That I had eight Children that I was loth ſhould be blemiſhed with it: And withal, I was confident the Duke of* Monmouth *would revenge his Father's Blood, if it were but to vindicate himſelf from having any Hand in it. Mr.* Weſt *preſently told me, that the Duke of* Monmouth *did not refuſe to give an Engagement, that he would not puniſh thoſe that ſhould kill the King.*

He forgave all the World, and even Mr. *Shepherd*, who promiſed to carry him to *Holland*; but inſtead of it, delivered him up, and

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and brought him into the Condition he was in. He forgave alſo the reſt of the Witneſſes; but begged it might be obſerved, if their End was Peace, and they died the common Death of all Men; *for though by the Law of the Land I ought to die, and the King may reaſonably put me to Death, for being at thoſe Meetings, where a War was debated; yet I think thoſe Men are guilty of my Blood, that were as deep in it as I, and have betrayed me, and taken it away.* Then he accuſed his Friends, *That they would neither hear any Man ſpeak, or ſpeak themſelves, what they would not have repeated; for there was no ſuch thing as Faith in Man to Man, whatever there was in Man to God: Either the Tears of a Wife, or a Family of little helpleſs Children, ſomething or other, would tempt and provoke Men to betray one another.*

Dr. Cartwright. You blame the Witneſſes for that which is their Virtue, not their Crime: That they have been Witneſſes for the King.

Walcot. I was not for contriving the King's Death, if you will believe me.

Dr. Cartwright. You blame them for betraying your contriving the War, upon which the Death of the King muſt have followed, if your Treaſon had gone forward; or elſe you could not have defended yourſelf from that Juſtice, to which he has brought you.

Walcot. Sir, *I think it was but reaſonable I ſhould ſuffer: That is due from Juſtice, and reaſonable by Law*; but theſe Men did not come in againſt me, till they did it to ſave themſelves; and they revealed it with that aggravating Circumſtance, no rational Man could be guilty of.

Dr. Cartwright. That Circumſtance, which you call aggravating, is no Aggravation at all; but rather a Mitigation of your Crime. They would have it believed, that you were tenderer of the King's Perſon, than to ſhoot him when he was not armed: But you confeſs you were conſulting that Crime.

Walcot. I was not to have a Hand in the King's Death.

Dr. Cartwright. But it was propoſed when you was there.

Walcot. It was ſo.

Dr. Cartwright. And it was agreed to be done.

Walcot. Truly, I do not know how far it was agreed; *I was there at many Meetings.*

Dr. Cartwright. Theſe very Meetings you could not but be ſenſible of.

Walcot. There were ſeveral Meetings, wherein the Buſineſs of the King's Life was never ſpoke of.

Dr. Cartwright. That was agreed at thoſe Meetings; but you had a tenderer Conſcience.

Walcot. I ſay, they were for aſſerting our Liberties and Properties.

Dr. Cartwright. I would fain have you explain that.

Walcot. Truly, Sir, ſince you do preſs me to ſpeak, We were under general Apprehenſions; and ſo were thoſe Lords, that are likely to ſuffer (as I have heard), of Popery and Slavery coming in.

Dr. Cartwright. What Sign was there of it? You had no Perſecution at all: You were allowed by Law to meet, five in a Houſe, beſides the Family. It is true, Conventicles have been diſturbed of late; and I would have you look upon it as a Judgment of God, to bring you to this, for forſaking the Communion of the Church of *England*, in which Way you were inſtructed from your Youth. 1683. 35 Car. II.

Walcot. I do not come here to diſpute of Religion; but to die religiouſly, if it pleaſe God to enable me.

Dr. Cartwright. I pray God enable you: But I would not have you charge that as a Crime upon the Witneſſes, which was their Duty.

Walcot. I cannot tell how to excuſe the Witneſſes, for aggravating Things againſt me, and making them worſe than really they were: For a Man to invite another to a Meeting; to importune him to this Meeting; to be perpetually ſoliciting him, and then deliver him up to be hanged, as they have done me.——

Dr. Cartwright. It was a Crime to ſolicit you to thoſe Meetings; but when you were in, it was a Duty in you, and in them, to reveal it: If God had given you the Grace to diſcover them, the Turn had been theirs, which is yours. And as you ſay, you cannot excuſe them, That is uncharitable.

Walcot. I do forgive them, and I deſire, with all my Heart, God would forgive them.

Dr. Cartwright. You confeſs you were guilty enough to take away your Life.

Walcot. I was ſo. The ſame Meaſure we mete to another, that Meaſure God will mete to us: I leave it to God.

Dr. Cartwright. You pray this may be the laſt Blood ſpilt upon this Account.

Walcot. I do ſo.

Dr. Cartwright. Would not you have Traitors brought to their End? You talk of ſpilling of Blood, as if it were innocent Blood now ſpilt, when you do confeſs and own the Guilt: But I ſhall give you no further Diſturbance, than my Prayers to Almighty God for you, That God would give you Mercy.

Dr. Cartwright, then turning to *Hone*, and exhorting him to unburden his Conſcience: *Hone confeſſed he was guilty of this Crime, according to the Law of the Land, and the Law of God.* Hone's laſt Words at Tyburn.

Dr. Cartwright. You ſay, *you were guilty of conſpiring the Death of the King, and raiſing an Inſurrection?*

Hone. *Truly, I muſt ſay, as the Captain, I was drawn in:* Thou ſaweſt a Thief, and thou conſentedſt with him. *So I ſay, That I was drawn in: I ſaw the Thief, and conſented.* I have looked upon myſelf ſince to be the more guilty of Blood, and my Circumſtance was to be drawn in, and enſnared; for I never was at any of their Meetings, any of their Cabals, but in a publick Coffee-Houſe or Tavern, where they diſcourſed the Matter of Fact: *And I was to meet the King, and the Duke of* York; *but I did not know at that*

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Time, when, or where, or what was my Buſineſs.

Dr. Cartwright. But you were to aſſiſt.

Hone. Yes, I promiſed that! To aſſiſt! I was reſolved, however, to go down into the Country, and not meddle in the Thing at all; and had been in the Country; but meeting with *Keeling*, he called me, and diſcourſing with him, I did ſay, *I was for killing the King, and ſaving the Duke of* York.

Dr. Cartwright. What was your Reaſon for killing the King, and ſaving the Duke of York?

Hone. The Duke of *York* did openly profeſs himſelf to be a *Roman* Catholick. And *I did ſay, I had rather diſpoſe of the King, than the Duke of* York.

Dr. Cartwright. Had you rather a Papiſt ſhould reign over us, than the King? If you had had a Deſign to kill the Duke, and ſave the King, it might be to prevent Popery; but you ſay the quite contrary. God in Heaven forgive your murderous Deſign.

Hone. I know as little of this, as any poor ſilly Man in the World: I was fain to gather it; I had it not down-right; I was drawn into it; however, I am now to die. As for the Witneſſes, The Lord forgive them.

Rouſe's *Speech at the Place of Execution.*

Dr. Cartwright asking *Rouſe*, What he had to ſay? he anſwered, *I confeſs I have been a Hearer, and have underſtood too much of ſome kind of Meetings; God forgive me that I have not been as careful and diligent to diſcover them:* But then he ſaid, he had declared his Opinion againſt thoſe Things, as a Breach of the Laws of God, and the Laws of the Land. And that what he had declared to his Majeſty in Council, was the naked Truth. He endeavoured to acquit Sir *Thomas Player*, of having any Hand in the Plot; and ſaid, he was indeed acquainted with the Lord *Shafteſbury*; but was very ſhy of his Company, after he came out of the *Tower:* That Sir *Thomas* told him *(Rouſe)*, he never was in that Lord's Company but once after; *for he ſaw ſome Deſigns that he was afraid were going on:* That he *(Rouſe)* had been at ſeveral Clubs, eating and drinking; and that there was a Deſign to ſet up the Duke of *Monmouth*, (he would not ſay while the King reigned) though ſome extravagant, hot-headed Men, had taken upon them to diſcourſe thoſe Things: And *he knew ſome worthy Men, who had declared, in his hearing, that in Oppoſition to the Duke of* York, *if the King was ſeized, they ſhould ſtand by the Duke of* Monmouth. *There were others that were for a Commonwealth; and ſome few for the Duke of* Buckingham. That the way of theſe Gentlemen's diſcourſing of theſe Things, was only with one at a Time. This had long been the Practice of one of the Witneſſes againſt him, who had teſtified againſt him, the Words he ſpoke himſelf. That his *(Rouſe's)* Deſign was, to get to the Bottom of the Buſineſs, and then to have made a Diſcovery: That the ſame Witneſs told him, That a certain Number of People had made a Reſolution to attack the *Tower* of *London*, the City, *White-Hall*, and St. *James's*: That their Reſolution was not to ſpill a Drop of Blood, but only *to ſecure the King's Perſon*, that the Papiſts did not kill him; and then they would deal with the Duke of *York* as they pleaſed.

That Meſſengers being out againſt that Witneſs, he *(Rouſe)* offered him a Bed at his Houſe; and now he came and ſwore againſt him, that he was the Perſon engaged in the taking the *Tower* of *London*; but he never had any ſuch Thought, never conſulted any Perſon of Quality, or diſcourſed of Arms in order to it. *That it was this Witneſs, that told him, the King was to be taken off, as he came from* Windſor; *and there were ſeveral Things to be done, in order to it: That they wanted a Place of Rendezvous; ſome were for* Salisbury-Plain, *and ſome for* Black-Heath; *but* Black-Heath *was pitched upon as the moſt convenient Place: And in order to gather the People together, ſome were for giving a Silver Ball to be played for; which he* (Rouſe) *ſeemed to approve of, and diſcourſed* Goodenough *about it; and of drinking a Bowl of Punch, and giving out that all ſhould be welcome: And by ſuch Means, they might gather Thirty or Forty Thouſand Men together, within two or three Days*; but his (*Rouſe's*) Deſign was only to get what he could out of them. That the ſame Witneſs told him, *Goodenough* ſaid, There were Forty Thouſand Pounds in Bank; and if ſuch a Ball coſt Thirty or Forty Pounds, it mattered not, to carry on ſuch a Deſign; He ſaid alſo, there were Five Hundred Arms to be brought in, and that Mr. *Weſt* knew of them; for part of them were bought by him.——*Rouſe* added, *I do freely acknowledge, and confeſs, that it is juſt in God, in the firſt Place, and righteous and juſt in the King, that I die: I die juſtly for concealing it:* But he ſaid, he did not conceal it with a Deſign to prejudice his Majeſty.——The Ordinary afterwards prayed, and ſung a Pſalm with them, and then they prayed by themſelves; after which the Executioner did his Office.

The Execution of the Lord *Ruſſel*, being appointed on the 21ſt of *July*, the Sheriffs went to *Newgate*, about Nine in the Morning, to ſee if he was ready; and in a little Time after his Lordſhip came out, and went into his Coach, taking his Leave of his Lady, the Lord *Cavendiſh*, and ſeveral other Friends. There went in the Coach with him, Dr. *Tillotſon*, and Dr. *Burnet*, who attended him to the Scaffold, erected in *Lincoln's-Inn-Fields*, which was covered with black Cloth. Lord Ruſſel ſet out from the Scaffold in Lincoln's-Inn-Fields.

Being come upon the Scaffold, his Lordſhip bowed to the Company, and then turning to the Sheriff, ſaid,

Mr. SHERIFF,

I Expected the Noiſe would be ſuch, that I ſhould not be very well heard. I was never fond of much ſpeaking, much leſs now: Therefore, I have ſet down in this Paper, all that I think fit to leave behind me. God knows how far I was always from Deſigns againſt the King's Perſon, or of altering the Government. And I ſtill pray for the Preſervation of both, and of the Proteſtant Religion.

Mr.

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Mr. Sheriff, I am told, that Captain *Walcot* Yeſterday ſaid ſome Things concerning my Knowledge of the Plot: I know not whether the Report is true or not. To which it being anſwered, his Lordſhip was not named by him; he replied, he hoped he was not; for, ſays he, I never ſaw him, or ſpoke to him in my whole Life; *and in the Words of a dying Man, I profeſs I know of no Plot, either againſt the King's Life, or the Government:* But I have now done with this World, and am going to a better. I forgive all the World heartily, and I thank God I die in Charity with all Men; and I wiſh all ſincere Proteſtants may love one another, and not make way for Popery, by their Animoſities. I pray God forgive them, and continue the Proteſtant Religion, that it may flouriſh, as long as the Sun and Moon endure. I am now more ſatisfied to die than ever I have been.

Then kneeling down, his Lordſhip prayed by himſelf; after which, Dr. *Tillotſon* prayed with him, and having prayed again by himſelf, he pulled off his Peruke, put on his Cap, took off his Neckcloth and Coat, and bidding the Executioner, after he had lain down a Moment, to do his Office with out a Sign, he gave him ſome Gold. Then embracing Dr. *Tillotſon*, and Dr. *Burnet*, he ſubmitted to the Block, and his Head was ſevered from his Body at two Blows, according to Dr. *Burnet*, who was on the Scaffold; though others ſay, there were three Strokes, and that the firſt deprived him of all Senſe and Motion; but the Faction had got a Story amongſt them, that they were mighty fond of propagating, namely, That the Executioner firſt ſtruck him on the Shoulder, and that his Lordſhip roſe up, and ſpoke to him, and his Head was not cut off under ſix or ſeven Strokes; inſinuating that the Executioner had Orders from Authority, to uſe him in that barbarous Manner: But theſe are ſuch Circumſtances, as would infallibly have been taken Notice of by Dr. *Burnet* if there had been any Truth in them; and therefore we may very well conclude there was no Foundation for this Story.

He is beheaded.

The Paper he left behind him.

As to the Paper the Lord *Ruſſel* left behind him, it being very long, and appearing an artificial Piece, drawn up by Dr. *Burnet*'s Advice and Direction, I have deſignedly omitted it; but if the Reader has the Curioſity to peruſe that Paper, he will find it in ſeveral of our *Engliſh* Hiſtories; and in the Tract, entitled, *The Characters and Dying Speeches of the State Priſoners.*

Dr. *Tillotſon*, and Dr. *Burnet*, it is ſaid, laboured very hard to convince the Lord *Ruſſel*, *That it was not lawful to take up Arms againſt the King*; which if they could have effected, his Pardon, it was thought, might have been obtained: But he differed in Opinion with theſe Divines, at leaſt with Dr. *Tillotſon* to the laſt, as appears by a Letter Dr. *Tillotſon* wrote to him, the Day before he died, of the following Tenour.

Dr. Tillotſon's Letter to Lord Ruſſel againſt Reſiſtance.

My Lord,

I WAS heartily glad to ſee your Lordſhip, this Morning, in that calm and devout Temper, at the receiving the Bleſſed Sacrament; but Peace of Mind, unleſs it be well grounded, will avail but little, and becauſe tranſient Diſcourſe many times hath little Effect, for want of Time to weigh and conſider it: Therefore, in tender Compaſſion to your Lordſhip's Caſe, and from all the good Will, that one Man can bear to another, I do humbly offer to your Lordſhip's deliberate Thoughts, theſe following Conſiderations, concerning the Points of Reſiſtance, if your Religion and Rights ſhould be invaded, as your Lordſhip puts the Caſe: Concerning which, I underſtood by Dr. *Burnet*, that your Lordſhip had once received Satisfaction, and am ſorry to find a Change. 1. *That the Chriſtian Religion doth plainly forbid the Reſiſtance of Authority.* 2. That though our Religion be eſtabliſhed by Law, which your Lordſhip urges as a Difference between our Caſe, and that of the primitive Chriſtians; yet in the ſame Law, which eſtabliſhes our Religion, it is declared, *That it is not lawful, upon any Pretence, to take up Arms:* Beſides which, *There is a particular Law, declaring the Power of the Militia to be ſolely in the King:* And that ties the Hands of Subjects, though the Law of Nature, and general Rules of Scripture, had left us at Liberty, which I believe they do not, becauſe the Government and Peace of human Society could not well ſubſiſt upon theſe Terms. 3. *Your Lordſhip's Opinion is contrary to the declared Doctrine of all Proteſtant Churches:* And though ſome particular Perſons have taught otherwiſe, yet they have been contradicted herein, and condemned for it, by the generality of Proteſtants. And I beg your Lordſhip to conſider, *How it will agree with an avowed aſſerting the Proteſtant Religion, to go contrary to the general Doctrine of Proteſtants:* My End in this is, to convince your Lordſhip, *That you are in a very great and dangerous Miſtake:* And being ſo convinced, That which before was a Sin of Ignorance, will appear of a much more heinous Nature, as in Truth it is, and call for a very particular and deep Repentance; which if your Lordſhip ſincerely exerciſe, upon the Sight of your Error, by a penitent Acknowledgment of it to God and Men, you will not only obtain Forgiveneſs of God, but prevent a mighty Scandal to the Reformed Religion. I am very loth to give your Lordſhip any Diſquiet in the Diſtreſs you are in, which I commiſerate from my Heart; *but am much more concerned that you do not leave the World in a Deluſion, and falſe Peace, to the Hindrance of your Eternal Happineſs.* I heartily pray for you, and beſeech your Lordſhip to believe I am with the greateſt Sincerity and Compaſſion in the World,

My Lord,

Your Lordſhip's moſt faithful, and

afflicted Servant,

TILLOTSON.

Mr. *Echard* relates, that Dr. *Tillotſon* delivered this Letter into his Lordſhip's own Hand, who read it with great Deliberation, and ac-

1683. 35 Car. II. acknowledged he had therein offered more to convince him, than he had ever met with before: That he was now ſatisfied, *nothing but a Caſe of a very extraordinary Nature, could juſtify Subjects in taking up Arms againſt their Prince: That he was fully of Opinion, no ſuch Cauſe had been given by the King to juſtify any ſuch Attempt againſt him. But ſtill he thought ſuch Circumſtances there might be, in which it would be lawful for them to Reſiſt.*

Remarks on the five laſt Trials. In my Remarks on the five laſt Trials, *viz.* Thoſe of Capt. *Walcot*, *Hone*, *Rouſe*, *Blague*, and Lord *Ruſſel*, I ſhall conſider theſe three Particulars. 1*ſt*, Whether there was any ſuch Plot as the Priſoners are charged with? 2*dly*, What were the reſpective Views of the Conſpirators? 3*dly* and laſtly, Which of the Priſoners were guilty, and how far?

1. Whether there was any Plot, or Conſpiracy, againſt the King and Government at that Time? And if the Evidence, given at theſe Trials, againſt the Priſoners, and their own Confeſſions at the Hour of Death, will not convince their Friends of the Certainty of it, I cannot tell how it is poſſible to convince them; eſpecially if it be conſidered, that the Witneſſes of this Plot were Men of Figure and Subſtance, Men who evidently appeared with great Unwillingneſs againſt their Accomplices, and only came in to ſave their own Lives, who gave their Teſtimony with all the Tenderneſs imaginable; and, indeed, could not forbear expreſſing their Affection for the Priſoners in open Court. Had they been a raſcally and profligate People, who made a Trade of ſwearing Men out of their Lives, for the extravagant Rewards that were offered them publickly and privately, as was the Caſe of the Witneſſes of the pretended Popiſh Plot, their Evidence might have been dubious: But when the Priſoners themſelves made no other Objections to their Teſtimony, *Than that they gave their Evidence to ſave their own Lives, and that they were as deep, or deeper, in the Plot than themſelves, and ſeduced them into it:* Surely there needs no other Proof of *a Plot in general*, the Priſoners, as well as the Witneſſes againſt them, atteſt the Truth of it: I proceed therefore to the ſecond Particular.

2. What were the ſeveral Views of the Conſpirators? And nothing is more evident than that all of them intended to make the Duke of *Monmouth* their Tool, to obtain their ſeveral Ends; the Lords *Ruſſel*, *Eſſex*, *Hampden*, *&c.* propoſed he ſhould command the Malcontents; aſſiſt them in compelling the King to exclude the Duke of *York* from the Succeſſion; to adminiſter the Government during his Majeſty's Life-time, under ſuch Limitations as they ſhould preſcribe; and that the Duke ſhould accept of the Crown after the King's Death, upon the like Limitations; that is, they propoſed to have a Chief Officer, with the Name and Title of King; but that he ſhould obey the Dictates of the Parliament, and never pretend to diſpute their high and mighty Commands. There was another Party of the Duke's particular Friends, that propoſed his enjoying the Crown with the ſame Prerogatives former Kings had done; but theſe were a very ſmall Party; for moſt of the Sons of Monarchy were for continuing the Succeſſion in the right Line: But the third and moſt powerful Faction, of which Lord *Shaftesbury* was the Head, were for extirpating both the Family of the *Stuarts*, and Monarchy itſelf, and reducing the Kingdom to a Commonwealth, like that of *Holland*, of which no doubt that Lord propoſed to be the PROTECTOR, or rather *Director*, in Imitation of the celebrated *Cromwell*; and to have exerciſed a more abſolute Dominion in the Name of the Commonwealth, than any of our Monarchs had ever aſſumed. 1683. 35 Car. II.

This third Party did not propoſe to obſerve any Meaſures, but to break through all Laws human and divine, and even to have aſſaſſinated their Sovereign, to facilitate the Enterprize; or perhaps they looked upon the People, of whom they fooliſhly imagined their Faction a Majority, to be veſted with Sovereign Authority; and that *They had a Right to depoſe, and call the Chief Magiſtrate to account, and to eſtabliſh what Form of Government they ſaw fit*; and, according to the Maxims of their Predeceſſors in Uſurpation, they propoſed *to do Juſtice* (as their Phraſe was) *either without them, or upon them*; that is, to turn out, or put to Death, the Miniſters of State at Pleaſure; and to murder their Maſter, if he oppoſed them, or refuſed to become their Slave. Thus much appears very obvious from theſe Trials, and the Declarations of the Conſpirators at the Place of Execution; which brings me to the third Particular, namely, to enquire, 3*dly*, Which of the Priſoners were guilty of any Part of the Charge, and how far?

As to Captain *Walcot*, he offers, in a Letter to Secretary *Jenkins*, to become an Evidence; and *aſſures his Majeſty, That the Conſpiracy was laid very broad:* At his Trial, *he acknowledged he had been at ſeveral treaſonable Conſults, and was acquainted with the intended Inſurrection:* At his Execution, he ſays, Mr. *Weſt* often viſited him, and his Diſcourſe was ſtill concerning the *lopping the two Sparks*; by which was meant, *the murdering the King and Duke*; and that it was ſometimes propoſed to be done at the Play-houſe: That *Weſt* told him, Arms were provided, and Fifty Men employed to aſſaſſinate the King and Duke; and that he (*Walcot*) told them, the killing the King and Duke would caſt a Blemiſh on them and their Poſterity, and the Duke of *Monmouth* would revenge his Father's Death.

He confeſſed, *That by the Law of the Land he ought to die*, for being at thoſe Meetings, where a War was debated; and in another Place, *he acknowledges the King's Murder was propoſed, when he was preſent:* After which, it is impoſſible to doubt whether he was to have a Share in the Inſurrection, and was acquainted with the Deſign of ſome of his Party to aſſaſſinate his Majeſty; and as he concealed both theſe traitorous Deſigns, though he pretends he diſapproved the Murder, he was ſurely, in a great Meaſure, guilty of both. If he was contriving an Inſurrection when he knew others deſigned to take that Opportunity to murder the King, in order to facilitate the

Inſurrection

1683. 35 Car. II. Inſurrection he was engaged in. Can any one ſuppoſe he was very averſe to the Aſſaſſination? Or that he would not have been pleaſed to have ſeen it effected, though he was not fond of the Infamy of the Action?

I ſhall conclude my Remarks on Capt. *Walcot*'s Caſe, with the Character Biſhop *Sprat* gives him; namely, "That he was an Officer "in *Cromwell*'s Army, who, after Pardon and "Indemnity received, and a plentiful Eſtate "ſecured to him at the King's Reſtoration, "was nevertheleſs engaged in all the Plots "againſt the Government ever ſince; and "particularly in that of *Ireland*, ſome Years "before, to ſurprize the Caſtle of *Dublin*. "He was introduced by Lord *Howard*, un-"der the Character of a ſtout and able "Officer, into a ſtrict Familiarity with the "Earl of *Shaftesbury*, from whom he never "departed till his Death; accompanying him "in his Flight to *Holland*, and returning "thence with his Corps; he and *Ferguſon* "having this peculiar Mark of his Kindneſs, "to be made Legatees in his laſt Will, as his "ſpecial Friends". *Biſhop of* Rocheſter's *Narrative of the Conſpiracy*, Page 22.

As to *Hone*, he confeſſed at his Trial, That he was to be one of thoſe who was to go down to the *Rye*, to aſſaſſinate the King; and was to have twenty Pounds for that Service; but ſays, he was drawn into it by *Goodenough*: After which, it is ſurely unneceſſary to bring further Proof of his Guilt; or that ſome of the Conſpirators had formed a Deſign to aſſaſſinate his Majeſty, at *Rumbold*'s Houſe at the *Rye* in *Hertfordſhire*, as he came from *New-market*.

As to *Rouſe*, it was proved at his Trial, He had been at ſeveral treaſonable Conſults; That he knew ſome of the Conſpirators had a Deſign to aſſaſſinate the King: That he had declared, *Whatever the King had, the Parliament gave him: That the King had forfeited his Crown, and had no Right to it.* At his Execution he ſaid, He knew ſome worthy Men, who in his hearing declared, That, in Oppoſition to the Duke of *York*, if the King was ſeized, they would ſtand by the Duke of *Monmouth*: Others were for a Commonwealth; and ſome few for the Duke of *Bucks*. That it was the principal Witneſs againſt him, who told him, *The King was to be taken off as he came from* Windſor; *and ſeveral Things were to be done, in order to it.* They were divided about a Place to aſſemble their Forces: Some were for *Salisbury-Plain*, and ſome for *Black-Heath*; but *Black-Heath* was at length agreed on: And in order to gather their Friends together, it was propoſed to play for a Silver Ball; which he ſeemed to approve of, and ſaid, they might gather together thirty or forty thouſand Men by that Means. And though he ſays, in his Excuſe, that he went to their Meetings only to ſerve the King, and enable himſelf to diſcover the Bottom of the Plot; yet he ſeems to recollect himſelf afterwards, and ſays, *I do freely acknowledge and confeſs, that it is juſt in God in the firſt Place, and righteous and juſt in the King, that I die: I die juſtly for concealing it* (the Conſpiracy); which he could not be ſaid to have done, if it had appeared he had no other Deſign than to have ſerved the King by a Diſcovery: And therefore we can no longer doubt he was to have had a Share in the intended Inſurrection; and was guilty, at leaſt, of concealing, that there was a Party that intended to aſſaſſinate his Majeſty. 1683. 35 Car. II.

I come now to enquire into the Lord *Ruſſel*'s Caſe, who was charged with Meeting and Conſulting with other Conſpirators, to raiſe an Inſurrection and Rebellion; and with a Deſign to ſurprize the King's Guards at *White-Hall*.

The Witneſſes againſt him were Colonel *Rumſey*, Mr. *Shepherd*, and my Lord *Howard*, his intimate Friends. Colonel *Rumſey* depoſed, That he was ſent by Lord *Shaftesbury* to the Duke of *Monmouth*, Lord *Ruſſel*, Lord *Grey*, Sir *Thomas Armſtrong*, and Mr. *Ferguſon*, who were met that Evening (*November* 2.) at Mr. *Shepherd*'s Houſe, to know what Reſolution they came to about the Riſing at *Taunton*; and that he went to Mr. *Shepherd*'s, and found all that Company there; and having delivered his Meſſage, they anſwered, Mr. *Trenchard* had failed them, who had promiſed to raiſe a thouſand Foot, and three hundred Horſe; but could not perform it; and Lord *Shaftesbury* muſt be content (to defer the Riſing.)

He teſtified alſo, That there was a Diſcourſe of ſeeing what Poſture the Guards were in, it being intended to ſurprize them: And being asked, if it was diſcourſed by all the Company, he anſwered, *All the Company did debate it; and that the Lord* Ruſſel *was agreeing to it: He teſtified alſo, That the Lord* Ruſſel *did diſcourſe of the Riſing at* Taunton.

Mr. *Shepherd* alſo teſtified, That the Duke of *Monmouth*, Lord *Ruſſel*, and the reſt of the Company, met at his Houſe; and that the Subſtance of their Diſcourſe was, *How to ſurpriſe the Guards: And that ſomewhat was read, in the Nature of a Declaration, ſetting forth the Grievances of the Nation, in order to a Riſing.*

Lord *Howard* depoſed, That on Lord *Shaftesbury*'s going to *Holland*, the Duke of *Monmouth*, Lord *Eſſex*, Lord *Ruſſel*, Mr. *Hampden*, jun. *Algernon Sidney*, and himſelf, formed a Cabal, or Council, in order to propoſe Matters for the intended Inſurrection (for the Buſineſs was not dropped on the Lord *Shaftesbury*'s retiring beyond Sea, but deferred): *That they met accordingly, and conſulted about raiſing Men: Where it was proper to begin the Inſurrection; whether at* London *or in the Country; and how to provide Arms and Money: But the principal Buſineſs was, to engage the Kingdom of* Scotland *in the Conſpiracy, before they declared themſelves.*

The Lord *Ruſſel* acknowledged at his Trial, that he met the Company mentioned, at Mr. *Shepherd*'s: And that he twice met the Gentlemen ſaid to be of the Council of Six.

And in the Paper his Lordſhip left with the Sheriff, he confeſſes, *He was with the Company at Mr.* Shepherd's, *and that there was ſome Diſcourſe of the Feaſibleneſs of ſurprizing the Guards there*; and ſeveral times by accident, in general Diſcourſe, he had heard it mentioned elſewhere, as a thing might eaſily

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be done; but never conſented to, as fit to be done: And, *particularly at Lord* Shaftesbury's, *there being ſome general Diſcourſe of this Kind, he flew out, and exclaimed againſt it.*

In another Part of that Paper his Lordſhip ſays, The Duke of *Monmouth* came to him and ſaid, he was extremely glad he was come to Town; *for Lord* Shaftesbury, *and ſome hot Men, would undo them all,* if great Care was not taken; and therefore deſired, for God's Sake, he would uſe his Endeavours with his Friends, to prevent any thing of that Kind. *That he told him, there would be Company at Mr.* Shepherd's *that Night, and took him thither with him: And there were ſome Things ſaid there, with much more Heat than Judgment, which he ſufficiently diſapproved; and yet for theſe Things he was condemned: And that it had been urged againſt him, That he was acquainted with theſe Heats and ill Deſigns, and did not diſcover them: But this was but Miſpriſion of Treaſon at moſt.* That he was adviſed not to confeſs Matter of Fact plainly at his Trial, *ſince that muſt certainly have brought him within the Guilt of Miſpriſion of Treaſon.*

Upon the Whole, there naturally ariſes three Queſtions:

1. Whether the Lord *Ruſſel* committed the Facts he was charged with?

2. Whether there was legal Evidence given to convict him? And,

3. Whether thoſe Facts were High-Treaſon, or juſtifiable by the Laws and Conſtitution of this Kingdom?

1. And firſt: His Lordſhip acknowledged he was at ſeveral Conſults or Meetings, which the Lawyers call Treaſonable; (that is) where the ſurprizing the King's Guards, and an Inſurrection, was treated of; and that he went deſignedly with the Duke of *Monmouth*, to Mr. *Shepherd*'s, to prevent the Earl of *Shafteſbury* precipitating Matters; which is a ſtrong Evidence they had conſulted and debated of an Inſurrection before. He confeſſed alſo in his Paper, that the ſeizing the Guards had ſeveral times been debated in his Company: *That he once flew out into a Paſſion when it was propoſed*; and that the Duke of *Monmouth* ſaid to him, *Did you ever hear ſo horrid a Thing?* Which would incline an impartial Man to believe, that theſe Things were talked of in earneſt, and with a view of putting them in Execution; eſpecially if it be conſidered, That *the Duke of* Monmouth, *one of the Six, with whom this Lord aſſociated himſelf, confeſſed himſelf guilty under his Hand:* And the Lord *Eſſex*, another of the Cabal, ſent a Meſſage to his Lady, when he was in the *Tower*, *That what he was charged with was true:* That Mr. *Hampden*, another of the Cabal, *confeſſed himſelf guilty in open Court afterwards:* And Lord *Howard* did not only confeſs his Guilt, but became an Evidence againſt his Accomplices.

Is it poſſible, after this, to believe no Inſurrection was intended, or conſidered of, at theſe Meetings? And if there was, though ſome of the Company might diſagree about the Time or the Manner, I doubt the Law would look upon them *all* as guilty of *High-Treaſon*, rather than *Miſpriſion* of Treaſon, which is only, *where a Perſon accidentally falls into Company, and hears Treaſon without revealing it*; and not where all the Company meet *on Purpoſe* to debate treaſonable Matters, which they have had under their Conſideration before.

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2. As to the Legality of the Evidence, both Colonel *Rumſey* and Mr. *Shepherd* agree, That the Meeting at *Shepherd*'s Houſe was by Deſign and Appointment, and not accidental: Both of them agree, that the ſurprizing the Guards was debated; and the Colonel avers, that their Meeting was to conſult, as well concerning the intended Inſurrection, as the ſurprizing the Guards: Nay, that Lord *Shafteſbury* ſent him to this very Company, telling him they were to meet at Mr. *Shepherd*'s by Appointment, to know what was done in Relation to the Riſing at *Taunton*: And Lord *Howard* gives Evidence of the Lord *Ruſſel*'s being at ſeveral Meetings, where the Inſurrection was conſidered, and the raiſing Arms and Money to effect it: The *Scots* invited into the Conſpiracy; and a Sum of Money promiſed them, to enable them to make a Diverſion.

Thus we find Colonel *Rumſey* and Lord *Howard* poſitive as to the Debates concerning an Inſurrection; and both Colonel *Rumſey* and *Shepherd* as poſitive, that the Propoſal of ſurprizing the Guards, was made when the Lord *Ruſſel* was preſent: So that here are, in Reality, three Witneſſes inſtead of two, which the Law requires, to convict a Perſon of High-Treaſon: And that ſuch Conſults are treaſonable, and may be given in Evidence as Overt-Acts of Compaſſing and Conſpiring the King's Death, was conſtantly reſolved at the Trials of the Conſpirators againſt King *William*, and ever ſince the Revolution.

3. But then come my Lord *Ruſſel*'s Friends, and ſay; Admitting all theſe Facts to be true, notwithſtanding the Opinions of the Lawyers, there was no Treaſon in the Matter; for theſe Conſultations were intended for the Support and Preſervation of the Conſtitution in Church and State. Our Liberties were invaded by the Adminiſtration: The Proteſtant Religion in Danger of being ſubverted; and Popery, and Arbitrary Power, eſtabliſhed: We had no other View but the ſecuring our Religious and Civil Rights, and reducing the Prerogative within its due Bounds: His Lordſhip's Caſe was the ſame with thoſe worthy Patriots, who were inſtrumental in the glorious Revolution.

To which it is anſwered, That the Circumſtances of the reſpective Caſes, were widely different: There were no Breaches made in our Conſtitution then, like thoſe in the ſucceeding Reign; none, at leaſt, that could juſtify an Inſurrection. The greateſt Grievance the Faction complained of, was, the putting the Laws in Execution againſt the Sectaries:

And

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And how hard and uncharitable ſoever this might be, it is generally held, *That while the King and his Miniſters only put the Laws and Statutes of the Realm in Execution, they are not to be reſiſted on any Pretence whatſoever* And as for the Apprehenſions of Popery and Arbitrary Power in the next Reign; neither could this juſtify an Inſurrection, while our Religious and Civil Rights were actually protected. At the Revolution, both the Civil and Military Government were put into the Hands of profeſſed Papiſts and Presbyterians, Enemies to the Conſtitution, and diſqualified to hold any Poſts in the Government: A great Standing Army was kept up in Time of Peace; the Penal Laws and Teſt ſuſpended, or evaded: The Biſhops, Clergy, and Univerſities, were attacked in the moſt violent Manner, for inſiſting on their Rights; and the whole Frame of Government, in a Manner, diſſolved; which was ſo notorious to the whole Nation, that they reſolved, as one Man, to ſtand up in Defence of the Conſtitution, and of their Liberties and Properties: For it is true, this is a legal and a limited Monarchy; and the People have as much Right to be governed according to Law, as the King has to govern them by Law. But then it is not every little Deviation from the Laws, every falſe Step in the Adminiſtration; or private Wrong done to ſome particular Man, or Party of Men, that will juſtify their taking up Arms: The Grievances ought to be general; and our Religious or Civil Rights actually invaded in ſuch apparent Inſtances, that a Majority of the Nation may be convinced the Foundations are ſtruck at: For might every little Faction enter into Plots and Conſpiracies againſt the Government, when the Adminiſtration is not agreeable to their Taſte, what Confuſion muſt it perpetually create in the Kingdom. One Set of Men might approve that Conduct, which another diſapproved; and we ſhould probably have as many contending Armies on Foot in the Iſland, as we have Opinions; a State more to be dreaded than that of Abſolute Monarchy. Whoever is at the Helm therefore, for the Preſervation of themſelves and the Conſtitution, will ever find it neceſſary to ſuppreſs ſuch Kind of Conſults and Conſpiracies, and puniſh them as treaſonable.

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It is very probable the Lord *Ruſſel*, and many more of his Party, had no other View, than to compel the King to call a Parliament, and paſs ſuch Acts as might ſecure the Nation againſt Popery and Arbitrary Power in the ſucceeding Reign: And were of Opinion that, according to the Conſtitution, they might lawfully put a Force upon their Prince, and compel him to put the Adminiſtration into ſuch Hands as they directed him; — the King being no more than their Officer; and the Supreme Power really veſted in the Commons. And thus his Lordſhip might unfortunately and ignorantly incur the Guilt of High-Treaſon, while he imagined he was ſerving his Country, and ſupporting the Conſtitution; which ſeems to me the moſt charitable Conſtruction that can be put upon his Actions. His ſolemn Profeſſions that he had no Deſign againſt the King or Government, at the Hour of Death, can no other way be accounted for.

I am apt to think, that the Parliament that reverſed his Attainder at the Revolution, were of Opinion, his Lordſhip deſigned well (however he might have been miſtaken in our Conſtitution); and as he was a Gentleman of great Honour and Virtue, and of a Family well-affected to King *William* and the Revolution, the Bill met with the eaſier Paſſage.

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The Trial of ALGERNON SIDNEY, Eſq; for *High-Treaſon*, at the *King*'s-*Bench-Bar*, the 21ſt of *November*, 1683. 35 *Car.* II.

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The Indictment.

THE Priſoner, was brought by *Habeas Corpus*, from the *Tower*, and arraigned the 7th of *November*, and the Indictment read; which charged him with Compaſſing and Conſpiring the Death of the King, and the Subverſion of the Government; and for that End, aſſembling and conſulting with other Traitors, on the 30th of *June*, in the 35th Year of his preſent Majeſty, at the Pariſh of St. *Giles's in the Fields*, in the County of *Middleſex*, how to execute and fulfil the ſame: And that he ſent *Aaron Smith* into *Scotland* to invite the Malcontents in that Kingdom, to join with the ſaid *Engliſh* Traitors to perpetrate the ſaid Treaſons. And it further charges, That the Priſoner, in order to accompliſh his ſaid traitorous Compaſſings, Imaginations and Purpoſes; and to perſuade his Majeſty's *Engliſh* Subjects, that it was lawful to riſe in Rebellion againſt him; did, at the Time and Place aforeſaid, traitorouſly compoſe and write a falſe, ſeditious, and traitorous Libel, wherein, among other Things, were contained the following Words, (*viz.*) *The Power, originally in the People of* England, *is delegated unto the Parliament: He* (meaning his preſent Majeſty) *is ſubject unto the Law of God, as he is a Man; to the People that make him a King, inaſmuch as he is a King: The Law ſets a Meaſure unto that Subjection; and the Parliament judges of the particular Caſes thereupon ariſing: He muſt be content to ſubmit his Intereſt unto theirs; ſince he is no more than any one of them, in any other reſpect, than*

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A Bill of Exceptions offered, and refused. The Prisoner desiring to put in a Bill of Exceptions to the Legality of the Indictment, was told, he must either plead or demur; and that it would not be accepted, unless he offered it as a Plea: Whereupon, after some Debate between the Court and the Prisoner, he pleaded *Not guilty*. Then he desired a Fortnight's time to prepare for his Trial, which was granted. He desired also Counsel, and a Copy of his Indictment, which were denied; and he was only indulged so far as to hear it read again in *Latin*.

Counsel, and a Copy of the Indictment, denied.

Challerge for want of Freehold. The Trial coming on the the 21st of *November*, the Jury, after several Challenges, were sworn: He challenged some for want of Freehold; but this was not held a legal Cause of Challenge.

The Evidence of a Plot in general. The Witnesses being called, Colonel *Rumsey* and Mr. *West* gave a general Account of the Plot; but said nothing against the Prisoner in particular, but what they had by Hearsay; of which the Prisoner complaining, and urging that this was done with a Design to prepossess the Jury, he was answered, That this was the Practice at the Lord *Stafford*'s Trial; and at all the Trials for the Popish Plot, when his Friends had the Direction of the Prosecution.

Lord Howard's Evidence. Then the Lord *Howard* was sworn, and deposed, That the principal Conspirators agreed, the preceding Month of *January*, to form themselves into a Cabal, or Council of Six, in order to prepare Matters for an Insurrection; and that the Members of this Cabal were, the Duke of *Monmouth*, the Lords *Essex* and *Russel*, Mr. *Hampden*, the Witness, and Colonel *Sidney*, the Prisoner: That these Gentlemen had a Meeting at Mr. *Hampden*'s House, the latter End of *January*, and considered when, and where, it was proper to begin the Insurrection; and what Magazines and Money would be wanting to carry on the Enterprize. That about a Fortnight or three Weeks after, the same Cabal had a Meeting at *Southampton* House (the Lord *Russel*'s); and it being debated what Answer they should give to those who demanded a Reason for the intended Insurrection, and whose Assistance they expected, It was agreed, to resolve all into the Power of the Parliament; and declare, They intended nothing but the publick Good. That they also considered the settling a good Understanding with the Lord *Argyle*, and some leading Men of the Kingdom of *Scotland*; and the inviting them to join with the *English* Conspirators. And it was agreed to dispatch *Aaron Smith* to *Scotland*, to negotiate that Affair; and to send a Letter by him to Sir *John Cockram*, under the Disguise of providing for a Plantation in *Carolina*. That he saw the Prisoner (Colonel *Sidney*), afterwards, put sixty Guineas in his Pocket, which he told this Witness (Lord *Howard*) were for *Aaron Smith*. After this, he told him *Aaron Smith* was gone, and he had heard from him from *Newcastle*.

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The Court demanding of the Prisoner, If he would ask this Witness any Questions? He answered, He had no Questions to ask him.

Evidence that the Scotish Agents came up. Sir *Andrew Foster* being sworn, deposed, That Sir *John Cockram*, and the two *Campbels*, came up from *Scotland* to *London* last Summer; and that Sir *John*, when he was taken, pretended they came up about making a Purchase in *Carolina*.

Evidence of the treasonable Libel found in his Study. Sir *Philip Lloyd* deposed, That the treasonable Libel, laid in the Indictment, was found upon a Desk in the Prisoner's Study.

Evidence of his Hand. Mr. *Shepherd* and Mr. *Carey* deposed, That they had seen the Prisoner's Hand to several Bills of Exchange, and believed the Libel to be written by the same (the Prisoner's) Hand. *Cooke* deposed, That he had never seen Colonel *Sidney* write; but he had seen several Notes that came to him, with Endorsements of his Name, and they had paid them; and the Writing was like this; nor were they ever called to an Account for Miss-payment.

The Libel read. Then Mr. Attorney desired the Libel might be read.

Colonel *Sidney* desired it might be *all* read.

The Chief Justice told the Prisoner, Mr. Attorney must have what Part he desired read; and then he (the Prisoner) should have what Part he desired read afterwards.

Then the Clerk read some other Passages in the Libel, besides those laid in the Indictment, (*viz.*) *I know not why the Multitude should be concluded headless:* Moses *was Head of the Multitude that went out of* Egypt. Othoniel *led them against the King of* Mesopotamia, *&c. The Earl of* Murray *headed the People of* Scotland *in the Minority of King* James I. *And in all the Revolutions we have had in* England, *the People have been headed by the Parliament; or the Nobility and Gentry that composed it: And when Kings failed of their Duties (in calling a Parliament) they called it by their own Authority. The Multitude therefore is never headless; but either finds or creates Heads to itself: And why may they not shake off the Yoke, if it prove uneasy or hurtful to them? When* Tarquin *turned the Regal Monarchy of* Rome *into a most abominable Tyranny, Why should they not abolish it? And when the Protestants of the* Low Countries *were so grievously oppressed by the Power of* Spain, *Why should they not make use of all the Means that God had put into their Hands for their Deliverance? If the King of* Spain *desired to keep his Subjects, he should have governed them with more Justice and Mercy; when, contrary to all Laws, Human and Divine, he sought to destroy those he ought to have preserved; he can blame none but himself, if they delivered themselves from his Tyranny. As to the People being Judges in their own Case,*

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it is plain, they ought to be the only Judges, because it is their own, and only concerns themſelves: The general Revolt of a Nation from its own Magiſtrates can never be called Rebellion: The Power of calling and diſſolving Parliaments is not in the King.

Mr. Attorney demanding, If the Priſoner would have any other Part of it read; he anſwered, He did not know what to ſay to it, as it was read thus in Pieces: The Chief Juſtice anſwered, He perceived, the Colonel had diſpoſed it under certain Heads; and demanded, to what Heads they ſhould read? To which the Priſoner only replied, Let him give an Account of it that did it; and demanded, what Statute he was indicted upon? The Court anſwered, He was indicted on the 25 *Edw.* III, which made it High Treaſon, to compaſs or conſpire the King's Death; and the Overt-Act was ſufficiently ſet forth in the Indictment.

The Priſoner's Defence.

Then the Colonel proceeded in his Defence, and ſaid, Since I am indicted on that Statute, I am not to take notice of any other. I am indicted for conſpiring the Death of the King, becauſe ſuch a Paper is found in my Houſe: I think that can be nothing at all to me; for, though Sir *Philip Lloyd* did ask me if I would put my Seal to it, he did not ask me till he had been in my Cloſet; and I knew not what he had put in: Then come theſe Gentlemen upon Similitude of Hands. My Lord, one told me, within theſe two Days, that a Perſon came to him and offered to counterfeit any Hand he ſhould ſhew him, in half an Hour: And there is a like Caſe of my Lady *Carr*, ſome few Years ago: She was indicted of Perjury, and, as Evidence againſt her, ſome Letters of hers were produced, that were contrary to what ſhe ſwore in Chancery; and her Hand was proved; that it is to ſay, it was like it: But the Chief Juſtice *Kelynge* directed the Jury, that though in Civil Cauſes it was a Proof, yet it was the ſmalleſt and leaſt of Proofs; but in Criminal Caſes it was none at all. Mr. Attorney ſhewed ſome Papers to me; I do not know whether they are mine are no; but theſe very Papers, ſuch as they are, do abhor, as much as any one can, ſuch a Deſign: Look upon them, you ſee they are all old Ink; they may have been written perhaps theſe twenty Years, the Ink is ſo old; and, my Lord, it is a polemical Diſcourſe; it ſeems to be an Anſwer to *Filmer*, which is not calculated for any particular Government in the World: And they, by a ſtrange kind of Conſtruction and Imagination, will have it, that theſe Papers, ſaid to be found in my Study, had relation to this Plot, as they call it; I know of none, nor am in none: But if a Commoner of *England* write his preſent Thoughts, and another Man looking on the Book, write his preſent Thoughts, what great Hurt is there in it? However, I ſay, firſt, it is not proved upon me; and ſecondly, it is not a Crime, if it be proved: Beſides, my Lord, if theſe Papers are right, it mentions two hundred and odd Sheets; and theſe ſhew neither Beginning nor Ending: And will you indict a Man for Treaſon, for Scraps of Paper found in his Houſe, relating to an antient Paper, intended as innocently as any thing in the World; and piece and patch this to my Lord *Howard*'s Diſcourſe, to make this a Contrivance to kill the King? Then, my Lord, I think it is a Right of Mankind, and it is exerciſed by all ſtudious Men, to write in their own Cloſets, what they pleaſe for their Memory; and no Man can be anſwerable for it, unleſs he publiſh it.

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The Chief Juſtice anſwered, *Pray do not go away with that Right of Mankind; That it is lawful for me to write what I will in my own Cloſet, ſo I do not publiſh it:* We muſt not endure Men to talk thus; that by the Right of Nature, every Man may contrive Miſchief in his own Chamber, and is not to be puniſhed for it, till he thinks fit.

The Colonel replied, If they will produce the whole, then I can ſee, whether one Part contradicts another: You aſk me, What other Paſſage I would have read? I do not know a Paſſage in them; I cannot tell whether it be good or bad; and what if any body had in my Houſe found Papers that were not well juſtifiable, either in my own Hand or another's; Is this Treaſon? Does this imagine the Death of the King? If any Man can ſay, I ever printed a Sheet in my Life, I will ſubmit to any Puniſhment: Nor have theſe Papers any Relation to the Deſign againſt the King's Life: You find only Scraps of Papers, never perfect, written many Years ago; and which could not be calculated for raiſing the People now. What Man can be ſafe, if the King's Counſel may make ſuch (whimſical, I would not ſay, but) groundleſs Conſtructions? If I had publiſhed it, or the Thing had been whole, and mine, I muſt have anſwered it; but for theſe Scraps, never ſhewed any body, that I think does not at all concern me: And, I ſay, If the Jury ſhould find it, which is impoſſible, I deſire to have the Law reſerved to me.

Then as for the Evidence, I cannot be indicted, much leſs tried, and condemned, on the 25th of *Edw.* III. The Act requiring two Witneſſes, to that very Branch unto which the Treaſon does relate. Now the conſpiring the Death of the King, and the levying War, are two Treaſons; and there muſt be two Witneſſes to either of theſe: Only my Lord *Howard* ſpeaks of the ſix Men, who were a ſelect Council, and he is but one Witneſs; and if by the Law there muſt be two Witneſſes to the ſame Fact, there is and End of the Matter: For one to come and tell a Tale of a Tub, of an imaginary Council, and another of a Libel or Paper, written No-body knows when, is ſuch a Thing as you can never get over.

The Chief Juſtice ſaid, If he relied on that, he would direct the Jury preſently.

The Priſoner went on, and ſaid, My Lord *Howard* ſets forth his Evidence very rhetorically; but it does not become a Witneſs; for he is only to tell what is done: And ſaid, His Lordſhip atteſted, That *they* took upon them to conſider; but does not ſay, what one Man ſaid, or what one Man reſolved, much leſs what I did; and I deſire I may have Counſel to that Point, of there being but one Witneſs.

The Chief Juſtice anſwered, That was a Point of Fact. Colonel *Sidney* replied, If the War was not levied, it was not within the Statute.

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Whereupon the Chief Juſtice ſaid, The Court will have Patience to hear you; but this is miſſpending your Time. If you can anſwer the Fact; or, if you can diſparage the Witneſſes, do; but do not ask us Queſtions, this Way or the other.

Then the Colonel proceeded, and ſaid, As to my Lord *Howard*, he has accuſed himſelf of divers Treaſons; and I do not hear he hath his Pardon for any. He is under the Terror of theſe Treaſons, and the Puniſhment for them: He hath ſhewn himſelf to be under that Terror: He hath ſaid, That he could not get his Pardon, till he had done ſome other Jobs, *till he was paſſed this Drudgery of ſwearing*; that is, he would procure his own Indemnity, by deſtroying of others: Beſides, my Lord, he is my Debtor, I lent him a conſiderable Sum of Money, in Time of his great Neceſſity; and when the Mortgage was forfeited, to avoid paying it, he gets me laid up in the *Tower*: And he would have perſuaded my Servants to put my Plate and Goods into his Hands, when I was made Priſoner. My Lord, he hath made ſeveral Affirmations, with Hands and Eyes lift up to Heaven, that he believed I was innocent: And though my Lord *Howard*'s Teſtimony were to be credited; it is but ſingle, as to the Conſult, and the ſending of *Aaron Smith*: Beſides, conſpiring to levy War is not Treaſon, and I deſire Counſel to that.

The Chief Juſtice anſwered, He might as well aſk him, Whether the firſt Chapter of *Littleton* was Law.

The Evidence for the Priſoner.

Then the Priſoner called his Witneſſes; and the Lord *Clare*, the Lord *Angleſey*, Mr. *Howard*, Dr. *Burnet*, and ſeveral more, depoſed, That they had heard the Lord *Howard* ſay, in the moſt ſolemn Manner, that the Priſoner was innocent; and that he knew nothing of a Plot: To which the Attorney General anſwered, Would not any Man have ſaid as much, that had been in a Plot?

After which, the Colonel proceeded in his Defence; and ſaid, It is firſt imagined, that I intended to raiſe a War; and then it is imagined, that War would tend to the Deſtruction of the King: Now that may follow, but that is not natural or neceſſary; it cannot be ſo underſtood by Law. Many Wars have been, and the Death of the King has not followed: It is two diſtinct Treaſons, to make War, and to endeavour to kill the King: Now, as there is no Manner of Proof, that I intended to kill the King directly, ſo it cannot be by Inference, becauſe, it is Treaſon of another Species; and therefore, though I had made War, I could not be ſaid to have conſpired the Death of the King. Beſides, I ſay, It is not the beſt Man's Evidence here, would be good in this Caſe, becauſe the Law requires two. The next Thing is the Buſineſs of *Aaron Smith*: My Lord *Howard* tells you of a Letter ſent with him; but he does not ſay by whom written, what was in it, or whether it was delivered or not: Nor have I written, or ſent a Letter into *Scotland* ſince the Year 59. I returned into *England* in the Year 77; and ſince that Time, have not written, or received, a Letter from *Scotland*: And as to the *Scots* Gentlemen that are come hither, I never ſaw the *Campbels*, or *Monroe*, in my Life. As to the Papers, What Agreement is there between them, and that other Buſineſs of the ſelect Council, as my Lord *Howard* calls it? And what was this ſelect Council, ſuppoſe Lord *Howard* was to be credited? But a few Men talking at large, of what might be, or might not be, without any Manner of Intention of doing any thing. They did not ſo much as enquire, whether there were Men, Arms, or Ammunition in the Country; and how unlikely it is, that a War ſhould be made by five or ſix Men, not knowing one another, or not truſting one another; for what Dr. *Coxe* ſaid at my Lord *Ruſſel*'s Trial, of my Lord *Howard*'s not being truſted by any Party, he might have ſaid of ſome others: And I deſire your Lordſhip to conſider, Whether there be a Poſſibility for any Men, that have the Senſe of Porters, to do ſuch Things as my Lord *Howard* would put upon us? He, the great Contriver of this Plot, goes to theſe Conſults, and agrees on nothing; then he goes into *Eſſex*, upon important Buſineſs, greater than the War of *England* and *Scotland*: To what Purpoſe? To look after a little pimping Manor: And what then? Why then, it muſt be laid aſide, and he muſt be idle five Weeks at the *Bath*; and there is no Enquiry after the Deſign: Is there any Appearance of Probability in all this? But further, my Lord, you are to go according to plain Proof: Conſtructive Treaſons, belong only to the Parliament. If I have neither endeavoured to kill the King, or levied War; then it is Matter of Conſtruction, and does not belong to any private Court.

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Mr. Solicitor's Reply to the Colonel.

To this Defence, Mr. Solicitor *Finch* replied, The Crime the Priſoner ſtands accuſed of, is, compaſſing and imagining the Death of the King: That which we go about to prove that compaſſing and imagining by, is, by his meeting, and conſulting how to raiſe Arms againſt the King; and by plain Matter in writing, under his own Hand, where he does affirm, It is lawful to take away and deſtroy the King. Notwithſtanding what the Priſoner has objected, it hath been adjudged over and over again, that an Act, which is one Branch of that Statute, may be an Overt-Act to prove a Man guilty of another Branch of it: Levying War is an Overt-Act to prove a Man guilty of conſpiring the Death of the King, as was adjudged in the Caſe of Sir *Henry Vane*; and ſo is meeting and conſulting to raiſe Arms; and Reaſon does plainly ſpeak it to be ſo: For they that conſpire to raiſe War againſt the King, cannot be preſumed to ſtop any where, till they have dethroned or murdered the King: And though the Priſoner ſays, there muſt be two Witneſſes to every particular Fact; this hath been often objected, and as often over-ruled: It was over-ruled ſolemnly, in the Caſe of the Lord *Stafford*.

As to the Papers found in Colonel *Sidney*'s Houſe, we prove them to be Colonel *Sidney*'s Hand, by as much Proof as the thing is capable of; and ſuch Proof as in all Caſes hath been allowed: And that is by Men, who knew, and are acquainted with his Hand-writing, who come and ſwear they believe this to be his Hand. And Sir *Philip Lloyd* atteſts that theſe very Papers were found in the Priſoner's Study,

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Study, on a Table where he uſed to write: And for the Surmiſe, that they were laid there, it is altogether without Ground. And if they were wrote by him, the next Thing will be, how far this will be Evidence to prove his compaſſing and imagining the Death of the King. Compaſſing and imagining the Death of the King is the Act of the Mind, and is Treaſon, while it remains ſecret in the Heart; though no ſuch Treaſon can be puniſhed, becauſe there is no Way to prove it: But when once there is an Overt-Act, that is, *any thing that does manifeſt and declare ſuch Intention*; then the Law takes hold of it, and puniſhes it as High Treaſon.

Now, after this Evidence, no Man will doubt whether it was in the Heart of the Priſoner to deſtroy the King. He objects indeed, that this is but Part of a Book; and unleſs you take the Whole, nothing can be made of it. As it is in wreſting of Texts of Scripture (ſays he) you may as well ſay, that *David* ſays *there is no God*, becauſe *David* ſays, *The Fool hath ſaid in his Heart, there is no God.* But the Application won't hold; for here you ſee a continued Thread of Argument. 'Tis not one Propoſition, but a whole Series of Argument. Theſe are his Poſitions: *That the King derives all his Power from the People: That 'tis originally in the People, and that the Meaſure of Subjection muſt be adjudged by the Parliament. And if the King does fall from doing his Duty, he muſt expect the People will exact it.* And this he has laid down as no way prejudicial to him: For, ſays he, *The King may refuſe the Crown, if he does not like it upon theſe Terms: But if he does accept it, he muſt expect the Performance will be exacted; or Revenge taken by thoſe he has betrayed.* He takes Notice of it alſo as a very abſurd Poſition, *That the King ſhould judge in his own Cauſe, and not the People. That would be to ſay,* (ſays the Priſoner) *that the Servant, entertained by the Maſter, ſhall judge the Maſter; but the Maſter ſhall not judge his Servant.* After theſe Kind of Arguments, he comes to this ſettled Poſition: *We may therefore,* (ſays he) *change or take away Kings, without breaking any Yoke, or what is made a Yoke. The Injury is in impoſing the Yoke; there can be none at all in breaking it.* He goes on, and, by way of Anſwer to an Objection, That if there be no Injury, yet there may be an Inconvenience, if the *headleſs Multitude* ſhould ſhake off the Yoke, ſays, *I would fain know how the Multitude came to be headleſs*; and having given many Inſtances in the Hiſtories of foreign Nations, he comes Home to the *Engliſh*, and tells you how all Rebellions, in later Ages, have been headed: And, *That the Parliament is the Head, or the Nobility and Gentry that compoſe it: And when the King fails of doing his Duty* (in calling a Parliament) *the People may call one. That the Multitude therefore is never headleſs; but they either find, or create a Head.* So that here is a plain and avowed Principle of Rebellion eſtabliſhed, on the ſtrongeſt Reaſons he has to back it. Gentlemen, This, with the other Evidence that has been given, will be ſufficient to prove his Compaſſing the Death of the King.

In another Part of the Book, he ſays, *The Calling and Diſſolving of Parliaments is not in the King's Power.* And you all know how many Parliaments the King hath called and diſſolved: If it be not in his Power, he hath done that which was not in his Power, and ſo acted contrary to his Truſt. Gentlemen, Words ſpoken upon a Suppoſition, may be High Treaſon, as was held in the Reign of King *James* I. in the Caſe of *Collins*, in *Roll*'s Reports. The Words were; *The King, being excommunicate, may be depoſed and murdered*, without affirming he was excommunicated; and this was held ſufficient to convict him of Treaſon: Now, according to that Caſe, to ſay, the King having broken his Truſt, may be depoſed by his People, is High Treaſon; but here he does as good as affirm, the King hath broke his Truſt; for every one ſees the King has diſſolved Parliaments: And this reduces it to an Affirmation.

And though this Book was not brought to the Council of Six, to be peruſed and debated there; yet it will be another, and more than two Witneſſes againſt the Priſoner: For ſuppoſe a Man was in a Room, with two other Men, and he comes to one of them apart, and endeavours to perſwade him that it is lawful to riſe in Arms againſt the King, if he breaks his Truſt; and then goes to the other, and tells him the King has broken his Truſt, and they ſeek ſome Way to redreſs themſelves, and perſwade the People to riſe: Theſe two Witneſſes do ſo tack the Treaſon together, that they will be two Witneſſes to prove him guilty of High Treaſon.

You have heard one Witneſs prove it poſitively, *That he conſulted to riſe in Arms againſt the King.* And here is his own Book ſays, *It is lawful for a Man to riſe in Arms againſt the King, if he breaks his Truſt:* In Effect, he hath ſaid, *The King hath broken his Truſt.* And this is a ſufficient Demonſtration, what the Imagination of the Heart of this Man was: That it was the Deſtruction of the King and Government, and indeed of all Governments; for there can be no ſuch Thing as Government, if the People ſhall be Judge in the Caſe.

I think this is ſufficient Evidence of his conſulting the Death of the King. Some Men may by Paſſion be tranſported into ſuch an Offence; but this Gentleman proceeds upon a ſurer Foundation: It is his Reaſon: It is his Principle; It is the Guide of all his Actions; It is that by which he leads the ſteady Courſe of his Life. A Man convinced of theſe Principles, what won't he do to accompliſh his Deſigns? Gentlemen, how dangerous is this Conſpiracy! how is it rooted in him! That he ſhould write it as his Principle, *That it is lawful to depoſe Kings when they break their Truſt, and that the Revolt of a whole Nation cannot be called Rebellion!* It will be a very ſad Caſe, when People act this according to their Conſciences; and do all this for the Good of the People, as they would have it thought. Gentlemen, We have proved it ſufficiently, that it was the Imagination of his Heart to deſtroy the King, and conſequently made ſufficient Proof of his being guilty of High Treaſon.

Colonel *Sidney* would have replied, but this was not permitted; it being the conſtant Courſe for the

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The Chief Juſtice ſums up the Evidence.

the King's Counſel to conclude: And the Chief Juſtice *Jeffries* therefore preceeded to ſum up the Evidence, and obſerved, That though two Witneſſes are required to prove a Man guilty of High Treaſon, yet if two Witneſſes prove two ſeveral Facts, that have a Tendency to the ſame Treaſon; this was ſufficient, as had been adjudged in the Lord *Stafford's* Caſe: And though ſome Judges had been of Opinion, that Words of themſelves were not an Overt-Act to prove a Man guilty of High Treaſon; yet none ever queſtioned, but a Letter would be a ſufficient Overt-Act to prove a Man guilty of High Treaſon, for *ſcribere eſt agere*.

That if the Indictment had charged him with levying War, there muſt have been a War actually levied to have convicted him of High Treaſon; but the Indictment charging him with Compaſſing the King's Death, the levying War, or Conſpiring to levy War, might be given in Evidence to prove his Compaſſing and Imagining the King's Death: For it was the Imagination of the Heart, that was the Treaſon. And when this appeared by any open, or Overt-Act, which naturally evinced, that the King was intended to be depoſed, impriſoned, or otherwiſe deſtroyed; it was a ſufficient Evidence of High Treaſon, within the 25th of *Edw.* III.

That if there was one Witneſs to prove a direct Treaſon, and another to a Circumſtance, that contributed to that Treaſon; theſe were deemed two Witneſſes, by all the Judges of *England*, on the following Caſe, lately put to them, (viz.) *If one buy a Knife of* J. S. *to kill the King; and it be proved by one Witneſs, that he bought the Knife for that Purpoſe; and by another, that he bought ſuch a Knife of* J. S. *Theſe are two Witneſſes, ſufficient to convict him of High Treaſon.*

The Witneſſes, who knew the Priſoner's Hand, ſwearing they believed in their Conſciences, that it was his Hand, and the Papers being found in his Study, on the Table where he uſed to write, was a ſtrong Evidence of their being his.

That if the Priſoner was privy to the Letter written by my Lord *Ruſſel*, and ſent into *Scotland*, and intended to remove, or depoſe the King; theſe were Evidence againſt him: And if the Jury believed the Book found in the Priſoner's Study, to be written by him; that was more than two and twenty Witneſſes againſt him; for there he affirmed, That the King was reſponſible to the People; That he was but their Truſtee; That he had betrayed his Truſt, and miſgoverned, and now was to give it up, that they might be all Kings themſelves.

Then Mr. Juſtice *Wythens* declared, That all the Judges on the Bench concurred with the Lord Chief Juſtice in all the Points of Law, delivered by him.

He is convicted.

The Jury afterwards withdrawing; returned into Court in half an Hour's Time, and brought the Priſoner in GUILTY of High Treaſon.

His Exceptions in Arreſt of Judgment.

The Colonel being brought to the Bar again to hear his Sentence, on *Monday* the 26th of *November*, objected, that ſeveral of the Jury were not Freeholders: To which the Court anſwered, That it was the Opinion of all the Judges of *England*, that this was no Cauſe of Challenge; for by the Statute of Queen *Mary*, the Trial of Treaſon was to be as it was before at Common Law; and there was no ſuch Challenge at Common Law.

Then the Priſoner deſired the Indictment might be read again; which being granted, he obſerved, that Part of the King's Title, (viz. *Defenſor Fidei*, was left out: To which the Chief Juſtice anſwered, the Treaſon was ſufficiently laid.

The Colonel objected further, That there was no Treaſon in the Papers, ſaid to be found in his Study: The Chief Juſtice anſwered, there was ſcarce a Line in the Book, but what was Treaſon, and that was the worſt Part of his Caſe: That if he was ſo riveted in Opinion, that Kings might be depoſed, and were accountable to their People, and that a general Inſurrection was no Rebellion; it was high Time, to call thoſe to an Account, that juſtified theſe Things. The Priſoner then repeated ſome other Parts of his Defence, as that Similitude of Hands was no Evidence, *&c.* and ſaid, He appealed to God and the World, he was not heard.

The Chief Juſtice anſwered, He could wiſh, inſtead of his Appealing to the World, as though he had received ſome great Hardſhip, he would appeal to God, and conſider the great Guilt he had contracted, and how ungratefully he had dealt by a Prince that had pardoned him once before: Which ought to have wrought ſuch a Temper in him, as to have turned the reſt of his Life into a generous Acknowlegment of his Bounty and Mercy; and not into a State of conſtant Combining and Writing, not only to deſtroy him, but to ſubvert the Government. He was ſorry to ſee him ſo earneſt in the Juſtification of a Book, which contained the rankeſt Treaſon; which not only encouraged, but juſtified Rebellion: And then the Chief Juſtice proceeded to pronounce the uſual Sentence, in Caſes of High Treaſon.

He is condemned.

After which the Colonel ſaid: *Then, O God! O God! I beſeech thee, ſanctify theſe Sufferings unto me, and impute not my Blood to the Country, or the City through which I am to be drawn: Let no Inquiſition be made for it; but if any, and the ſhedding of Blood that is innocent, muſt be revenged; let the Weight of it fall only upon thoſe that maliciouſly perſecute me for Righteouſneſs Sake.*

Exclaims againſt the Sentence.

The Chief Juſtice thereupon ſaid, *I pray God work in you a Temper fit to go into the other World; for I ſee you are not fit for this.*

Colonel *Sidney* replied; *My Lord, feel my Pulſe* (holding out his Hand), *and ſee if I am diſordered: I bleſs God, I never was in better Temper than I am now.*

Then the Lieutenant of the *Tower* carried away his Priſoner.

As the Colonel was of a Noble Family (that of *Leiceſter*), the King was pleaſed to remit all the Sentence, but the Beheading. Whereupon he was brought to a Scaffold, erected on *Tower-Hill*, on *Friday*, the 7th of *December* 1683. When, inſtead of making a Speech, he delivered a Paper to the Sheriff, wherein he obſerved,

He is beheaded.

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observed, They lived in an Age, that made Truth paſs for Treaſon: That the Lord *Howard*, the only Witneſs againſt him, was too infamous to be believed; and there was no other Evidence againſt him but the Papers, ſaid to be found in his Cloſet; and there was no other Proof of their being his, than a Similitude of Hands; but if they were his, there was nothing in them, but what might be juſtified: That God had left Nations at Liberty, to ſet up what Governments they pleaſed: That Magiſtrates were ſet up for the Good of Nations; not Nations for the Honour and Glory of Magiſtrates: That the Right and Power of Magiſtrates, in every Country, was what the Laws of that Country made them: That thoſe Laws were to be obſerved; and the Oaths taken by them, having the Force of a Contract between Magiſtrate and People, could not be violated without Danger of diſſolving the whole Fabrick: But if the Writer was miſtaken, he ought to have been refuted by Law, Reaſon, and Scripture: It was never known, that ſuch Points were referred to the Judgment of a Jury, compoſed of Men utterly incapable to comprehend them.

Whatever was ſaid, in that Treatiſe, of the Expulſion of *Tarquin*; the Inſurrection againſt *Nero*; the Slaughter of *Caligula*, or *Domitian*; the Tranſlation of the Crown of *France*, from *Meroveus*'s Race to *Pepin*, and from his Dependants to *Hugh Capet*, and the like, which had been applied by *Inuendo's* to the King; if they had conſidered that, if ſuch Acts of of State were not good, there was not a King in the World, that had any Title to the Crown he wore, nor could have any, unleſs he could deduce his Pedigree from the eldeſt Son of *Noah*, and ſhew that the Succeſſion had ſtill continued in the eldeſt Line, and had been ſo deduced to him.

Then he complains of having a pack'd Jury, ſome of whom were not Freeholders; that he had not a Copy of his Indictment, or Counſel allowed him; and that he was condemned for Facts they made Treaſon, by Conſtruction, or Inferences, which none but the Parliament could do; and by ſuch means, he obſerved, he was brought to that Place; concluding in the following Words.

Grant that I may die, glorifying thee for all thy Mercies; and that at the laſt, thou haſt permitted me to be ſingled out as a Witneſs of thy Truth; and, even by the Confeſſion of my Oppoſers, FOR THAT OLD CAUSE, IN WHICH I WAS ENGAGED FROM MY YOUTH, AND FOR WHICH THOU HAST OFTEN AND WONDERFULLY DECLARED THYSELF. Having delivered this Paper to the Sheriff, he ſubmitted to the Block, and the Executioner did his Office.

He is beheaded.

Some Account of him.

This Gentleman took up Arms, when he was very young, againſt King *Charles* I. and deſerved ſo well of the Uſurpers, that he was nominated one of that King's Judges. At the Reſtoration, he did not take Advantage of the Act of Oblivion, but remained in Baniſhment, till the Year 1677, when he returned to *England*, and obtained a particular Pardon for himſelf, upon his repeated Engagements, to remain his Majeſty's faithful Subject for the future; but how he employed his Time afterwards, is pretty evident from this Trial. Biſhop *Burnet* relates, that he was attended by ſome Independant Teachers, in his laſt Moments; which ſhews he was of that Sect.

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Mr. Solicitor *Finch's* Reply to Colonel *Sidney's* Defence, ſeems to me to be unanſwerable; and therefore I ſhall only obſerve, in Confirmation of that great Man's Arguments, that moſt of the Things the Colonel and his Friends complained off, (if not all) have been practiſed and defended by thoſe very Lawyers, at ſeveral Trials, ſince the Revolution, who ſo loudly complained of ſuch Practices before.

Remarks on Colonel Sidney's Trial.

At the Trial of Sir *John Friend*, *Anno* 1695. the Lord Chief Juſtice *Holt*, in his Directions to the Jury, declares, That if there be a Conſpiracy to kill the King; to depoſe, or impriſon him; or to put any Force, or Reſtraint upon him; and the Method intended to effect this, is by Levying War; there, the Conſultation, or Conſpiracy to levy War for that Purpoſe, is High Treaſon, though no War be levied. *That this ſhould not be High Treaſon, unleſs a War be actually levied, is very ſtrange Doctrine; and the contrary has always been held to be Law.*

And yet Sir *John Hawles*, who was Counſel at this very Trial for the King, ſpent a great deal of Paper, in his Remarks on the Trials of Lord *Ruſſel*, *Sidney*, &c. in endeavouring to prove what the Lord Chief Juſtice ſays, at Sir *John Friend's* Trial, *was very ſtrange Doctrine, and the contrary always held to be Law.*

In the Trials of Sir *William Parkins*, *Rookwood*, and *Cook*, the ſame Year, the Chief Juſtice maintains, *That the Conſpiring to invade the Realm, or to depoſe the King, were Overt-Acts of High Treaſon, within the 25th of Edw.* III. *and of the ſame Species of Treaſon as the deſigning to murder him.* The Chief Juſtice alſo declares, *That if there was one Witneſs to one Overt-Act, and another Witneſs to another Overt-Act of the ſame Species of Treaſon, that was all the Law required.*

The Lord Chief Juſtice *Treby* declared at the ſame Trial, That the Conſpiring with a foreign Prince to invade the Realm; the providing Arms, to join with the Invaders, and make an Inſurrection againſt the King, were Overt-Acts of Conſpiring his Death. *He that would cauſe an Invaſion, or Inſurrection againſt the King's Perſon, muſt be preſumed to deſign his Ruin and Murder.*

When Sir *John Friend* moved in Arreſt of Judgment, That he was convicted by one Witneſs, becauſe the other Witneſs only ſwore to a Conſpiracy to levy War, which he apprehended was not Treaſon, unleſs War was actually levied; All the Judges on the Bench told him, they were agreed, That a Conſpiracy to levy War to depoſe the King, was Treaſon; or a Conſpiracy to invade the Realm, was Treaſon. And as to there being two Witneſſes to every Overt-Act, the Statute of the 7th of *Will.* III. Cap. 3. for regulating Trials of Treaſon, has put the Matter beyond all Doubt declaring the Law to have been, and enacting that it ſhall always be, conſtrued ſo for the future, *That one Witneſs to one Overt-*

1683. 35 Car. II. *Act, and another to another Overt-Act of the same Treaſon, ſhall be ſufficient.*

And laſtly, As to the proving the Papers, or treaſonable Libel, to be the Colonel's, *by Similitude of Hands, and their being found in his Cuſtody*; the like Evidence was given againſt the Lord *Preſton*, after the Revolution, in the Year 1690; and held to be good Proof, that the Papers were his: Nay, the Proof was not ſo ſtrong, as in *Sidney*'s Caſe; for there the Papers were found in his Study, on a Table where he uſed to write; and in the Lord *Preſton*'s Caſe, the Papers were found in the Hold of the Ship, where his Lordſhip was; but not upon him.

Thus, we ſee the Judges and Lawyers in all Reigns, find it neceſſary to ſupport theſe Maxims, in Order to ſupport the King, on his Throne, how much ſoever they were clamoured at, when declared to be Law at the Trials of Lord *Ruſſel*, *Sidney*, *&c.* And the Lord *Sidney*'s Friends are ſo far from denying the Libel to be his, at this Day, that they have printed and publiſhed it, as his, ſince the Revolution; and ſeem to adore his Memory for the Principles laid down in it, and his Deſign of propagating thoſe Principles, by that Libel.

It remains, therefore, only to conſider, Whether the Maxims advanced in that bleſſed Piece, were really treaſonable, or conſiſtent with, and agreeable to the Laws and Conſtitution of this Kingdom; and ſuch as were *neceſſary* to be propagated and maintained, for the Preſervation of our Rights and Liberties.

Thus far I agree with the Colonel, That no particular Form of Government is *Jure Divino*; but whatever Government we find eſtabliſhed in any Country, ought to be obeyed:

And, That the Right and Power of Magiſtrates, in every Country, is what the Laws of that Country make them to be.

But then as to the next Article, That the Oath taken by the Prince, at his Coronation, and the Oath of Allegiance, taken by the Subject, are in the Nature of a Contract between King and People, and cannot be violated without Diſſolving the Government; this I muſt deny; eſpecially, as he makes every Man a Judge of this Violation: (For if he does not, it will not come up to his own Caſe, who could not pretend to have the Authority of either Lords or Commons; of either Houſe of Parliament, to juſtify this Conſpiracy, to depoſe the King: Only his own Opinion, and that of an inconſiderable Faction, his Accomplices: The Bulk of the Kingdom were Loyal, and for continuing the King upon his Throne.)

Now, that the King's Coronation Oath, is not of the Nature of a Contract, and every Breach of it a Forfeiture of his Kingdom, is evident; becauſe by our Laws a Man may be guilty of High-Treaſon before the King is crowned: And there is no limited Time ſet for the King's Coronation, but he may defer it as long as he ſees fit. The People owe Allegiance to him, and are obliged to take the Oaths to him, though he be not crowned.

And though the Col. lays great Streſs on that Maxim, *That Princes and Governors are appointed for the Good of the People, and not for their own Glory*; yet neither will this juſtify every private Man, or every little Faction conſpiring againſt the Government, whenever they apprehend themſelves aggrieved, or that their Governors do not act for the Good of the Nation, or agreeable to the Laws: For, if this was admitted, no Government, whether Monarchical or Republican, could ſubſiſt; for there will be always ſome Malcontents, in all Countries, who will think themſelves aggrieved by the Adminiſtration: Nor would this Maxim contribute to the Peace and Happineſs of Mankind; for if one Part of the Nation ſhould be of Opinion that the Adminiſtration was legal and beneficial, and the other of a contrary Opinion, what Confuſion muſt this Doctrine create? Every People muſt be in a perpetual State of War among themſelves: It is very fit therefore, for the Sake of the Subjects themſelves, that they ſhould not have a Power of calling their Kings or Governors to an Account, and depoſing them whenever the Adminiſtration is not ſuitable to their Taſte. Ask the *Dutch*, or the *Venetians*, how they would reliſh ſuch depoſing Doctrines; or indeed, whether they ever ſuffer ſuch to be broached in their Territories? And whether a People have one or many Governors, this can make no Alteration in the Terms of their Allegiance, unleſs the Laws of their reſpective Countries make any: If the four and twenty Burgomaſters of *Amſterdam*, in whom the Sovereign Power is veſted there, ſhould in the Opinion of any of their Subjects ſtudy their own Intereſt and Glory, more than than that of their People, they might according to this Maxim be depoſed, as well as a King of *England*. But I do not doubt, the States of that City would make no Scruple of convincing the Author of any ſuch Doctrine of his Error, by the Ax or the Halter.

Sure I am, our Laws make no Exceptions in Favour of thoſe who conſpire to dethrone their Prince; nor would it be any Anſwer to an Indictment or Charge of High-Treaſon, that the Party did not think the King's Adminiſtration was for the Good of the People, or agreeable to the Conſtitution: I would not adviſe my Friends and Fellow-Subjects therefore to depend upon ſuch a Plea, in any Reign.

Biſhop *Burnet* ſays, Colonel *Sidney* met Death, as became one who had *Marcus Brutus* for his Pattern. But there ſeems to have been this remarkable Difference between *Brutus* and *Sidney*; That *Brutus* fought in Behalf of a glorious Commonwealth, that had been eſtabliſhed ſeveral Centuries, without any Diſpute, Claim, or Pretence of Title by any other; whereas *Sidney* conſpired to deſtroy his lawful Sovereign, and Monarchy with him, under which Form of Government this Kingdom had flouriſhed for Time immemorial, and where a Republican Form of Government was never heard of, unleſs in the Reign of the Regicides, whom he ſeemed ſo fond of imitating. In one Word, *Brutus* fought to maintain the Laws and Conſtitution of his Country; and *Sidney* conſpired to ſubvert thoſe of his; which is extremely like ſome of the reſt of Biſhop *Burnet*'s Parallels.

This Judgment was reverſed after the Revolution, in which the Colonel's Family were very Inſtrumental.

The

1683. 36 Car. II. Braddon's Trial.

The Trial of LAURENCE BRADDON and HUGH SPEKE Gentlemen, for a *Miſdemeanor*, at the *King's-Bench-Bar*, the 7th of *February*, 1683. *Hill.* 36 *Car.* II.

The Information.

AN Information was preferred againſt the Defendants, *Laurence Braddon* and *Hugh Speke*, by Mr. Attorney General Sir *Robert Sawyer*, which recites; That whereas *Arthur*, late Earl of *Eſſex*, was on the Tenth of *July*, in the 35th Year of the King, committed to the *Tower* for High-Treaſon; and on the 13th of the ſame Month, murdered himſelf, as appeared by the Coroner's Inquiſition: The Defendants, *Laurence Braddon* and *Hugh Speke*, knowing the Premiſſes, and deſigning to bring the Government into Hatred and Contempt; did on the 15th of *Auguſt*, in the Year aforeſaid, in the Pariſh of St. *Clement Danes*, in the County of *Middleſex*, maliciouſly conſpire, to make his Majeſty's Subjects believe, that the ſaid Inquiſition was unduely taken; and that the Earl did not murder himſelf, but was murdered by the Perſons to whoſe Cuſtody he was committed; and that the ſaid Defendants did conſpire to procure certain falſe Witneſſes to atteſt the ſame; and to induce the King's Subjects to believe theſe Reports, did maliciouſly declare in Writing, that the ſaid *Laurence Braddon*, was the Perſon that did proſecute the ſaid Earl's Murderers: To the great Scandal of the Government, againſt the King's Peace, *&c.*

The Coroner's Inqueſt read.

Then the Warrant for the Earl's Commitment, and the Inquiſition taken before the Coroner, were proved: By which Inquiſition, taken the 14th of *July*, it was found, that the ſaid *Arthur* Earl of *Eſſex*, on the 13th of *July*, in the 35th Year of the King, about Nine of the Clock in the Forenoon, being alone in his Chamber in the *Tower*, did feloniouſly cut his Throat with a Razor, from one Jugular Vein to the other, of which Wound he inſtantly died.

Evans's Evidence.

The Witneſſes being called, Mr. *Evans* was ſworn, and depoſed, that about Eleven o' Clock, that Morning the Earl of *Eſſex* cut his Throat, *Edwards*, a Cuſtom-Houſe Officer, told him, he had heard from Home, that his Son ſaw a Hand throw a Razor out of the Earl of *Eſſex*'s Window that Morning; and that *Edwards* came to him again in the Afternoon, and told him, he had examined into that Matter, and his Boy confirmed the Truth of it.

Edwards's Evidence.

Mr. *Edwards* being ſworn, depoſed, that about Ten, on the 13th of *July* in the Morning, he was informed by his Family, that his Son ſaid, he had been at the *Tower*, and ſeen his Majeſty and the Duke of *York*; and that the Earl of *Eſſex* had cut his Throat: And he (the Boy) ſaw a Hand throw a Razor out of the Window, and a Maid or Woman came out of the Houſe and took it up, and went in again; and then he heard a Noiſe, as of Murder, cried out: Mr. *Edwards* depoſed further, that his two Sons, of which this was the younger, were going together that Morning to *Merchant-Taylors* School, as they uſed to do; and hearing by the Way, that the King was at the *Tower*, the younger Boy gave the elder Brother the Slip, and went to the *Tower*, where he rambled about from Place to Place: That examining the Boy afterwards, as to the Truth of his ſeeing a Razor thrown out of a Window, he did not deny it, till the Defendant *Braddon* came to his (the Witneſs's) Houſe, to enquire concerning that Report: That he (the Witneſs) begg'd of Mr. *Braddon*, that he would take no notice of the Matter; but he was ſo zealous as that nothing would ſatisfy him: That leaving Mr. *Braddon* at his Houſe, till he went to the *Cuſtom-houſe*, ſome of his Family talked to the Boy at that Rate, that he began to deny he had ſeen any ſuch Thing; but in half an Hour he own'd it again; and ſo the Boy was off and on, till the Time he was carried before the Council; and at this Day, he ſeemed to ſtand to his Denial; but whether he would now do it or no, he could not tell.

The Court demanding, If he did not acquaint Mr. *Braddon*, the Boy was a lying Boy? *Edwards* anſwered, he acquainted him with as much, and told him, he would not undertake to aſſert the Truth of the Story; for his Daughter told him, the Boy had often excuſed his playing Truant by falſe Stories.

The Court then demanded, If he talked of this Matter before he went Home? *Edwards* anſwered, he ſtepped Home, being very near his own Houſe, and as ſoon as he came in at the Door, the Family began to give him an Account what News the Boy brought in: He could not diſcourſe of it before, unleſs he had been the Contriver of the Story; to which Mr. Attorney replied, ſo it is like enough you were.

Then *Evans* was called again, and confronted with *Edwards*; and ſaid, he thought Mr. *Edwards* ſaid, he had the Story from Home, but did not go Home; and at two a Clock he came to the Company again, and ſaid he had now been at Home, and the Boy had told him the ſame Story he had heard in the Morning: But ſtill *Edwards* perſiſted, he did not tell *Evans* any thing till he had been at Home the firſt Time, and then he had it from his Family.

Being ask'd, If ever *Braddon* tendered his Son a Paper to ſign? *Edwards* anſwered, he had heard ſo, and that he did ſign it; and *Braddon* told him, before his Son ſigned it, that he had other Evidence beſides his Son's: That he never ſaw *Braddon* before the 17th of *July*, when he firſt came to his Houſe about this Matter.

Edwards the Son his Evidence.

Then *William Edwards* the Boy was ſworn; and his Father charging him to ſpeak the Truth, and nothing but the Truth, the Chief Juſtice bid him turn about, and exhort his Father to ſpeak nothing but the Truth.

A Paper being then produced in Court, and the Boy asked, If he ſet his Name to it; He anſwered, Mr. *Braddon* enquired of him, if he ſaw any Thing at the *Tower*; and he told him, Yes, he was in the *Tower*, and ſaw a Razor thrown out of a Window: That he afterwards went with his Brother to the *Tower*, and ſhewed him the Place,

1683. 36 Car. II. Place; and Mr. *Braddon* wrote this down as he told it him.

The Court demanding, if he refuſed to put his Name to it; he anſwered, yes; he was afraid of coming into Danger.

The Chief Juſtice replied, why ſo? What Danger could there be, if it was Truth? The Boy ſaid, *That was not the Truth which he told him:* The Court demanded, how he came to ſign it afterwards then? The Boy anſwered, he perſuaded me, and ſaid there was no Harm in it; and would have had my Aunt ſign it.

Being asked, If he told Mr. *Braddon* it was falſe? He ſaid, No.

It was then demanded of him? What he told his Father before *Braddon* came to their Houſe? The Boy anſwered, he told his Father, the King and the Duke of *York* were at the *Tower*, and while he was there, he ſaw a Hand caſt out a bloody Razor; and a Maid came out and took it up, and went in again: Being asked, if he really did ſee a bloody Razor caſt out; he anſwered, No.

Hawkins's Evidence. Then, young *Hawkins*, the Son of Doctor *Hawkins*, who play'd Truant that Day with *Will. Edwards*, was ſworn as a Witneſs, and depoſed, that he met with *Edwards* that Morning in the *Tower*, and they walked round the *Tower* as long as the King walked, and then the King going into the Conſtable's Houſe, they went to play with ſome other Boys; after which he went home to his Father's Houſe in the *Tower*; and in a little Time, News was brought to his Father that the Earl of *Eſſex* had killed himſelf: That thereupon, his Father went down, and he (young *Hawkins*) followed him; and after he had been at the Place a little while, *Will. Edwards* came to him, and they ſtood looking up at the Window, an Hour or two at leaſt; and about Eleven, he and young *Edwards* went away together out of the *Tower*-Gate; but there was no Razor thrown out of the Window, neither did young *Edwards* mention any ſuch Thing.

Then *Will. Edwards* was called again, and confronted with *Hawkins*; and it being demanded of him, if young *Hawkins* was with him all the while he was in the *Tower*; he anſwered, yes, except a little Time he was at the Mills.

The Clerk of the Council's Evidence. Mr. *Blathwaite*, one of the Clerks of the Council, being ſworn, depoſed, That Mr. *Braddon*, and young *Edwards*, being brought to *Whitehall* the twentieth of *July*, and the Boy being aſked before his Majeſty, if the Matter in the Information was true? The Boy anſwered, It was a Lie; upon his Faith it was not true: And Mr. *Braddon* being called in, and told what he ſaid, it appeared to have been an Invention of the Boy's, to excuſe his playing Truant that Day.

He depoſed further, That Mr. *Braddon* having been in the Country, was again examined before the King upon this Matter; by which it appeared he continued his Purſuit: And the Words in the Minutes, which he, (*Blathwaite*,) took, at the Examination of one of *Edwards*'s Siſters, were, *That* Braddon *compelled the Boy to ſign it.*

The Under-Secretary's Evidence. Mr. *Monſtevens*, being ſworn, depoſed, That about five or ſix Days after the Lord *Eſſex* had murdered himſelf, *Braddon* came to the Lord *Sunderland*'s Office, (who was Secretary of State) at *Whitehall*, with a young Woman, and a Boy about 12 or 13 Years of Age; and *Braddon* told this Witneſs, that he had earneſt Buſineſs with my Lord *Sunderland*, and came from Sir *Henry Capel*, having an Information that the Boy had given relating to the Earl of *Eſſex*'s Death; and the Deponent demanding, Why Sir *Henry Capel* did not appear himſelf, in a Matter that ſo much concerned the Reputation of his Family, *Braddon* ſaid, He was not well; and added, that what he (*Braddon*) did, he was obliged to do, out of Conſcience, and the Duty he owed to the Memory of the Earl of *Eſſex*: That the Deponent thereupon went with *Braddon* to my Lord *Sunderland*, and his Lordſhip having taken the Information, *Braddon* was committed to Cuſtody, and brought before the King and Council. 1683. 36 Car. II.

The Court then demanded of young *Edwards* If he never told any body, he was in my Lord *Brandon Gerrard*'s Lodgings in the *Tower*: To which the Boy anſwering, *Never in his Life*, the Information that *Braddon* had drawn up for the Boy to ſign, was ordered to be read.

The Information ſigned by young Edwards. In this Information, the Boy ſays, Hearing his Majeſty and the Duke were in the *Tower*, on *Friday* the thirteenth of *July*, he ran thither; and when he had ſeen his Majeſty, he went to the Lord *Brandon Gerrard*'s Lodgings; and as he was ſtanding between them and the Lord *Eſſex*'s Lodgings, he ſaw a Hand caſt out a bloody Razor, out of the Lord *Eſſex*'s Lodgings; and that, as he was going to take up the Razor, a Maid run out of Captain *Hawley*'s Houſe, took up the Razor, and carried it into the Houſe; and he believed it was this Maid, that firſt cried out Murder: That he alſo heard the Maid ſay, after Murder was cried, that ſhe heard the Lord *Eſſex* groan three Times that Morning.

Sir Henry Capel's Evidence. Sir *Henry Capel* then being ſworn, the Court aſked him, If he ever employed *Braddon* about any ſuch Buſineſs, as he had undertaken? He anſwered, *Braddon* was twice to ſpeak with him; the firſt Time he was in ſuch Diſorder, that he did not know well what he ſaid; the ſecond Time, *Braddon* ſpeaking of ſuch a Buſineſs, he told him, he was under great Grief, and under a great Burthen of Buſineſs in his private Family; and whatever he had to ſay in the Matter, he deſired he would acquaint a Secretary of State with it. Being aſked, if he deſired *Braddon* to go to *Edwards*'s Houſe, Sir *Harry* anſwered, He knew nothing of *Edwards* or his Houſe.

Mr. *Blathwaite* alſo teſtified, That when *Braddon* was before the King, he confeſſed, he had gone about to find ſome Juſtice of the Peace, to take the Information upon Oath, and named Sir *Robert Clayton*, and Sir *John Lawrence*; and becauſe Sir *Robert* refuſed to take it in private, he would not let him take it at all, but went away with it.

Beech's Evidence. *Beech* the Meſſenger, depoſed, He apprehended *Braddon* in *Wiltſhire*; and among other Papers found upon him, was a Letter of Mr. *Speke*'s, (the other Defendant) directed to Sir *Robert Atkyns*; and another from one *Burgis* of *Marlbrough*, directed to *Compten*, Poſt-Maſter at *Frome*, to enquire concerning a Report, that was there the thirteenth of *July*, that the

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Earl of *Eſſex* was murdered, being the ſame Day he murdered himſelf.

Speke's Letter read.

Then *Speke*'s Letter, dated the fifteenth of *Auguſt*, was read, the Purport whereof was to acquaint Sir *Robert Atkyns*, that *Braddon* was the only Perſon who proſecuted the Earl of *Eſſex*'s Murder: That he was qualified for ſuch an Undertaking, being a Perſon of good Reputation, Prudence, and great Courage: That he was going Poſt to *Marlbrough* to make a further Diſcovery, and he lent him his Man; for he was afraid he would be ſtabbed, or knocked on the Head; and that he had directed him to wait on Sir *Robert*, ſince he was to go ſo near him, and adviſe with him how he had beſt proceed; deſired he would conceal *Braddon*'s being there, leſt it ſhould be a Prejudice to Sir *Robert*; and he hoped they ſhould bring the Earl of *Eſſex*'s Murder upon the Stage, before they could bring any of thoſe in the *Tower* to a Trial: He alſo informs Sir *Robert*, that *Braddon* went by the Name of *Johnſon*; and that he, (the Writer) had received a Letter from Sir *Robert* that Day, with a Letter incloſed for the Lady *Ruſſel*, which he ſealed up, and carried to her; and my Lady returned him ten thouſand Thanks for his Kindneſs, and the great Pains he had taken.

Lodeman the Girl's Information read.

The Information of *Jane Lodeman*, aged thirteen Years, alſo was read, importing, that ſhe was in the *Tower* on the thirteenth of *July*; and ſtanding over-againſt the Window of the Earl of *Eſſex*'s Lodging, ſhe ſaw a Hand caſt a Razor out of the Window, and heard Shrieks; and that a Soldier at the Door, cried out to thoſe in the Houſe, that they ſhould come and take up the Razor, and a Maid come out of the Houſe in a white Hood; but who took up the Razor ſhe could not tell. *Which Paper alſo was found about Mr.* Braddon *when he was taken.* Another Letter from *Burgis*, to *Cumpen* at *Frome*, that was found about him alſo, was read; wherein *Burgis* deſires *Cumpen* to call to Mind that he was at *Frome*, the ſixth of *July*, being *Friday*; and then heard the Report, that the Earl of *Eſſex* had cut his Throat; and that he would enquire, who firſt reported it; and give the Bearer an Account of it.

The Defence.

Here Mr. *Wallop* and Mr. *Williams*, the Defendant's Counſel, urged in their Behalf, That what they had done, was not with any malicious or factious Deſign; nor did they go about to procure theſe Informations, but heard of the Facts accidentally: And, if they had gone a little out of the Way, and taken theſe Examinations in Writing, in order to lay them before the Secretary of State; they hoped this was no Crime, if they did not do it ſeditiouſly; but only with an Intention, that Mr. Secretary might receive a fuller Information.

Then the Defendant's Witneſſes were called, one of whom ſaid, As he was upon the Road, he heard the Earl of *Eſſex* had cut his Throat: Another ſaid, He heard ſo at *Andover*, the *Wedneſday* or *Thurſday* before it was done.

Sarah Edwards's Evidence.

Edwards and his Wife being examined again by *Braddon*, gave much the ſame Evidence *Edwards* had given before; and then *Sarah Edwards*, the Boy's Siſter, depoſed, That *Braddon* came the *Tueſday* after the Lord *Eſſex*'s Death, and told her Father, he came from Sir *Henry Capel* and the Counteſs of *Eſſex*, to know the Truth of her Brother's Report: That her Father told him, the Boy had reported ſuch a Thing; but he would not affirm the Truth of it, for he was apt to tell Lies, to excuſe his playing Truant: That when the Boy came from School, ſhe bid him be ſure to tell the Truth; whereupon he aſked, If any Harm would come of it? And ſhe anſwered, She did not know; but a Gentleman had been to enquire about it: And then the Boy denied it; whereupon they were all daunted: And *Braddon* coming again ſoon after, bid the Boy ſpeak Truth; telling him what a dreadful Thing it was to be a Liar; that he ſhould read the fifth Chapter of the *Acts*, where two were ſtruck dead for lying: And that *Braddon* coming again the *Wedneſday* following, the Boy owned it again; whereupon *Braddon* wrote down what the Boy told him, and went away, ſaying, he would go to Sir *Henry Capel*, and the Counteſs of *Eſſex*: That the next Day *Braddon* came again, bringing a Paper he had written over, and the Child ſet his Hand to it; but it was not the ſame Paper *Braddon* wrote at their Houſe: The Boy was unwilling to ſign it; but he ſaid, It would be no Harm to him: If there was any Danger, it would be to himſelf.

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Braddon demanding of her, Why the Boy ran to his Mother, and cried he ſhould be hanged? ſhe anſwered, The Child had ſuch a Fear and Dread upon his Spirits, knowing it to be a Lie he had told, ſhe ſuppoſed.

Mr. *Wallop* demanded, If they did not tell him his Father would loſe his Place? and ſhe anſwered, They did.

Lodeman's Evidence.

Jane Lodeman, the Girl of thirteen Years of Age, being called, depoſed, That between nine and ten in the Morning, the Day the Earl of *Eſſex* died, ſhe ſaw a Hand throw a Razor out of the Window, and heard two Shrieks and Groans preſently after; and the People ſaid it was the Earl of *Eſſex*'s Lodging: That the Razor fell within the Pales; and ſhe ſaw a Woman come out in a white Hood; but could not tell, whether ſhe took up the Razor or not: That ſhe ſaw the Razor only as it was flying, and it appeared open and very bloody: She did not ſee it upon the Ground; but was ſure it was a Razor, and not a Knife.

Then the aboveſaid Information was read, atteſted by thoſe who heard her tell the Story to *Braddon*: Whereupon the Chief Juſtice obſerved, That the Information ſaid, ſhe heard the Soldier cry out; but here, ſhe ſaid ſhe did not know of any Soldier, or heard any body ſpeak to the Maid, as ſhe related there.

The Girl being aſked, If Mr. *Braddon* carried her before a Juſtice of Peace; ſhe anſwered, No; he took the Information himſelf.

Beech the Meſſenger, depoſed, That he asked the Poſt-Maſter of *Frome*, if there had been any Rumour there, concerning the Earl of *Eſſex*'s Death, on the Day it happened, as was reported; and that the Poſt-Maſter anſwered, there was no ſuch Report in that Town, till the *Sunday* after his Death.

Mr Speke's Evidence continued.

Then Mr. *Thompſon*, Counſel for Mr. *Speke*, ſaid, That his Client was no otherwiſe concerned in the Matter, than writing the ſaid Letter to Sir *Robert Atkyns*, ſending it by Mr. *Braddon*,

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and lending him his Man: To which the Counſel for the King anſwered, That the Letter was written in ſuch a Strain, as ſhewed, he had a conſiderable Share in the Contrivance; for he ſaid in it, *We row againſt the Stream: We thank you for your Kindneſs to us: We hope to bring on the Trial of the Earl of* Eſſex's *Murder, before they can any of thoſe in the* Tower.

Mr. *Speke* ſaid, Mr. *Braddon* came to him late at Night, when he had been drinking a Bottle of Wine; and he hardly knew what he wrote: Mr. *Wallop* his Counſel alſo ſaid, He might believe, from what *Braddon* told him, there were probable Grounds to go upon; but he knew nothing himſelf, and deſired the Jury would obſerve, there was no Contrivance proved againſt him.

Then Mr. Attorney ſaid, They ſhould ſhew that it was impoſſible for any Man, unleſs the moſt malicious, and villainouſly inclined againſt the Peace and Government of the Kingdom, to ſpread ſuch a Report; and called Mr. *Bomeney*, the Lord *Eſſex*'s Gentleman, to give an Account of the Matter, who had lived with his Lordſhip ſix Years; and attended him in the *Tower* at the Time of his Death.

Bomeney's *Evidence for the King.*

Bomeney depoſed, That he attended his Lord to the *Tower*, and waited on him there: That his Lordſhip aſked him for a Pen-knife to cut his Nails; but that coming away from home in Haſte, he had not brought one: However, when he ſent the Footman to the Steward for Proviſions the next Morning, *he wrote to the Steward to ſend a Pen-knife:* That his Lord asked, if it was not come? and when he told him it was not, he bid him bring him one of his Razors, which would do as well; and he carried his Lord a Razor, who walked with it in his Hand about the Chamber: That the Deponent, in the mean time, ſtepped into the Paſſage, and talked with *Ruſſel* the Warder at a Window, and ſaw the King was in the *Tower:* That a little while after, he (the Deponent) went down, and the Footman returned with the Proviſions and a Pen-knife: He brought alſo a Note, which the Deponent carried up to his Lord's Chamber, but found Nobody there: And there being a Cloſet in the Room, in which was a Cloſe-ſtool, he thought my Lord was there, and went down therefore a little while, and then went up again; and finding the Cloſet Door ſhut ſtill, he knocked three Times, and called his Lord, but Nobody anſwered: Then he looked through a Chink of the Door, and ſaw Blood, and Part of the Razor; whereupon he called the Warder, and the People of the Houſe; and *Ruſſel* the Warder came up, and puſhed againſt the Door, but could not open it far, becauſe my Lord's Feet were againſt the Door: That it was a very ſmall Cloſet; the Cloſe-ſtool and the Length of a Man would fill it: That his Lord lay all along on his Side, and the Razor by him: There was a Window in the Cloſet, and, he thought, a Caſement that opened into a little Yard.

It being demanded, If he obſerved his Lord to be melancholly; he anſwered, Yes, he was melancholly, but they took no notice of it; for he uſed to be ſo, and they had no Reaſon to ſuſpect any thing more than ordinary.

Ruſſel the Warder, being ſworn, depoſed, That on the Morning the Earl killed himſelf, he was in the Chamber oppoſite to my Lord's Chamber: That the Stairs came up between the two Doors, which being both open, he could ſee plainly into the Room: That he heard my Lord ask *Bomeney* if the Pen-knife was come, and he ſaid, No: Then ſaid my Lord, Lend me your Razor, that will do it; and my Lord took the Razor in his Hand, and went two or three Turns in the Room: By and by *Bomeney* went down, and my Lord ſhut the Door to him: A little while after *Bomeney* came up, and my Lord being gone to Stool in the Cloſet, as he ſuppoſed, he went down a ſecond Time, and ſtaid about a Quarter of an Hour. 1683. 36 Car. II. *The Warder's Evidence.*

The Court demanded, If any Perſon had been there, from the Time *Bomeney* went down, to the Time he came up again: *Ruſſel* anſwered, No; but that *Bomeney* coming up again, and finding his Lord not come out of the Cloſet, he put by the Hanging, and ſaw my Lord lying in his Blood in the Cloſet: Whereupon *Bomeney* made a great Noiſe; and he *(Ruſſel)* came up, and finding the Key on the out-ſide of the Door, opened it a little; but could not puſh it quite open, becauſe my Lord's Legs lay againſt the Door: That there was a Window in the Cloſet that looked into a back Yard, which was paled in, and there was only one Door that went into it out of the Houſe: Nobody could come into that Yard, without coming through Captain *Hawley*'s Houſe.

Lloyd the Centinel, who ſtood at the Door of the Lord *Eſſex*'s Lodgings, was ſworn, and depoſed, That he ſaw the Lord *Eſſex* at the Caſement in the Morning; and he asked, what o' Clock it was: That he ſaw him alſo when the Lord *Ruſſel* went by; and about half an Hour after, a Cry was made, that Lord *Eſſex* had killed himſelf: That there was no Razor thrown out; no Maid came out of the Houſe; nor did he call to any one; and there was no other Soldier at the Door at that Time, but himſelf. *The Centinel's Evidence.*

It being demanded, If any body came into the Houſe that Morning; he anſwered, Nobody came in while he ſtood there.

Captain *Hawley* being ſworn, depoſed, That ſtanding at the *Tower* Gate that Morning, the Warder came and told him, the Lord *Eſſex* had killed himſelf, whereupon he went up Stairs, and coming to the Cloſet could not open the Door far, but looked in, and ſaw the Razor bloody, and my Lord lying on his Arm; and the Conſtable was called, to come and examine the Servants. *Hawley's Evidence.*

That the Houſe having ſettled, the Caſement in the Cloſet could not be opened far; and beſides, it was ſo low, and the Pales before the Window ſo high, that it was impoſſible to throw any thing out of the Window three Foot, they could not throw any thing out of the Window to be ſeen *(in the Street, I ſuppoſe he means; the little Yard being encloſed with high Pales, and had no Door into it out of the Street.)*

Then Mr. *Speke* called his Servant as a Witneſs, who atteſted, That he had never ſeen Mr. *Braddon* but once at his Maſter's Chambers, before he wrote the aboveſaid Letter: And Mr. *Speke* obſerved, That it had not been proved, *The Defence continued.*

he

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he had conſpired with *Braddon* to procure falſe Witneſſes, as was laid in the Information; but that it appeared he was ſurprized when he wrote the Letter, by *Braddon*'s making him believe that to be true, which was not; and that he wrote it late at Night, after he had been at the Tavern.

Braddon alſo obſerved upon the Evidence, That it had not been proved he had uſed any ill Arts to perſwade the Witneſſes to teſtify what was falſe, but had dealt with all the Caution and Candour imaginable; and deſired the Jury would take no Notice of what had been ſaid, or ſhould be ſaid, that was not proved.

Directions of the Chief Juſtice.

Then the Lord Chief Juſtice proceeded to direct the Jury; and among other Things ſaid, that the Crime Mr. *Braddon* was accuſed of, carried all the Venom and Baſeneſs, and the greateſt Inveteracy againſt the Government, that ever any Caſe did; for it was inſinuated, that, becauſe the King and the Duke were walking in the *Tower* that Day, and near that Time when this unfortunate Thing happened, the King and the Duke had deſigned this Murder.

That as to the Corrupting of Witneſſes, though *Braddon* did not get any Witneſſes ſworn, and ſo it was no Subornation of Perjury; yet however it was a Miſdemeanor to labour any one, eſpecially ſuch a Child, into a Falſity, as apparently he did; and preſſing the Boy to ſign the Paper, when he refuſed it.

Had it been a Thing of Indiſcretion only, without Malice, and had there been no Caution given him about it, as a Thing that did not concern him, there might have been ſomething ſaid to alleviate it: But for him to come, as if he had Authority from the Counteſs of *Eſſex* and Sir *Henry Capel*, who denied they ever gave him any ſuch Authority, ſhewed the Malice of his Deſign.

As to Mr. *Spake*, If he did write the Letter above-mentioned, with a Deſign to ſpread the Calumny, he made himſelf a Party to the general Deſign; though not equally Guilty, as to the Management of the Witneſſes: But if they were of Opinion he was ſurprized into the Thing, and did it innocently, or ignorantly, they ſhould acquit him, though he ſeemed to have been very zealous in proſecuting the Buſineſs.

Remarks on Braddon's Trial.

The Faction, it ſeems were very zealous in promoting that Calumny, that the Earl of *Eſſex* was murdered by thoſe that had him in Cuſtody, — by the Direction of the Duke of *York*: They went ſo far, as to ſay, that the King and the Duke went to the *Tower* that Morning, on Purpoſe to countenance the Fact: But ſurely, if they had been at the Bottom of it, they would rather have choſen to have been at a greater Diſtance from the Place where it was executed. Biſhop *Burnet*, for whom the Party profeſs a moſt profound Veneration, gave up the Story as a Forgery, after he had narrowly enquired into it: And as he had better Opportunities of informing himſelf of the Truth of the Fact, than any other Man could have; and was employed by the Lady *Eſſex* for that Purpoſe; one would think the Faction ſhould not have the Aſſurance to repeat the malicious Tale to this Day, as ſome of them do.

The Biſhop, ſpeaking of this Occurrence in the firſt Volume of his Poſthumous Hiſtory, ſays, That "the Earl of *Eſſex* appeared in "much Confuſion, when he was brought be- "fore the Council; and fell under great De- "preſſion of Spirit, after he was committed to "the *Tower*. He had been before troubled "with Fits of the Spleen, which now returned "upon him with greater Violence. He ſent a "a Meſſage by a Servant to his Wife; telling "her, *That what he was charged with, was* "*true; and he was ſorry he had ruined her,* "*and her Children.* He ordered ſeveral Things "to be ſent to him, and among the reſt, a "Pen-knife, with which he uſed to pare his "his Nails; but it not being brought, he asked "for a Razor, and ſaid, that would do as "well. That Morning the King and Duke "came to the *Tower*, to ſee a new Invention "concerning the Ordnance, as was given out: "And as they were going into their Barge to "to return back, News was brought that the "Lord *Eſſex* was killed: For his Man think- "ing he ſtaid longer in his Cloſet than Ordi- "nary, looked through the Key-Hole, and "ſaw him lie dead; and breaking open the "Door, they found his Throat was cut. At "that Time, every Body looked upon it as "done by himſelf, and the Coroner's Inqueſt "found it to be Self-Murder: His own Sur- "geon alſo aſſured me, that it was impoſſible "the Wound could be as it was, if it had been "given by any Hand but his own."

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Bp. Burnet's Reflections on the Earl of Eſſex's Death.

In the ſame Volume of his Poſthumous Hiſtory, a little afterwards, he ſays, "Suſpicions "began now to be entertained, that the Earl "of *Eſſex* was murdered, from the Report of "a Boy and a Girl, that heard a Cry in his "Lodgings, that Morning he was found dead; "and that they ſaw a bloody Razor thrown out "of the Window, and a Woman came out of "the Lodgings, and took it up: But as ſoon "as the Earl of *Eſſex*'s Lady heard of this Re- "port, ſhe made a ſtrict Enquiry about it, "and ſent what ſhe had collected to him (Dr. "*Burnet*) who, when he had peruſed all, "*thought there was no Colour to ground any* "*Proſecution upon:* Which the Lady would "have encouraged, with all poſſible Zeal, *if ſhe* "*had found any Appearance of Truth in the* "*Matter.* Beſides, (adds the Doctor) *The* "Lord Eſſex *had a Notion, that every Man* "*was Maſter of his own Life*; and ſeemed to "approve what his Wife's Great Grandfather, "the Earl of *Northumberland*, had done, who "ſhot himſelf in the *Tower*, after he was ar- "raigned."

To this Account of Dr. *Burnet*'s, I ſhall add a Paragraph of Mr. *Echard*'s Hiſtory of *England*; who ſays, Since the Manner of the Earl's Death has been made a Queſtion, I here ſubjoin an Extract of two Letters ſent me, in the Months of *September* and *October*, 1719, from a Perſon of full Credit and Worth, who had the trueſt Honour and Reſpect for that Noble Lord: In theſe Letters the Writer ſays:

"I was then one of the Family of that very "worthy, but unhappy Earl of *Eſſex*, who "died in the *Tower*, by his own Hands. He "was really an excellent Perſon, but happened, "by Lies and falſe Suggeſtions, to be exaſpe- "rated

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" rated againſt the King, by a very ill-de-
" ſigning Man (the Earl of *Shaftesbury*.) There
" were two or three Pamphlets publiſhed, eſpe-
" cially one large one, by *Speke* and *Braddon*, to
" prove that he was murdered in the *Tower*:
" But I do believe, and I think I am as ſure
" as I can be of a Thing I did not ſee, that
" the Earl in a ſudden Tranſport of Paſſion,
" was the Author of his own Death. As ſoon
" as his Lady, the Counteſs, heard there was a
" Report of his being murdered, (for none of
" the Pamphlets were then publiſhed) about
" four Days after his Death, ſhe ſent me with
" Letters to the Earl of *Clarendon*, who mar-
" ried the Earl of *Eſſex*'s Siſter, to Sir *Henry*
" *Capel*, afterwards Lord *Capel*, the Earl's
" only Brother, and to Doctor *Walter Needham*,
" their Phyſician, and Friend; and deſired,
" and impowered us Four to take all the Care
" we could, and to ſpare no Charge to enquire
" fully into that Matter. Accordingly we Four
" met at *Eſſex*-Houſe in St. *James*'s Square,
" and ſent for the Coroner, and ſeveral of the
" Jury: And I myſelf went to the *Tower* to
" ſee the Room, and to conſider how what
" they ſaid correſponded: And I muſt truly
" ſay, That every one of us was fully ſatisfied,
" that it could be done by Nobody but himſelf:
" And ſo, I dare ſay, was the Counteſs ſatisfied:
" And ſo was Doctor *Burnet*, though he was
" the Perſon that gave the Counteſs the firſt No-
" tice of the Report of his being murdered;
" which gave beginning to the Enquiry. We
" all Four loved and honoured him ſo en-
" tirely, that if we had found any juſt Ground
" of thinking otherwiſe, we ſhould not have
" concealed it. I could ſay Abundance more,
" if I had Time; and if you ſhould be at *Lon-*
" *don* in *November*, I ſhould be glad to ſee
" you. Be ſure not to miſtake the Time of
" his Death, as ſome have done. The Earl
" was, by an Order of Council, ſeized at *Caſhio-*
" *bury*, on *Monday*, *July* the 9th, in the Af-
" ternoon. He was brought to *White-hall* that
" Night, and lodged in the Lord *Feverſham*'s
" Lodgings. On *Tueſday*, *July* the 10th, he
" was ſent to the *Tower*. On *Friday* Morning
" next, *July* the 13th, he died about Eight a
" Clock, juſt after the Lord *Ruſſel* was car-
" ried out to be tried. I aſſure you, the moſt
" ſolemnly that can be, that what I ſay is
" true, according to the beſt of my Judg-
" ment.

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I ſhall conclude theſe Remarks, with obſerving the Diſingenuity of the Authors of that Hiſtory, which goes under the Name of *Rapin*, who were well acquainted with Mr. *Echard*'s Hiſtory, and Biſhop *Burnet*'s Poſthumous Hiſtory; and yet ſtill ſuggeſt, that the Earl was murdered by the Direction of the King and Duke: They do not think fit indeed to recite, what theſe Authors ſay on the other Side; for had they given us the Words of Biſhop *Burnet*, whom they call in other Parts of their Hiſtory, *The moſt illuſtrious Writer*, ſubſcribing to the Truth of whatever he advances; they durſt not have aſſerted the direct contrary to what he affirms here. Their greateſt Admirers muſt have retorted upon them.—With what Face can you reject the Authority of a Man, whoſe Opinion you have hitherto looked upon as ſacred; and to whoſe Labours you are indebted for the beſt Part of your Hiſtory of thoſe Times?

Rapin at Variance with Burnet.

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Barnardiſton's *Trial.*

The Trial of Sir SAMUEL BARNARDISTON, Baronet, for a *Miſdemeanor*, in the Court of *King's-Bench*, the 14th of *February*, 1683. 36 *Car.* II.

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The Information.

AN Information was preferred againſt Sir *Samuel Barnardiſton* the Defendant, by the Attorney General Sir *Robert Sawyer*; which recites, That, whereas there had been a horrid Conſpiracy, againſt the King and Government, of which ſeveral Perſons had been convicted, and afterwards executed for the ſame; particularly the Lord *Ruſſel* and Colonel *Sidney*; the Defendant, being a Perſon of a turbulent and unquiet Spirit, and maliciouſly intending to ſcandalize and vilify the Evidence, and diſturb the Government, cauſed ſeveral Letters to be written, in the firſt of which were the following Expreſſions.

His Letters made Evidence againſt him.

" The Return of the Duke of *Monmouth* to
" *Whitehall*, and his being received into Favour,
" has made a ſtrange Alteration at Court: Thoſe
" who before ſpoke of him very indecently,
" now court, cringe, and creep to him. His
" Grace complained to the King, of the ſcan-
" dalous Repreſentation made of him in the
" *Monday's Gazette*; upon which the *Gazet-*
" *teer* was called to an Account, who alledged
" for himſelf, that a Perſon of great Quality
" ſent him in Writing, the Words related there-
" in, commanding him to put them into the
" *Gazette*. Yeſterday all the Priſoners that were
" in the *Tower*, upon the late ſham Plot, were
" diſcharged upon Bail. Great Applications
" are made to his Majeſty for pardoning Mr.
" *Sidney*, which, it is believed, will be attain-
" ed, and that he will be baniſhed. The Lord
" *Howard* appears deſpicable in the Eyes of all
" Men; he is under a Guard at *Whitehall*; and,
" it is believed, will be ſent to the *Tower*; for
" the Duke of *Monmouth* will accuſe him, con-
" cerning the Teſtimony he hath given, &c.
" The Papiſts and High Tories are quite down in
" the Mouth; their Pride is abated, themſelves
" and their Plot confounded; but their Malice
" is not aſſwaged. It is generally ſaid, the Earl
" of *Eſſex* was murdered: The brave Lord
" *Ruſſel* is afreſh lamented. The Plot is loſt
" here, except you in the Country can find it
" out among the Addreſſers and Abhorrers.

In another Letter, he ſays, " I am now tho-
" roughly ſatisfied, that what was printed in
" *Monday's Gazette*, (*relating to the Duke of*
" Monmouth's *Confeſſion*) is utterly falſe, and
" you will ſee it publickly declared ſo ſhortly:
" The King is never pleaſed, but when he is
" with him; hath commanded all the Privy
Council

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" Council to wait on him, and happy is he that " hath moſt of his Favour: His Pardon was " ſealed and delivered him laſt *Wedneſday*. It is " reported, he will be made Captain General, " and Lord High Admiral: He treats all his " old Friends, that daily viſit him, with great " Civilities: They are all ſatisfied of his Integri- " ty; and, *if God ſpares his Life, I doubt not, " but he will be an Inſtrument of much Good to the " King and Kingdom*: He ſaid publickly, he " knew my Lord *Ruſſel* was as loyal a Subject " as any in *England*; and that his Majeſty be- " lieved the ſame now. It would make one " laugh to ſee, how ſtrangely our high Tories " and Clergy are mortified; their Countenances " ſpeak it".

In a third Letter, he ſays, " The late Change " here is ſo great and ſtrange, that we are like " Men in a Dream, can hardly believe what " we ſee, and fear we are not fit for ſo great a " Mercy as the preſent Juncture ſeems to pro- " miſe: The ſham Proteſtant Plot is quite loſt " and confounded: The Earl of *Macclesfield* is " bringing Actions of *Scand. Mag.* againſt all " the Grand Jury that indicted him; and the " Gentlemen of *Cheſhire* and *Northamptonſhire*, " who were indicted, will bring their Actions".

His fourth Letter ſhews all his Hopes were blaſted, where he ſays, Contrary to all Men's Expec- " tations, a Warrant is ſigned at laſt, for be- " heading Colonel *Sidney*, on *Tower-Hill*, next " *Friday*: Great Endeavours have been uſed, " to obtain his Pardon; but the contrary Party " have carried it, which much daſhes our " Hopes; but God ſtill governs".

The firſt of theſe Letters was dated the twenty-ninth of *November*, 1683, and directed to Sir *Philip Skippon* at *Ipſwich*: The ſecond Letter was dated the firſt of *December*, 83. and directed to the ſame: The third was dated 1ſt of *December*, and directed to Mr. *Edward Gael*, Linnen-Draper at *Ipſwich*; and the fourth was dated the 4th of *December*, 1683, and directed to Mr. *William Cavell* at *Brightwell*, near *Ipſwich*.

The three firſt were proved to be Sir *Samuel*'s Hand, or written by his Direction, by his own Confeſſion before the Council, and the Evidence of *Oſland* his Servant: The fourth, *Oſland* depoſed, was tranſcribed from a Copy Sir *Samuel* gave him; and, it appeared, they were all ſent to the Poſt-Houſe by the Defendant's Direction.

Mr. *Williams* being of Counſel for Sir *Samuel*, ſaid in his Defence, That though it was proved, Sir *Samuel* did ſend theſe Letters to the Poſt-Houſe, he doubted, whether the writing a Letter to a private Friend, and putting it into the Poſt, could be deemed publiſhing a Libel, within the Information: Beſides, he held there were ſeveral Things mentioned in the Information, by Way of Inducement, that were not proved; as that the Defendant, being of a turbulent Spirit, did it maliciouſly and ſeditiouſly, to diſturb the Peace.

The Chief Juſtice demanded, If he did it piouſly, with a good Intent? and obſerved, that if the Fact implied Malice and Sedition, the Law ſupplied the Proof. In Informations for Offences of this Nature, it is ſaid he did it falſely, maliciouſly, and ſeditiouſly, which are the formal Words; and, if the Nature of the Thing be ſuch, as neceſſarily imports Malice, Reproach, and Scandal, to the Government, there needed no Proof, but of the Fact done: If the Fact indeed were indifferent in itſelf, then, to make a Crime of it, the accidental Circumſtances muſt be proved; but they need not, where they imply Malice in their own Nature. And the Chief Juſtice proceeding to ſum up the Evidence, ſaid, Sir *Samuel* might endeavour to cover his Practices, and gild them with a Pretence of Zeal for the true Proteſtant Religion, and call himſelf one of the *ſober Party*, or the *godly Party*; yet his Inſide was rotten: He was factious and ſeditious at Bottom, and full of Malice againſt the King and Government; againſt both Church and State, and every one that had not a Share in the late bloody Conſpiracy againſt his Majeſty: That in his Libels, he ſainted my Lord *Ruſſel* and Colonel *Sidney*, two of the Traitors that had been legally condemned and executed; and inſinuated, that the King was prevailed on by a ſham Plot, to deſtroy the Government, and every one of the *ſober Party*, as they called themſelves: Theſe Letters tell us, in the Language of that Traitor *Walcot*, *That God will be ſure to raiſe up Inſtruments*, by which was meant Inſtruments of Rebellion, Faction, and Sedition, which they impiouſly called *God's own Work*: That this was the Language of thoſe Times, when they deſtroyed the beſt of Kings, and ſubverted the beſt of Governments: Nor did they only aim at the Deſtruction of the Civil Government, and thoſe in Authority; but of all thoſe who had been ſo dutiful to addreſs his Majeſty, and congratulate him on his Deliverance from the late Conſpiracy; by branding them with the Names of Abhorrers, Tories, Addreſſers, Sham-Plotters, and all the ignominious Names they could think on.

The Chief Juſtice's Directions to the Jury

That the Queſtion now to be tried, was, Whether the Defendant was guilty of writing theſe malicious factious Letters? which Sir *Samuel*'s Counſel had not offered to defend: And it muſt be admitted, they were as ſeditious and factious as could be written; and, in his Opinion, bordered on High Treaſon: He had not ſaid thus much, but it was a Matter of great Expectation and Conſequence; and he ſhould be ſorry to ſee us twice in one Age gulled by the ſelf-ſame Men, and the ſelf-ſame Way, into the ſame Treaſon and Rebellion; and all thoſe other Miſchiefs brought upon us in the late Times.

Then the Jury, without going out of Court, gave their Verdict, That Sir *Samuel Barnardiſton* was GUILTY of the Miſdemeanor charged in the Information:

The Defendant convicted.

For which he was ſentenced to pay a Fine of 10,000 Pound, and to give Security for his good Behaviour for Life.

Fined 10,000 *l.*

We may diſcern by theſe Letters the Credulity of the Faction; how ready they are to believe every thing to be true, that is for the Advantage of their Party, upon the ſlendereſt Grounds; and with what Zeal they ſpread and propagate every Calumny, that may traduce the Government, and incite Tumults and Inſurrections, when they are out of Play.

Remarks

The Duke of *Monmouth* we find, notwithſtanding their ſanguine Hopes, was turned out of all his Places, and in a Manner baniſhed; and the reſt of the Facts aſſerted in thoſe Letters were equally falſe; probably forged by ſome of the Party.

1683. 35 Car. II. *The* East-India *Company and* Sandys.

The Trial between the East-India Company Plaintiffs, and Thomas Sandys Defendant, in the Court of *King's-Bench*, in the 35th and 36th Years of *Car.* II. 1683, and 1684.

The Declaration.

THIS is a Special Action on the Caſe, wherein the Plantiffs declare, That His Majeſty King *Charles* II. by his Letters Patent dated the third of *April*, in the thirteenth of his Reign, reciting, That the Governor and Company of Merchants, trading to the *Eaſt-Indies*, had for a long Time been a Corporation, and enjoyed divers Liberties and Privileges, by Virtue of divers Letters, Patents, and Charters, granted them by Queen *Elizabeth* and King *James*: And that the King being informed that divers Diſorders and Inconveniences were then lately committed, to the great Prejudice of the ſaid Company, and Interruption of their Trade; whereupon they had humbly beſought his preſent Majeſty King *Charles* II. to confirm their ſaid Charter, with ſome Alterations and Additions, tending to the Advancement and Benefit of Trade: —— The King had given and granted to them, That they ſhould be a perpetual Corporation, to have Succeſſion, Capacity, *&c.* And further granted, That they, and every one that ſhould be of the ſaid Company, and their Sons, at their ſeveral Ages of twenty-one; their Apprentices, Factors, and Servants; might freely traffick, and uſe the Trade of Merchandize by Sea, by ſuch Ways and Paſſages, then found out and diſcovered, as they ſhould think fit, to and from the *Eaſt-Indies*; and to and from the Iſlands, Ports, Havens, Cities, Creeks, Towns, and Places of *Aſia*, *Africa*, or *America*, or any of them beyond the *Cape of Good Hope*; as by the ſaid Company, from Time to Time, ſhould be limited and agreed, without Moleſtation, any Statute, Uſage, Diverſity of Religion or Faith, or any other Cauſe whatſoever notwithſtanding; ſo as the ſaid Trade be not carried on to any Country, Port, or Place, in the Poſſeſſion of ſome Chriſtian Prince or State, in Amity with his Majeſty.

That the ſaid Company ſhall have the whole, entire, and only Trade, to and from the *Eaſt-Indies*, and all Ports and Places aforeſaid. —— That the ſaid *Eaſt-Indies*, Ports and Places aforeſaid, ſhall not be traded to, or frequented, by any other of his Majeſty's Subjects, who are prohibited to viſit the ſame, by Way of Merchandize, unleſs licenſed ſo to do, by the ſaid Company, on Pain of Forfeiture of their Ships and Goods, the one half of ſuch Forfeitures to the King, and the other to the Company: The Offenders to be impriſoned during the King's Pleaſure, and otherwiſe puniſhed for their Contempt; and not to be ſet at Liberty, till they have reſpectively entered into Bonds to the ſaid Company, of 1000 Pound each, not to trade to the *Eaſt-Indies* for the future. —— That the ſaid Company might grant Licences to any other Perſons to trade thither: And that the King would not, during the Continuance of the ſaid Letters Patent, give Licences to any Perſons to trade thither.

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By Virtue of which Letters Patent, they alledged, They had been and were a Corporation; and have had eſtabliſhed and managed, and did ſtill manage, a great Trade of Merchandize to the ſaid *Eaſt-Indies*, with the Inhabitants there; who at the Time of the making the ſaid Letters Patent, or ſince, were not Chriſtians, or Subjects to any Chriſtian Prince or State; but are, and were Infidels and Enemies to the Chriſtian Faith: And that they had ſpent and laid out many and great Sums on this Occaſion.

And they further ſay, That the Trade aforeſaid cannot be managed or carried on, but by ſuch a Corporation; and that they ought to have and enjoy the ſole Trade thither, according to the ſaid Letters Patent.

But that the ſaid *Thomas Sandys*, being a Subject of the King's, and no Member of the ſaid Company, or Son, Apprentice, Factor, Servant, or Aſſignee of any of the ſaid Company, ſufficiently knowing the Premiſſes, and deſigning to prejudice the Company, contrary to the ſaid Letters Patent; and after making the ſame, and after the ſaid Company had ſettled their Trade, *viz.* the 19th of *January*, in the 34th Year of the King, did trade to the *Eaſt-Indies*, within the Ports and Places above ſpecified, particularly to *Atcheon*, *Mechlopotan*, and *Porta Nova*, with a certain Ship called the *Expectation*, without the Licence, and againſt the Will of the ſaid Company; to the Prejudice, Impoveriſhment, and manifeſt Grievance of the ſame, and againſt the Form and Effect of the ſaid Letters Patent, to the Plaintiffs' Damage 1000 *l.*

The Defendant's Plea.

The Defendant hereupon prayed *Oyer* of the ſaid Letters Patent, which being ſet forth in *hæc Verba*, he pleaded the Statute of 18 *Edw.* III. *cap.* 3. which enacted, *That the Sea be open to all manner of Merchants, to paſs with their Merchandiſe where they pleaſed.*

Demurrer.

To this Plea the Plaintiffs demurred, and the Defendant joined in Demurrer: Mr. *Holt*, in his Argument for the Company, reduced the whole Diſpute to theſe two grand Queſtions: 1. Whether this Grant of the King to the Company, to have the ſole Trade to the *Eaſt-Indies*, excluſive of all the reſt of his Subjects, was a good Grant? 2. Admitting it to be a good Grant, whether it did veſt ſuch an Intereſt, Liberty, and Franchiſe in the ſaid Company, that an Action might be brought and maintained by them againſt any Perſon trading to the *Eaſt-Indies*, who was not qualified ſo to do by the ſaid Charter?

Mr. Holt's Argument for the King.

And he held the Company's Charter to be good, 1. From the Conſideration of the Perſons to be traded withall; that they were Infidels, and not Chriſtians: 2. From the Conſideration of Foreign Trade itſelf; which might by Law be reſtrained by the King's Royal Power: And, 3. He conſidered the Circumſtances and Particulars of this Grant made to the Company.

1. As

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1. As to the first he held, That by Law no Subject of *England* could trade with Infidels, without the King's Licence; or at least the King might prohibit it; for the Law had adjudged them to be perpetual Enemies; for which he quoted the Lord *Coke*'s Words, 7 *Rep.* 17. 6. And no Man could trade with an Enemy without the King's Permission; Besides, it was lawful for the King to use his Royal Authority, to prevent his Subjects being perverted from the true Religion; which he could not do, unless he could prohibit their resorting to Infidel Countries. And it was plain also from the Writ *Ne exeat Regnum*, that the King might prohibit any Person from going beyond Sea: That the Subjects of *England* had not such a Right to a foreign Trade, that it could not be controuled, because the Liberty and Right to foreign Trade depended on Agreements and Contracts with foreign Princes, which depended on the Accidents of Peace and War; and the King had the sole Power of making Peace and War: Besides, the Rights of Trading were founded on the Treaties made between Princes, and the Articles of Commerce wholly in their Power; and no Subject could have Right to trade to any Country, but upon such Terms as the King was pleased to settle with other Princes by Treaties of Commerce. He held further, that if a Trade became a Nusance, and was rather hurtful than advantageous, the King, by Virtue of his Prerogative, was to defend the Nation, and protect his Subjects against those Evils.

Then he proceeded to answer that Objection in the Defendant's Plea, That by the Statute of 18 *Edw.* III. c. 3. *The Sea shall be open to all Merchants to trade where they please.*

That this could not be taken so largely as the Defendant would have it; for then it would give a Liberty of trading with the King's Enemies: But the true Meaning of that Statute was only this; That the Sea should be open, without paying any extraordinary Duties or Customs for their Wool: Agreeable to that Clause in *Magna Charta*, *c.* 30. that all Merchants should be allowed to trade, without unlawful Exactions: And further, that this Statute could not affect the *East-India* Trade; because there was then no Trade in being, either with the *Indians*, or any other Infidel Nation.

That the Kings of *England* had, since that Statute, restrained foreign Trade by their Proclamations: And when the Commons petitioned they might have Liberty to trade, notwithstanding any Proclamation, *Roll's Abr.* 214. they were not of Opinion, that the said Statute did extend to give Merchants Liberty to trade any where at their Pleasure; if they had, they would have insisted on that Statute, and urged it to the King; and desired that Law might be observed: But there they did tacitly acknowledge that the King had such a Power.

Another Objection, he observed, was made against this Patent, that it created a Monopoly: But this, he alledged, was not a Monopoly; for that was a Grant or Commission from the King to any Persons, Bodies politick, or corporate, for the sole buying, selling, making, working, or using any Thing, whereby other Persons were restrained of their Freedom or Liberty that they had before, or hindered in their lawful Trade: Now here it could not be made out, that the Defendant ever had any such Liberty before; or, that he was in Possession of this Trade; and consequently this Charter did not restrain him. That in the 43d of *Elizabeth* a Parliament was sitting; and at that very Time there was a Charter granted to this Company, of having the sole Trade, exclusive of all others; and there had been another Charter of the like Tenor granted before, in the 27th of *Eliz.* That in the Parliament of the 43d of *Eliz.* they fell vigorously upon Monopolies, and brought in a long Catalogue of them: But in all these Debates there was not one Word mentioned of the *East-India* Company's Charter; or indeed, of the Charters granted to any other Companies; as appeared by *Townshend*'s Collection of the Proceedings of that Parliament, 244, 245. where might be seen the whole Catalogue of Monopolies, and all the Debates upon them.

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That between the 43d of *Elizabeth* and the 21st of King *James*, the Legality of Monopolies was warmly debated in Parliament; and, at length, a Statute was made, in the 21st of King *James*, which seemed to settle and bound the Prerogative of the Crown, and the Right of the Subject; and this Statute condemns all Monopolies, and Commissions, for the sole buying, &c. or using any Thing within the King's Dominions: But the Parliament were so far from condemning the Charter of this or any other Company, that there was an express Proviso, That it should not extend to any Company, for the ordering or managing of Trade: That it appeared also, by the Preamble of the Statute 3 *Jac.* cap. 6. That the King had granted a Charter to divers Merchants to be a Company, and to have the sole Trade to *Spain* and *Portugal*, exclusive of all others; and the Statute recites the Mischief of giving a Liberty to all the King's Subjects to trade thither: So far were they from condemning that Charter as unlawful; they seem to acknowledge, that nothing less than an Act of Parliament could give the Subject Liberty to trade contrary to that Charter: For their Words are, *Notwithstanding the Charter had given the sole Right of Trade to the Company, yet it should be lawful for all People to trade thither.*

Mr. *Holt* observed farther, That Practice and Usage was a great Evidence of the Law; and it appeared, that many Charters had been granted to Persons, to trade exclusively of all others: *Abraham Gilbert*, 26 *Eliz.* had the sole Trade to *China*, granted to him and his Associates, exclusive of all others: There was a Patent to Sir *Walter Raleigh* 27 *Eliz.* to discover new Countries, inhabited by Heathens and Infidels: In the 23d of *Eliz.* There was a Patent to divers *Turky*-Merchants, to have the sole Trade to *Turky*, exclusive of others: Another Patent, of the like Tenor, in the 34th of her Reign: And in the 27th, there were Letters Patent granted to certain Noblemen, to trade to *Barbary*; and other Patents there were, for the sole Trade to *Guinea*. And the Parliament had been so far of late from looking on the *East-India* Trade as a Monopoly, that in the 14th of this King, they had declared it to be for the Good of the Kingdom.

2. As to the second Point, supposing this to be a good Grant, If any Person did trade to the

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the Damage of the Company, it was a good Ground for an Action: For whenever the King grants a Franchiſe to one, and another Perſon violates the Franchiſe, the King's Patentee may have an Action of the Caſe againſt the Perſon that does violate the Franchiſe: And, as the Company had a Right, they had a Remedy againſt any that invaded it.

Sir George Treby's *Argument for the Defendant.*

Sir *George Treby*, who argued on the other Side for the Defendant, laid down this for his Foundation, *That this Patent, as to reſtraining the Trade, and excluding all other Subjects, had the Nature of a Monopoly; and therefore was void in that Particular.*

For the Statute againſt Monopolies, 21 *Jac. cap.* 3. declares, That all Grants, any way tending to the erecting, ſtrengthening, furthering, or countenancing the ſole buying, ſelling, making, working, or uſing any Thing, whereby any Perſon is reſtrained of any Freedom, or Liberty, he had before, or hindered in his lawful Trade, are contrary to the Laws of the Realm, and utterly void.

If therefore this Trade to the *Eaſt-Indies* be a lawful Trade, then the Patent for reſtraining it, muſt be a Monopoly. The Nature of a Monopoly conſiſts in reſtraining a common Right: It appropriates to one, or a few, what others had the lawful Uſe of before.

Generally ſpeaking, Merchandiſe was always reckoned a lawful Trade. Every Man might uſe the Sea, and trade with other Nations, as freely as he might uſe the Air: And this Trade to the *Eaſt-Indies* was lawfully uſed before there was a Company, or elſe there never had been a Company.

He inſiſted chiefly on thoſe two Caſes in *Coke* 11 *Rep.* The Caſe of the Taylor of *Ipſwich*, and *Darcy* and *Allen*'s Caſe, called the Caſe of Monopolies. It was themain Ground of both thoſe Caſes, that, at Common Law, no Man could be prohibited to exerciſe his Trade; for that was an Avoidance of Idleneſs: It helped to provide Suſtenance for a Man and his Family: It was of Service to the King; and the Conſequences of reſtraining Trade were pernicious; as the raiſing the Prices of Commodities, impoveriſhing of Men, and the bringing in bad Goods: And it was held in the Taylor's Caſe, That no Trade, or Merchandiſe, could be hindered by Patent: And a Charter to hinder a Trade at Sea, (as that a hundred Men ſhould have the ſole Trade, and the like,) was void.

It was truly ſaid by my Lord *Coke*, *Co. Mag. Cha.* 47 & 67. That all Monopolies concerning Trade and Traffick, were againſt the Common Law, and divers Statutes.

A Patent for the ſole printing of Law Books held void.

15 *Jac.* A Patent was granted, for the ſole printing of Law-Books: The Validity of which was queſtioned, in 1668, in *Chancery*, in a Cauſe between the Patentees and the Bookſellers, who had acquired Copies of Law-Books; and it was referred to all the Judges, before whom many ſpecious Reaſons were given to maintain it; as, that the Invention of Printing was new; that the printing Law concerned the State; and that they were printed in a particular Language and Character: But it was the Opinion of all the Judges, certified to the Lord Keeper, That thoſe Perſons who had acquired Copies ſince the Patent, could not be reſtrained from printing them.

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Then he cited *Magna Charta*, 28 *Edw.* III. and ſeveral other Statutes, which declared, That all Merchants ſhould be at Liberty to trade by Sea: And he obſerved, that the Statute of 26 *H.* VIII. *cap.* 10. gave the King Power during his Life, to reſtrain the Trade to ſeveral foreign Countries; and repeated the Lord *Coke*'s Obſervation, that this King, who ſtood ſo much upon his Prerogative, would never have accepted this Power from the Parliament, if he had it before: That the 35 *Eliz. cap.* 7. enacts, That the Queen might by Proclamation prohibit the Exportation of Corn, which ſhe could not have done without ſuch an Act: And in anſwer to Mr. *Holt*'s Aſſertion, That no Subject can trade with Infidels without the King's Licence, he ſaid, there was no Law or Statute that prohibited it: That the Caſe of *Michelborn*, in 2 *Brownlow* 296. was but a very ſlender Authority to build upon. Had this been Law, Men would have been proſecuted for trading to *Turkey*, and *Barbary*, and ſeveral other Infidel Countries in *Aſia* and *Africa*; but there never were any ſuch Proſecutions: That it was only ſaid by the by in *Michelborn*'s Caſe, *That no Subject might trade with Infidels*; and was never ſolemnly adjudged; nor was it any where to be found in the Lord *Coke*'s own Books: And if the Lord *Coke* had ſeen a Licence to trade with Infidels, no Man beſides had ever ſeen one: And perhaps he was miſtaken; perhaps it was not authentick; and perhaps a ſufficient Anſwer to it might have been found in the Inſtrument itſelf, if it had appeared: However, this was but one Precedent; and if the Law required ſuch Licences, there would have been more found among our Records.

And as to the Danger of corrupting our Religion, or Manners, by opening a Trade with Infidels; this would be as much endangered by the Company's Servants reſorting to *India*, as by thoſe of any other private Trader's Servants, or Agents.

As to that Opinion of the Lord *Coke*'s, cited by Mr. *Holt*, That *Infidels were our perpetual Enemies*, it was not eaſy to underſtand what my Lord *Coke* meant by theſe Words. He thought he muſt mean a ſpiritual Diſcord, in reſpect to Religion, and not a temporal one between Nations; for then we could not be in Peace, or have any Treaty or Intercourſe with *Indians*, or other Infidel Nations, but muſt be in a conſtant and never-ceaſing State of War; eſpecially, if this was founded on a Divine Precept, as the Lord *Coke* inſinuates; for whatever Prerogative the King might have, he could not have a Prerogative to diſpenſe with the Canon of Scripture: And by the like Reaſon we ought not to trade with Infidels, there ought to be no Foreign Trade at all; for there was no Nation where the Religion did not differ from that eſtabliſhed in *England*, in one Inſtance or other: That as to the Paſſage in *Grotius*, cited by Mr. *Holt*, it was only a Caution; for his whole Drift was, to demonſtrate, that Commerce and Leagues with Infidels were lawful; and he had written a whole Book, entitled, *Mare Liberum*, to manifeſt the Right and Lawfulneſs of Trade to the *Eaſt-*

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East-Indies, obſerving, that God in Nature appointed all People to reſort to and trade with others, inaſmuch as he had given ſeveral Commodities to ſome which others wanted: And Sir *George* obſerved, that this Notion, of having no Commerce with Infidels, was abſurd, monkiſh, phantaſtical, and fanatical.

The King, indeed, had a Right of making Peace and War: But it could not be ſuppoſed that his Majeſty, in his Treaties with the *Indian* Princes, ſhould ſtipulate, that one Part of his Subjects ſhould trade thither, and the reſt ſhould not: Or, that the King could be at Amity with them, as to one Part of his Subjects, namely, the Company, and be at Enmity with them, as to the other Part of his Subjects.

That the Statute of 12 *Hen.* VII. *cap.* 6. did not only recite, That the Merchant-Adventurers had Commerce with *Spain* and *Portugal*, and other Places in Amity with the King; but added, *That of Right they ought to have it*: Which ſhewed, that it was not by the King's Grant, or Licence: And, in like manner, the Defendant of Right ought to trade with the *Indians*, there being no War between the King and them.

He admitted, the King might reſtrain particular Perſons from going out of the Kingdom, by the Writ of *Ne exeat Regnum*: But that Writ was intended originally, to reſtrain the Clergy only. Of late, indeed, it had been extended to confine a Perſon to abide the Juſtice of a Court here: But it was always to reſtrain ſome particular Man from ſomething unlawful, and againſt the Duty of a Subject; and never to reſtrain one from doing a lawful Act, as Trade was.

As to the Charters ſaid to be granted by Queen *Elizabeth*, theſe were but Temporary, and grounded upon ſome new Diſcovery of a Trade, or Paſſage; and this was the only good Foundation on which ſuch a Charter could be granted. When a new Invention, or Diſcovery, has been made, or was making by any Perſon, by his Skill, Charge, or, perhaps, with the Peril of his Life, the King, in that Caſe, may remunerate him with ſuch a Grant; but this muſt be only for a reaſonable Number of Years by the Common Law; and the Statute 21 *Jac.* concerning Monopolies, had limited that reaſonable Time to fourteen Years. The firſt Grant made in *England* to Perſons of the ſole Trade to the *Eaſt-Indies*, was upon a Suggeſtion of their being the firſt Traders thither; and that was but for fifteen Years, which was long ſince expired.

He cited the Statute of 18 *Eliz.* for eſtabliſhing the *Ruſſia* Company, which recites their Charter made by the Crown; and that, notwithſtanding that Charter, others traded thither; and then enacts, that no other Perſons ſhould trade to *Ruſſia*: Which ſhewed the Judgment of the Parliament, that without ſuch an Act, the Reſtraint was not good.

The *Canary* Company had a like Charter; but in Treſpaſs brought, for ſeizing the Ship of one that traded to the *Canaries* without Licence, the Defendant juſtified by Virtue of that Charter; and Judgment was given for the Plaintiff againſt the Charter, by the uniform Opinion of the whole Court. *Mich.* 26 *Car.* II. *Rot.* 403. *Banco Regis*, *Horn* and *Ivy*.

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As to the ſecond Point, he held, That the Charter could not give the Plaintiffs a Right to an Action againſt the Defendant; he could only be ſubject to a Penalty at the Suit of the King. In every Action on the Caſe, there muſt be *Damnum & Injuria*; there muſt be ſome Wrong done the Plaintiff: And it was no Wrong done the Plaintiffs here, that the Defendant had broke a Law which was diſpenſed with, as to them.

If the Defendant's trading without the King's Leave, was an Offence againſt the King, it was puniſhable by the King ſtill; and that Way of Puniſhment muſt be followed, if there was to be any. The Charter on which the Plaintiffs founded their Action, appointed the Penalty to be Forfeiture of the Ship and Cargo; but no Action of the Caſe was given: And, if this Trade had been prohibited by Act of Parliament, under Forfeiture of Ship and Goods, that muſt have been purſued: There could never have been an Action on the Caſe brought: In all Caſes of Statutes, By-Laws, and Charters, the Method of Puniſhment preſcribed muſt be obſerved.

Mr. Solicitor's Argument for the Company.

Mr. Solicitor *Finch*, in his Argument for the Company, maintained, That the Crown had Power at Common Law to grant ſuch a Charter. 1. Becauſe no Subject at Common Law had a Right to trade with Infidels, or go to Infidel Countries, without the King's Licence: And 2. Becauſe no Trade could be eſtabliſhed without precedent Treaties; and no ſuch Treaties could be made by Subjects, without Licence from the King to make them: For firſt, there was no Trade but what depended on the good Will and Pleaſure of the Foreign Prince, with whom it was propoſed to trade, whether he would admit of it, or not; and 2. this might be reſtrained by a total Prohibition of Commerce with ſuch Prince, or Nation, by the King; and 3. The King might reſtrain any Man from going out of the Kingdom by a *Ne exeat Regnum*, without ſhewing any Cauſe. 4. If any Foreign Prince, on concluding a Treaty with the King, ſhould reſtrain the Trade to a certain Number of Perſons, or inſiſt on any particular Qualifications in the Management of of it; he did not ſee how any Man could pretend to a Right to act contrary to that, in Breach of ſuch a League or Treaty made with the King by ſuch Foreign Prince: And as to the Statute of 21 *Jac. cap.* 3. it was made upon a particular Occaſion, and had not altered the Common Law in theſe Particulars; and, if ſo, the King had ſtill the Prerogative of laying ſome Reſtraints upon Trade, and of ſeeing it conducted to the Advantage of the Nation.

Mr. Pollexfen's Argument for the Defendant.

Mr. *Pollexfen* afterwards argued in Behalf of Mr. *Sandys*, the Defendant, wherein he admitted, that the King might reſtrain his Subjects on particular Occaſions, from going out of the Kingdom: And that he might alſo prohibit Commerce with any People in Time of War or Peſtilence; but ſaid, it did not follow from thence, that he might reſtrain all his Subjects, and at all Times, from trading, except ſome particular Men, or Companies. And having inſiſted on the like Authorities that Sir *George Treby*

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Treby had done, he obſerved, That ingroſſing of any Goods or Merchandize, was penal by the Laws of this Nation; and whoever had the ſole Trade of buying and ſelling the Commodities of any particular Country, ingroſſed thoſe Commodities; and the Merchandizes that were to be vended, in ſuch Countries, were at his Will and Pleaſure, whereby he made what Prices he pleaſed, ordering and diſpoſing of them, both as to the Value, and every Thing elſe, as his own: And all monopolizing of Trade, in this Manner, was ingroſſing, by the Aſſiſtance of Letters Patent, which created ſuch Monopolies. The granting this Company the ſole Trade to the *Eaſt-Indies*, inveſted them in all the Merchandize of thoſe Countries: And, if ingroſſing by the Common Law was unlawful, all Letters Patent, to authoriſe Men to ingroſs, were void. And as it had been admitted on the other Side, that, if this was a Monopoly, it was unlawful, he would take upon him to ſhew, that it agreed exactly with my Lord *Coke*'s Deſcription of a Monopoly: And firſt, he obſerved, that by their Patent the ſole Trade was granted them; that is, the ſole buying and ſelling; and accordingly they actually had the ſole buying and ſelling of all *Eaſt-India* Commodities, if their Charter was good. 2. They were within that other Part of the Deſcription, that other Perſons were hindered and reſtrained from a Freedom, or Liberty they had before, in their lawful Trade; for they were authoriſed, by this Patent, to ſeize the Ships and Goods of thoſe that traded thither. 3. All the Evils and Miſchiefs that attended Monopolies, were the Conſequences of this Patent: 1. The Prices of Goods were raiſed and enhanſed. 2. It was calculated for the private Gain of a few, to the Prejudice of the reſt of the King's Subjects. A Grant of the ſole Trade to one Set of People, to this or that Part of the World, was deſtructive to other Merchants, and People: All Shipping, and Maſters that go ſuch Voyages, muſt alſo ſubmit to their Prices, and ſuch Terms as theſe Monopolizers pleaſed to impoſe; as muſt all Mariners, Artificers, Factors, and others, that depend upon ſuch Foreign Trades, which might be of very ill Conſequence to the Kingdom. Great Oppreſſions might be, and actually were, exerciſed by ſuch Companies, on thoſe who were within their Service or Power: And, if the Evils and Miſchiefs which the Common Law forbad, and endeavoured to prevent, by adjudging all Monopolies, Ingroſſings, and ſole Trade, unlawful, were great, the Evils and Miſchiefs, attending this Patent, were greater than any other Monopoly; becauſe their Trade was the greateſt that ever *England* knew.

It was held, That every Grant of the King had a Condition annexed to it, namely, that it ſhould not be to the Charge or Prejudice of the King's Subjects; for if it were, it was a void Grant; and therefore the King is ſuppoſed to be deceived in ſuch Grants.

It had, indeed, been ſaid by the Defendants, That this was not a Patent granted for the Advantage of a few, or for raiſing the Prices, or monopolizing Commodities; but for good Government and Order, and the Preſervation of this Trade, which otherwiſe would be deſtroyed: And there were the like Grants heretofore, to *Turkey*, *Barbary*, and other Places: But it was obſervable, what our Law-Books ſaid concerning ſuch Grants and Monopolies; particularly 2 *Inſt.* 540. That new Corporations, trading to Foreign Parts, or at Home, though under the fair Pretence of Order and Government, yet, in Concluſion, tended to the Hindrance of Trade and Traffick; and in the End produced Monopolies: And he inſiſted, that there never was one judicial Opinion againſt Perſons trading ſeparately within the Limits granted to any trading Company, though there muſt have been a Multitude of Inſtances of private Perſons trading within ſuch Limits.

He did admit, that the Grants to the *Turkey*, *Barbary*, and *Ruſſia* Companies, were like this, of ſole Trade; but yet they had never attempted to reſtrain others in the Manner the *Eaſt-India* Company had done: Theſe Companies never inſiſted on a ſole Trade, though they had ſuch Words in their reſpective Patents; but had uſed their Trade in a more commendable and legal way; and thereupon obſerved the Difference between the Way of trading of thoſe Companies, and the Trade of the *Eaſt-India* Company.

That the Companies of *Turkey*, *Barbary*, *Ruſſia*, and *Hamburgh*, nor any other, till of late Years, ever traded with a Joint Stock; but the Members of the ſaid Companies, every Man uſed his own Trade; bought and ſold his own Commodity; uſed and employed his own Factors and Servants; and the Company took Care to ſend out a Conſul, or ſome other Agent, to preſerve the Trade; and by ſmall Impoſts upon the Commodities traded for, provided for ſuch Officers; which Impoſts, and Aſſeſſments, were made by By-Laws among themſelves: They only ordered what Ships ſhould go; but left it to every particular Member of the Company, to ſend what Goods he would upon his own Account; to appoint who he would for his Factor; and to bring over what Commodities he pleaſed: They did not trade upon a Joint Stock, or the Stock of the Body politick. If you dealt with any of them, you knew the particular Perſon you dealt with; and no Man was refuſed to be of the Company, who would pay a ſmall Sum for his Freedom: And whoever was of the Company, had a Vote in ordering the Affairs of the Company: But on the other Hand, the *Eaſt-India* Company ingroſſed the whole Trade: They had a Joint Stock; and every Man, whether a Merchant or not, who could buy a Share in their Stock, was of their Company: The Committee managed; and the reſt were forced to ſubmit to their Pleaſure in the Diſtribution: Thoſe few that had the greateſt Shares, had the Diſpoſal of the whole Stock: No Member traded, bought, or ſold, or had any Thing he could call his own, but ſuch a Share in the Stock: They did not ſuffer the Members to trade with their own Money, at their own Diſcretion, or to employ whom they pleaſed; and no Man could have a Vote amongſt them, that had not 500 *l.* Stock: Nor no Man could have ſuch a Share, unleſs he gave 14 *l.* or 15 *l.* two and a half *per Cent.* or ſome great Sum for it: So that by their Conſtitution they could have no more Perſons in their Company than they had 500 *l.* Shares; and theſe Shares being ingroſſed

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groſſed into a few Hands, they had All, and called themſelves the Company: So that a Man that would not be deceived by Words, but diſtinguiſh Things different from one another, muſt diſtinguiſh between one Company and another; which of them were Ingroſſers and Monopolizers, and which not.

The *Turky* Company, and thoſe like it, might be truly ſaid to be Managers, Regulators, and Improvers of Trade: They had no Joint Stock to trade upon: They did not ingroſs: They admitted every Man to be free of the Company that would; to trade with his own Money, on his own Credit; to buy and ſell his own, and to employ whom he pleaſed: And none of them, under Pretence of Government, or the Preſervation of Trade, made unreaſonable Advantages. ——While this inviſible *Eaſt-India* Merchant, the Body politick, covered and countenanced ſome few Men amongſt them, to ingroſs, buy, and ſell, at their own Rates; and exclude all others, to the great and exceſſive Advantage of a few.

In the *Turky* Company, where they traded as diſtinct Members, every Man knew his Creditor and his Debtor, becauſe they dealt in their natural Capacities: But this Company trading in the Capacity of a Body Politick, no Man that dealt with them knew his Creditor or Debtor; and it was a great Miſchief, when Perſons knew not how to ſue or deal with them: Take them apart indeed, they were as juſt and good a People to deal with as could be; but take them together as a Body, what was ſo hard to deal with as a Corporation? They had ſeen Inſtances of theſe Things in this very Company: Within a few Days they had ſuch an exorbitant Power, that no Man could contend with them; and in a few Days they became ſo inviſible, as well as low, that no Dun could find them: Bodies politick, in Judgment of Law, had neither Soul or Conſcience; and they generally dealt with the reſt of Mankind, as if the ſeveral Members in their natural Capacities had neither Souls or Conſciences.

Then Mr. *Pollexfen* proceeded to conſider that Objection, That this was an Infidel Country; and the Subject had no Right to trade with Infidels, without the King's Licence. To prove which, they had cited *Michelborn*'s Caſe, in 2 *Brownl.* 296; wherein Mr. *Brownlow*, the Prothonotary, recites, what my Lord *Coke* ſaid in that Caſe, "*That no Subject might trade to Infidel* "*Countries, without the King's Licence*; and his "Reaſon was, becauſe he might relinquiſh the "Catholick Faith, and adhere to Infideliſm: "And that he had ſeen a Licenſe in the Time "of *Edward* III; wherein the King recited the "Confidence that he had in his Subject, that "he would not decline his Religion, and li-"cenſed him; and that this did ariſe upon "the Recital of a Licence, made to trade to the "*Eaſt-Indies*".

That they had alſo cited *Calvin's* Caſe, in *Co.* 7 *Rep. Fol.* 17; wherein it is ſaid, "*That Infi-*"*dels were in Law, perpetui inimici*: Between "them and Chriſtians, there was perpetual Hoſ-"tility; there could be no Peace: And 12 *H.* VIII. "*Fol.* 4.; where it was holden, That a *Pagan* "could not have or maintain any Action at all, "or have any thing within the Realm; and to "prove this cited the Regiſter, 282, & 12 *H.* "VIII. *Fol.* 4."

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He anſwered, Suppoſing the Law to be according to theſe Books, and as the other Side would have it; the Conſequence would be, that the Plantiffs could not maintain their Action; but the Charter granted to them would be void: For if the Books cited were of any Authority, the Reaſons given in them muſt be of Authority; and *Brownlow* ſaid, the King had the Care and Preſervation of Religion, by the Law veſted, and repoſed in him; that the Subject ſhould not trade with Infidels, that they ſhould not renounce their Faith: And the King would give Licence only to ſuch Men to traffick, as he had that Confidence in, that they would never waver from the Religion they profeſſed.

But ſuppoſing this to be true, the Patent muſt be naught; for then it would only have been grantable to Perſons in whom he had ſuch Confidence: But here the Power of trading with Infidels, is granted to Perſons indefinitely; for the Members of this Company were perpetually changing; ſome ſold their Stocks, ſome died, and others came in as Executors: Many new Members there were every Year; nor was it ſo much as examined or enquired into, whether they were fixed in their Religion or not? And what Confidence then could there be in this Body politick, which the Law looked upon as having neither Soul nor Conſcience? What Confidence could be repoſed in ſuch a Perſon, as to Religion?

2. It was not only the Members of the Company, that at the Time of the Incorporation were incorporated, and their Succeſſors, that were thus priviledged; but their Sons, Apprentices, Factors, and Servants, had Licence to trade there, by this Patent: And what Security could there be, that ſuch might not, by converſing with Infidels, change or prejudice their Religion? Such a Patent could not be granted to a Body politick, and their Succeſſors, which might have Continuance for ever; and to their Sons, Factors, Apprentices, and Servants, Perſons yet unborn, and not *in rerum natura*, when theſe Patents were made. And admitting the King could give Licence to the *Eaſt-India* Company to trade with Infidels, he could not give them a Power to grant Licences to others, as this Patent did, to their Sons, Servants, and all that they ſhould nominate at their Diſcretions.

Could the King thus grant from himſelf his Kingly Care, and the Truſt in him repoſed, for the Care of Religion, to them, to manage as they would; and ſtipulate that he would not uſe it himſelf without their Conſent? This muſt certainly make it a void Grant.

And conſidering the Authorities, on which this Point was founded; he obſerved, That this Book of *Brownlow*'s was printed during the Uſurpation, and was not licenſed by any Judge: And he had, he ſaid, got an Abſtract of the Roll of the Caſe there reported; and it was this, *Mich.* 7 *Jac. B. C. Rot.* 3107. *Michelborn* againſt *Bathurſt*: In a Prohibition, ſetting forth, That the King had granted to the Plantiff his Commiſſion, to go with the Ship *Tyger* to the *Indies*, *To ſpoil and ſuppreſs the Infidels, and to take from them what he could*; and the Plantiff

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in the Prohibition having this Commiſſion from the King, did enter into Articles with the Defendant, to give him a Share of what he ſhould get in the Adventure; and thereupon there was a Suit in the Admiralty by the Defendant againſt the Plantiff, and he moved for a Prohibition, ſuggeſting, That the Articles were made upon the Land, and not upon the High Sea, and ſo the Court had no Juriſdiction. Upon the Debate of this Caſe, it did appear, there were a kind of Letters of Mart, a Commiſſion from the King, in a warlike Manner to ſpoil the Infidels, and get what he could from them: But how this would effect the Buſineſs of Trade, he did not know. As to what was in *Brownlow*, it was only an occaſional Saying of the Lord *Coke's*, upon the Motion for a Prohibition, and did not relate to the Matter brought in Judgment.

As to that Caſe in *Calvin* of the *Poſt-nati*; where it is ſaid, That an Infidel is *perpetuus inimicus*, can maintain no Action, or have any Property in any thing; and that there is, or ought to be, perpetual Hoſtilities between Chriſtians and them; no Peace could be made with them: Theſe too were but occaſional Sayings, and made nothing to the Matter in Queſtion, about the *Poſt-nati*: There was nothing there in Judgment that gave Occaſion for them: It did appear indeed, That in a Writ of Protection, granted to the Prior and Brethren of the Hoſpital of St. *John of Jeruſalem*, that that Hoſpital was founded for the Defence of Holy Church, againſt the Enemies of *Chriſt* and Chriſtians; but it could not be concluded from thence, that Infidels ſhould not have any Property in Trade, and be perpetual Enemies, with whom no Peace could be had: And as to the Caſe cited 12 *H.* VIII. 4. This was an Action of Treſpaſs, for beating a Man's Servant, and taking away his Dog, called a Blood-Hound; and in arguing this Caſe, it was ſaid occaſionally, That if a Lord beat his Villain, or an Huſband his Wife, or if a Man beat a Pagan, an Outlaw, or a Traitor; theſe Perſons reſpectively could have no Action, becauſe they were diſabled to ſue: But this was no more than Diſcourſe, ſudden Thoughts and Opinions, and Sayings of Counſel; no ſolemn Debates or Judgment in the Caſe.

It was true, the Chriſtian Religion and Paganiſm were contrary to each other: But, becauſe theſe Religions could not be reconciled, did it therefore follow we ſhould have no Commerce with them? This was a moſt irreligious Doctrine; and deſtroyed all Means of convincing or converting them.

One would think, If the General Practice of Trade and Commerce, and legal Proceedings in all Ages, had been conſidered; my Lord *Coke* could not be in Earneſt, in what he ſaid in *Calvin's* Caſe about Infidels; for we had had Commerce with the *Turks*, *Perſians*, and *Moors* of *Barbary*, as well as with thoſe of *Spain* and *Portugal*, who were Infidels, till the Year 1474: And we had made Leagues with ſeveral Infidel Princes, ſent Ambaſſadors and Miniſters to them, and received Ambaſſadors from them, even in that religious Reign of Queen *Elizabeth*, and ſome hundred of Years before.

But had they been perpetual Enemies, we might have juſtified killing them; and the taking away all they had, as was adjudged 17 *Edw.* IV. *Fo.* 13, & 14. and 2 *H.* VII. 15. 1684 36 Car. II.

It had been objected, That the *Jews* were actually dealt with in this Manner: As they were Infidels and perpetual Enemies, our Kings taxed them, and took away their Eſtates at Pleaſure: To which he anſwered, Our Kings uſed them but as Spunges, ſuffering them to gripe what they could from others, that they might ſqueeze it from them, into their own Treaſuries: And it did not follow from thence, that they were to be uſed as alien Enemies, and could have no Property: They were indeed under a Curſe, a vagrant People, without Head, Prince, Governor, or Country; and there was no Difficulty in taxing or taking from them at Pleaſure, being hated of the People wherever they lived: But had they been as alien Enemies amongſt us, they could neither have made Bargains or Contracts, or been capable of Property; but the Subject as well as the Prince might at Pleaſure fall upon them, and take what they had to their own Uſe, as from an Enemy.

But by what had been admitted, That they were great Uſurers, and had great Eſtates; it was evident, they were treated as *alien Amies*, (Friends): How could they elſe have been Uſurers, and got Eſtates, if they could make no Contracts? How could they have preſerved their Perſons and Eſtates againſt the King's Subjects, unleſs they had had the King's Protection, and been treated as alien Friends? How could ſuch Multitudes have remained amongſt us, as it appears there were here in the Reign of *Edward* I. when the Statute *de Judaiſmo* was made, *That no Jew ſhould take Uſury upon Lands, Rents, or other Things*; upon the making whereof, my Lord *Coke*, in his Comment on that Statute, ſays, That 15,000 *Jews* and upwards, thereupon went out of the Realm: And of late Years, and at preſent, how many of them were there that lived amongſt us, drove great Trades, and had conſiderable Eſtates?

And ſhould it now be adjudged, that any Man at Pleaſure might take away their Eſtates, and they could have no Remedy or Action for their Debts owing them; but inſtead thereof, might be beaten or impriſoned, as Enemies to the King; we ſhould probably ſoon ſee, what the Succeſs of ſuch a Judgment would be.

It is none of the moſt inconſiderable Doctrines our Religion teaches us, That we ſhould ſpeak and act plainly and uprightly one with another: But Religion is too often made a Cloak for other Purpoſes; he hoped it would not be ſo in this Caſe. He obſerved further, That the Statutes that had been cited, *Magna Charta*, 9 *Edw.* III. 25 *Edw.* III. 2 & 11 *Rich.* II. all enacted the Freedom of Trade in general Words, excepting only ſuch as were at War with the King: In none of them was there any Exception of Trade with Infidels, and the Practice had been accordingly: We had traded with all Infidel Countries, with which we were acquainted; and treated the People of thoſe Nations as *alien Amies*, (Friends) when we were not in an actual War with them. And thoſe Sayings on which the contrary Opinion is founded, were probably taken out of ſome zealous Catholick Authors, in ſuperſtitious Times; not being at all

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all conſonant to the Rules of Law, or true Religion.

The Statute of Monopolies was general; and he hoped it would not be avoided, upon any imaginary Difference in Law, between Infidel and Chriſtian Countries, to monopolize the Trade of the greater Part of the World thereby; *viz.* That of *Turky*, *Perſia*, *Barbary*, and the *Eaſt* and *Weſt-Indies*.

If Licences to trade to theſe Places were neceſſary, it would be worth Conſideration, Whether that would not introduce the impoſing of Rates without a Parliament? For ſuppoſing it true, That there had been Licence to go to trade in Infidel Countries; ſo there had been Licences to go beyond Sea, and to carry on other Trades beſides this: But it did not follow from thence, That it was unlawful to trade without Licences; much leſs did it follow, that ſuch a Patent as this to any one, or to a few Men, to have the ſole Trade to any Place and the Power of licenſing others, could be warranted by it.

The King, no Doubt, might reſtrain the Paſſage of Merchants and Merchandize, in ſome Caſes, and lay an Embargo on Ships; but this muſt be done upon ſpecial Reaſons.

As, Firſt, In Caſe of War. 2. He might reſtrain the Exportation of ſuch Merchandizes, as were neceſſary for the Defence of the Kingdom. 3. In caſe of a Plague, he might prohibit Commerce with any infected Country; but then theſe Prohibitions were general to all his Subjects alike, and the particular Reaſons and Grounds of them apparent: But if under any Pretence, any ſole Trade to ſome one Perſon, Body politick, or natural, be granted, excluding all others; ſuch a Grant was in Deceit of the King, and to the Prejudice of his Subjects; and therefore void.

As to the ſecond Point, They could not have an Action on the Caſe, provided their Patent had been good: If they would take Advantage of the Grant, they muſt take it as the Grant gives it; and proceed for the Forfeiture of Ship and Goods: As for an Action of the Caſe, their Charter did not give it; and, if an Act of Parliament had been penned in this Manner, ſuch an Action could not have lain.

And upon the whole concluded; 1. That what the Company claimed by their Patent, (*viz.*) To have the ſole Trade to the *Eaſt-Indies*, in their politick Capacity, excluding all others, was a Monopoly and Ingroſſing, againſt the common Law and the antient Statutes, and the Statute of Monopolies, 21 *Jac.* and therefore they had no Right to what they claimed.

2. That what the Defendant had done, he had done lawfully, and therefore was not to be puniſhed: And

3. Though the Company had a lawful Claim to this Trade by their Patent, and the Defendant had done what he ought not, yet they could not maintain this Action; and therefore prayed Judgment for the Defendant.

The Chief Juſtice's Declamation.

The Chief Juſtice *Jeffries*, upon hearing the Arguments thus far, obſerved, That it was a Caſe of great Importance, and had been very well argued on both Sides: But he did not think there was any material Difference, between this and the Charters granted to the *Turky* Company, and others: But there was another Thing, which, he thought, deſerved great Conſideration, it being a Queſtion wherein Trade was mightily concerned: We had a potent Neighbour, that had both Experience and Induſtry, and was our Rival in this Trade: He wiſhed, We had as much Induſtry, and were as diligent as they: They had found by long Experience, that a Joint-Stock was the only Way to carry on their Trade; (he meant *Holland*). And it was very well known, if it had not been for a Joint-Stock, the Trade had never been ſo beneficial as it was; it was owing to this, that their Trade was become ſo great and deſirable: And now, that by the Joint-Stock, and Induſtry, and Expence of the Company, the Thing was become facile and valuable; that particular Perſons ſhould come and ſweep away the Advantage of it, ought to be conſidered. Mr. *Sandys* and his Partners were zealous now to reap the Fruits of the Company's Labours: But would he be contented to pay his Proportion of all the Charge theſe People had been at, to advance the Trade to the Condition it was in?

There was another Conſideration of great Moment: Peace and War was no Doubt in the Power of that Prince and People with whom this Trade was carried on: And ſuppoſe an Injury ſhould be committed by any particular Perſons in the Infidels Country, and the Ship ſuch Perſons belonged to, ſhould get away without making any Reparation for it; Would not the Company's Stock and Factors, as they were of the ſame Nation, be in Danger of ſuffering by it? And might not ſuch Outrages occaſion a War, and exclude all the Subjects of this Nation from that Trade? As the Company therefore were liable to make Satisfaction for ſuch Injuries, it ſeemed fit they ſhould have the Management of the Trade.

Judgment for the Plaintiff.

This Cauſe having been argued ſeveral Terms, Judgment was given for the Plaintiff, in which all the Judges of the *King's Bench* were unanimous, and gave their Reaſons for it.

The Judges Reaſons.

Mr. Juſtice *Holloway* obſerved, That a Foreign Trade, with ſeveral Chriſtian Nations, had been opened by Act of Parliament; but held, that at Common Law, this was an inherent Prerogative in the Crown; and none could trade with Foreigners without the King's Licence: That *Michelborne*'s Caſe, cited by thoſe that argued for the Company, had not been anſwered: That this Trade could not be carried on but by a Company, which none could erect but the King: And that the Parliament were ſo far from looking on it as a Monopoly, that it was declared to be advantageous to the Publick, by the Statute of 14 *Car.* II. *cap.* 24. which was made that the Company might not be diſcouraged in carrying on their Trade: That the 29 *Car.* II. took Notice of them, and aſſeſſed their Stock, at twenty Shillings for every hundred Pounds; nor had it ever been queſtioned as a Monopoly by Parliament: That the Prerogative of making Leagues and Treaties with foreign Nations, was in the King alone; and conſequently the Terms and Conditions of Trade: That the Statute of *Edw.* III. did not affect this Trade, for there was then no ſuch Trade in Being; but taken in the largeſt, it only extended to the Tranſportation of Wool:

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That the Company had been in Poſſeſſion of this Trade an hundred Years, which gave them a Right, if they had none before.

Mr. Juſtice *Walcot*, and Mr. Juſtice *Wythens*, gave much the ſame Reaſons, concluding alſo for the Plaintiff. The Lord Chief Juſtice *Jeffries* went through the Caſe, and ſummed up what had been offered by the Counſel on both Sides: And he ſeemed to admit that the Clauſe in the Charter, for the Forfeiture of the Ship and Cargo, was illegal: But he held, that Commerce was founded on the Law of Nations, and not on the Common Law; and that the King only had the Prerogative of ſettling the Terms of it with other Powers: That the King only could do Juſtice to his Subjects, and grant Letters of Mart or Repriſal, where they were injured in their Trade: That all the Staples and Marts for the Trade of his Subjects, whether in *England* or out of *England*, were erected by the Crown: That the King ſhut and opened foreign Trade at Pleaſure.

That the *Hanſe* Towns were ſome of the firſt Corporations of Trade, mentioned in our Hiſtories; and it was thought the Intereſt of *England* to ſupport and encourage them: King *Henry* III. gave them great Privileges, and the *Still-yards* for their Reſidence, which they enjoyed near 300 Years.

That the firſt Patent for erecting the Staple, was obtained in the Reign of *Edward* III. They were called, *The Brotherhood of St.* Thomas *of* Becket; and their Charter confirmed by many ſucceeding Kings, till the Reign of *Hen.* VII, who gave them the Name of *Merchant-Adventurers*; and they were afterwards confirmed by *Hen.* VIII. *Edw.* VI. Q. *Mary*, and Q. *Eliz.* the laſt of whom inlarged the Privileges of this Company; confirmed the Charter to the *Muſcovy* Company, granted by *Philip* and *Mary*; and erected ſeveral other Trading Companies: And in the third Year of King *James* I. that Act was made for opening a general Trade to *Spain*, *Portugal*, and *France*, to all his Majeſty's Subjects, but left all other Charters of Foreign Trade to remain as they were before.

That it appeared, the Law of the Land, and the Law of Nature and Nations, gave the Power of erecting Companies, for the Management of Traffick, to the Prince, excluſive of all others; and this was to be reckoned among the *Jura Regalia*: No Act of Parliament had reſtrained this Prerogative, but in ſome particular Places: That the *Eaſt-India* Company had ſolely run the Hazard, and been at the Expence of eſtabliſhing this Trade; made Diſcoveries, erected Forts, kept Forces, ſettled Factories, and entered into Leagues with the *Indian* Princes, for the due Regulation of it; and, it would be againſt natural Juſtice and Equity for others to reap the Advantage; eſpecially ſince they had done all this by the Authority of the Crown, under which they claimed: And had the Matter been at firſt doubtful, as it was not; yet, after ſo many Years undiſputed and uninterrupted Prerogative of the King's, and the Poſſeſſion of the Company purſuant thereto, it muſt be looked upon as a good Grant by Law.

As to the ſecond Point, he was of Opinion, That the Defendant trading to the *Indies*, contrary to this Charter, might be puniſhed by an Information at the Suit of the King; and that this Action by the Pliantiff was alſo well brought, and the Plaintiff need not alledge ſpecial Damage, any more than the Grantee of a Fair or Market, or any other Franchiſe; and, upon the whole declared, he was of the ſame Opinion with his Brethren, That Judgment be given for the Plaintiff. 1684. 36 Car. II.

Remarks on the Trial of the Eaſt-India Company and Sandys.

Notwithſtanding this Judgment, it ſeemed to be the prevailing Opinion after the Revolution, That Charters, granting the ſole Trade to Foreign Countries, excluſive of the reſt of his Majeſty's Subjects, were not legal; and the Old *Eaſt-India* Company, thereupon, applied themſelves to the Parliament, to have their Trade eſtabliſhed by a Statute; which the Parliament were ready to comply with, on Condition of their advancing a Sum of Money, for the Support of the War againſt *France*: But another Set of Merchants out-bidding them, and offering to advance two Millions, it was agreed to demoliſh the Old Company, and erect a new one: However, the Old Company ſubſcribing large Sums towards the New one, and ſo gaining a conſiderable Intereſt in it, and being poſſeſſed of all the *Engliſh* Forts and Factories in *India*, the two Companies thought fit, at length, to unite; and were eſtabliſhed by Act of Parliament, as they remain at this Day.

But, if the monopolizing any Branch of Trade be prejudicial to the Kingdom, it certainly is not leſs ſo, for having the Sanction of a Statute to countenance it; and, I think, it is agreed, that all ſuch excluſive Acts and Charters, are very detrimental to Trade.

It was, indeed, neceſſary, at firſt, to fit out ſtrong Fleets, and to erect Forts in the *Eaſt-Indies*, for the Protection of our Trade; not againſt the inoffenſive *Indians*, but againſt the *Dutch*; who, in a hoſtile Manner, drove both the *Engliſh*, and the Natives themſelves from the Iſlands where the fine Spices grow, and monopolized that Trade, while we were unhappily engaged in a Contention with King *James* and King *Charles* I. about their Prerogatives. King *James* was ſo diſtreſſed for want of Money, that he was forced to deliver up the Cautionary Towns to the *Dutch*, which rendered them dependant on *England*: 'Till they obtained theſe, they durſt not openly invade our Settlements in the *Oriental* Iſlands: But they no ſooner had theſe Towns reſtored, and ſaw the Parliament contending with King *James*, about his Prerogatives, but they ſeized all our Settlements in the Spice Iſlands, tortured and murdered our Merchants and Factors there, and deſtroyed their Ships, and plundered them of their Goods; for which they have never made us Satisfaction ſince. King *James*, indeed, preſented Memorial after Memorial on this Head: But as they knew he abhorred War, and that his Parliament would never grant him a Penny of Money to go to War with them, though he had had an Inclination that Way, they went on with their Depredations, till they had entirely expelled us from the Spice Iſlands.

King *Charles* I. had ſet his Heart on procuring the Nation Satisfaction from theſe High and Mighty Monopolizers; and when the Parliament refuſed him Money to enable him to call the *Dutch* to an Account, and maintain the Sove-

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Sovereignty of the Seas, he raiſed Money by Ship-Writs for that End; a Way that had been made uſe of antiently to equip out a Fleet. But the *Dutch*, jealous they ſhould be driven from the Herring-Fiſhery on our Coaſts, and be obliged to reſtore us the Spice-Trade, the two Grand Supports of their State, joined with the *French*, and with their Brethren the *Engliſh* Fanaticks and Republicans, and raiſed ſuch a Rebellion againſt him, that they deſtroyed this Prince, and Monarchy with him, for a Time.

The Uſurpers afterwards made the ſame Demands on the *Dutch*, that King *James* and King *Charles* had done; and beat them in ſo many Sea-Engagements, that they were glad to beg Peace, and promiſe Reſtitution of what they had robbed the Nation of: But *Cromwell*, on account of their Guaranteeing his Uſurpation, was content to diſpenſe with this Article of the Peace, and let them remain in poſſeſſion of the Spice Iſlands. King *Charles* II. continued to demand the Reſtoration of theſe Iſlands; and engaged in two Wars with them on that account, in which they were very handſomely beaten: But they raiſed up a Faction againſt that Prince at home, as they had done againſt his Father; and he was compelled to make Peace with them: King *James* II. made the like Demands, and was preparing to call thoſe High and Mighty Merchants to an Account; which occaſioned their joining ſo vigorouſly in depoſing of him; and ever ſince they have been our good Allies. We muſt not quarrel with them, if they beat us out of every other Branch of Trade: But in no Reign have we ever expreſly relinquiſhed our Right in theſe invaluable Iſlands, to this Day.

To return to our Subject: It was at firſt, as I have obſerved, abſolutely neceſſary to provide a large Joint-Stock, to fit out a Fleet, of Force ſufficient to eſtabliſh and defend our Plantations and Settlements in the *Eaſt-Indies* againſt the *Dutch*: And it is much to be lamented, that, inſtead of quarrelling with our Princes, we did not enable them to ſupport the Pretenſions this Nation had to the Spice-Iſlands, againſt the Uſurpations of the *Hollanders*. But when we had actually loſt theſe, the *Eaſt-India* Trade was not of the like Importance as before: We had, indeed, afterwards, a Trade to the Continent of *China* and *India*, from whence we import Silks, Muſlin, Calicoes, Tea, Pepper, Jewels, *&c.* But this we have in common with the *French*, *Dutch*, and *Danes*; and this might have been carried on by private Traders, probably, with more Succeſs than by a Company; as I have heard the famous *Pit* affirm, though he was twice Governor of the Coaſt of *Cormandel*, for the Company. And we find, that the *African*, or *Guinea* Trade, has been much improved ſince it was laid open: Indeed, it is very proper, that thoſe who uſe any Trade, ſhould contribute to maintain the Forts, and Forces, that are neceſſary to preſerve the Nation in the Poſſeſſion of that Trade; and this is done, by obliging the Merchants, who trade to any Country, to allow five or ten *per Cent.* or ſuch other Sums as ſhall be found neceſſary for the Support of them. This the Statute requires, that lays open the *African* Trade: But there is no Manner of Neceſſity of excluding all the King's Subjects, but the Company, from trading; this would be prejudicial to the Nation, as well as to particular Men; for private Merchants will uſe much more Frugality, and Diligence, in carrying on their Trade, than Companies will; and manage better for themſelves, than Directors, or Committees, do for them: It is obſerved of all Companies, not excepting that of the *Dutch Eaſt-India* Company, That their Directors, Governors, Factors, and Officers, grow exceſſive rich, while the Company itſelf is miſerably poor; every Man regarding his private Intereſt, more than that of his Maſters, or of the Publick.

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The only Remark I ſhall make more on this Trial, is, That it appears from the Arguments of the Counſel on both Sides, that the Commiſſions, which were granted to the firſt Adventurers to the *Indies*, and other Parts of the Heathen World (and particularly, that to) authorized them to ſpoil, plunder, and enſlave the poor defenceleſs Natives; take their Countries from them; and even to kill them, if they refuſed to ſubmit to the Dominion of the Chriſtians, and embrace their Religion: But how, or when, this *Mahometan* Doctrine came to be introduced among a People, whoſe Religion teaches them univerſal Benevolence and good Will to Mankind, and ſtrictly forbids all Violence and Injuſtice, is not eaſy to conceive: Certain it is, that it was originally a Popiſh Doctrine; and that both the Kings of *Spain* and *Portugal* gave the like Commiſſions to the Diſcoverers of the *Eaſt* and *Weſt-Indies*, with the Concurrence of the Pope; or rather by his Authority: For it was by Virtue of the Pope's Bulls, that the one aſſumed the Dominion over all Pagan Countries in the *Eaſt*, and the other over thoſe in the *Weſt*; and by Virtue thereof they invaded the Natives in a hoſtile Manner; took their Countries from them, and enſlaved them; in which they exactly copied after *Mahomet*.

Dominion was then univerſally held to be founded in Grace; and none were thought to have a Right to this World, but true Believers; and thoſe particularly, to whom the Pope, the then Head of the *Latin* Church, transferred thoſe Countries that remained in the Poſſeſſion of the Pagans: And though the Proteſtants, after the Reformation, renounced the Pope's Authority, yet they ſtill held, that Chriſtians might juſtly invade Heathen Countries, and uſurp the Dominion of them; as appears by that Commiſſion of *Michelbourn*'s, above-mentioned. And our Saints, during the Grand Rebellion, carried this Principle ſo far, that they held, *No Man was entitled to any Thing in this World, that was not of their Party*; and made no Scruple in plundering and enſlaving all other Chriſtians that differed from them; which was a remarkable Improvement on that Popiſh Doctrine, That DOMINION IS FOUNDED IN GRACE; eſpecially, as it was held by Men who pretend to abhor nothing more than Popery.

The

1684 36 Car. II. Hampden's Trial.

The Trial of JOHN HAMPDEN, Esq; for an *High Misdemeanor*, at the *King's-Bench* Bar, 6 *February*, 1683. *Hill.* 36 *Car.* II.

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The Indictment.

THE Indictment charges, That the Defendant, *John Hampden*, on the last Day of *June*, in the 35th Year of the King, did, at the Parish of St. *Giles in the Fields*, in the County of *Middlesex*, unlawfully assemble, consult, and agree, with divers other evil disposed Persons, to raise a Rebellion, and to provide Forces and Arms in divers Parts of the Kingdom; and, the better to accomplish their said evil Purposes, they did, on the Day and Year aforesaid, agree to send certain Persons to *Scotland*, to invite the Malcontents there to join with them in the said Conspiracy.

The Reasons given, why the Defendant was not charged with High Treason.

Mr. Attorney, in opening the Evidence, observed, that the Matter in this Trial had already been under Examination at several Trials for High-Treason, at which the Enemies of the Government pretended, the Persons accused lay under great Hardships, in not having the Advantage of Counsel, and their Witnesses examined upon Oath; for which Reason his Majesty was pleased the Defendant should be prosecuted in a milder Way, to give him all Opportunities of clearing his Innocence, if he had Witnesses to do it: And if the having Counsel would contribute to the Advantage of his Cause, he might have them too. He observed farther, that the Earl of *Essex*, one of the Conspirators, had given Judgment against himself; but the Party had been so officious to fling his Death upon the Government: That two more of this Cabal had received the Judgment of the Law; and the remaining two, the Lord *Howard* and the Duke of *Monmouth*, having confessed the whole Matter, the King had extended his Mercy to them; and they were summoned to be here this Day, that the Malcontents might see there was nothing intended by this Prosecution, but the settling the Peace and Quiet of the Kingdom.

Duke of Monmouth summoned as a Witness.

Then the Duke of *Monmouth* was called, and Oath made of his being served with a *Subpœna*, to appear as a Witness; but his Grace did not think fit to attend.

Lord Howard's Evidence.

Whereupon the Lord *Howard* was sworn, and gave an account of the Lord *Shaftesbury*'s having formed a Conspiracy, to incite a Rebellion about *Michaelmas* 1685. as he had done at the Trials of *Sidney* and *Russel*; and that *Shaftesbury* going beyond Sea the following *November*, the Duke of *Monmouth*, the Earl of *Essex*, the Lord *Russel*, Colonel *Sidney*, Mr. *Hampden* the Defendant, and himself, (Lord *Howard*) formed themselves into a Cabal, to carry on the said Conspiracy, and met at Mr. *Hampden*'s House about the Middle of *January*, when they discoursed of raising Money, and of the Time and Place most proper to begin the Insurrection. But the Principal Thing resolved on, was to settle a Correspondence with Lord *Argyle*, and the Malcontents in *Scotland*, that they might give the Government all the Diversion they could, both at Home and Abroad; and that they all concurred and assented to this Resolution.

Cabal of six.

The Court demanding what Grievances they complained of in the Administration, to induce them to enter into this Conspiracy; his Lordship answered, They thought it a Grievance, that such a Force was put upon the City at the Election of Sheriffs; and observed the ill Consequences this would have upon Juries.

At their next Meeting, which was in *February* at the Lord *Russel*'s, about a Fortnight after the first; they agreed to send *Aaron Smith* to *Scotland*, and *Sidney* took upon him to manage that Affair; and told the Deponent afterwards, That he had sent *Smith*, and given him threescore Guineas to bear his Charges; and that he was then at *Newcastle*, from whence he heard from him: That in Pursuance of this Message, the Lord *Melvin*, Sir *John Cockram*, and one *Campbel*, of the Lord *Argyle*'s Name and Family, came up to *London*, under Pretence of carrying on a Plantation in *Carolina*: That these Gentlemen were known to the Lord *Russel* only; and he was to write the Letter to them, which he, (Lord *Howard*,) supposed he did.

Then Proof was made by the Master of the Inn, at *Newcastle*, where *Smith* lay; and by the Guide that conducted him towards *Scotland*, of his being at *Newcastle*, at the Time the Lord *Howard* testified.

Proof the Scotish Malcontents came up to London.

Atterbury, the Messenger, also proved his apprehending the two *Campbels*, and some of the rest of the *Scots* Gentlemen in *London*, who came up about this Business: And Sir *Andrew Foster* deposed, That Sir *John Cockram*, *Monroe*, Sir *George Campbel*, and his Father, were in *London* the last Summer; and that he saw a Commission to Sir *John Cockram*, to make a Purchase in *Carolina*.

Mr. Hampden's Defence by his Counsel.

Mr. *Williams*, being of Counsel for Mr. *Hampden*, then entered on his Defence, and observed, That Lord *Howard* not being positive as to the Day of the Consultation in *January*, it was not possible to contradict him in that Particular; and that there was not any one Circumstance, unless the Matter of *Aaron Smith*, to confirm his Testimony: That it was strange there should not be one Person more, who could prove that any of these Gentlemen were at that Meeting at Mr. *Hampden*'s, or the other Meeting at Lord *Russel*'s.

And though he testified there was a Discourse of raising Men, providing Arms, Money, &c. in *January*, yet nothing was done thereupon; though no Discovery was made till the *July* after: He insisted also, That Lord *Howard* appeared, by his own Evidence, to be very deep in the Conspiracy; and gave this Evidence against others to get his own Pardon: *And he had, by exposing this Gentleman, and the Blood of others, procured himself a Pardon:* Was it reasonable therefore to believe what he had said?

The

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The Chief Juſtice thereupon ſaid, What do you mean by that, Mr. *Williams?* It is a harſh Word, you had need explain yourſelf; as though the King's Pardon were to be procured by Blood.

Mr. *Williams* anſwered, I mean no more than that, there being other Witneſſes before my Lord *Howard*, it concerned him to give a home Evidence, or he could not have expected his Pardon. Another Objection he made to this Lord's Evidence was, That he owned he knew nothing of the Plot; and had ſaid, Colonel *Sidney* and the Lord *Ruſſel* were innocent: And that he had been guilty of Atheiſtical Expreſſions; and, becauſe he had ſaid, *That he could not have his Pardon, till the Drudgery of of Swearing was over*. That he ſhould call that a Drudgery, which was manifeſtly his Duty (*viz.*) the giving his Teſtimony to preſerve the King and Government, was but an odd Inſinuation; and, as he underſtood it, his Lordſhip ſtrained a little, to make his Diſcovery the more profitable to him.

As to what concerned *Aaron Smith*, he did not ſee how that affected Mr. *Hampden*; he ſaid no more of him, than that he was in the Company.

The Chief Juſtice obſerved, he ſaid, *He conſented to it.*

The Evidence for the Defendant.

Mr. *Williams* replied, It muſt be by his Silence; for he did not teſtify he ſaid one Word: Nor was it proved at laſt, that *Aaron Smith* was in *Scotland*, or concerned in the Conſpiracy; or, that the Defendant was ever in the Company of thoſe *Scotiſh* Gentlemen.

The Counſel then called the Defendant's Witneſſes, *viz.* Mr. *Ducas*, Mr. *Howard*, the Earl of *Clare*, Dr. *Burnet*, *&c.* who depoſed, that they had heard the Lord *Howard* ſolemnly declare, he knew nothing of any Plot: And particularly Dr. *Burnet* depoſed, that the Lord *Howard* proteſted, with Hands and Eyes lifted up, he knew of no Plot; and that, before the Lord *Howard* made thoſe ſolemn Aſſeverations, he was poſſeſſed with a Belief of the Plot.

Dr. Burnet.

Mr. Recorder thereupon demanded of the Doctor, If he believed the Plot now?

Dr. *Burnet* anſwered, *I make no Doubt, as to the Aſſaſſination.*

Mr. *Blake* depoſed, The Lord *Howard* ſaid, *He muſt not have his Pardon, till the Drudgery of Swearing was over.*

Witneſſes being called to Mr. *Hampden*'s Character, the Lord *Paget* depoſed, That he believed the Defendant to be a Man of Honour and Virtue, and lived a ſtudious contemplative Life; and therefore was not likely to be engaged in ſuch a Deſign: That he was not of a turbulent, ſeditious Spirit, but a peaceable Man, and of little Acquaintance; and he never heard him expreſs any Diſſatisfaction, as to the Government.

Mr. *Pelham* gave him the like Character; as did Sir *Henry Hobart*: Adding, that the Defendant went over to *France* in 1680, and remained there till *September* 1682, and deſigned to go over to *France* again.

Other Witneſſes depoſed, they had heard the Defendant expreſs a great Affection for the Government; and that, when he was told the Duke of *Monmouth* and the Lord *Grey* lay hid, he ſaid, I will never fly, or conceal myſelf; for my Conſcience reproaches me with nothing.

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Then Mr. *Williams* was about to produce a Witneſs, that the Lord *Eſſex* had ſo mean an Opinion of the Lord *Howard*, that it was not likely he would enter into Conſultations with him about ſuch Matters.

The Chief Juſtice anſwered, They muſt not bring Evidence of what a third Perſon thought of the Lord *Howard*; and beſides, the Record of the Conviction of the Lord *Ruſſel* and Colonel *Sidney*, who were convicted on my Lord *Howard*'s Teſtimony, ſupported his Credit more than the Report of a third Perſon could impeach it: And, it ſeemed, my Lord *Eſſex* had ſuch an Opinion of my Lord *Howard*'s Evidence, that he cut his Throat upon it.

Then one *Murray* was called, to give an Account of my Lord *Howard*'s Atheiſtical Diſcourſes; but Mr. Attorney objected againſt ſuch Evidence, as it was impoſſible his Lordſhip could be prepared to give any Anſwer to it.

Lord *Howard* alſo ſaid, This preſſes hard upon my Reputation; and I profeſs before God, I do not know this Fellow; I never ſaw him in my Life: Who is this Raſcal they bring here? I would fain have this Fellow to dare ſay this any where elſe.

The Chief Juſtice obſerved, That it was very hard thus to rake into the whole Courſe of a Man's Life: Whereupon his Teſtimony was waved; and the whole Evidence for the Defendant being ended, the Counſel on both Sides agreed to make no Obſervations on the Evidence, but leave it to the Court.

The Directions of the Chief Juſtice to the Jury.

The Chief Juſtice, in his Directions to the Jury, obſerved, That the Counſel on both Sides had drawn Inferences to their Advantage, from the Duke of *Monmouth*'s being *ſubpœna*'d as a Witneſs in this Cauſe: Thoſe for the King urged, they had *ſubpœna*'d him to ſhew the Fairneſs of their Proceedings; and that they were not afraid to have the whole Truth appear: And the other Side inſinuated, that the Truth of the Conſpiracy ought to be ſuſpected, becauſe he did not appear.

As to the Objections that had been made to the Lord *Howard*'s Teſtimony, it was very ſtrange it ſhould be made an Objection, that, before he had his Pardon, he gave his Evidence out of Fear, and in order to get his Pardon; and it ought to be an Objection too, that he had got his Pardon, and therefore ought not to be believed: But if, after he was pardoned, when he was under no Dread or Fear, he ſaid the ſame Things he did when he might be in Fear, it was a plain Anſwer to that Objection, of his being moved by his Fears.

That he might be particular, as to the Time he converſed with the Lord *Shaftesbury* about Sheriffs, and the Return of Juries, becauſe the Sheriffs are always ſworn the Day after *Michaelmas*-Day; but it was not ſo eaſy for him to fix the very Day when the Conſultation in *January* was, becauſe there was not ſo material a Circumſtance to fix it in his Memory.

The Reaſon there was nothing done by the Conſpirators, between the Time of the Conſultation in *January* and *July* following, was, becauſe a Treaty was to be negotiated with the

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Scots, before they could reſolve on any Thing; and the *Scotiſh* Agents did not come up to *London* till *July*.

And as to the Lord *Howard*'s ſaying, He knew nothing of a Plot; and that they had done nothing but what was legal; he knew ſome People believed the raiſing Tumults, and the making Seditions and Commotions, was a legal Way to obtain their Ends: And what would they not do, under a Perſuaſion, that all they did was according to Law? They were taught, by the Religion they profeſſed, to oppoſe the Government. *The Old Cauſe was a good Cauſe to this Day, in ſome Mens Opinion*: They could die in it; and thank God for being concerned in it; and yet called themſelves Proteſtants. But this was rank Treaſon and Rebellion, let Men pretend Conſcience, or what they would. Was it not under Pretence of Religion, that King *Charles* I. was brought to the Block?

As to Lord *Howard*'s ſwearing, that he could not have his Pardon till the Drudgery of the Swearing was over; it muſt be a Drudgery, and irkſome to him, to call himſelf Traitor ſo often, in a Court of Juſtice; though it was his Duty to tell the Truth: He might, indeed, have given it a ſofter Term; but he had Reaſon, in ſome Senſe, to call it a Drudgery: But, as he did ſwear, before he had a Pardon, upon all Occaſions, when he was called to be a Witneſs; ſo when he had his Pardon, he did ſwear the ſame Thing: The Want of a Pardon, therefore, did not influence his Teſtimony: He was under no Fear, but as free as any Subject the King had; and yet he made Oath of the ſame Things now, as he did at the Trials of the Lord *Ruſſel* and Colonel *Sidney*.

And notwithſtanding the Evidence that had been given of Mr. *Hampden*'s loyal and peaceable Diſpoſition, he obſerved from the Teſtimony of his own Witneſſes, that there had been ſome Jealouſy of him; and that he lay under hard Cenſures as well as other People. For in diſcourſing of the Plot, the Advice given him was this: My Lord *Grey* is gone, and the Duke of *Monmouth* is gone; Why wont you go? Why ſhould this Advice be given to him, if there was no Suſpicion of his being concerned? As to his ſaying, *I will not go*, which they gave as a Proof of his Innocence, there was the ſame Innocence in my Lord *Ruſſel* and Colonel *Sidney*, and all the ſix, except the Duke of *Monmouth*; and he did abſcond. They knew no Reaſon why they ſhould ſtay to be taken, any more than *Weſt* or *Rumſey*; and yet that was not uſed by them as an Argument of their Innocence. As to his Intentions of going Abroad, it was much he did not put them in Execution. He came over at an unlucky Time, when the City was in a Ferment, and Men were filled with Fears and Jealouſies; and theſe might animate him, as they did other People: It had been much better, for his Advantage, he had never come out of *France*, or, that he had returned thither ſooner.

As to the Lord *Howard*'s denying he was in a Plot; Could it be ſuppoſed, that a Man guilty of High-Treaſon would proclaim his own Guilt? Could it be ſuppoſed he ſhould tell Dr. *Burnet*, that he, and Colonel *Sidney*, and Mr. *Hampden*, were in a Plot, and make it common Talk? His Proteſtations were ſo far from being an Argument of his Innocence, that they were rather an Argument of his Guilt: If he had been free from Suſpicion, why ſhould he tell Colonel *Sidney*'s Footman, and this Man and the other, *I know nothing of the Plot; and neither I, nor any Man, I am ſure, is concerned in it?* This Over-Caution was an Intimation, that there was ſomething more than ordinary in the Matter; ſo that the Argument turned the other Way: And if it did not, the Witneſſes muſt be looked upon as Perſons diſaffected to the Government; namely, Dr. *Burnet*, Lord *Paget*, Lord *Clare*, and the reſt. It muſt be ſuppoſed, he did not think fit to truſt theſe loyal Gentlemen with his Confeſſions: This they ought to value themſelves upon; it was for their Credit and Reputation: They ſhould not therefore make it an Argument againſt my Lord *Howard*, or againſt the Credibility of his Teſtimony, that he did not truſt them with the Secret.

The Chief Juſtice concluded, That this was a Cauſe of great Conſequence, wherein the Peace and Government of the Kingdom was concerned in a very high Degree: And had there been another Witneſs as poſitive as my Lord *Howard*, the Charge would have amounted to High-Treaſon; but as there was but one Witneſs, ſupported by other corroborating Circumſtances, he was only charged with a Treſpaſs; the Tendency whereof, however, was to bring us into Confuſion, as in the Times of the late Rebellion. Men might make fair Pretences; as that they deſigned only the Security of the Government, and the Proteſtant Religion: But they would have done well to have waited till they had a legal Authority to conſult of thoſe High Matters that they pretended to ſecure: What had they to do to aſſume ſuch a Power? Upon the whole, the Lord *Howard* had poſitively ſworn the Matter of Fact laid in the Indictment, and was ſupported by the Witneſſes that teſtified *Smith*'s going to *Scotland*, the *Scotiſh* Gentlemens being in *London*; and the Sham and Cant of *Carolina*; and was not contradicted by any Thing that carried any Probability of an Anſwer; and he left it to the Jury to determine, whether the Defendant was guilty.

The Jury thereupon withdrawing, returned within the Space of half an Hour; and brought in their Verdict, that the Priſoner was GUILTY. *The Defendant convicted.*

Mr. Attorney, on *Tueſday* the 12th of *February*, prayed Judgment againſt the Defendant: That the Court would ſet a good Fine upon him, and he might find Sureties for his good Behaviour for Life: Whereupon Mr. *Williams* repreſented, that Mr. *Hampden* was but Heir apparent to his Father, who was alive: So that he had only the Proſpect of an Eſtate; very little in Poſſeſſion; and, according to *Magna Charta*, Fines ought to be ſet with a *Salvo Contenemento*.

The Chief Juſtice anſwered, If the Crime had been proved by two Witneſſes, it would have wrought a Forfeiture of his Eſtate and Life too, and corrupted his Blood; and that it deſerved a great Puniſhment, if they could impoſe one adequate

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adequate to his Deſerts; and the Clauſe in *Magna Charta* never meant Fines for great Offences, but Amerciaments only.

Fined 40,000 l.

Then a Fine of 40,000 Pounds was ſet upon the Defendant; and he was ordered to be impriſoned till he paid it, and find Sureties for his good Behaviour during Life: But the Chief Juſtice told the Defendant, If he would apply himſelf to his Majeſty, he might find Mercy.

Then Mr. *Hampden* being committed for his Fine, his Bail were diſcharged.

Remarks on Mr. Hampden's Trial.

As every one of the ſix Noblemen and Gentlemen, charged with aſſembling and conſulting to raiſe a Rebellion, and depoſe the King, either confeſſed the Fact, or were convicted of it; there is little Doubt to be made of the Truth of the Conſpiracy, or of their Share in it. And I queſtion whether their Friends at this Day would endeavour to diſprove the Charge; or rather, whether they do not look upon them as Heroes and Patriots, that endeavoured to preſerve the Religion and Conſtitution of their Country, with the Hazard of their Lives.

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I ſhall only obſerve here, that though Biſhop *Burnet*, in his poſthumous Hiſtory, ſpeaking of the intended Aſſaſſination of the King at the *Rye-Houſe*, ſays, *It was all but rambling Diſcourſe, all was but Talk:* Yet at this Trial of Mr. *Hampden*, when he was asked, If he believed the Plot; he anſwered, *I make no Doubt, as to the Aſſaſſination.*

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The Trial of WILLIAM SACHEVERELL, Eſq; and twenty-one more, for a *Riot*, in the Court of *King's-Bench*, the 2d of *May*, *Eaſter-Term*, 1684. 36 *Car.* II.

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Sacheverell's Trial.

The Information.

AN Information was preferred by Sir *Robert Sawyer* the Attorney General, againſt *William Sacheverell* Eſq; *George Gregory* Eſq; *Richard Mansfield* Eſq; *Henry Plumtree* Eſq; *Charles Hutchinſon* Eſq; *John Greaves* Gent. *William Greaves* Gent. *&c.* Setting forth, That on the twenty-ninth of *September*, in the thirty-fourth Year of the preſent King, at the Town of *Nottingham*, there was an Aſſembly duely ſummoned, before *Gervas Wild*, then Mayor of the ſaid Town, for the electing and ſwearing a new Mayor of the ſaid Town, for the Year enſuing: That the ſaid Mayor proceeding to Election, made a Proclamation for all Perſons to depart, that were not concerned in the Election, and for keeping the Peace; and that they, the ſaid *Will. Sacheverell*, and the reſt of the Defendants, nevertheleſs, well knowing the Premiſes, and being unconcerned in the ſaid Election, did diſturb the Peace of the Place, ſet the Town together by the Ears; and, in a riotous Manner, aſſemble themſelves with many other ill-diſpoſed Perſons, to the Number of five hundred, and continued the Riot for the Space of ſeven Hours, with a great deal of Noiſe and Tumult; and with Force and Arms, did riotouſly carry away, and detain a Mace, from one *John Malin*, then one of the Sheriffs of the ſaid Town; to the great Terror of his Majeſty's Subjects, to the evil Example of others, and againſt the King's Peace, *&c.*

The Caſe, as ſtated by Mr. *Sacheverell*, is as follows: The Town of *Nottingham* claimed to have been a Corporation by Preſcription: King *Edward* I. granted the Burgeſſes of that Town, the Privilege of chuſing a Mayor annually, they having only Bailiffs before: King *Henry* VI. made it a County, and gave them the Privilege of chuſing two Sheriffs, inſtead of Bailiffs; and of electing ſeven Aldermen out of their Number, one of them to be Mayor annually: That the Aldermen, while they remained ſuch, ſhould be Juſtices of Peace; and, that the Town of *Nottingham* ſhould for ever be a Body Corporate, by the Name of Mayor and Burgeſſes: And that no Charter ſince, or any By-Law, had given the Aldermen any more Power than they held by that Charter, which was no more than every Burgeſs of the Town had; except the Privilege of being Juſtices of Peace, and wearing Gowns and Hoods.

That the Aldermen, however, in the Reign of King *James* I. did take upon them to be Part of the Council, and intermeddle in the Affairs of the Town; and pretend to have a Right of letting, and diſpoſing of the Corporation-Lands, Bridge-Lands, and School-Lands; of which the Burgeſſes complained to the Lords of the Council, in the Year 1605, and prayed Redreſs: The Council referred the Matter to the Judges of Aſſize; but it was afterwards amicably agreed, That there ſhould be a Council of twenty-four Perſons; (the Aldermen for the Time being always excepted) and theſe, with the Mayor, or (the Majority of them) ſhould have the letting or diſpoſing of the Town-Lands; and that Pretence of the Aldermen, to diſpoſe of their Lands, or to be of the Council, was given up, till of late Years.

That the Burgeſſes being informed, That in *Eaſter*-Term laſt, the Mayor, and ſome of the Aldermen of the Town, had a Deſign to ſurrender the Charter of that Corporation; for the Prevention of the ill Conſequences thereof, they entered four Caveats, two at the Lord Chancellor's, and two at the Attorney-General's; one of which, in each Place, was againſt paſſing any new Charter to the Town of *Nottingham*, without the Privity, Conſent, or Hearing of the Burgeſſes; the other againſt the accepting of any Surrender of any Charter of that Town, without the like Privity, Conſent, or Hearing.

However, the Mayor called a Council the twenty-fifth of *July* laſt, without giving Notice what the Buſineſs would be; and there appearing at the Hall the Mayor, five Aldermen, and twenty-two of the Council, beſides Alderman *Toplady*, whoſe Election was conteſted; the Mayor cauſed the Queſtion to be put, for ſurrendering their Charters: And, though it was objected

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objected by ſome of the Council, That the Aldermen had no Right to vote; yet the Mayor cauſed the Poll to be taken, and admitted the Aldermen and Mr. *Toplady* as Voters: And there appeared to be the Mayor, four Aldermen, and nine of the Council for ſurrendering; and Aldermen *Greaves*, the two Coroners, and ten more, were againſt ſurrendering; ſo that the Votes were equal: But, if *Toplady*'s Vote was not good, (as he held it was not) Thoſe that were againſt the Surrender were a Majority: And if the Aldermen had no Right to give their Votes, as he conceived they had not, either by Preſcription or Charter; then there were only the Mayor and nine of the Council for the Surrender, and thirteen of the Council againſt it.

Nor had the Council, as he apprehended, any Right to ſurrender their Charters, if there had been a Majority of them; being only elected by the reſt of the Burgeſſes, for the Management of the Revenues of the Corporation, and the Diſpatch of ſome other ordinary Affairs: All the Burgeſſes were intereſted in the Matter, and had as good a Right to vote as any of the Council; nor could the Mayor, Aldermen, or Council, bind their Hands, or ſurrender their Charter, without the Conſent of the Burgeſſes: However, the Mayor, as ſoon as the Vote paſſed in the ſaid Aſſembly, for the Surrender of the Charter, produced an Inſtrument in writing, purporting a Surrender, and cauſed the Town-Seal to be fixed to it, and ſent it up to *London*.

Whereupon the Burgeſſes of *Nottingham*, who were againſt the Surrender, adviſed with Counſel, Whether many of their Cuſtoms and Privileges in reference to Trade, which they held only by Cuſtom or Preſcription, and the Lands they held of the Crown, and of private Perſons, which were of a great annual Value, would not be loſt by a Surrender of their Charter?

To which the Counſel anſwered, That if the Charters of any Body Corporate were lawfully ſurrendered, the Corporation that held by ſuch Charters was diſſolved, and the Heirs of the Perſons that granted the Lands, would be entitled to recover the ſame; and as to the Crown Lands, his Majeſty might grant them again to the Corporation: But no new Charter would give them a Title to ſuch Lands, as had been granted by private Perſons, and enable the Corporation to keep them from their Heirs; as was reſolved by the Judges when the Monaſteries were ſurrendered; and therefore a ſpecial Act of Parliament was made, to veſt theſe Lands in the King.

That, if they claimed a Right of Common in other Men's Lands, their Preſcription for Common would be deſtroyed by ſuch a Surrender.

That their Freedom from Tolls, in like Manner, would be loſt.

And to the laſt Queſtion. *(viz.)* Whether, if the Mayor and other Members, without the Conſent of the Body Corporate, ſhould ſurrender the Charters of the Corporation; the particular Perſons who received Damage thereby, might not have an Action againſt the Mayor and ſuch other Members? it was anſwered, They might: But to prevent the ſurrendering the Charter, and the Suits and Inconveniencies that might be occaſioned thereby, it was thought fit to preſent Mr. Mayor with their Senſe of his Proceedings, and declare their Diſſent to any Surrender; and accordingly a Writing was drawn engroſſed and ſigned, by between three and four hundred of the Burgeſſes, and preſented to the Mayor, on the 14th of *Auguſt*, as the Senſe of moſt of the Burgeſſes of that Town; in which Inſtrument they ſay,

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That underſtanding the Mayor, and thirteen more of the Corporation, had, without the Conſent of the Burgeſſes, agreed to ſurrender the Charters, Liberties, and Franchiſes of the Corporation; and cauſed the Corporation-Seal to be affixed to an Inſtrument, for making ſuch Surrender; They, conſidering the great Damage it muſt be to the Corporation, and to every particular Burgeſs, if they ſhould be ſo ſurrendered, did ſignify their Thoughts on what they had done, and were about to do: That many of their Liberties and Franchiſes would be loſt, if ſuch Surrender ſhould be effected, as they had agreed to: They did thereby declare their Diſſent to thoſe Proceedings; and that they did not, nor ever would conſent that a Surrender of any Charter, Liberty, Franchiſe, or Privilege of the Corporation of *Nottingham*, ſhould be made; and that they would by all lawful Means oppoſe the ſame; and, in caſe they proceeded in the ſaid Surrender, they ſhould expect ſuch Satisfaction as the Law would give them.

The Burgeſſes alſo ordered Caveats to be entered at the Lord Chancellor's, the Lord Privy Sea'ls, and the Signet-Office, againſt ſurrendering their Charters without their Conſent, and againſt the paſſing any new Charter: A Petition alſo was ſigned by three hundred and ſixty Burgeſſes, deſiring to be heard, before any Surrender of their Charters ſhould be accepted.

But, contrary to the Expectation of the Burgeſſes, Mr. Mayor, having, as he ſaid, received Advice from *London*, that the Inſtrument he had ſent up for ſurrendering the Charters was not ſufficient; did, on *Saturday* the twelfth of *Auguſt*, without ſummoning a Council, affix the Town-Seal to another Inſtrument of Surrender; which was preſented to his Majeſty the 14th of *Auguſt*: And he ſuggeſts that the Mayor broke open the Cheſt, where the Town-Seal was kept, to come at it: The Seal being kept under three Locks and Keys, and the Officers who had them refuſing to deliver him the Keys, without calling a Council: From all which Conſiderations, they looked upon the Surrender that had been made of their Charters to be illegal, and hoped ſtill to preſerve their antient Rights, by the Aſſiſtance of the Courts of Juſtice: And when a new Charter was ſent down, they actually refuſed to accept it; but proceeded to the Choice of a new Mayor, according to their old Charter; Mr. *Sacheverell*, one of the Honorary Burgeſſes, and the reſt of the Gentlemen mentioned in the Information, being at the Town-Hall, and countenancing the Burgeſſes, in their Oppoſition to the new Charter; which appears to have been the Occaſion of preferring this Information againſt them.

The Defendants plead Not guilty.

All the Defendants, except *Plumtree*, pleaded *Not Guilty* to the Information; but alledged, That the Inhabitants of the Town and County

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ty of the Town of *Nottingham*, ought not to be drawn out of their ſaid County; and deſiring that a Jury of the County of *Kent* might try the Iſſue; the Attorney General agreed to it; and, accordingly a Jury of Gentlemen of the County of *Kent*, were impanelled, and ſworn: After which, the King's Counſel opened the Information and the Evidence; and calling their Witneſſes; Mr. *Pollexfen*, of Counſel for the Defendants, objected to the ſwearing Mr. *Wild*, Mr. *Edge*, and other Members of the new Corporation, as not being competent Witneſſes in this Caſe: He ſaid, There was a Diſpute, Whether the Old Corporation was in being, or not? and, Whether the New Charter was a good Charter in Law? That the Matter was depending both in the *Chancery* and *King's-Bench*: A *Scire Facias* having been brought againſt the New Charter, and a *Quo Warranto* in this Court, againſt the Old; and, if it ſhould ſo fall out, that the New Charter, upon which the Information was founded, was not good in Law, the Cauſe muſt go for the Defendants: That the Members who claimed under the New Corporation, therefore, could not be Witneſſes; becauſe they would thereby maintain their Intereſt in the New Charter.

Tried by a Jury from Kent.

Objections to the Witneſſes.

The Chief Juſtice anſwered, They were not about to try, whether the Old or New Charter was good, that would not come in Queſtion on this Iſſue: But, whether there was a Riot committed by the Defendants, againſt the publick Peace.

Wild's Evidence.

Then Alderman *Wild*, who was Mayor at the Time of the Riot, was ſworn, and depoſed, That on *Michaelmas-Day*, being the Day for electing the Mayor, he was waiting at his Houſe, in Expectation of the New Charter; and the Burgeſſes came to him, and would have had him gone with them to Church, as was uſual on that Day; but he told them the New Charter was coming, and deſired they would ſtay a little; however, they went to Church, with Mr. *Sacheverell* at the Head of them, leaving him (the Mayor), and ſome of the Aldermen with him: That the New Charter arriving immediately after, he went to the Town-Hall, in order to be ſworn; and ſent to the Church, for the Town-Clerk to come and adminiſter him the Oath, that he might act as Mayor under the new Charter: The Town-Clerk ſent him Word at firſt, that he would not come; but not long after he came, with Mr. *Sacheverell*, and other Gentlemen mentioned in the Information, and many more, who were not Burgeſſes; and thoſe of them that were Burgeſſes had no Votes by the old Charter: That he was a little amazed to ſee ſo many Gentlemen; and he took the new Charter out of the Box, and ſhewed it them, and would have had Alderman *Edge* the Town-Clerk read it, but he refuſed; and ſome People cried out, *No New Charter*, *No New Charter*; and Mr. *Sacheverell* ſaid, This is not our Buſineſs here, we come for the Election of a Mayor by the old Charter: That he (the Mayor) then ſaid to Mr. *Sacheverell*, I know no Buſineſs you have here, nor a great many Gentlemen more; it would better become you to be in another Place: That Mr. *Sacheverell* then demanded, If he would proceed to an Election? And he (the Mayor) anſwered, He had a great deal to do, before he could proceed to an Election; he muſt be ſworn himſelf, and ſwear half a Dozen more, in the Room of thoſe that were left out in the new Charter: And then they cried out again, *No New Charter*, *No New Charter*; *A* Greaves *Mayor*: They bid Alderman *Edge* take his Book alſo, and proceed to Election; demanding of him (the Mayor), Who he was for? To which he replied, They could not proceed to Election without his Conſent, and he diſclaimed it; and then adjourning the Court from the Council-Room, to the Guild-Hall adjoining; he went out into the Hall, where ſitting on the Bench with ſome of his Brethren, he was ſworn: Then he told the Burgeſſes of the Town, the King had granted them a new Charter, and they ſhould hear it read: But Mr. *Gregory* and Mr. *Hutchinſon*, mentioned in the Information, coming from the Gentlemen in the inner Room, told him, they had elected Mr. *Greaves* Mayor; and deſired he (the Mayor) would come and hear him ſworn: But he (the Mayor) told them, they could not elect a Mayor without him, and he would have nothing to do with it; whereupon there was ſuch a Noiſe and Tumult, that they were afraid they ſhould have been pulled off the Bench; and Mr. Alderman *Parker* ſaid, Shall we ſtay here and be knocked on the Head? That he replied, He hoped there was no Danger of that; and commanded Silence while the New Charter was reading: Whereupon an honeſt Gentleman, a Barriſter, took the Charter, and read it to the Burgeſſes, as far as they would give him Leave: That he made Proclamation for Silence, and keeping the Peace, ſeveral Times, commanding all that had no Buſineſs there to depart; but they were ſo outrageous, that Alderman *Parker* apprehending his Life in Danger, ran out of Court: He (the Mayor) ſtaid ſome little Time after; but finding nothing could be done for the Noiſe, he adjourned the Court to his own Houſe, and went away; and was no ſooner come Home, but Mr. *Gregory*, Mr. *Hutchinſon*, and ſome other Gentlemen, came after him, and very ſaucily demanded his Mace: That he anſwered them, he received it by the King's Authority, and to the King's Authority only ſhould reſign it: They had nothing to do in the Election, either by the New or the Old Charter; and thereupon they went away: And when he had ſworn all thoſe that were in the New Charter, they proceeded to Election, and choſe Mr. *Toplady* Mayor, and went in the uſual Manner, and proclaimed him at the Market-Croſs; and while they were proclaiming him, came *Sherwin* and *Green*, and a great many more, and cried out, *No New Charter*, *No New Charter*, *A* Greaves *Mayor*; ſhouting, and throwing up their Hats: And the Court demanding, Who was at the Head of this Rabble? He anſwered, He believed, if Mr. *Sacheverell*, and the reſt of the Gentlemen, had not been there, they had met with no Diſturbance; it was they that abetted and countenanced the Tumult.

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That being apprehenſive the Tumult would increaſe, the next Day being Market-Day, and they might be knocked on the Head, he diſ-

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patched a Letter to the Duke of *Newcaſtle*, to come to their Aſſiſtance; and he came with ſome Troops, and ſtaid till the Town was quiet: However, the other Side had proclaimed their Mayor *(Greaves)*, at the Market-Croſs firſt, as they (the New Charter Men) did *Toplady*; it being uſual to proclaim the Mayor on the Day of Election, and on the Market-Day following.

It being demanded, If Mr. *Sacheverell* was a Burgeſs; the Mayor anſwered, He was a Burgeſs by the Old Charter; but was not, however, one of the Electors; nor had any thing to do there: The Electors were the Mayor, Aldermen, Sheriffs, Coroners, and the reſt of the Council, by both Charters; none of the other Burgeſſes uſed to appear at the Election.

Malin's *Evidence.*

Mr. *Malin*, one of the Sheriffs of *Nottingham*, confirmed the Teſtimony that Mr. *Wild* the Mayor had given; and added, that the Mayor having ordered Proclamation, for all to depart out of the Council-Chamber, that had no Buſineſs there; and a Tumult being made, it was with Difficulty he eſcaped from them into the Town-Hall: And they laid their Hands on the Mayor's Mace to have ſtopped it; but the Serjeant got away with it, and went out with the Mayor and ſeveral of the Aldermen; and Mr. *Sacheverell* cried out ſeveral Times, *Stop the Books:* That he (the Sheriff) was crouded out, and not ſuffered to take his own Mace; and thought he ſhould have been knocked on the Head: That he ſent the Serjeant for his Mace, and they would not let him have it: That he went in himſelf afterwards for the Mace, and they reſcued it from him, and would not let him bring it away: And that the Burgeſſes were ſo tumultuous in the Hall, that Alderman *Parker* ran away, leſt he ſhould be knocked on the Head.

Rippon's *Evidence.*

Alderman *Rippon*, being ſworn, confirmed the Teſtimony of *Wild*: The Mayor alſo added, that his Clothes were torn off his Back, in endeavouring to ſave the Charter from being torn in Pieces; and that the Tumult in the Hall, was occaſioned chiefly by two of the Gentlemen coming out of the Council-Chamber into the Town-Hall, and demanding of *Wild* the Mayor, that he would come into the Council-Chamber, and ſwear *Greaves* in Mayor, whom they had taken upon them to elect; though no Mayor could be elected, but in the Preſence of the old Mayor: That the Mayor and Aldermen, finding themſelves in Danger, adjourned to the Mayor's Houſe; where they choſe Mr. *Toplady* Mayor, by the New Charter, and afterwards proclaimed him as uſual.

Reynolds's *Evidence.*

Mr. *Reynolds*, who carried down the New Charter, being ſworn, atteſted the Truth of what *Wild* the Mayor had teſtified: As did alſo

Alderman Parker's *Evidence.*

Alderman *Parker*; who added, that expecting to be knocked on the Head, and with much Difficulty getting out of the Town-Hall, he went and drank a Glaſs of Wine, for he was almoſt ſpent.

Whereupon *Jeffries*, the Chief Juſtice, obſerved, *That was to recover his Heart again, that was ſinking; for an Alderman's Heart generally ſinks in ſuch a Fright.*

Parker replied, He went back again afterwards; for, he ſaid, if they muſt be knocked on the Head, he would go, and be knocked on the Head with them; which gave the Chief Juſtice Occaſion to obſerve again, *That his Courage came again, when he had a Glaſs of Wine.* 1684. 36 Car. II.

Then *Parker* proceeded, and ſaid, He met *Wild* the Mayor, and ſome of his Brethren, coming from the Town-Hall, and went with them to the Mayor's Houſe; where they choſe a Mayor, according to the new Charter; and proclaimed him, as the former Witneſſes had teſtified: Adding, that *Greaves*, whom the other Party pretended to have choſen Mayor, conteſted with the Mayor in the Church the next *Sunday*, for the Chair; but it was not yielded to him.

Somner's *Evidence.*

Somner the Sheriff's Serjeant, being ſworn, confirmed ſeveral of the Particulars the former Witneſſes had atteſted; and depoſed, That the Sheriff's Mace was wreſted from him, by the Company in the Council-Chamber; and, that neither he, nor his Maſter the Sheriff, were ſuffered to have it again; and that he *(Somner)* was beaten by ſome of the Rabble, when he deſired them to be quiet.

Wright's *Evidence.*

Mr. *Richard Wright* alſo was ſworn, and confirmed the Evidence, given by the former Witneſſes.

Obſervations of the Defendants' Counſel on this Evidence.

Mr. *Pollexfen*, Counſel for the Defendants, then obſerved in their Behalf, That the Information charged a tumultuous Aſſembly on the Defendants, to diſturb the Election of a Mayor upon the new Charter: That it charged alſo the taking away the Mace from *Malin*, who was then Sheriff: But *Malin* was Sheriff by the old Charter, and not by the new; and, if ſo, then by the Surrender of the old Charter, he was out of Office, and the Information failed as to that Point.

And as to the aſſembling and acting of the Defendants, and others, under the old Charter; the Mayor was by that to be elected, or rather confirmed, and take his Place on *Michaelmas*-Day: Now *Greaves* was nominated according to Cuſtom, on the 14th of *Auguſt*, before, and agreeably to their Conſtitution by the old Charter: If the former Mayor was not preſent, the Coroner had Power to ſwear the new one: And *Greaves* was ſworn by the Coroner, in the Abſence of the laſt Mayor: All Things were done by the old Corporation, as uſual: It was ſaid, indeed, that ſome of the Defendants were not of the Corporation, and others had no Vote at the Election; but, admitting they had no Voice, yet there was no Crime: For, if a Burgeſs was preſent at the Election of the Town Officers, and did adviſe or aſſiſt at an Election, (and he was not altogether unconcerned in it); this of itſelf could be no Crime: The Day was *Michaelmas*-Day, the uſual Time of Election; the Place, and Proceedings, were according to Cuſtom, and the old Charter; for they went firſt to the old Mayor's, then to Church, and from thence to the Council-Chamber; where the Mayor uſed to be confirmed, who was nominated before: There they did elect, or confirm, *Greaves* Mayor, and ſent to the old Mayor, who was then in the Hall, to be preſent at the Swearing of him; all which was according to the old Charter; and the ſole Queſtion therefore was, Whether that Charter was in Force? For, if it was, their ſwearing *Greaves* Mayor, and demanding

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manding the Mace of *Wild*, must be regular, as was also their proclaiming the new Mayor: That the crying out, A *Greaves* Mayor, was but a Sort of Applause, very usual at such Elections; and they should shew there was no Violence or Force used, that could occasion the calling this a riotous Assembly: That all that was done in the Council-Chamber, was before *Wild* had taken the Oaths by the New Charter; and therefore he could not act by Virtue of that Charter: So that the Information failed in that Particular; where it was charged, that the Assembly was duly summoned by *Gervas Wild*, then Mayor of the Town, in Pursuance of the New Charter: For, if what was done, was done before he was sworn Mayor, it could not be an Assembly duely summoned by him; he having till then no Authority to summon it: Nor could what the Defendants had done, be to the Hindrance or Disturbance of him, in the Exercise of his Office; and so the Information differed from the Fact the Witnesses had sworn: It appeared also, that the new Charter bore Date the 28th of *September*; and came down the next Day, being *Michaelmas*-Day, at eleven o' Clock: And they should shew in their Proofs, that the Surrender of the Old Charter was not enrolled till the seventh of *October* afterwards; and he held, the old Charter could not be determined, till the Surrender was enrolled: As the Old Charter therefore remained in Force, at the Time of the Election, they might well act under it; and if they had neglected to have proceeded to an Election that Day, they had been faulty, according to the old Charter.

The Chief Justice demanding, Whether *Malin* was Sheriff, or not: Mr. *Pollexfen* answered, He believed he was Sheriff then by the Old Charter. To which the Chief Justice replied, What had the Defendants then to do with his Mace?

Mr. *Pollexfen* said, As the Information had charged the Offence to be, in Taking away the Mace from one who was Sheriff by the New Charter, and he was not Sheriff by the New Charter, the Information was faulty.

The Chief Justice demanded again, If it was not true, in Fact, that *Wild* was then Mayor, and met in an Assembly, for the Election of a new Mayor? Mr. *Pollexfen* answered, That was true; but, they conceived, that would not support the Information: If the Old Charter was in Being, they had done nothing but what they might justify by the Old Charter; Mr. *Sacheverell* was a Burgess, and might be present at an Election.

The Chief Justice replied, It was not an Offence, indeed, for a Freeman of *London* to be at the Election of the Mayor: But if a Parcel of Freemen, that were not Liverymen, came, and run themselves into the Business, and gave Directions about that they had nothing to do with, crying out, *Stop the Books*; *Deliver the Mace*, and the like; they concerned themselves, and meddled with an Authority they had nothing to do with; and must suffer for it: It was never known that Mr. *Sacheverell*, or any other Gentleman, intermeddled with these Affairs before.

Another of the Defendants' Counsel said, He conceived *Malin* was not Sheriff; for they had chosen another Sheriff, by the Old Charter, before the Mace was demanded of him: And he was left out by the New Charter; and so could not be Sheriff either by the one or the other. The Chief Justice demanded, What Authority they had to take the Mace away by Force? Besides, he observed, there was no New Sheriff chosen. The New Sheriff was appointed by the New Charter; and, till that appeared, *Malin* was empowered to act as Sheriff: This Way of Riots, he said, looked like the Times of Usurpation; when the Rabble met to reform the Government: Let us have no such Doctrines preached here, as the Settling of Governments, and Trying of Rights, by Club-Law: There were legal Courses to be taken, to try which Charter was in Force: But that was not the Question here; the Defendants were now to answer, Why they committed this Riot?

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Then the Defendants called their Witnesses; and first, Sir *Thomas Parkyns* deposed, That he was at the Council-Chamber at *Nottingham*, on the Day of Election; and he saw no Disturbance there: There was some Discourse, indeed, of a New Charter, and that they must have a Mayor, according to that; and others voted for a new Mayor, according to the Old Charter: And when *Wild*, the old Mayor, saw that *Greaves* was like to have a Majority, he rose up, and went away. He did not oppose the Election; neither was there any Proclamation made for any Body to depart; nor did any of the Old-Charter-Men oppose the reading the New Charter: He did not hear Mr. *Sacheverell*, or any Body, cry out, No New Charter; or to stop the Books; or any Outcries at all made.—He did, indeed, remember, that the Old Mayor went away with two Maces, and one was left behind; and that Mr. *Malin* came back presently, and demanded it; and some said, they had as much Interest as *Malin* in it; for they had paid their Shares towards it; but he could not tell who they were: And the Court demanding, If he heard no Noise at all? he answered, *No, by my Soul, not I:* Which directly contradicting all the Evidence that had been given, the Defendants' Counsel observed, Sir *Thomas* was not in the Hall when the Uproar was, but in the Council-Chamber: To which the Chief Justice replied, Could he be in the next Room, and not hear the Noise?

Sir Tho. Parkyns, *Evidence for the Defendants.*

Mr. *Thynn* also deposed, That he was in the Council-Chamber on the Day of Election; and he observed no manner of Heat, or the least angry Word, or heard any Shout; but, he said, he was a Stranger, and did not much mind what was done.

Thynn's *Evidence.*

Mr. *Pole* deposed, That he was at the Council-Chamber, and heard *Wild*, the Mayor, ask Serjeant *Bigland*'s Advice, how to proceed upon the New Charter: Who said, Do you ask my Advice as Recorder, or as Counsel? and gave no other Answer: That the Mayor put the like Question to Mr. *Edge*, the Town-Clerk, who gave the same Answer: After which some of the Company said, Let us go to the Poll; and Mr. *Edge* began to take the Poll; and some that were for the New Charter gave their Votes: That he saw nothing but civil Behaviour from Mr. *Sacheverell*, and the Gentlemen there; but he might hear some Noise without

Pole's *Evidence.*

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in the Hall. It being demanded, If he ſaw any thing of the detaining *Malin*'s Mace? he anſwered, Mr. *Malin*, or ſomebody, left a Mace behind him; and when one came for it, a Gentleman of the Council puſhed it from him, and would not let him have it; but he could not be poſitive who it was.

The Court demanding, If he heard any Body ſay, Stop the Books? he anſwered, He thought there was a Diſpute about the Books among the Gownſmen of the Council; but he could not name any particular Perſon.

The Court demanding, If Mr. *Sacheverell* concerned himſelf in the Election? *Pole* anſwered, That the Old-Charter-Men took it, that the Surrender had been ſurreptitiouſly obtained; and he thought Mr. *Sacheverell* might ſay, They had a good Right to inſiſt upon the old Charter: He added, that he did not hear the Proclamation made, for all People to depart that had no Buſineſs there: Whereupon *Reynolds* was called again, and depoſed a ſecond Time, that he made ſuch a Proclamation in the Council-Chamber, by *Wild* the Mayor's Order.

Mr. *Pole* depoſed further, That the great Shout in the Hall was occaſioned by ſending Mr. *Hutchinſon* (mentioned in the Information) to the old Mayor, to acquaint him, Mr. *Greaves* had a Majority, and to deſire him to come and ſwear Mr. *Greaves*.

Ryley's Evidence.

Mr. *Ryley*, being called as a Witneſs, depoſed, That he was at the Nomination of *Greaves* for Mayor, the 14th of *Auguſt*, according to the Cuſtom; and being ſummoned upon the Clothing on *Michaelmas*-Day, he went to the old Mayor's, then to Church, and from thence to the Council-Chamber, with the Old-Charter Men, where he ſaw *Greaves* ſworn in Mayor: And being asked, If he ever knew the new Mayor ſworn in the Abſence of the old one? He anſwered, No: Nor did he hear any Diſturbance in the Council-Room, or any Proclamation made.

Muxlow, another of the Clothing, depoſed to the ſame Effect as the laſt Witneſs had done.

The Defendants' called two Witneſſes, who ſaid, They were in the Hall, and heard the Shouting, and confirmed part of the Evidence of the Witneſſes on the other Side; and one of them acknowledged, he ſhouted himſelf, and flouriſhed his Hat in the Hall.

Objections of the Defendants' Counſel on their own Evidense.

Upon this Evidence Mr. *Pollexfen* obſerved, That *Wild* was not ſworn till moſt of the Buſineſs was over; and that, as he could not act till he was ſworn, this could not be ſuch an unlawful Aſſembly as was laid in the Information: He had no Authority to make Proclamation for the People to depart, or do any Thing elſe, till then.

Then *Wild* being called again, and aſked, Whether he was ſworn before the Proclamation? anſwered, The firſt Proclamation was made in the Council-Room, before he was ſworn, and the other in the Hall, after he was ſworn.

Whereupon the Defendants' Council obſerved, That the Proclamation made in the Hall could not affect the Gentlemen in the Council-Chamber, that did not hear it; and the other was made before *Wild* was ſworn Mayor; and the Information ſuppoſed they continued together, and that all the Facts were done after he was ſworn Mayor by the new Charter; which, upon the Evidence, appeared not to be ſo. 1684. 36Car II.

Further Evidence.

After this the Defendants called Serjeant *Bigland* as a Witneſs; who depoſed, that he was in the Council-Room on the Day of the Election, but heard no Noiſe or Diſturbance, or any Proclamation made there: Neither did he hear Mr. *Sacheverell* ſpeak to the Mayor.

Mr. *Edge* being called, depoſed, That he took the Poll; but did not ſwear *Greaves*: That the Gentlemen would have had him to have ſworn him in the Abſence of the Mayor; but he refuſed. And being aſked, If Mr. *Sacheverell* was among them all Day? He ſaid, He was.

The Chief Juſtice's Directions to the Jury.

The Lord Chief Juſtice, in his Directions to the Jury, obſerved, That the Defendants inſiſted they could not be guilty of the Riot laid in the Information, becauſe the Mayor was not ſworn, as the Information charged; but it was evident they were guilty of a great Crime; becauſe, till another Mayor was choſen, *Wild* was Mayor. And as to what was ſaid, that *Greaves*, whom they choſe Mayor, was regularly ſworn into that Office, according to the old Charter, they could not ſwear him in the Abſence of the old Mayor; and whoever adminiſtered the Oath to him was guilty of a Crime, as well as he that took it: Nor was there any Occaſion for this Riotous Aſſembly to have inveſted him in this Office, if he was legally choſen: They might have had a *Mandamus*, to admit and ſwear him into his Office. Every Right had a Remedy; and they ought to have taken a lawful Courſe to obtain this Right they pretended to; and he underſtood, there was a *Scire Facias*, and a *Quo Warranto*, depending, in order to determine it: But for Country Gentlemen to buſy themſelves, and come and head the People at thoſe Elections they had nothing to do with, was never practiſed before. Had they been only Spectators, and behaved themſelves quietly, there had, indeed, been no great Matter in it: But the demanding People to be ſworn, calling out to ſtop the Books, and heading the Mob, did not become any Man: The greater the Man, the greater his Influence; and the greater ought to be his Puniſhment. He obſerved, the Tumult was ſo great in the Hall, that the King's Charter was like to have been torn in Pieces; and in the Council-Chamber, they ſeized the Sheriff's Mace, and forced it from him: The People, without any Authority, had choſen a Mayor; that Mayor had aſſembled a Body of all Sorts of People, that committed all Manner of Diſorders, under Pretence of acting by his Authority; which was, in Effect to ſet up a Commonwealth: And had it been on a general Deſign, and not with an Intent to do ſome particular Thing, it had been High-Treaſon.

If People pretended to obtain their Rights in a mutinous Manner in general, that was High-Treaſon; or at leaſt ſo near it, that it would be difficult to diſtinguiſh them: That if ever there was a Riot, this was plainly proved; and though they objected, *Malin* was not Sheriff, he muſt have been Sheriff till another was ſworn; and if he was Sheriff, they could have no Authority to take his Mace from him: Nay,

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Nay, though he was but *de facto* Sheriff, and poſſeſſed of the Enſign of his Office, that was enough; for the Right was not to be determined in ſuch a Way as this.

As to *Wild*, he was Mayor by the Old Charter before he was ſworn on the New one: He had made Proclamation for them to depart, in the Council-Chamber, and then again in the Hall, after he was ſworn; but no Obedience was given either to the old Authority or the new: They grew the more violent, and Mr. *Sacheverell*, and the reſt of the Gentlemen, continued with them to the laſt, requiring the new Mayor might be ſworn, which could not be done in the Abſence of the old Mayor.

Sir *Thomas Parker*, one of the Witneſſes for the Defendants, indeed pretended there was no Noiſe, and ſcarce a Word ſpoken; though their other Witneſſes heard a Noiſe, he heard none: All was a wonderful regular Thing; ſo that the Witneſſes they themſelves called, contradicted each other; and ſuch was the Happineſs of ſome People, that they could not hear if they had no Mind to it: Mr. *Thynn*, another of their Witneſſes, ſaid, he came as a Stranger, and could give no particular Account of the Matter. Others of their Witneſſes did hear a Noiſe, but nothing of the Out-cry, *No new Charter, a* Greaves *Mayor*: But then all the King's Witneſſes had poſitively ſworn theſe Things; and if the Jury did not look upon them all to be perjured, they muſt believe there was a Riot: They did hear, and they did ſee, the Things they teſtified; though the Defendant's Witneſſes pretended, they neither heard or ſaw any Thing of a riotous Nature: And upon the whole concluded, that every one of the Defendants were guilty of the Riot, having been proved every Man to be there, except *Humphry Barker*, whom he directed them to acquit.

The Defendants convicted. The Trial having continued long, the Court broke up, and the Jury afterwards gave in a private Verdict, which they confirmed next Morning in Court, *viz.* That One and Twenty of the Defendants were GUILTY, and the other Defendant, *Humphry Barker*, was not Guilty.

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The following *Trinity*-Term the Defendants were ſentenced to pay each of them a Fine, *viz. Sacheverell* 500 Marks, *Gregory* 300, *Hutchinſon* 200, *Sherwin*, and three more, 100 Marks each, and none of the reſt more than 20 Marks; and the ſeveral Defendants were ordered to give Security for their good Behaviour for a Year. *Fined.*

Remarks on the Trial for this Riot. The Practices of the Miniſtry in theſe Times, to induce Corporations to ſurrender their Charters by Threats, Bribes, or other corrupt and indirect Means, were certainly very odious, and of dangerous Tendency to the Conſtitution: But then the way of ſupporting their Privileges and Franchiſes, by Riots and Tumults, was not to be ſuffered; at leaſt till they had tryed all Legal Ways, and found that Juſtice was denied them in the Courts of Law.

As this was a Party Cauſe, we ſee the Witneſſes on both Sides ſwore very home to carry their Point, and even in direct Contradiction to each other: But upon the whole, it ſeems pretty evident, that there was a great Tumult, and that the neighbouring Gentlemen encouraged the Burgeſſes of *Nottingham* to inſiſt on their old Charter, and reject the new one; and as far as they endeavoured this in a legal Way, perhaps they may deſerve Applauſe. But, as the Chief Juſtice obſerved, it would have been of very ill Conſequence to try theſe, or any other Controverſies by Club Law. The Remedy would probably have been worſe than the Diſeaſe. As to Mr. *Sacheverell's* Obſervation in ſtating his Caſe, *viz.* That the Election ought to be by the whole Body of Burgeſſes. This ſeems to have been given up by both Sides; for in the Election of *Greaves* by the old Charter-men I don't find that any Body was ſuffered to vote but the Aldermen, Sheriffs, Coroners, and 24 Livery-men of the Common-Council. This had been the Cuſtom for many Years paſſed; the Burgeſſes at large had now loſt the Privilege of electing their Mayor, if they had it anciently.

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The Trial of JOSEPH HAYES, Citizen of *London*, for *High-Treaſon*, at the *King*'s-*Bench Bar*, 21ſt *November*, in *Michaelmas*-Term. 1684. 36 *Car.* II.

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The Indictment. THE Indictment charges the ſaid *Joſeph Hayes* with High-Treaſon; for that he, well knowing Sir *Thomas Armſtrong* to be a Traitor, and to have been Out-lawed, and proclaimed guilty of High-Treaſon, in Conſpiring the Death of the King, did on the 31ſt of *Auguſt*, in the 35th Year of his Majeſty's Reign, traiterouſly relieve, comfort, and maintain the ſaid Sir *Thomas Armſtrong*, and particularly did aſſign, or pay to him, or for his Uſe, the Sum of 150 *l.* contrary to the Duty of his Allegiance, &c.

Peremptory Challenges. The Priſoner being brought to his Trial the 21ſt of *November*, 1684. Challenged 35 of the Gentlemen returned to try him peremptorily, which was as many as he could challenge by Law; and was ſo fortunate as to have ſeveral of his Party and particular Friends among the Twelve that were ſworn of his Jury, particularly *Sheppard* the Foreman, and *Bellamy*; and there might be more, but I am not acquainted with the Characters of the reſt. The Names of the Twelve that tried him were theſe, *viz. Samuel Sheppard*, *The Jury ſworn.*

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Daniel Allen, *Rowland Platt*, *Adam Bellamy*, *Daniel Templeman*, *William Dewart*, *Edward Piggott*, *Thomas Brailesford*, *Edward Cheek*, *Edward Underwood*, *Robert Maſters*, and *William Warren*.

The Evidence

The Indictment againſt Sir *Thomas Armſtrong*, found the 12th of *July* 1683. was then read, with the Proclamation for apprehending him, and declaring him to be a Traitor. After which the Witneſſes were called; and

of Everis.

firſt, *Ezekiel Everis* was ſworn, and teſtified, That in the Month of *Auguſt* 1683, he was at *Cleve* in *Germany* with the Lord *Grey*, who went by the Name of *Thomas Holt*; and that Sir *Thomas Armſtrong* who went by the Name of *Henry Lawrence* came thither, and ſhewed him a Bill of Exchange from *England*, drawn upon Mr. *Iſrael Hayes* in *Amſterdam*, for 160 *l.* odd Money, it being for an 150 Guineas paid in *England*; that the Bill was ſigned *Joſeph Hayes*, and accepted; and the Deponent ſaw a Letter from *Iſrael Hayes* to Sir *Thomas Armſtrong* by the Name of *Lawrence*, which mentioned the ſending the ſaid Sum to *Cleve*.

Conſtable's *Evidence.*

Conſtable, Mr. *Chudleys* Secretary, being ſworn depoſed, That he was preſent when the Scout of *Leyden* apprehended Sir *Thomas Armſtrong*, and took three Letters out of his Pockets, which the Deponent brought over and delivered to the *Lord Godolphin*: And his Lordſhip being ſworn depoſed, That the three Letters now produced in Court were the ſame Letters he received from Mr. *Conſtable*.

Davis's *Evidence.*

Charles Davis depoſed, That taking Boat from *Amſterdam* to *Rotterdam*, he met *Iſrael Hayes* and Sir *Thomas Armſtrong* coming to take Boat, and that Sir *Thomas* accompanied him in the Boat, and went by the Name of *Henry Lawrence*: He depoſed further, that he lodged a Month in the Houſe of one Mr. *Briſcoe* in *Amſterdam*, where there was a Club every *Thurſday*, of which Mr. *Iſrael Hayes*, Mr. *Henry Ireton*, Mr. *Wilmore*, Mr. *Dare*, Mr. *Emerton*, and ſome other *Engliſh* Merchants were Members, and he heard them ſeveral Times abuſe the King at Table.

A Letter proved

Then a Letter was produced in Court, ſubſcribed by *Joſeph Hayes*, and dated the 31ſt of *Auguſt* 1683. being directed to Mr. *Lawrence* Senior, at *Amſterdam*; wherein *Hayes* tells Sir *Thomas*, *At your Deſire I have ſent you a Bill*, &c. And Mr. *Walpole* being ſworn depoſed, that he was Servant to Mr. *Joſeph Hayes* four Years and three Quarters; and upon peruſing the Letter, ſaid, he believed it to be his Maſter's Hand.

by Walpole.

The Priſoners Hand proved by others.

Harman, a Servant to the *Eaſt-India* Company being ſworn teſtified, That he knew Mr. *Hayes* the Priſoner, and that he had made ſeveral Contracts with that Company, which were entered in their Books; and that he ſaw him ſubſcribe his Name to one of them in *September*, 1683. *Brittle*, another of the Company's Servants alſo depoſed, he ſaw the Priſoner ſet his Hand to the Book; and this, being compared in Court with the Hand in the ſaid Letter, appeared to be the ſame.

Captain *Piercehouſe* alſo produced a Note, which he ſaid was the Priſoner's, and that he paid the Money upon it; and *Walpole* depoſed, that he believed the Note to be his Maſter's the Priſoner's Hand, whereupon this alſo was compared with the Hand in the aboveſaid Letter. 1684. 36 Car. II.

Then another of the Papers taken out of Sir *Thomas Armſtrong*'s Pockets was produced, and Mr. *Conſtable* atteſted it to be the ſame that was taken from Sir *Thomas* by the Scout of *Leyden*.

This was another Letter, ſigned *Joſeph Hayes*, and directed to Sir *Thomas Armſtrong*; but the Contents are not given us.

Atterbury *the Meſſenger's Evidence.*

Atterbury, the Meſſenger who apprehended the Priſoner, depoſed, That he brought him before his Majeſty, and was preſent when he was examined; and the Letter being ſhewn the Priſoner, the King and the Lord Keeper *North*, preſſed him to ſay whether it was his Hand or not: To which he anſwered, he ſhould ſay nothing to it, if they could prove it upon him well and good. The Chief Juſtice ſaid, that this was true, the Priſoner did not abſolutely deny the Letter; but ſaid he was not bound to accuſe himſelf: He did deny, indeed, that he knew either *Lawrence* or *Armſtrong*.

The Priſoner's Defence.

The Priſoner in his Defence ſaid, That *Walpole* his Servant, who was the principal Witneſs againſt him, went away from him in a very odd manner, ſuggeſting that he was governed by Malice or ſome corrupt Motive to appear againſt him; and objected that a Compariſon of Hands, or a Belief that it was his Hand, was no Evidence in a Charge of Treaſon; and held to be no Evidence in ſome Caſes that were not Capital, particularly in the Lady *Carr*'s Caſe.

The Court anſwered, That was a Miſtake, he had it from Colonel *Sidney*; but Compariſon of Hands was always allowed to be Evidence, particularly in *Coleman*'s Caſe.

The Priſoner replied, That was a different Caſe; for thoſe Letters were found in *Coleman*'s Cuſtody; but theſe were in the Hands of another Man, and in another Nation. Beſides, here was no other Evidence produced againſt him but the Letter, and that was not two Witneſſes as the Law required: Nor was there any Proof that *he knew* Sir *Thomas Armſtrong* to be guilty of Treaſon, as the Indictment charged, and which only could make his relieving or correſponding with him Criminal: And whether the Outlawry and Proclamation were ſufficient Notice, as was urged, was a Point of Law: To that he deſired Counſel, as well as to that other Point, whether a Similitude of Hands was Evidence in a Charge of High-Treaſon? Nor was there any Evidence but hear-ſay, he obſerved, of any Money paid to Sir *Thomas*. He objected further, that the Indictment was laid for Money paid in *London*, and they would prove the Money paid beyond Sea, which could not maintain the Indictment: That for a Fact done beyond Sea, he could not be tried but according to the 35 *H.* 8. *c.* 2. by ſpecial Commiſſion from the King, and by a Jury of

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The Evidence for the Priſoner.

of ſuch a County as the King ſhould appoint: To which Point he alſo deſired Counſel.

The Chief Juſtice anſwered, This was a fooliſh Crochet. The Priſoner then called Mr. *Sturdivant* as a Witneſs for him; who depoſed, That he had dealt with the Priſoner for ſeveral thouſand Pounds; and being ſhewn the aboveſaid Letter, ſaid, he did not believe it to be the Priſoner's Hand.

The Chief Juſtice ſaid, Every Body knew a Hand might be counterfeited very like.

The Priſoner urged further, That he was not a Man of that Quality to give Sir *Thomas* 150 Guineas.

The Chief Juſtice anſwered, They all knew he had been a very active buſy Fellow about the City; as forward a Spark as any he knew: He did not know his Quality, indeed, but he knew his Qualifications; that he had always been factious and turbulent againſt the King and Government.

The Priſoner proceeded in his Defence, and ſaid, That Mr. *Common Serjeant* had his Books ſeveral Days in his Hands; in which there was an Account of 20,000 *l.* between him and his Brother; but not any thing of the Name of *Lawrence* to be found; or of any ſuch Sum paid: He acknowledged, indeed, there was an Account of divers Parcels of Money diſburſed in little Sums, amounting to the Sum in the Bill; but he appealed to any Merchant, Whether any ſuch Bill of Exchange was ever paid in ſuch ſmall Parcels as 20 *l.*— 3 *l.*— 10 *s.* *&c.* and the like.

Then the Priſoner called Alderman *Jefferies*, Mr. *Withers*, Mr. *Lloyd*, Mr. *Pellet*, *&c.* to his Character, who all ſaid he was a fair Dealer.

Whereupon the Chief Juſtice demanded, If they had ſeen how active he was, when *Corniſh* and *Bethel*, and ſuch Men, were choſen Sheriffs? And Alderman *Jefferies* anſwered, He could ſay nothing to his Behaviour on thoſe Occaſions.

The Priſoner then applied himſelf to the Jury, and ſaid, He knew nothing of any Conſpiracy; nor had any one of the Conſpirators accuſed him; and begged they would conſider what the Witneſſes had teſtified: That they were not poſitive, but ſwore according to their Belief; neither were there two to any one Point; only *Conſtable* had ſworn the Letter was found amongſt Sir *Thomas*'s Papers: And *Everis* only ſaid, he ſaw ſuch a Bill; but did not know the Hand.

Then he uſed the moſt ſolemn Proteſtations, ſaying, I call God, Angels and Men, to witneſs the Truth, as I ſhall anſwer it to him; before whom, for ought I know, I am quickly to appear; I never ſpoke with Sir *Thomas Armſtrong*; or ever was in his Company; or ever wrote to him by the Name of *Lawrence*, or any other Name: And I do ſolemnly ſay, in the Preſence of God, that I never gave, ſent lent, paid, or ordered to be paid, any Money, directly or indirectly, to Sir *Thomas Armſtrong*, or *Henry Lawrence*, or to him by any other Name, or for his Uſe: I ſpeak it without Counterfeiting or Equivocation.

He added, That Overtures of Life had been made him on certain Terms; and did they think he would riſque his Life, if he could ſave it by ſpeaking the Truth?

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Here the Chief Juſtice reprehended him, as endeavouring to caſt a Reflection on the Government; telling him, he muſt not inſinuate that the Government would make Bargains with him.

The Priſoner anſwered, He ſaid no more than that it had been told him, the Way to ſave his Life was to confeſs, and Mr. *Foſter* told him ſo.

The Chief Juſtice replied, He could tell him too of 4 or 5000 *l.* that was offered to let him eſcape.

Then the Priſoner applied himſelf to the Jury again, and ſaid, Gentlemen, I have declared to you the whole Truth, with all the Solemnity that becomes an innocent Man: And you have heard the Evidence; it is nothing but Circumſtance and Hear-ſay: And ſhall a Man's Life be taken away for *I believe*, *I think*, or, *I have heard?* Gentlemen, you are my fellow-Citizens, and fellow-Chriſtians; of the ſame Reformed Religion that I am: And I hope you are ſworn into this Service without any Prejudice againſt me, but with an impartial Reſolution to do Juſtice; and therefore I chearfully leave the Matter to you. I am ſure that, if God help me, and deliver me in this Exigency, it is you that under him muſt preſerve my Life. Gentlemen, the great Incertainties, Improbabilities and Conſequences in this Caſe, I hope will be weighed by you. We muſt all die; and I am ſure it will be no Grief to you, when you come to die, that you have acquitted an innocent Man. I leave it with you: The Lord direct you.

The Obſervations the King's Counſel made on the Evidence, and their Reply to the Priſoner's Defence, are wanting in this Trial: And great Part of the Chief Juſtice's Obſervations in his Directions to the Jury are likewiſe wanting; from whence we may conclude, this Trial was taken by ſome of the Priſoner's Friends.

The Chief Juſtice's Directions to the Jury.

If what they have given us be genuine, they make the Chief Juſtice, in his Directions to the Jury, ſay, That they were to go according to their Evidence: That the Priſoner's Proteſtations of his Innocence was not to weigh with them: That ſeveral of the Conſpirators had, with as much Solemnity, imprecated the Vengeance of Heaven if they were guilty of any Treaſon: They thought they did God Almighty good Service in that helliſh Conſpiracy. One of the proſcribed Traytors had declared, That they ſhould be ſo far from being eſteemed Traitors, that they ſhould have Trophies ſet up for them; and all this under Pretence of Religion. They were wound up to that Height, as to diſturb the Government, and deſtroy the Foundations of it; to murder his Majeſty, and his Royal Brother; and ſubvert Religion, Liberty and Property, under Pretence of ſerving God. As the Life of this Man was precious, the Life of the King alſo was precious, and the Preſervation of our Religion and Government precious Things; and a due Regard ought to be had for them.

The Jury withdrawing, returned into Court about two Hours afterwards, and gave in their Verdict,

1684. 36 Car. II. Verdict, That the Priſoner was NOT GUILTY. Whereupon he was diſcharged: Though Mr. Attorney moved, that the Evidence being ſo ſtrong againſt him, he might be obliged to give Security for his good Behaviour, during Life.

He is acquitted.

Remarks. The Priſoner made as good a Defence as could have been expected, from a Man of his Education. No doubt, he found his Account in his ſolemn Proteſtations, and his Application to the Jury. He knew there were ſome amongſt them enclined to favour him; and as there was nothing but a Similitude of Hands to convict him, they had ſome Pretence for acquitting him. In every other Caſe, where a Man's Hand-writing had been urged as an Evidence againſt him in former Trials, there were other Overt-Acts proved againſt the Priſoner; and therefore I do not think the Jury did amiſs in acquitting Mr. *Hayes*; though I verily believe he ſent over the Money to Sir *Thomas Armſtrong*, as the Indictment charged.

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Proceedings on the Outlawry againſt JAMES HOLLOWAY, for *High-Treaſon*, in the Court of *King*'s-*Bench*, on *Monday* the 21ſt of *April*, 1684. *Paſch.* 36 *Car.* II.

1684. 36 Car. II. Holloway's *Outlawry.*

The Indictment. THE Priſoner, *James Holloway* of *London* Merchant, was indicted of High-Treaſon, in compaſſing and imagining the Death of the King; and meeting and conſulting for that End, with *Hone*, *Rumbold*, *Goodenough*, and other falſe Traitors, how to depoſe and murder his Majeſty, and ſubvert the Eſtabliſhed Religion and Government, *&c.*

Outlawry. For not appearing, and anſwering to which Indictment, the Priſoner was outlawed, and attainted of the ſaid High-Treaſon; but being apprehended, and committed to *Newgate*, he was brought from thence by *Habeas Corpus*, to the Court of *King*'s-*Bench*, to ſhew Cauſe why a Rule ſhould not be made for his Execution: When the Court offered to waive the Outlawry, and admit him to a Trial, if he had any thing to ſay in his Defence.

He confeſſes his Guilt. The Priſoner anſwered, He could not undertake to defend himſelf; for he had confeſſed before his Majeſty, that he was guilty of many Things in the Indictment; and he threw himſelf upon the King's Mercy.

The Court replied, That muſt be left to his Majeſty, who was the Diſpenſer of his own Grace; they muſt execute his Juſtice, and give a Rule for the Priſoner's Execution:

A Rule made for his Execution. And a Rule was made accordingly for his Execution on the *Wedneſday* ſev'night following.

The Priſoner's Petition. After Execution was awarded, *Holloway* preferred a Petition to his Majeſty, wherein he acknowledged himſelf guilty of the Crimes he was charged with, and declares himſelf ſorry for them; imploring, that his Majeſty, who was ſo eminent for his merciful Diſpoſition, would grant him his Pardon. However, as he made no Scruple ſtill to cenſure his Majeſty's Adminiſtration pretty freely, he was not deemed a proper Object of the King's Mercy, and therefore was drawn to the Place of Execution at *Tyburn*, on the 26th of *April*, 1684, when he left a Paper with the Sheriffs, *Daniel* and *Daſhwood*: Who demanding of him at the Place of Execution, if it was his own Hand-writing? He anſwered, It is my own Hand-writing. — A Diſcovery of what I knew, I made to his Majeſty; but a great many People think that I have not diſcovered what I knew: But I have diſcovered what I knew of the Plot, and I am heartily ſorry I was concerned in that Way, as to the endeavouring any thing by Arms. I do think ſeveral things have been ill managed in *England*; there have been many Things done againſt the King and the Kingdom's Intereſt; and I wiſh the King was well ſatisfied of it, and that a Courſe might be taken to prevent it. And I think one Way to prevent Plotting (according to my weak Capacity) is, That his Majeſty would be pleaſed to call a Parliament, and paſs an Act of Oblivion for all Plotters whatſoever. There was a damnable Popiſh Plot; and I look upon the ſtifling of that to be the only Cauſe that any Man did any thing in this. Had all the Popiſh Plotters been——

His Diſcourſe with the Sheriffs at Tyburn.

Sheriff *Daniel.* By the Way, Sir, how do you know it was ſtifled?

Holloway. Sir, we have known that the Laws could not be ſuffered againſt them; and the Parliament could not be ſuffered in the Proſecution of them. I wiſh the King would conſult his own Safety, and the Safety of the Nation; and that an Act of Oblivion might paſs, for I believe there are many concerned.

Being asked what he knew of the Buſineſs of the *Rye*, for Lopping, or taking off the King and Duke? He ſaid, he look'd upon it as a Buſineſs not likely to take Effect; for he could never find above five were concerned in it: That it was carried on by *Rumſey* and *Weſt*; he was not concerned in the Plot till a good while after that was intended to have been done. This Dialogue being ended, and the Priſoner having prayed ſome time, the Executioner did his Office.

He is executed.

The

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His Paper left with the Sheriffs.

The Paper delivered to the Sheriffs was dated April 26, 1684.

Wherein he ſays,

" To ſtop the Mouths of all Pamphleteers " and News-Scribblers, who have done more " Prejudice to his Majeſty and his Kingdoms, " by their impudent Endeavours to ſham all " Plots, and to fill the Country with falſe " News, than they will ever be able to re- " trieve; and to ſatisfy all I leave behind " me, I thought good to draw up a ſhort " Account of what I knew of the late *Pro-* " *teſtant Plot*, how I came to be concerned, " what induced me to it, and how far I was " concerned; alſo my now Opinion of it, *&c.*

" About *July*, 1682, I met with a Per- " ſon who then being come from *London*, " gave me a Relation at large, concerning " the Election of Sheriffs that had been in " *June*, the Manner of which is well known " to all; he repreſented it to me as a very " illegal Act; and that there was a deviliſh " Deſign of the Papiſts in it, to cut off the " King's Friends, the ſtirring Men in both " the laſt Parliaments, and the Proſecutors " of the Popiſh Plot, who I always took to " be both the King's and the Nation's Friends. " That there were Witneſſes ready a long " time, to ſwear againſt them, but they could " not get Jurors to believe them; but now " they had, by Force of Arms, *&c.* got " Sheriffs who would find Juries to believe " them, and ſo hang them up at their Plea- " ſure. That there was none but bad Coun- " ſel about the King, who kept all ill Actions " from his Knowledge; and if they proceed- " ed to ſwear *North* and *Rich* at *Michaelmas*, " and to chuſe Lord-Mayor as they had " done Sheriffs, the Proteſtant Gentry were " reſolved (naming ſome) to remedy what " was deſigned, by an Inſurrection in ſeveral " Parts of *England*; and if poſſible, to get " the King off from his evil Council, and " bring all Popiſh Offenders to Juſtice, ſay- " ing, That they were ſure that, when the " King knew the Occaſion of the Riſing, he " preſently give up all Offenders, and come " in to them: That it ſhould begin in *No-* " *vember* in *London*, *Briſtol*, *Exeter*, *Taunton*, " *Cheſter*, *York* and *Newcaſtle*; and that we " ſhould hear more of it in a Month's Time; " therefore deſired we might conſider how " it might be managed in *Briſtol*, which we " did; and concluded that *Briſtol*, with " about 350 Men, might be eaſily ſecured " by a Surprize, without the Bloodſhed of " one Man. About a Month after that, came " the Perſon he mentioned we ſhould hear " more by; but he could declare no more " than the former did, only that the Deſign " went on, and there would be timely No- " tice given to all Parts; but we heard of " nothing but Diſappointments and Delays, " putting it off from time to time. In *April* " I heard of another Deſign againſt the King " and Duke of *York*, as they were to come " from *Newmarket* ſome time in *March*; but " when I enquired into that, found it was " carried on by three or four; and never " could hear the Names of above five that " were for it. When I heard it, I declared " my Abhorrence of any ſuch Thing, and " that I was confident none in our Parts would " be for ſuch a baſe Action. After that, I " enquired farther into it, and could find, " that although it was intended to be done " ſix Weeks before, that they had only a " Parcel of Arms ready, and that they had " neither Men nor Horſes; but one ſaid, if " they could have raiſed 6 or 800 *l.* to have " bought Horſes, and alſo ſomething to en- " courage Men, they ſhould have found Men " enough; ſo that I looked upon that only " to be the Deſign of five or ſix Perſons, and " no way likely to be acted; but the general " Deſign for the Inſurrection was carried on " by others, who, though they had made a " great Stir in the Nation, trying the Incli- " nations of People, and had treated with " the *Scots* and *Iriſh* (as I heard), who were " to be ready at the ſame Time, yet were " never come to any Reſolution as to any " Time, or Method, before all was diſ- " covered; though they had been eleven " Months contriving it, from the Time I firſt " heard of it. This, I hope, will be enough " to ſatisfy all People that there was a Plot; " I mention no Names here, having given his " Majeſty a more large Account of what I " knew of it, mentioning the Names of all " I knew concerned. The Arguments before- " mentioned, with many others to the ſame " Effect, not only ſoon prevailed with me, " but made me indeed think it my Duty to " do what I could for my King and Country's " Safety; being then fully perſuaded, that " not only Popery, but Arbitrary Govern- " ment was intended; not then conſidering, " as I have ſince conſidered, how much Blood- " ſhed it might have cauſed in the Nation; " for then I thought all would have ended in " little time, ſuppoſing Things to be as to " me was reported. But I do now declare my " hearty Sorrow for my yielding thereto, and " acting therein; though I can ſafely ſay, I " was not for taking the King's Life, but " wholly for his Preſervation; yet am ſatiſ- " fied that it might have cauſed very much " Bloodſhed in the Nation, and I am glad it " did not take Effect. Alſo I declare, that " I am ſatisfied it was a very great Sin againſt " God, not only in diſtruſting his Providence, " but in offering to take the Work out of " his Hand, who knows the Hearts, Thoughts, " and Actions of all, though never ſo ſecret; " whoſe Mercy and Pardon I moſt humbly " beg, and truſt ſhall have; and in Confi- " dence thereof, through the Merits of the " Blood of our Lord and Saviour Chriſt Jeſus, " can willingly die.

" I have heard that ſome ſhould ſay, I " took up Money at Intereſt to carry on the " Plot, which I diſown; for I never was at " any Charge therein, more than common " Expences; nor never heard of any Money " raiſed upon that Account; though I heard " of ten thouſand Pounds that were to be " raiſed for the *Scots*; but ſuppoſe it was " not done.

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" When I gave in my Confeſſion, *I ſtood not upon Terms of a Pardon*, being confident, if Truth would merit Mercy from the King, I ſhould have his Pardon, and that it was the only way to gain Mercy with God. I find already, that People are paſſing their Cenſures upon me, ſome one way, and ſome another, for my not pleading and accepting of another Trial, when it was offered; ſaying, that I confeſſed the whole Indictment, which I diſown: For I ſaid thus; What I was guilty of I had confeſſed to his Majeſty, and wholly depended upon his Mercy: Beſides, I had ſome other Reaſons why I did not plead, which at preſent I conceal; and alſo why I did not ſpeak what I intended. More I may ſay at the Place of Execution, before I leave the World, which will be according as I find Things: But as to a Diſcovery of any more Perſons, I cannot, than has been already mentioned. Should I mention any whom I thought would have been concerned, I may much abuſe them, though I believe many thouſands in the Nation would have appeared, for the Reaſons afore-mentioned, which cauſed me to be concerned. I doubt not, but ſeveral that were concerned, who are, or may be cleared for want of ſufficient Proof againſt them, or by his Majeſty's Mercy, will blame me for confeſſing what I knew, and not much grieve that I failed of a Pardon, or at my Death. But I repent not my Confeſſion; and could I diſcover more, would do it willingly, though I find no Mercy with Man.

Remaks on Holloway's Outlawry.

James Holloway was a Merchant of *Briſtol*, a bold enterpriſing Man, and a great Projector: He had engaged in a Deſign of betraying the City of *Briſtol* into the Hands of the Malcontents; and was acquainted alſo with the intended Aſſaſſination at the *Rye*; but ſays, he did not know above five or ſix of the Aſſaſſins; among whom were the two *Rumbolds* (one of them the Owner of the *Rye*, where the Murders were to have been committed.) Some would infer, that this Aſſaſſination was only the Project of four or five daring Villains, becauſe *Holloway* ſays *he knew* but five or ſix of the Aſſaſſins; but from the Trials of the Conſpirators themſelves, there appears to have been a great many more than five concerned in that intended Regicide, and even thoſe of the beſt Quality among the Malcontents. Nor is it any Wonder that *Holloway* ſhould not be acquainted with every one of the Aſſaſſins; Conſpirators do not uſe to communicate ſuch Secrets to many: Beſides, he did not come into the Conſpiracy till that Part of it was dropped, if we may believe him. It is evident from the Trials, that there were ſeveral deſperate Men prepared to execute any Villany their Leaders ſhould put them upon, without asking Queſtions, or knowing when or where the Murders were to be perpetrated, which they were to be concerned in, till the very Time of Action. *See the Trial of* Hone, Vol. 3. p. 129.

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Holloway had made his Eſcape twice; and the laſt time got away as far as the *Weſt-Indies*, and yet was diſcovered there, brought back, and executed on the Outlawry that had been proſecuted againſt him in his Abſence. The Reaſon he refuſed to make his Defence when this Favour was offered him, was probably, as he himſelf ſays, becauſe he had before confeſſed enough to hang him, and he hoped, by a free Acknowledgment of his Guilt, to have obtained Mercy; but as he ſeemed to perſiſt in that Opinion, that it was lawful to reſiſt our Governors, and call them to an Account when their Adminiſtration was not acceptable to the People, he was deemed too dangerous a Man to live; as has been hinted already.

I ſhall only obſerve further, That Biſhop *Burnet* was egregiouſly miſtaken, when he ſays, *Holloway* was offered a Pardon; for he himſelf is ſo far from aſſerting any ſuch thing, that he ſays, *He did not inſiſt upon a Pardon; but made his Confeſſion voluntarily.*

Pro-

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Proceedings on the Outlawry againſt Sir THOMAS ARMSTRONG, for *High-Treaſon*, in the Court of *King's-Bench*, on *Saturday* the 14th of *June*, 1684. *Trin.* 36 *Car.* II.

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Arm-ſtrong

SIR *Thomas Armſtrong* was taken in *Holland*, and being brought before the Court of *King's-Bench*, by Virtue of a Writ of *Habeas Corpus*, directed to the Keeper of *Newgate*, it appeared he was in Cuſtody of the Keeper of *Newgate*, by a Warrant from the Honourable *Sidney Godolphin*, Eſq; one of his Majeſty's Principal Secretaries of State, and the Return being read and filed, Mr. Attorney Sir *Robert Sawyer*, prayed an Award of Execution upon the Outlawry. Whereupon the Chief Juſtice ordered the Priſoner to be arraigned on the Outlawry; whereby it appeared, that Sir *Thomas* had been indicted in *London* of High-Treaſon, in conſpiring the Death of the King, and the ſubverſion of the Government; and for not appearing and anſwering that Indictment he had been outlawed and attainted of the ſaid Treaſon: It was therefore demanded of him, What he could ſay why Execution ſhould not be awarded upon that Attainder?

Outlawed.

Sir *Thomas* anſwered, he was beyond Sea at the Time of the Outlawry, and deſired he might be admitted to a Trial, according to that Clauſe in the Statute of *Edw.* 6. whereby it is provided, That if the Party outlawed, ſhall, within one Year after the Outlawry pronounced, yield himſelf to the Chief Juſtice, and offer to Traverſe the Indictment, he ſhall be received to Traverſe it, and if he be found not Guilty, he ſhall be acquitted and diſcharged of the ſaid Outlawry, and of all Penalties, *&c.* as though no ſuch Outlawry had been.

Tho-mas offers a Trial.

Att. Gen. I ſuppoſe, Sir *Thomas* will now ſhew he yields himſelf to your Lordſhip.

Sir *Thomas Armſtrong*. The Year is not yet out, and therefore I come Time enough now. And here, I am, and deſire the Benefit of this Act.

Aſſerted he came time enough.

L. C. J. You did not render your ſelf according to that Act, but are brought a Priſoner before us now.

Sir *Thomas Armſtrong*. My Lord, I beg I may have Counſel to plead for me in this Caſe.

Denied, ſelf comitted.

L. C. J. For what Reaſon, we are of Opinion, it is not a Matter of any Doubt.

Sir *Thomas Armſtrong*. A little while ago, there was one in this Place had the Benefit of a Trial offered him, if he would accept it.

Denied, by reaſon of the Family.

L. C. J. That was the Grace and Mercy of the King, and he may, if he pleaſe, extend the ſame Grace and Favour to you; but that is not our Buſineſs: We are ſatisfied, that according to Law, we muſt award Execution upon this Outlawry.

Mrs. *Matthews*. My Lord, I hope you will not murder my Father, this is murdering a Man.

L. C. J. Who is this Woman? Marſhal, Take her into Cuſtody.

Mrs. *Matthews*. God Almighty's Judgments light upon you.

L. C. J. God Almighty's Judgments will light upon thoſe that are Guilty of High-Treaſon; but Clamours never prevail upon me: I am Clamour Proof, and will never fear to do my Duty.

Then Mr. *Attorney* ſhewed that Sir *Thomas* did not deſerve the ſame Favour that *Holloway* had; for that after the Diſappointment of the Conſpirators by the Fire at *Newmarket*, the Priſoner was one of the Perſons, who actually engaged to go and deſtroy the King upon his coming to Town, as appeared upon full and clear Evidence.

L. C. J. We are not to meddle at all with the Evidence, all we have to do, is to conſider of the Record before us; and what the Priſoner ſays againſt our awarding Execution. We have conſidered whether this be a yielding within the Statute; and we think it is not, nor can be, by any Means.

Sir *Thomas* complained, that when he was taken they robbed him, and took all his Money from him, ſo that he had no Money to Fee Counſel; and he knew Lawyers would not plead without Money.

The Chief Juſtice ſaid he knew nothing at all of that Matter, and ordered Execution to be done the *Friday* following.

And accordingly Sir *Thomas* was drawn on a Sledge to *Tyburn*, on *Friday* the 20th of *June*, 1684. of whoſe Behaviour at the Place of Execution we meet with the following Account.

His Behaviour at his Execution.

The Sheriffs of *London* and *Middleſex*, about Nine o'Clock in the Morning, coming to *Newgate* and demanding their Priſoner, he was delivered to them, and put into a Sledge, and drawn to the Place of Execution, attended by a numerous Guard, and as great a Number of Spectators, of all Degrees and Qualities, as have been ſeen on ſuch Occaſions. Though he affected an Air of Courage, yet ſomething of Sullenneſs and Reſerve appeared in his Countenance.

He employed the Time he was drawing to *Tyburn* in reading *The Whole Duty of Man*, till he came within Sight of the Gallows, and then he laid it by, and with lifted up Hands and Eyes addreſſed himſelf to Heaven, till he came beneath the Tree, where he remained about a Quarter of an Hour in the Sledge: Before he aſcended the Cart that ſtood ready for him, he deſired the Sheriff to admit Dr. *Tenniſon* to come to him; and having delivered a Paper to the Sheriff, the Doctor kneeled down

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down with the Priſoner, and prayed with him about a Quarter of an Hour, during all which Time the Priſoner preſerved a becoming and heroick Countenance, little daunted with the Terror of that Fate he was in view of; but riſing from his Devotions, he pulled off his Cravat and Hat, which he gave to his Servant who attended him, and had followed him by the Sledge-ſide; when kneeling down himſelf, he prayed for a ſhort Time with Fervency and Devotion, begging Pardon of God for thoſe manifold and crying Sins he had been too often guilty of, and concluded with a Reſignation of himſelf to the God of Heaven and Earth, before whoſe Judgment-Seat he was forthwith to appear, deſiring that the whole World would forgive him, with whom he hoped he died in Peace and Charity.

Remarks on Armſtrong's *Execution.*

In the firſt Volume of Biſhop *Burnet*'s Poſthumous Hiſtory, he informs us, that Sir *Thomas Armſtrong* had been intruſted in every Thing by the Duke of *Monmouth* (which I preſume is meant in relation to the Duke's Conſpiracy againſt the Government) and yet he has ſome Paſſages in that worthy Hiſtory that would encline a Man to believe both the Duke and Sir *Thomas* were perfectly innocent. The Biſhop adds, that Sir *Thomas* expreſſed ſuch a Dejection of Mind before he made his Eſcape out of *England*, that *Hampden* told him (the Biſhop) That he believed he would do any thing to ſave his life: However, in his Examination before the Council, he denied he knew of any Plot but the *Popiſh* Plot, and only deſired he might have a fair Trial. The Biſhop tells us alſo, that he was loaded with Irons, which was not uſual for a Perſon of his Quality, having been Lieutenant of the Guards, and Gentlemen of the Horſe to the King. But the Credit of the Witneſſes was ſo blaſted, that the Court was apprehenſive a Jury would not credit them; and therefore ordered *Armſtrong* to be executed on the Outlawry, and would not ſuffer him to have the Advantage of a Trial, though the Statute allowed it to any one that came in within the Year: (But the Biſhop is ſo good as to remember that the Court told him, *That he did not come in voluntarily, but was brought in by Force.*)

The Biſhop goes on, and ſays, In the Paper *Armſtrong* left behind him at his Execution, he denied he ever knew of a Deſign againſt the King's, or the Duke's Life; *or was in any Plot againſt the Government:* And the Court ordered no Reflections ſhould be made upon his Speech on Account of a Paſſage in it, wherein he denied his being ſent over by *Cromwell* to murder the King during his Exile, as the King had reported to the Foreign Miniſters and others. The Biſhop relates alſo, That he ſaw a Paper, wherein *Armſtrong* expreſſed his Reſentments in a ſharper Manner than he (the Biſhop) thought became a dying Penitent; which being repreſented to *Armſtrong*, he ſoftened it much: Though he ſhewed he never went but once beyond Sea, and then he carried a conſiderable Preſent of Money to the King, and brought back Letters of Thanks from his Majeſty; and for this, *Cromwell* impriſoned him almoſt a Year, upon the Merit of which, he was advanced to the Poſt of Captain of the Horſe at the Reſtoration.

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But as to the Reaſon the Biſhop gives for not admitting *Armſtrong* to a Trial, namely, becauſe a Jury would not Credit the Witneſſes againſt him; this agrees very ill with what the Biſhop aſſerted but juſt before, *viz.* That Juries would at this Time find any Thing they were directed to find, whether there was Evidence of the Facts or not: And as to that Clauſe he mentioned in *Armſtrong*'s Paper, *That he knew of no Deſign againſt the Government*; This may eaſily be accounted for, inaſmuch as the Conſpirators pretended all their Deſigns were for the Support and Eſtabliſhment of the Government, and to prevent the Subverſion of it. And, as the Biſhop confeſſes, he had the Peruſal and Alteration of the Speech, if he had not the entire modelling of it, we are not to wonder at the equivocal Expreſſions in it. The Fact ſeems now to be pretty well ſettled: All the Diſpute at preſent is, Whether Sir *Thomas*, and his Accomplices, ought to be looked upon as Traitors; or ought to have Statues erected to their Memories, as Patriots and Champions of their Countries Liberties, as the celebrated *Ferguſon* told them they ought?

Dr. *Sprat*, Biſhop of *Rocheſter*, who wrote the Hiſtory of the *Rye-houſe* Plot, ſays, That the King could not think himſelf in the leaſt bound to go out of the way of the Law, by ſhewing any diſtinguiſhing Act of Grace to *Armſtrong*; eſpecially ſince it was manifeſt there was ſcarce a Man living who had more Perſonal Obligations to his Majeſty than he had, and yet no Man had made more ungrateful Returns for them than he had done: Nor could his Majeſty forget how many other Perſons, and ſome very near his Majeſty, Sir *Thomas Armſtrong* had been the chief Inſtrument of perverting: Upon which Account his Majeſty had Reaſon to look on him as the Author of many more Treaſons beſides his own.

The

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The Execution of a Writ of Enquiry between his Royal Highneſs JAMES Duke of *York* and *Albany*, and TITUS OATES, Clerk, in the Court of *King's-Bench*, on *June* 18, 1684. *Trin.* 36 *Car.* II.

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The Duke of York againſt Titus Oates.

The Declaration.

THIS was an Action of Treſpaſs and Contempt grounded upon the Statute *de Scandalis Magnatum*, wherein his Royal Highneſs ſet forth, That whereas the ſaid Statute prohibited the ſlandering the great Men and Peers of the Realm, and that the Plaintiff being the King's only Brother, and a Peer, the Defendant, in Diſcourſe between him and ſome other Perſons about a Letter the Defendant then had in his Hands, ſaid, *This Letter coſt me nine Pence, and might have been brought for a Penny; I know no body the better for it, but that Traitor* James *Duke of* York. And at another Time ſaid, before a great deal of Company, *That the Duke of* York *was a Traitor:* Which Words were laid to be to the Plaintiff's Damage one hundred thouſand Pounds. The Defendant not pleading to the Declaration,

Judgment by Default.

the Plaintiff ſigned Judgment; and a Writ of Enquiry was taken out, directed to the Sheriffs of *Middleſex*, to enquire, by a Jury of that County, what Damages the Plaintiff had ſuſtained; and upon a Motion made in the Court of *King's-Bench*, a Day was given to the Defendant to ſhew Cauſe why the Writ of Enquiry ſhould not be executed at the Bar of that Court; and no Cauſe being ſhewn to the contrary, Sir *Peter Daniel*, Kt. and *Samuel Daſhwood*, Eſq; the then Sheriffs of *Middleſex*,

Writ of Enquiry executed.

came into Court at the Day appointed, and being placed at the Table at the Judges Feet, were covered during the Execution of the Writ.

The Jury.

Sir *Charles Lee*, three other Knights, ten Eſquires, and one Gentleman, in all fifteen, being ſworn of the Jury, Mr. *Thomas Rouſe*, the Under-Sheriff, read the Writ of Enquiry in *Engliſh* to them, and informed them, That they were to enquire what Damages his Royal Highneſs the Plaintiff had ſuſtained, by means of the aboveſaid Words; as alſo what Coſts he had been at in this Suit.

Then the King's Counſel opened the Declaration, and obſerved, That the Words were confeſſed by the Defendant's Default in not pleading, and that they were only to enquire of the Damages: However, they ſhould produce Witneſſes to prove the Words, and to ſhew that this was the conſtant Tenour of his Diſcourſe, inveighing againſt the Government in all Companies, and particularly againſt his Royal Highneſs the Plaintiff.

The Evidence.

Witneſſes being called, Mr. *Smith* depoſed, That he heard the Defendant ſay in a publick Coffee-houſe, *This Letter coſt me nine Pence; it might have been brought for a Penny; I know no body is the better for it but a Traitor*; and to the beſt of his Remembrance he ſaid, *The Duke of* York.

Mr. *Penniſton Whaley* being ſworn, depoſed as follows:

Whaley. I was at the Biſhop of *Ely*'s Table at *Ely*-Houſe, either the *Eaſter* or *Whitſunday* after Sir *Thomas Gaſcoigne*'s Trial. I had received the Sacrament at the Chapel there that Day, and ſo had Dr. *Oates*. And ſome Diſcourſe happening at the Table about Sir *Thomas Gaſcoigne*'s Trial, *Oates* fell foul upon the Jury, and ſaid, *They are a Company of profligate Villains*, and *He would have them attainted.* I ſaid, Doctor, you are a good Man at a Matter of Fact, but I doubt you are not ſo at a Matter of Law. Then we came to high Words, and among other Things he ſaid, *The Duke of* York *was a Traitor.* I ſaid, Doctor, you lie under a great Error, I ſuppoſe by miſtaking a Statute made againſt Popery: Says he, *No matter for that; I ſay he is a Traitor.* And both of us growing pretty warm, he called his two Men, that uſed to follow him up and down, to his Aſſiſtance. I ſaid, there is no body to hurt you: Do you think that the Biſhop of *Ely*'s Table is not a Protection for any body that comes here?

L. C. J. Was the Biſhop at the Table then?

Whaley. He was at the Table, but a great Diſtance from us; the Doctor and I ſat at the lower end of the Table. Afterwards I begged the Biſhop of *Ely*'s Pardon, for being ſo hot and loud at his Table: Says the Biſhop, I thank you kindly for it; none of us dare talk with him.

Edward Johnſon was ſworn.

He depoſed, that meeting *Oates* the 23d of *Auguſt* 1680. the Deponent ſaid, All things will go well now, for there is a Parliament to meet in a little Time; and *Oates* anſwered, *No, not till* York *be baniſhed or hanged. He has a good Brother, but he takes all the Courſes in the World to undo him.*

Randall Bowring was ſworn.

He depoſed, in *October* 1679, he was at dinner with *Oates*, at his Lodgings at *Whitehall*, and a Gentleman ſaying in caſe his Royal Highneſs were a Papiſt, how ſhould we be ſecured, in caſe he came to the Crown, that he would not bring in Popery? The Doctor replied, *I would not have you trouble your ſelf about that; for he ſhall be hanged before that Time.* That at another Time *Oates* having preached in *Foſter-lane*, the Church-Warden invited him to Dinner. He asked, *If any of them had dined with* James *D. of* York, *at any of the Feaſts in the City, when the Duke uſed to come ſometimes*; and none of them anſwered him. *Oates* replied, *He would not dine with any Man that had eat with the Devil,*

1684. 36 Car. II. *vil*: And ſo went and dined with a Brazier at *London-wall*.

Mr. *Fairfax* was ſworn.

He depoſed, That in my Lord Chief Juſtice *Scrogg*'s Time, there was a Preſentment to be brought in by the Grand Jury againſt his Royal Highneſs for being a Papiſt, and not coming to Church; and that this *Oates* was the main Proſecutor of it. That the Grand Jury being diſmiſſed, the Deponent told *Oates*, that now he was diſappointed; and *Oates* replied, *Oh, We will do well enough; there will be a Seſſions after the Term, and there we will at him again; and we will have no more Regard for him than if he were a Scavenger of* Kent-ſtreet.

Mr. *Philips* was ſworn.

He depoſed, That in *January* 1678, he was at *Oates*'s Lodgings in *Whitehall*, and *Oates* ſaid, *He hoped to ſee our Maſter* James, meaning the Duke of *York*, *at the Bar of the Houſe of Commons; and it would be no Diſparagement to him to appear there, for there were better Men Members of that Houſe than he was.*

William Aſhlock was ſworn.

He depoſed, That as *Oates* was dreſſing one Morning in *Eaſter*-Term 1682, *Oates* ſaid, He was going out to draw up a Bill of Indictment againſt the Duke of *York*; but the Deponent heard afterwards he was otherwiſe adviſed. That he ſaid alſo, The City of *London* was fired by the Duke of *York*'s Order; and the Forces at *Blackheath* were to have plundered the City, and killed all the honeſt Proteſtant Diſſenters there; and the Duke of *York* was to have headed thoſe Forces; and this he would prove, if ever they could get a Parliament to their Mind. And he ſaid, They ſhould take away the Poſt-Office from the Duke of *York*, and give it to the Duke of *Monmouth*.

That at another Time he ſaid in Company, *The Duke of* York *was a Son of a Whore, and he ſhould live to ſee him hanged; and if they could but get a Parliament to their Mind, they would ſoon ſend the Duke and all his Gang out of* England; *for he muſt never expect to ſucceed to the Crown.*

Capt. *Creſſet* was ſworn.

That as he was waiting one Morning at the Duke's Lodgings, *Oates* ſaid to him, *You will never leave, till you have loſt your Reputation: You have been with* James (York, *I mean:) He is a Raſcal, a Papiſt, and a Traitor, and I hope to live to ſee him hanged.*

Sir *William Jennings* was ſworn.

He depoſed, That being at a Tavern at *Oxford* with *Oates*, when the Parliament ſat there, and the Duke's Health being propoſed, *Oates* ſaid, *Do not drink* York's *Health: He has ruined the Nation; and if the Devil has a Place in Hell more hot than others, I hope he will beſtow it upon him.*

Mr. *Warcop* was ſworn.

He depoſed, That meeting *Oates* afterwards, and reproving him for the laſt recited Expreſſions, he anſwered, *The Duke was a Traitor, and in the Plot*: and told the Deponent, *He was a* Yorkiſt, *and he would remember him for it.* 1684. 36 Car. II.

Mr. *Charles Chapman* was ſworn.

He depoſed, That he went along with Mr. *Swift*, the Duke's Attorney, when he went to the Defendant *Oates* to demand a Plea: That *Oates* asked Mr. *Swift*, If he were the Duke's Attorney? And *Swift* anſwering, Yes; *Oates* ſaid, *He did not value the Duke, nor his Attorney neither; he would plead as he ſhould ſee Cauſe; and that he neither loved the Duke nor feared him. That, may be, he might be in the* King's-Bench *for* 100,000 l. *But if ever a Parliament ſat, he did not queſtion but to have ſome body elſe in his Place.*

No body appearing for the Defendant *Oates*, my Lord Chief Juſtice ſaid,

L. C. J. Gentlemen of the Jury, It is not your Buſineſs to enquire whether *Oates* ſpoke theſe Words; for by letting Judgment go againſt him by Default, he doth in Law confeſs the Words; but you are to enquire what Damages are fit to be given to the Plaintiff, by reaſon of theſe Words. Yet inaſmuch as this is a Caſe of an extraordinary Nature, Weight and Moment, having Relation to ſo great a Prince, His Royal Highneſs, the King's only Brother, it requires this extraordinary Solemnity; it not having been uſual heretofore to have Writs of Enquiry executed at this Bar. But the Occaſion is extraordinary, ſuch as has not happened before this Age, this corrupt, this profligate Age, wherein we live, and wherein common ordinary Fellows, the meer Scum and Scoundrels of the factious Party, have taken the Liberty to reproach and calumniate Magiſtracy and Government, and the greateſt Perſonages concerned in it; not ſparing even Majeſty it ſelf, nor him who is next in Degree to his ſacred Perſon, his only dear and Royal Brother. And therefore, as the Caſe is extraordinary in its Nature, ſo ought the Example of it to be made as publick as can be, in order to ſatisfy all People what a ſort of Fellow this Defendant is, who has been ſo much adored, and looked upon with an Eye of Admiration, courted with ſo wonderful an Affection, and ſo, I had almoſt ſaid, *Hoſanna*'d by the Factious. Such as he ought to be made publick Examples of; and therefore the King's Counſel have deſired that this Cauſe might be here canvaſſed at the Bar; and that the Defendant, as he has made himſelf eminent for ſome particular Qualifications, might be made a publick Example for this Offence.

Thus the Writ comes to be executed here. Now though the Words laid in this Declaration, are Words that do import in themſelves ſo much Scandal and Reproach, ſo much Malice and Venom, that they need no Aggravation; and his ſuffering Judgment to go by Default ſhews they are no way to be extenuated: Yet, however, to ſatisfy all People that have any Inclination to be ſatisfied, that this Proſecution is highly reaſonable, nay, abſolutely neceſſary; they come here, and give you an Account, that theſe in the Declaration are but a ſmall Part of the ſcandalous and malicious

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licious Words that the Defendant had uſed concerning the Plaintiff. And indeed it doth plainly appear, that the Malice of the Defendant is intended with all the moſt unchriſtian and uncharitable, as well as diſloyal and diſobedient Circumſtances, that any thing can be; with Deſign to traduce and diſparage a Subject ſo Loyal, and a Perſon ſo Great and Illuſtrious as his Royal Highneſs.

Then the Chief Juſtice having ſummed up the Evidence, the Under-Sheriff ſaid, Gentlemen, Lay your Heads together, and conſider of your Verdict.

Which they did, ſtanding at the Bar.

Under-Sheriff. What Damages do you find?

Sir *Charles Lee.* Full Damages, an hundred thouſand Pounds, and twenty Shillings Coſts.

Which Verdict being recorded in an Inquiſition indented, taken under the Hands of all the Jury, was afterwards annexed as the Return to the Writ of Enquiry; and the Priſoner was committed in Execution to the *King's-Bench* Priſon for Non-payment of the Damages, where he remained till he was convicted of Perjury in the next Reign, and then he was remanded to the ſame Priſon again.

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His Offence in reviling the Duke of *York*, the Preſumptive Heir of the Crown, was certainly a very great one; but the giving ſuch Damages as the Defendant could never poſſibly pay, was in Effect to condemn him to perpetual Impriſonment, and render him incapable of getting his Bread, which has been juſtly cenſured: And it is preſumed the Precedent will not be followed, eſpecially by that Party who uſed to exclaim moſt loudly againſt ſuch rigorous Judgments, as being a Breach of *Magna Charta*, and conſequently illegal. *Remarks.*

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The Trial between Sir WILLIAM PRITCHARD, late Lord Mayor of *London*, Plaintiff, and THOMAS PAPILLON, Eſq; Defendant, at *Guildhall, London*, *Nov.* 6, 1684. *Mich.* 36 *Car.* II.

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Pritchard and Papillon. The Declaration.

THE Plaintiff, Sir *William Pritchard*, declared, That whereas on the 12th of *February*, in the 35th Year of the King, he was Mayor of the City of *London*, the Defendant *Thomas Papillon*, being one of the Commonalty of the ſaid City, and under the Government of the Plaintiff, maliciouſly contriving to diſturb him in the Execution of his ſaid Office, did, on the ſaid 12th of *February*, in order to vex the Plaintiff, and without any probable Cauſe of Action, take out a Writ againſt the Plaintiff, and cauſe him to be arreſted and detained in Cuſtody for the Space of ſix Hours, on the 24th of *April* following, to the Plaintiff's Damage 10,000 *l.*

Mr. Attorney General, in opening the Evidence, ſaid, This Action was brought to vindicate the Honour of the Chair from ſuch Affronts as it never had met with, till theſe Times of Faction and Confuſion: That the Defendant had no probable Cauſe for the Action he brought againſt the Lord Mayor was evident by his not proceeding in the Action; but there was a further Deſign in that Proſecution, namely, to carry on the Plot againſt the King's Life, and to ſubvert the Government; for the Faction had contrived to impriſon the Mayor, ſuppoſing that the Loyal Citizens would have attempted his Reſcue, and then their Party deſigned to riſe and aſſiſt the Officer that arreſted him, he having the Countenance of Authority, as being in the Execution of the King's Writ, and ſo a publick Commotion would have been made; and in that Confuſion, while the City wanted a Head, they expected they ſhould have had an Opportunity of accompliſhing what the Conſpirators intended.

The Evidence.

The Witneſſes being called, *Keeling* was ſworn, and depoſed, That he was made a ſpecial Bailiff on purpoſe to arreſt the Lord Mayor, and that he did arreſt him accordingly. *Goodenough*, the Under-Sheriff, telling this Witneſs, The Party would take it amiſs if he refuſed to do it; and that thirty or forty of the Party were by, when he received his Directions to arreſt the Lord Mayor.

Sir *John Peak* depoſed, That there being ſome Diſturbance on the arreſting of the Lord Mayor, he had Orders from the Lieutenancy to raiſe his Regiment, and that he came with his Soldiers to *Skinners-Hall*, where he heard the Lord Mayor was, and prevented the Miſchief that was intended.

Mr. *Wells*, the Common Cryer depoſed, That *Brown* the Coroner cauſed the Lord-Mayor to be arreſted and carried to his Houſe, where he was detained in Cuſtody ſome Hours, on his refuſing to give an Appearance: (*It ſeems, The Militia being raiſed, and coming to his Lordſhip's Reſcue, the Party thought fit to releaſe his Lordſhip*)

Papillon's *Defence by his Counſel.*

Mr. Serjeant *Maynard*, being of Counſel for Mr. *Papillon*, ſaid in his Defence: This is an Action upon the Caſe, wherein the Plaintiff declares, That the Defendant did arreſt him, being then Lord Mayor, without any probable Cauſe, and out of Malice. Now my Lord Mayor, if he do miſtake in his Office, and do not do that which belongs to him to do;

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do; if he does any Man an Injury, or does that which is not right in his Office, by which another Perſon is grieved, he is as much ſubject to Actions, and to the Proceſs of Law, as any private Man in the City of *London*; and if we can give you any Account of a probable Cauſe for the Arreſt, that is ſufficient to juſtify us from this Action. The Queſtion is not, whether this or that Man were duly choſen into ſuch an Office? but whether there were any probable Cauſe for the Defendant to conteſt about the Choice? And here the Caſe falls out to be thus: There was a Difference in the City of *London* about the Choice of Sheriffs, wherein the Defendant was one of the Competitors, and had many Suffrages, and was returned by the Sheriffs to the Court of Aldermen to have a Majority, which gave him Occaſion to apprehend he was rightly choſen: Now though we inſiſt not upon the Right of Election (that having been otherwiſe determined), yet this ſurely was a probable Cauſe for him to proceed upon it; and he having no other Method to take, for ſettling this Matter, but to appeal to your Lordſhip, and that great Court where your Lordſhip ſits, to have a Writ to command the Mayor to ſwear him into the Office, or ſhew good Cauſe why he did not; accordingly a *Mandamus* was moved for and granted; and to this Writ the Mayor and Aldermen, to whom it was directed, made a Return that we were not elected Sheriff of *London*; which Return we apprehended to be falſe, and to try the Truth of this Return, was the Action brought againſt the Plaintiff, and not to promote the Deſigns of a diſcontented Party, as has been inſinuated: Upon this Action the Defendant proceeded regularly and orderly, applying himſelf in a decent manner to get an Appearance: For firſt, we took out a *Latitat* againſt my Lord Mayor, and by the Attorney gave him Notice of it, and deſired an Appearance, but he was not pleaſed to give an Appearance upon that Writ: We took out a *Capias*, and gave him Notice of it, but could have no Appearance: Whereupon we took out an *Alias Capias*, which is the Writ mentioned in the Declaration; to which my Lord refuſing to give an Appearance, the Officer was conſtrained to arreſt him. This was nothing but what the then Plaintiff apprehended he might lawfully do, and no Malice or ill Deſign is proved upon him: And I hope it will never come to that, That a Man (though miſtaken) conceiving himſelf to have a Right of Action, and ſuing out the King's Writ, ſhall ſuffer for ſo doing, unleſs particular Damage be made appear. Here is a great Noiſe of Damage and Diſgrace to the Plaintiff and his Office, and he has been pleaſed to reckon his own Damages 10,000 *l.* But we ſay he has ſuſtained no Damage by any Thing we have done, and we are not Guilty of this unreaſonable and malicious Proſecution laid to our Charge.

The Defendant's Witneſſes.

Then *Brome* the Coroner, who granted the Warrant for arreſting the Lord Mayor, was called as a Witneſs for the Defendant, and depoſed, That he ſeveral Times deſired an Appearance of his Lordſhip, but he refuſed to give any, whereupon he was arreſted; and he carried his Lordſhip to his (the Deponent's) Houſe: And it being demanded, how he came to releaſe his Lordſhip, he anſwered; he was taken into Cuſtody himſelf; and ſaid, he had Directions from his Clients to uſe his Lordſhip with all the Reſpect imaginable, and he punctually obeyed their Orders.

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Mr. *Corniſh* and ſeveral other Witneſſes being called, they confirmed *Brome*'s Teſtimony: But Mr. *Corniſh* prevaricating in ſome of his Anſwers, the Chief Juſtice ſaid, You muſt not think to dance in a Net and blind all the World: I know theſe Things very well without their Aſſiſtance, and only ask theſe Queſtions to let the World know what ſort of Men theſe are that pretend to Saintſhip: You ſee we can hardly get one Word of Truth out of them; neither *Bethell*, nor that Fellow *Corniſh* would take the Oaths and Sacrament according to Law, till they found it would contribute to their Deſign of ſubverting the Government: Then theſe Raſcals could qualify themſelves for an Office, only to put the Kingdom into a Flame.

Then ſome other Witneſſes depoſed, That Mr. *Papillon*, and Mr. *Dubois* had a Majority at the Poll for Sheriffs.

To this, the Attorney-General anſwered, That the Poll taken by the Sheriffs was done in an unlawful and riotous manner, and by thoſe who had no Power to take it; and called the Town-Clerk as a Witneſs for the Plaintiff, who depoſed, That Sir *Dudley North* and Mr. *Box*, were duly elected Sheriffs, *An.* 1682. and that the Sheriffs were not Judges of the Poll.

Obſervations on the Evidence by the Defendant's Counſel.

The Evidence being cloſed, Mr. Serjeant *Maynard* made his Obſervations on it, and ſaid, It is nothing to the Purpoſe, who took the Poll, or who had a Right to take the Poll; but it was a Diſpute, and ſome, it may be, could not poll at one Place, and others would not poll at the other, yet the lifting up of two Thouſand Hands might make the Defendant think he was choſen Sheriff; and there lies the Cauſe of his Action, his Apprehenſion of a Right. And though it may be objected to the Prudence of my Client, to deſire ſuch an Office, yet that proves nothing of Malice in him againſt the Plaintiff. And as to the Objection to the Inſtrument we made Uſe of, that our Attorney was in a Plot, *&c.* what is that to us? There is not the leaſt Suſpicion upon us; though he is a bad Man, that doth not make all his Clients bad. Now, Gentlemen, upon this Action we are not to be fined: But they, if they can, are to ſhew what Damages the Plaintiff ſuſtained by our Action: And if what we have ſaid do not ſatisfy you, that we had probable Reaſon for what we did, then you upon your Oaths are to give him what Damages you in your Conſciences think he has received by it: After which the Chief Juſtice directed the Jury, and ſaid.

The Chief Juſtice's Directions to the Jury.

Gentlemen of the Jury, The Point of this Action before us reſolves it ſelf into a very narrow Compaſs, and is only this in ſhort: Whether or no the Plaintiff was arreſted by the

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the Defendant without probable Cauſe, and maliciouſly. Now Matters of Malice are Things that remain in a Man's Heart, and it is impoſſible to diſcover whether another Man hath Malice againſt me, if I do not ſee it in his Actions. Therefore you muſt conſider the Circumſtances that do attend this Action; if they are malicious, then you are to find for the Plaintiff: But if they for the Defendant have offered to you any Circumſtances that can convince you that he had any probable Cauſe of Action, and that not attended with a malicious Proſecution of that probable Cauſe; then the Iſſue is with the Defendant. Now, in point of Law, I am to tell you, that though I have a probable Cauſe of Action againſt another; yet if, to obtain my End in that, I proſecute him maliciouſly, with a Deſign to ruin him, or to put an Indignity upon him, or the Character he bears in the Publick; or put an Hardſhip or Difficulty upon him, I mean in Point of Time, when it is probable the Remedy may be had at another Time; and the ſame thing done with leſs Injury and leſs Trouble, then an Action will lie againſt me; though it be true, I had a conjectural Cauſe of Action againſt him. The perſuing malicious Ways to obtain a Right, makes a Man obnoxious to the Action of the Party ſo proſecuted.

But as to their probable Cauſe, Suppoſe it were a Queſtion between me and *John-a-Stiles*, for the Place of Bridge-maſter, for the Purpoſe, and a Poll is demanded and granted; if they that have no Authority ſhall go, after the Court is adjourned by him that has Power, and take a Number of Names in the way of a Poll, by themſelves, and upon that come and ſay, that *J. S.* has 2400, and I have but ſo many, that ſure is not any probable Cauſe, nor a Right: For you have gone here out of the known and uſual Method in ſuch Matters, and depend upon that which can give no Foundation of a Right at all: You may have 50000 Names for you after that Rate, and yet not be elected, or have probable Cauſe of any ſuch Apprehenſion.

But Gentlemen, to bring an Action alone, will ſcarce amount to a Proof of Malice; therefore you muſt weigh the Evidence, whether the Circumſtances do ſhew there was any Malice in Mr. *Papillon*. It is true, a Man may lawfully ſue for ſuch an Office, and it is no Offence; yet it looks ſomewhat extraordinary, and that a Man has a Mind to do ſomething unuſual in the Place, that he ſhould ſue for it; eſpecially when he had fined for the Office once before. My Lord Mayor of *London*, it is true, is not, nor no Perſon whatever, exempt from the Law: If he owe a Man any thing, he is bound to anſwer it to him, as much as the meaneſt Citizen: But is he to be arreſted juſt at ſuch a Time, when he is chief Governor of the City? And the Court of Aldermen too, becauſe they are his Aſſiſtants? And at ſuch a time as this was, when the Government, both in the City and elſewhere, was ſurrounded with Difficulties, and in great Danger on all Sides? What Occaſion was there for ſuch Haſte in this Action? Would Mr. *Papillon* and Mr. *Dubois* have ſtarved, if it had been ſuſpended a while? Sir *William Pritchard* would have been as anſwerable to this, or any Man's Action, when the Year of his Office had been out: But it carries Malice and Vengeance in the very Face of it. And becauſe they would be ſure their Malice and Revenge ſhould take Place, they take the very Scoundrels of the Party to be employed in this great Work; the *Goodenoughs*, *Burleigh*, *Keeling*, and *Nelthorp*, who now ſtand attainted of High-Treaſon, muſt be called in to conſult about a fit Man to make an Arreſt. It is plain, Gentlemen, what the Deſign was, from the Beginning to the End; nothing but to cauſe a Tumult and Confuſion in the City, in order to put that damned helliſh Conſpiracy, for the Deſtruction of the King and his Brother, and every Man that was honeſt and loyal, in Execution. Another Circumſtance, which is conſiderable in this Caſe, is the particular Perſons that were ſued. The *Mandamus*, that was directed to the Lord Mayor and Aldermen in general; and the Return was made in the Name of the whole Court. How comes it then, that my Lord Mayor, Sir *Henry Tulſe*, and thoſe other Gentlemen, muſt be arreſted; but Mr. *Corniſh*, and his Party, are not meddled with? This is a Circumſtance, that carries Malice in it.

Gentlemen, as to the Damages, if you find for the Plaintiff, it is left to your Judgments to conſider of, and give what you ſhall think fit, upon this Occaſion. It is true, it is not eaſy to aſcertain particular Damages in ſuch a Caſe; or to prove that Sir *William Pritchard*, being in Priſon five or ſix Hours, ſuffered ſo much Damages as comes to 10,000 *l.* Yet, however, if the Thing for which the Action is brought, were deſigned with Malice, though the ill Deſign be not effected, that is no Thanks to the Party, nor is to weigh with you; but the malicious Deſign muſt govern you. Now the Malice here, was not againſt Sir *William Pritchard*, as ſuch a particular Man, but againſt my Lord Mayor; and the Government of the City, the Honour of your Chief Magiſtrate, and indeed the Honour of your King, whoſe Subſtitute he was, is concerned; and that puts a Weight upon your Enquiry into the Damages of this Caſe. You are to conſider, you give Damages to the Plaintiff, not as Sir *William Pritchard*, but as Lord Mayor: And your Severity in this Caſe, will deter all People from entering into Clans and Cabals, to make Diſturbances, and affront the Government.

It was not, I dare ſay, out of a frank, generous Humour, to oblige the City, that Mr. *Papillon* would have ſpent his Time and Money in the Office of Sheriff: No, I know he had better Ways to employ both.

It was not the generous Mind of Mr. *Bethel*, that called him on to be Sheriff of *London*, to entitle him to ſpend his Money; but on Purpoſe to be one of the firſt that ſhould turn all Things upſide down in the City, and diſturb the Government: And they that ſucceeded him, carried on the Project; and they that would have been in, but could not, had a Mind, no doubt, to follow ſo worſhipful an Example as he laid before them.

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Then the Jury withdrew, and after half an Hour's ſtay, returned with a Verdict for the Plaintiff, and aſſeſſed Damages to 10,000*l* and Coſts to four Marks.

Remarks.

It appears, that many of the Conſpirators, who were in the Plot againſt the King and Government, were concerned in contriving and promoting this Action againſt the Lord Mayor. *Goodenough*, the Attorney, was deep in the intended Aſſaſſination: *Brome*, the Coroner, who granted the Warrant, was a Conſpirator: *Keeling*, who was made a Special Bayliff, on purpoſe to arreſt the Lord Mayor, was one of the intended Aſſaſſins; and the Plaintiffs, and the reſt of the Citizens that aſſembled to direct the Affair, were known Malcontents, and probably equally concerned in the Conſpiracy, though not ſo openly: And if this be admitted, it cannot remain a Doubt, whether one principal View in arreſting the Lord Mayor, was not in hopes of creating ſome Confuſion in the City, and thereby to favour the intended Inſurrection; though another Reaſon poſſibly might be, to gratify their Spleen in diſgracing the Lord Mayor, who was a loyal Citizen, and well-affected to his Majeſty. They would ſhew the Government, they were not afraid to inſult the Chief Magiſtrate of the City, and in him the King himſelf, whoſe Subſtitute he was: For, as the King's Counſel obſerved, if *Papillon* and *Dubois* had only brought their Action to obtain Satisfaction for their Loſs of the Shrievalty, this might have been done as well half a Year afterwards, and with more Probability of Succeſs, when he was out of his Office, than while he poſſeſſed the Chair.

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Roſewell's Trial.

The Trial of THOMAS ROSEWELL, a Diſſenting Preacher, for *High-Treaſon*, at the *King's-Bench-Bar*, on the 18th of *November*, 1684. *Mich.* 36 *Car.* II.

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The Indictment.

THE Indictment charged, That the Priſoner, *Thomas Roſewell*, on the 14th of *September*, in the 36th Year of the King, at the Pariſh of *Rotherhith*, in the County of *Surrey*, did compaſs and imagine the Death of his Majeſty, and to raiſe a Rebellion; and that, to accompliſh his ſaid traitorous Purpoſes, he did, at the Time and Place aforeſaid, in a certain unlawful Aſſembly, ſpeak, aſſert and declare the following Words, (*viz.*) That the People made a Flocking to the King, upon Pretence of healing the King's Evil, which he could not do; but that They, meaning himſelf, and other traitorous Perſons, the King's Subjects, were the Perſons they ought to flock to, becauſe they were Prieſts and Prophets, who by their Prayers could heal the Dolours and Griefs of the People: That they had had two wicked Kings together, meaning King *Charles* I. and King *Charles* II. who had permitted Popery to enter in under their Noſes; whom they could reſemble to no other Perſon but to the moſt wicked *Jeroboam*: And that if they, meaning the ſaid evil-diſpoſed Perſons, unlawfully aſſembled, would ſtand to their Principles, he did not fear but they would overcome their Enemies, meaning the King and his Subjects, as in former times, with Rams-Horns, broken Platters, and a Stone in a Sling: All which was laid to be againſt the Duty of his Allegiance, the King's Peace, &c.

The Evidence.

The Witneſſes being called, *Elizabeth Smith* was ſworn, and depoſed, That the Priſoner preached at ſeveral private Houſes, and had a publick Meeting-Houſe of his own in *Salisbury-ſtreet*, near his own Dwelling-Houſe in *Rotherhith*, where there uſed to aſſemble, three or four hundred at a Time. That preaching at Capt. *Daniel Weldy*'s Houſe, on the 14th of *September*, 1684, he uſed the Expreſſions laid in the Indictment, (*viz.*) *The People make a Flocking to the King*, &c. That there were two lower Rooms, and two Chambers, full of People, that came to hear the Priſoner, who ſtood in a Door upon the Stairs, ſo that his Voice might be heard above and below.

She depoſed further, That ſhe had been offered two hundred Pounds not to come in a Witneſs againſt Mr. *Roſewell*.

Mrs. *Hilton*, who went with the former Witneſs to the ſaid Meeting, on *Sunday* the 14th of *September*, depoſed, That ſhe heard the Priſoner ſpeak the Words laid in the Indictment: Adding, that they returned home about Two of the Clock, and Mrs. *Smith*, the firſt Witneſs, immediately wrote down the Words: That the Exerciſe began at Seven in the Morning; and the firſt Part of it being over, the Priſoner went to Dinner, and abundance of the Congregation eat Sweetmeats, Biſcuits, &c. during his Abſence.

Mrs. *Farrar* depoſed, That ſhe was at the ſame Meeting, and heard him ſay, It was not the King that cured the Evil, but it is we they ſhould flock to; for we are Prieſts and Prophets, that by our Prayers do cure the Grievances of the People. He ſaid alſo, That we had had two wicked Kings together; and bid the People ſtand to their Principles, and in time they ſhould overcome their Enemies.

That at another Meeting ſhe heard him pray, That he might not offend the Lord in not praying for the King; but the Lord might pleaſe to open his Eyes, or turn the Times.

Then

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Then the Court acquainting Mr. *Roſewell*, that he might enter upon his Defence, he deſired the Indictment might be read again in *Latin*. After which, he objected to the *Latin*, that *Morbus Regni Anglici* was the Diſeaſe of the *Engliſh* Kingdom, and could not be made to ſignify the King's Evil.

L. C. J. No, no, it is, *Morbus Regni, Anglicè, the King's Evil*; there being no apt Word in the Law for that Diſtemper, they help it with an *Anglicè*.

Roſewell. But, my Lord, there are proper Words for the Diſeaſe, as *Struma*, and *Scrofula*, and not *Morbus Regni*.

L. C. J. Phyſicians may uſe thoſe Words, but we muſt keep to the legal Names and Phraſes; and where we have not a proper Word, we uſe an *Anglicè* to expreſs what we mean.

Roſewell. Then there is another Phraſe I object to, *viz. Nos habuimus nunc duos iniquos Reges inſimul:* This cannot be underſtood of two Kings one after another; but *inſimul* makes them to be both at once. Theſe two Words, *inſimul*, and *nunc*, both ſignify the preſent Time; it ſhould have been *ſucceſſivè*.

L. C. J. Then it had not agreed with your Words; which are, That we had two wicked Kings together.

Roſewell. If that be an Angliciſm, this cannot be true *Latin*.

L. C. J. If it be a Blunder in *Latin*, it is one of your making, for you ſpoke it ſo in *Engliſh*; and the Indictment in *Latin* muſt exactly purſue your *Engliſh*.

Roſewell. Then here is *Romanam Superſtitionem* made to ſignify Popery: Now there may be Superſtition in the Church of *Rome*, and yet that not be the Thing we call Popery.

L. C. J. Therefore, becauſe *Romana Superſtitio* may be too general an Expreſſion, we have aſcertained it with an *Anglicè*.

Roſewell. Then my Lord it is ſaid, in *eorum conſpectu*, under their Noſes. Now if the *Latin* in the Indictment is exactly to purſue the *Engliſh*, it ſhould have been, *ſub naribus illorum*.

L. C. J. Suffer Rebellion, or Conventicles, under your Noſes; are theſe Things, *ſub naribus*, or *in conſpectu*.

Roſewell. Theſe Words could not be ſpoken of the late King, and this King; for the firſt died a zealous Proteſtant, and his preſent Majeſty has often declared againſt Popery.

L. C. J. But it was the Pretence of Popery and Arbitrary Power that brought the firſt to the Block; and the Cry of every ſeditious factious Fellow is againſt Popery now, as if it was juſt breaking in upon us, and the Government abetted it; and the Words are laid in the Indictment, as ſpoken, *falſo & malitioſe*.

Roſewell. Then, my Lord, it is ſaid, *Si ipſi ſtarent ad Fundamentalia eorum.* How comes *Fundamentalia* to ſignify Principles?

L. C. J. The *Latin* Bible expreſſeth them by *Fundamentalia: If the Foundations be deſtroyed, &c.*

Roſewell. Then it is ſaid, *Si ipſi*, which muſt refer to the two wicked Kings that were ſpoken of juſt before.

L. C. J. No, that was ſpoken of your Congregation if they would ſtand to their Principles, *&c.*

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Roſewell. It is ſaid *ipſe non timebat quin* — This is in the third Perſon, and the ſingular Number.

Sol Gen. The Jurors that find this Indictment ſay, that he ſaid ſo; and that muſt be in the third Perſon.

Then Mr. *Roſewell* deſired he might have Liberty to declare what the Words of his Sermon really were; and in the moſt ſolemn Manner averred, That he did not ſpeak the Words in the Order, or with the Intention the Witneſſes had teſtified. And then called ſome Witneſſes, who took Notes at his Meeting, to ſhew what the Words were, and what Application he made of them.

The Priſoner's Witneſſes.

Mr. *Thomas Hudſon*, being called as a Witneſs for the Priſoner, depoſed, That he was at the Meeting mentioned by the Witneſſes to be held the 14th of *September*, and that in the Morning the Priſoner did not preach, but expound the 20th Chapter of *Geneſis*; and took Occaſion from thence to ſpeak of the Worth and Value of the Prayers of God's Prophets, ſaying, *They were good to cure the King's Evil*; and inſtanced in the Prophet that came to *Jeroboam*, by whoſe Prayer that King's withered Arm was reſtored.

It being demanded what Application the Priſoner made when he ſpoke of the two wicked Kings; *Hudſon* anſwered, He ſaid, if *Abraham* fell, and *Jehoſhaphat* fell, and *Sampſon* and *Peter* fell, What are we? *Let him that ſtandeth take heed leſt he fall.* Then he was asked, How he apprehended that about the King's Evil was meant? *Hudſon* anſwered, He did not believe it was ſpoken with reſpect to that Diſeaſe called the King's Evil; becauſe it was ſpoken with Reference to the Diſeaſe the King was under: And as to what was mentioned about the Rams-horns, that was in his Sermon in the Afternoon, where he ſhewed how God could by very ſmall Means bring great Things to paſs; inſtancing in *Moſes*'s Rod, *Gideon*'s broken Pitchers, the ſounding of Ram's-horns, whereby the Walls of *Jericho* fell down, and the like.

Roſewell demanding if he had heard the King of *England* mentioned, *Hudſon* anſwered, He prayed for the King, or elſe he did not hear a Word of any King that Day, unleſs the Kings in the Scripture. He prayed heartily that God would bleſs the King, and enable him to govern his People; and uſed to ſay, God forbid he ſhould ſin againſt God in neglecting to pray for the King: And *prayed God would remove all evil Counſellors from him.*

The Chief Juſtice anſwered, He did not queſtion that; and he remembered their praying in *Weſtminſter-hall* for the doing his late Majeſty Juſtice; and they knew where that ended.

Atkinſon, another Witneſs, depoſed, That at the Meeting the Priſoner expounded the 20th Chapter of *Geneſis*; and obſerving how *Abraham* bid *Sarah* ſay ſhe was his Siſter, he inferred that a Child of God might fall into the ſame Sin again and again, inſtancing in *Lot*'s committing Inceſt twice, *Peter*'s denying his Lord three Times, *Sampſon's* taking two Wives

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Wives of the *Philiſtines*, and *Jehoſhaphat*'s joining with two wicked Kings. And he ſaid, A godly Man, by his Prayers, might help to cure the King's Evil; but he heard nothing of the King of *England*, or any thing like what the King's Witneſſes had teſtified: And ſeveral more of the Priſoner's Witneſſes confirmed what theſe had ſaid.

Other Witneſſes appeared to the Priſoner's Character, and ſaid he was an honeſt Man, and a loyal Subject, and uſed to pray heartily for the King: And *Atkinſon* being called again, depoſed, That the Priſoner kept the 30th of *January* as a Faſt, and preached on this Text, *Pray for Kings, and all in Authority*; aſſerting, That Kingly Government was moſt agreeable to the Word of God.

Then the Priſoner called ſeveral Witneſſes to diſcredit Mr. *Smith*, one of the King's Witneſſes, ſome of whom ſaid that he would have perſuaded them to have appeared as Witneſſes againſt Recuſants for holding Conventicles, or being preſent at them, when they knew nothing of the Matter; and that he had ſworn falſly againſt ſome for being at Conventicles.

Sir *John Talbot* depoſed, that Mrs. *Hilton*, another of the King's Witneſſes, lived ten Years in his Family, but uſed to tell Lies and Stories, and bubbled ſome Gentlemen of their Money, by pretending ſhe had an Intereſt in Mrs. *Jones*, a Lady of a good Fortune. And another Witneſs depoſed, That *Hilton* had but an indifferent Character.

Roſewell *proceeds in his Defence.*

Then Mr. *Roſewell* proceeded to make his Obſervations on the Evidence, and ſaid, That what he ſhould now ſpeak, was as much in reſpect of the precious Souls of thoſe who were concerned in the Proſecution, or trying of him, as of his own Safety; and that, though Strangers, he would lay down his Life to be inſtrumental in ſaving any one of their Souls. He declared his Incapacity to make a regular Defence before ſuch learned Gentlemen of the long Robe, and thanked his Lordſhip, and the Court, for the Indulgence ſhewn to his Infirmities. Then he obſerved that the Witneſſes varied in their Evidence; for Mrs. *Smith* ſwore the Text was the 21ſt of *Geneſis*, and Mrs. *Hilton* ſwears to the 20th, and therefore they could not be deemed two legal Witneſſes, or either of them deſerve Credit. His next Obſervation was, That they teſtified the Words charged in the Indictment, were delivered all in the Morning-Exerciſe, when he had proved the contrary; and left it to the Jury if they were two credible Witneſſes. That they varied likewiſe in this: That one depoſed they met at Capt. *Daniel Weldy*'s, and the other at Mr. *Daniel*'s; and if they were out in one thing, they might be ſo in another. He reflected on their great Wickedneſs, in applying what was innocently ſpoken and meant to the late King and his preſent Majeſty whom he had proved he always prayed for. He added, that they had not only ſworn him a Knave, but a Fool, and a Madman, to ſpeak ſuch abſurd, incoherent, ſoleciſtical, and nonſenſical Things; and he had brought Perſons to teſtify, no ſuch Things were ſaid; and that he was always for Monarchy, and againſt Anarchy, and continually obſerved the 30th of *January*, and the 29th of *May*, and inveighed againſt thoſe that were Rebels againſt his preſent Majeſty, or had been concerned in that barbarous Act againſt his Royal Father, which he utterly abhorred: And obſerved further, That ſeveral Gentlemen of the Church of *England* had teſtified concerning his Converſation, who had known him eight, ten, or twelve Years: That he hoped his Lordſhip and the Jury took Notice that the Witneſſes would ſwear and forſwear any Thing; and that one of them had made Compoſitions, and was a Woman of lewd Converſation: He obſerved likewiſe, that they muſt have incredible Memories, that they could exactly agree in every Circumſtance, and in each particular Word, which he believed the Jury would not undertake to repeat upon their Notes; and ſaid, That he laid the great Streſs of his Defence, not on the Incredibility and Improbability, but the Impoſſibility of the Truth of the Evidence they had given. He confeſſed, if that were a Crime, that it was his Practice to expound the Scriptures to the People; for the People, he ſaid, periſhed for lack of Knowledge; and that it was by the Knowledge of our Lord Jeſus Chriſt, that they muſt come to Life and Salvation.

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L. C. J. Mr. *Attorney*, will you, or any of the King's Counſel, ſay any thing in this Matter?

Att. Gen. No, my Lord; we leave it entirely to your Lordſhip.

The Lord Chief Juſtice in ſumming up the Evidence ſaid, That though a Man muſt have an obdurate Heart not to compaſſionate his Fellow-Creature in ſuch Circumſtances, yet the Priſoner's Denials, with the Imprecations he had made, and the Affirmations he had offered of what he had formerly done, and his appealing to God about his Innocency, was not to weigh with the Jury; for their Buſineſs, according to the Oath they had taken, was to know if they had Evidence given to ſatisfy them he was guilty according to that Evidence. He obſerved likewiſe, (though he ſaid he did not ſpeak it to affect this Caſe) that the Law does declare, that it was from theſe Seminaries of Sedition and factious Conventicles, and the Clubs and Cabals of diſcontented and irregular People, diſaffected to the Laws both of Church and State, that the great Miſchief and Confuſion that was brought upon us, and which at length brought us into the Diſtractions of the late Times, proceeded; and that he muſt ſay (whatever the Priſoner thought) that Bleſſed Martyr King *Charles* I. was by ſuch Means brought to that horrid, accurſed, murderous Death and End, under the Pretence of Religion; and that perhaps, there were as many Rebels raiſed againſt the late King, by the beating of the Cuſhion in the Pulpit, as by the beating of the Drum in the Street. He obſerved alſo, that they picked out and choſe Occaſional Texts, of binding Kings in Chains, and their Nobles in Fetters of Iron; and raiſed ſuch Doctrines from Texts of Scripture, as were intended to quite other Purpoſes, to make People kill and ſlay God's Anointed, under Pretence

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Pretence of ſaving and protecting the Anointed of God. He obſerved, that the Priſoner ſaid, he undertook to expound and teach his People the Knowledge of God: That it was a very good Leſſon to be learnt and taught; but (without any Reflection on the Gentlemen at the Bar) he thought we had Churchmen of as great Learning, Piety and Virtue, as he could pretend to; and that whoever preaches at a Conventicle, cannot preach Obedience to the Civil Magiſtrate; becauſe in that very preaching, they are acting Diſobedience againſt his Laws: Then he ſhewed, that the Thing now before them was a Queſtion of a different Nature, that they were not to try whether he Preached at a Conventicle, or whether in ſo doing it was againſt Law; but whether he did ſpeak Words of the ſame Subſtance, to the ſame Effect and Intent that are compriſed in the Indictment; therefore they were to try and conſider, whether the three Witneſſes, produced againſt him, did ſwear true, or were guilty of wilful Perjury.

He is convicted. Then the Jury withdrew, and after ſome Time returned with their Verdict, that the Priſoner was *Guilty.*

His Exceptions in Arreſt of Judgment. Mr. *Roſewell* being brought into Court again on the 24th of *November*, to hear Judgment, objected, That there was not any Crime ſufficiently ſet forth in the Indictment to give Judgment upon; for it was not ſufficient to ſay in an Indictment of Treaſon in general, that a Man did intend to depoſe the King, or raiſe a Rebellion; but there ought to be ſome Overt Act poſitively aſſerted to be done by that Perſon, which was Treaſon of it ſelf without the *Inuendo.* He inſiſted, as he had done at the Trial, that the Words were repugnant and inſenſible; and deſired Judgment might be arreſted, and Counſel aſſigned him to argue his Exceptions: Whereupon Counſel were aſſigned him, and on *Thurſday* the 27th of *November*, the Exceptions were argued.

Mr. *Wallop*, of Counſel for the Priſoner, inſiſted, That the Words laid in the Indictment, diſcharged of *Inuendo's*, were looſe, extravagant, inſenſible Words, rather than Treaſon, and held, that if it was only the *Inuendo's* that made them treaſonable, and thoſe *Inuendo's* were not warranted by Law, they could not effect the Priſoner; and that it is a Rule in Law, that no *Inuendo* could warrantably be inſerted in an Indictment, Information, or Declaration, upon an Action of the Caſe for Words, unleſs the Defendant be firſt averred, (and that directly) to have mentioned a Perſon in certain himſelf, to whom thoſe Words may be referred; and in this Caſe, how could the Hearer underſtand who the Preacher meant, and ſo be influenced to Rebellion, unleſs the Preacher himſelf had named the King to whom the Words he ſpoke ſhould be referred? That as to the firſt Words laid in the Indictment, *viz. Quod populus*, &c. The People (meaning the Subjects of our Lord the King) keep a flocking to the King to cure the King's-Evil, which he cannot do, *&c.* Here *Populus* might intend any People: It might intend the *French* People flocking to the *French* King (for he pretended to heal the People in the ſame manner). As to the next Words, *Nos habuimus nunc duos iniquos Reges inſimul*; We (meaning the Subjects of the King) have had two wicked Kings (meaning King *Charles* I. and this King) together. That there was no mention of any Kings before in the Diſcourſe, to which, according to the Office of an *Inuendo*, theſe Words are to be applied, according to the 4 *Rep.* fo. 17. *B. int. Jeames & Rutlech*, being an Action of the Caſe for Words; where two Things were reſolved, *Firſt*, That the Perſon ſcandalized muſt be aſcertained: And *Secondly*, That the Words ſpoken muſt be apparent Slander. — And he held, That an *Inuendo* was not ſufficient to give an original Certainty, where a Certainty is not fixed before. The Defendant himſelf muſt ſet up ſuch a Light, as will carry the Intention to the End of the Diſcourſe. — And further, That the Words *habuimus nunc* were inconſiſtent, *Habuimus* referring to the Time paſt, and *nunc* to the Time preſent; and that if *habuimus* were to take Place, it might refer to any two Kings before the Conqueſt. — Then he proceeded to the Words which ſeemed to be moſt relied on, *viz.* if they would ſtand to their Principles, he did not queſtion but they ſhou'd be able *Inimicos ſuos vincere*, (*Inuendo* the King and the Government.) Now there was no Mention of any Enemies before, no Averment that the King was Enemy to any Body, or any Body to him; and therefore the *Inuendo* was to be rejected; it could not put ſuch a Violence and Force upon Words, as to make them Treaſon, when in themſelves they have no ſuch Meaning; and that by the Law of *England*, in all dubious, uncertain, and general Caſes, the moſt benign and candid Interpretation is to be taken; ſo if there were a Doubt, as to the meaning of the Words, the moſt favourable Conſtruction ought to be made.

Mr. *Pollexfen*, being alſo of Counſel for the Priſoner, brought his Argument, That ſome ſort of Words might be an Overt Act of Treaſon; but that the Statute of 13 *Car.* 2. on which the Priſoner was indicted, had diſtinguiſhed between Words of Treaſon and Miſdemeanour; and was about to ſhew that theſe for which the Priſoner was indicted, were but a Miſdemeanour by that Statute.

Here Mr. Attorney interrupted him, and ſaid, he did not underſtand it was his Lordſhip's Pleaſure they ſhould argue, Whether the Words were Treaſon, being found to be ſpoken with ſuch an Intention; but whether the *Inuendo's* had been ſufficiently laid to maintain the Indictment in Point of Form?

Mr. *Pollexfen.* My Lord, What I would obſerve is, That the Treaſonable printing, writing or ſpeaking, mentioned in the firſt Clauſe of that Statute, muſt be of ſuch Words as ſhall intend the Death, Bodily Hurt, Reſtraint, or Impriſonment of the King's Perſon, or levying War. And that if the Words laid in the Indictment, are in themſelves ſo uncertain, or ſuch as do not tend or relate to the preſent King, or the preſent Government, to ſtir up Sedition or Re-

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Rebellion againſt them, then they will not be Treaſon; becauſe they do not ſo relate. That the Words laid in the Indictment ſeemed to run thus; We have had now two wicked Kings together, who have ſuffered Popery to come in under their Noſes; we cannot compare them to any but wicked *Jeroboam*: And if [they] would ſtand to their Principles, then he did not doubt but [they] ſhould overcome their Enemies, as in former Times, *&c.* And, if according to Grammar, *ipſi* [they] being a Relative, muſt refer to that which laſt before went, there is nothing in the Sentence that went before, but we (that is, he and the People that heard him) and the two Kings that he ſpoke of; and the two Kings being laſt ſpoke of, it muſt be underſtood of the Kings; for it would be pretty hard to apply the *Nos habuimus nunc duos iniquos Reges*, to the *ipſi qui ſtarent ad Fundamentalia*. But in all Probability he ſpoke it thus, and if we do but ſtand to our Principles, I do not doubt but we ſhall overcome our Enemies as formerly, *&c.* But *ipſi* is a Variation of the Perſon, and according to Grammatical Conſtruction, it is evident how it ought to be expounded. This laſt ſeems to be the natural Reading of the Words; but the Indictment has not purſued them, but inſtead of that, has made Nonſenſe: For I do not ſee how *ipſi* can be me and my Auditors.

But paſſing by this, how will they make the Word *Inimicos* to mean the King and his Subjects? For it is not ſurely an *Inuendo* that can make my Words have any other Senſe than I that ſpoke them intended. The bare ſetting down the Words with *Inuendo's*, are not ſufficient to maintain an Action or an Indictment; for there are but two Ways to apply Words that are uncertain; the one is by laying a *Colloquium* precedent of ſuch Matter as leads to the Senſe of the Words, (and whenever that is done, the *Colloquium* muſt be proved in the Evidence.) The other Way is, where Words are laid in a Declaration, with an Averment that they were ſpoken of ſuch a Perſon; then the Words with an *Inuendo* after that Averment ſhew ſufficiently what is meant by them: As where one ſays, your Brother, your Maſter, your Servant, or your Son, is a Thief: Here the Words themſelves do not expreſs the Man of whom the Scandal is raiſed; but they give ſuch a Deſcription of him, that the Hearers may know who is meant: And then if in the Declaration it is averred that the Plaintiff was his Brother, his Maſter, his Servant, or his Son, and theſe Words were ſpoken of him, and thereby it comes to be made apparent to the Court who is meant, it is right; but then the Averment muſt be proved, or the Action cannot be maintained. Theſe are the only Ways that are allowed to maintain any ſuch Action; and there the *Inuendo* comes very properly to aſſiſt the Averment or *Colloquium*. But in this Caſe, here is nothing but a bare *Inuendo* that ſuch and ſuch are meant, without either a *Colloquium*, that there was a Diſcourſe concerning ſuch and ſuch Perſons, or an Averment that the Words were ſpoken of the Perſons.

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Mr. Attorney replied, That where ever Words by ſtrong and pregnant Intendment do carry Slander, and of ſuch a particular Perſon, there the Books are expreſs, that there needs no Averment, that they were ſpoken of ſuch a Perſon; and for this he cited the Caſe of *Fleetwood* and *Curle*. *Hob.* 267.

That this was not only ſo in Actions of the Caſe for Slander, but alſo in Indictments and Informations; and here every one knew there was but one King and one Government: And when Words are laid, to be ſpoken to excite Commotions or Rebellions, they are but external Declarations of the Mind; his inward Thoughts were the Treaſon: Indeed the laying that alone, That he did ſo and ſo compaſs and imagine, without ſome outward Declaration, would not be good in an Indictment, any more than the outward Declaration, without the inward Intention, would be ſufficient: But in this Indictment it was laid, that he did imagine to raiſe Rebellion and War within the Kingdom, to ſtir up the People againſt the King, and to depoſe the King, and bring him to Death; and then goes on and ſays, to the End he might effect this Treaſon he ſpoke ſuch and ſuch Words, (which by the late Statute amount to Treaſon). Now if theſe Words did not in their own Nature import a Tendency to invite and ſtir up the People to Rebellion and War againſt the King, it would be naught with *Inuendo's*; and ſo it would be, if there were twenty Averments. He added, That this Indictment was according to former Precedents, and cited 3 *Hen.* 8. *Rot.* 17. the Indictment againſt the Lord *Grey*; the 2 *Jac.* Lord *Cobham's* Caſe, *Paſch.* 17. *Jac. Rot.* 40. *Williams's* Caſe, *Fitzharris's* Caſe, where the Duke of *York* was deſcribed in the Libel by the Letters D. of *Y.* and ſometimes only *Y.* and the King by the Letters *Ch.* and the *Inuendo* is (meaning our Sovereign Lord the King,) and there is nothing averred; and that in Colonel *Sidney's* Caſe, there was no Averment, but the Words of the Libel are brought in alſo with an *Inuendo*: From whence he inferred, that the charging Words to be ſpoken to ſtir up Sedition and Rebellion within the Kingdom, without the help of any Averment whatſoever, was ſufficient.

That to ſay, Enemies was a very general Word, and therefore a bare *Inuendo* could not make it mean one more than another, was odd; for he ſaid it to a great Congregation, being unlawfully aſſembled at a Conventicle: And when he ſaid, That [they] ſhould overcome their Enemies, the Government muſt be intended. —— Beſides, it was plain who he meant, by what he ſaid before: That the King was a wicked Man, and repreſented him as an Enemy to God and Man, by introducing Popery into the Kingdom: And it was well known, that the conſtant Cry in thoſe Conventicles was, that we ſhould be all overrun with Popery, which were conſiderable Circſtances in this Caſe. That it was the ſame Thing as if the Words had been ſpoken at the Head of an Army, they being ſpoke to People aſſembled contrary to the Laws of the Land, and in Defiance of the Govern-

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ment. Nor did he ſee how it was poſſible the Words could be better laid, being ſworn exactly as they were laid; and eſpecially, being found to be all ſpoken to raiſe Sedition and Rebellion.

Mr. Sollicitor alſo inſiſted, That the Form of the Indictment was good. He ſaid, had the Words been, *Procure your ſelves Arms, and make your ſelves ready by ſuch a Day, and go to* Whitehall, *and kill the King*; no one would have affirmed it was neceſſary they ſhould ſay in the Indictment, *Dixit de Populo, vel de Rege*, ſo and ſo, becauſe the Words plainly import their own meaning, and ſo they do in this Caſe; and therefore to ſay, *Dixit de Rege, dixit de Populo*, would be impertinent. That indeed it was neceſſary, in Actions of the Caſe for Slander, to aver, *Dixit de querente*, for he muſt aſcertain the Perſon of whom the Words are ſpoken, to be the very Plaintiff, becauſe there may be ſeveral of the ſame Name; but where Words are pregnant, and full of themſelves, there needs no Averment.

My Lord Chief Juſtice ſaid, That the Precedents Mr. Attorney had cited, had very little Weight with him: And though he made no doubt, that if one ſhould bid Men prepare Arms, and go to *Whitehall*, and kill the King (according to the Caſe Mr. Sollicitor had put) thoſe Words would be an Overt Act of High-Treaſon: For there the Words import in themſelves who is meant, and are therefore good without any Averment: But had he bid them Riſe, and go to *Whitehall*, and they ſhould overcome their Enemies; there would be no Neceſſity of intending the King was their Enemy, unleſs it had been plainly declared by the Party himſelf, who he meant. And there was no doubt, if they had averred, that thoſe Words were ſpoken of the King and the People of *England*, it would have made it more certain. And if they had laid the Words thus, *If we will ſtand to our Principles, we ſhall deſtroy them*; the Caſe would have been ten times ſtronger. That he thought the Words, *We have had two wicked Kings together, who have ſuffered Popery to come in under their Noſes*, related plainly enough to the late King, and the preſent: But that when they came to ſpeak of Enemies, *Inuendo* the King and his Subjects; having talked of no Body before, that they were ſaid to have an Enmity againſt; this, he doubted, was to ſtretch it a little too far. —— Then, as to the Difference of Perſons, he obſerved they began in the firſt Perſon Plural, We have had two wicked Kings together; *Nos habuimus nunc duos iniquos Reges ſimul*: And afterwards ſay, If they, *ipſi*, will ſtand to their Principles, he did not doubt but they ſhould overcome their Enemies. If they had laid them (as any one muſt believe they were ſpoken) *If you or we will ſtand to our Principles, we ſhall overcome them*; and a Jury had found that theſe Words were ſpoken with ſuch an Intention as is laid in the Indictment, it would have been Treaſon: But when they come to ſay *ipſi*, They, in the third Perſon, and there are no third Perſon ſpoken of but the two Kings, who are alſo the laſt Antecedent, who could this relate to? Had they put *Nos* inſtead of *Ipſi*, it had been better underſtood, and better Grammar; for when one ſpeaks in the third Perſon, he excludes both himſelf, and thoſe he ſpeaks to, and an *inuendo* cannot help it.

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Sol. Gen. If we had laid it otherwiſe, we ſhould not have laid it as the Truth is, for the Word ſpoken was, *They*.

L. C. J. No doubt, he ſaid, *If you will ſtand to your Principles*; it is Nonſenſe elſe.

Sol. Gen. I take that to be well enough, for there are three Sentences: The firſt is, *That the People make a Flocking to the King*, &c. *Quod populus*, &c. The next is, *Quod nos habuimus*, &c. And the third is, *Quod ſi ipſi*, &c. Now *Quod* governs the particular Sentence by itſelf, and it is good in Grammar and Senſe too.

L. C. J. You lay it in the Indictment to be an entire Speech, and then the Relative muſt go to the laſt Antecedent.

Juſt. *Wythens.* If you make it ſeveral Speeches, it is ten times worſe; for then the latter Part is ſo uncertain, without an Averment of whom the Words were ſpoken, that it can never be made good.

Sol. Gen. It was an entire Speech; but conſiſted of ſeveral Sentences, which in common Underſtanding, muſt have relation to one another.

Juſt. *Walcot.* I think that the Averment, that theſe Words were ſpoken of the King, is a Point of Fact that ought to be averred, and proved.

L. C. J. Our Books require greater Certainty in Indictments, than in Actions on the Caſe; and in Cauſes of this Nature we are bound to be of Counſel for the Priſoner (which we are not in Cauſes not Capital.) And we have not one Act of Parliament to help the Defect of Form in Indictments, as we have in Civil Actions; which ſhews that our Anceſtors would not help Uncertainties, or Inſufficiencies in Form, where the Life of a Man was concerned. We will conſider of it: Take back the Priſoner; and you ſhall have a Rule to bring him, when the Court is ready for Judgment.

But no Judgment being given this Term, Mr. *Roſewell* procured the King's Pardon before the next Term; and upon pleading it, was diſcharged.

Biſhop *Burnet*, who is ever finding Fault with his Sovereign, in his firſt Volume of Poſthumous Hiſtory, is pleaſed to cenſure the King, for ſuffering Judgment againſt *Roſewell* to be arreſted, and not granting him a Pardon before he heard what he had to ſay for himſelf; telling us, that his Majeſty was aſhamed of the Proſecution: But I think the Biſhop has much more Reaſon to be out of Countenance, for reflecting on his Prince's Conduct in this Affair. *Remarks upon Roſewell's Trial.*

The Miniſtry, ſenſible how much his late and preſent Majeſty had ſuffered by thoſe Trumpeters of Rebellion from the Pulpit, that their Preachments were uſually Invectives againſt the Government; and that, inſtead of praying for their Governors, great Part of the Lord's Day was ſpent in curſing and reproaching

1684. 36 Car. II. proaching them. And Oath having been made by three Witneſſes, that the Priſoner had been guilty of moſt ſeditious and treaſonable Speeches in his Pulpit, thought fit to order this Proſecution againſt him: But when it appeared at the Trial, that the Witneſſes were common Informers, People of no Character; and that the Priſoner had always behaved himſelf in a modeſt and dutiful Manner, in all other Reſpects but his Nonconformity, the Court thought fit to give him Time to make his Exceptions to the Indictment (which was not drawn up with ſo much Accuracy as it might have been). And when it appeared doubtful, Whether the Treaſon was well laid, or not; his Majeſty, to prevent Judgment being given againſt him, interpoſed, and granted Mr. *Roſewell* a Pardon.

And what is there in all this, that future Princes may not be proud of imitating King *Charles* in? The Proſecution was grounded upon the Oaths of three poſitive Witneſſes, who appeared alſo againſt him at his Trial, upon whoſe Evidence the Jury convicted *Roſewell*: But ſo juſt and merciful was the King, ſo tender of the Life of his Subject, that though he knew the Sectaries to be generally Enemies to his Adminiſtration; yet, becauſe he doubted of the Teſtimony that had been given againſt this Preacher, was pleaſed to pardon him. Where is that Prince or State, that had gained ſuch an Advantage of a ſuppoſed Enemy to their Government, that would have extended their Grace and Compaſſion to him? But ſo maliciouſly bent againſt this benign and merciful Prince, does this envious Prelate appear, that he abuſes and calumniates him for his beſt Actions; ſuch as Poſterity, when they ſee them ſet in a true Light, muſt ever bleſs his Memory for, while they deteſt the Man that ſo induſtriouſly endeavoured to traduce him. 1684. 36 Car. II.

1684. 36 Car. II. Baillie's *Trial.*

The Trial of ROBERT BAILLIE of *Jerviſwood*, for *High-Treaſon*, before GEORGE, Earl of *Linlithgow*, Lord Juſtice-General of the Kingdom of *Scotland*; and the reſt of the Lords of Juſticiary at *Edinburgh*, *December* 23, 1684. 36 *Car.* II.

The Charge. THE Dittay, or Indictment, ſets forth, that the Priſoner having conceived extraordinary Malice againſt the King and Government, and deſigning to debar his Royal Highneſs, his Majeſty's only Brother, from his Right of Succeſſion, did endeavour to get himſelf elected one of the Commiſſioners for negotiating a Settlement of a Colony in *Carolina*, in or about the Month of *May*, 1683, that he might have the freer Acceſs to the Earls of *Shaftesbury* and *Eſſex*, the Lord *Ruſſel*, and others, who had entered into a Conſpiracy in *England*, againſt his Majeſty's Perſon and Government; and with Colonel *Rumſey*, *Walcot*, *Weſt*, *Ferguſon*, and others, who had conſpired the Murder of his Majeſty, and of his Royal Highneſs: That when he could not get himſelf elected one of the ſaid Commiſſioners, he went to *London* at his own Expence; declaring, his Deſign was to puſh forward the People of *England*, who did nothing but talk: That he did, at *London*, negotiate with the ſaid *Engliſh* Conſpirators, about a Sum of Money for the Lord *Argyle*, a declared Traitor, for procuring Men and Arms for raiſing a Rebellion againſt his Majeſty, and invading his native Country of *Scotland*; and endeavoured to perſuade *Argyle* to take any Sum, rather than not engage in the Deſign.

That having aſſured his Correſpondents in *Scotland*, the *Engliſh* were reſolved to exclude the Duke of *York* from the Succeſſion, thereby to encourage them to promote the ſaid Rebellion and Excluſion; he entered into an intimate Correſpondence with *Robert Ferguſon*, Sir *Thomas Armſtrong*, Colonel *Rumſey*, and *Walcot*, who were concerned in that Part of the Conſpiracy, for aſſaſſinating his Majeſty and the Duke; and did ſet up ſeveral Nights with them in Conſultation about it.

To which Indictment the Priſoner pleading *Not Guilty*, an Aſſize or Jury was ſworn, conſiſting of the Earls of *Strathmore* and *Balcarras*, Sir *George Skeen*, and twelve Gentlemen more. *A Jury of Fifteen impannelled.*

The Counſel for the Priſoner objected, That he ought to have had fifteen Days Notice of Trial, which the Court over-ruled; declaring, That this was not the Practice where the Perſon accuſed was a Priſoner; but that he might be tried upon twenty-four Hours Notice. *Objections of the Priſoner's Counſel to the Charge.*

The Priſoner's Counſel alſo objected, That he had been proſecuted before the Council, and fined a conſiderable Sum for the ſame Offence; and therefore he ought not to be proſecuted again for it.

To which his Majeſty's Advocate replied, That he confined himſelf to ſuch Facts as were High-Treaſon, and not mentioned in that Deciſion of the Council: And this Objection was alſo over-ruled by the Court.

The Earl of *Tarras* being called as a Witneſs for the King, the Priſoner's Counſel objected, That the Earl was an Accomplice in the *and the Witneſs.*

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the ſame Crime, and had confeſſed the Fact; and that he now came to give Evidence againſt the Priſoner, in order to merit his Pardon, and therefore was not a legal Witneſs: But the Court ruled, that in Caſes of Treaſon, Accomplices were legal Witneſſes, and ordered his Teſtimony to be received.

The Evidence.

Then the Earl of *Tarras* was ſworn, and depoſed, That the Priſoner went to *London*, and concerted Meaſures with the *Engliſh* Conſpirators, negotiating with them for a Sum of Money to enable the Earl of *Argyle* to raiſe Forces, and promote an Invaſion and Rebellion, as laid in the Indictment: That the Priſoner wrote the Deponent Word by one *Martin*, that the Earl of *Argyle* was to have 10,000 *l.* but his Countrymen at *London* would have had 30,000 *l.* for him) which was to be ſent over to *Argyle* in *Holland* to provide Arms; and he was to land in the Weſt Highlands of *Scotland*.

Alexander Monro confirmed the Teſtimony of the former Witneſs, adding, That *Martin* was ſent down to *Scotland* by a Club of the Conſpirators, (who met at the Priſoner's Chambers in *London*) to inform them, they ſhould not riſe, till there was a Riſing in *England*: And that on *Martin*'s Return to *England*, the Priſoner told the Deponent, Matters were in ſuch a Condition in *Scotland*, that a little would kindle the Fire of Rebellion.

Mr. *William Carſtairs* teſtified, That the Priſoner was at *London* concerting Meaſures with the *Engliſh* Conſpirators about *Chriſtmas*, 1682. That he met the Priſoner at Mr. *Shepherd*'s Houſe in *London*, where the Lord *Ruſſel* being preſent, the Deponent mentioned to his Lordſhip the Propoſal of 30,000 *l.* for the Earl of *Argyle*, and the raiſing a thouſand Horſe and Dragoons: And that the Lord *Ruſſel* told the Deponent, they could not raiſe ſo much at that Time; but if they had ten thouſand Pounds to begin with, that would draw People in; and when they were once in, they would ſoon be brought to more: But as to the thouſand Horſe and Dragoons, he could ſay nothing to it at preſent; that muſt be concerted on the Borders. That it was reſolved by the *Scotiſh* Agents in *London*, to ſend *Martin* to *Scotland* to deſire their Friends to hinder the Country from riſing, or taking raſh Reſolutions, till they ſaw how Matters went in *England*: And that the Deponent heard of the Deſign of killing the King and Duke from Mr. *Shepherd*, who told him ſome were full upon it. That the Deponent communicated the Deſign to Dr. *Owen*, Mr. *Griffith*, and Mr. *Mede*, of *Stepney*, Diſſenting Preachers, who all concurred in it.

Shepherd's Examination read as Evidence.

Then his Majeſty's Advocate produced the Examination of *Thomas Shepherd*, of *London*, Merchant, taken upon Oath the 23d of *December* 1683, before the Right Hon. Mr. Secretary *Jenkins*.

He depoſed, That *Ferguſon* told him about *April* laſt, that an Inſurrection was intended both in *England* and *Scotland*; and that for ſettling that Affair betwixt the two Nations, Mr. *Baillie* the Priſoner, Mr. *Monro*, Sir *John Cockran*, Sir *Hugh* and Sir *George Campbel*, and ſome others, were come to Town: That the Deponent had ſome Acquaintance with the Priſoner Mr. *Monro*, and Sir *John Cockran*: And that the Priſoner told the Deponent, *Argyle* demanded 30,000 *l.* of the *Engliſh*, to capacitate him to begin the Buſineſs in *Scotland*; and that the Priſoner told the Deponent, that having talked with the Lord *Ruſſel* and others, he found an Impoſſibility of raiſing that Sum; that afterwards the Priſoner acquainted the Deponent, they were certainly promiſed 10,000 *l.* which was agreed to be paid into the Deponent's Hands, in order to be remitted to *Holland*, for providing Arms. That both Sir *John Cockran* and the Priſoner lamented the Delays that were made in paying in the Money, and ſaid, *They feared it would be too little, if it were paid in.* And the Deponent being asked to explain what he meant by the Words *to capacitate him*, (Argyle) *to begin the Buſineſs?* He ſaid he underſtood by the Word *Buſineſs*, an Inſurrection in *Scotland*.

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Bourn's Examination read as Evidence.

His Majeſty's Advocate alſo produced the Information of *Zachary Bourn*, of *London*, Brewer, taken upon Oath the 10th of *December* 1683, before the Right Hon. Mr. Secretary *Jenkins*.

This Informant depoſed, That Mr. *Baillie*, the Priſoner, ſat up one Night, if not two, with Mr. *Ferguſon*, and went ſeveral Times in the Evening with him to the Duke of *Monmouth*, and the chief Managers of the Conſpiracy; that *Ferguſon* told the Deponent, that he, the ſaid *Baillie*, was the chief Man for the *Scots*, next to the Lord *Argyle*: That the ſaid *Baillie* did ſit up the greateſt Part of one Night with the ſaid *Ferguſon*; at which Time the Deponent believes they were buſy in preparing the intended Declaration; for that *Ferguſon* was about to ſhew the Deponent ſuch a Paper; but Company came up and prevented him: That *Ferguſon* told the Deponent, That the main Buſineſs of the ſaid *Baillie*, in meeting the ſaid Conſpirators, was, to get from them the 10,000 *l.* promiſed, for the buying Arms for the Inſurrection intended in *Scotland*.

His Majeſty's Advocate likewiſe produced ſeveral Warrants and Papers to prove that thoſe Depoſitions were ſigned by Sir *Leolin Jenkins*: And having ſummed up the Evidence, the Jury withdrew, and, on the 24th of *December*, brought in their Verdict, That the Priſoner was GUILTY of the Treaſons with which he was charged in the Indictment; and thereupon he received Sentence to be executed as a Traytor at the Market-Croſs in *Edinburgh*; and he was executed accordingly the ſame Afternoon.

He is convicted;

and executed.

Biſhop *Burnet*, in his firſt Volume of Poſthumous Hiſtory, reflects very ſeverely on the Government for trying and executing this Malcontent, his Kinſman and Countryman; but if it be obſerved, that there were upon his Jury two Nobleman, and thirteen Gentlemen of Quality, who unanimouſly found him guilty of the Treaſons he was charged with, though a Majority had been ſufficient to have convicted him by the Laws of *Scotland*; and that the Facts were proved beyond all Diſpute by Witneſſes that were known Friends

Remarks on Baillie's Trial.

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of the Party. It is not eaſy to conceive what that Right Reverend Prelate could found his Clamours upon. I am apt to think his greateſt Quarrel to theſe Proceedings was, that they laid open and confirmed the Guilt of the *Engliſh* Conſpirators, with whom he himſelf appears to have been pretty cloſely engaged. It is obſervable, that the Biſhop touches upon the Evidence given at this Trial very ſlightly, chuſing rather to dwell upon the Hardſhips *Baillie* endured in Priſon, in order to move the Compaſſion of his Readers: And this is his conſtant Practice, when Facts are too evident to be denied, to ſlide them over, and endeavour to captivate the Mob with lamentable Relations of the Priſoner's Sufferings. He ſeems alſo to mention it as a Grievance, that *Baillie* was executed the ſame Afternoon Sentence paſſed upon him: But this was the uſual Practice in *Scotland:* And poſſibly they may not be much in the Wrong; for when a Criminal knows his Death is ſo near and certain, in caſe he is caſt, he will probably be the leſs likely to prevaricate and trifle with his Judges; and the truth may more eaſily be diſcovered, than where the Criminal has a Week or a Fortnight's Time allowed him, and an Opportunity of applying for a Pardon, or perhaps of making his Eſcape.

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The next Paper we meet with, bound up among the State Trials, is called *The Trial of* William Diſney, *Eſq*; but in Truth there is nothing of the Trial there. The Compilers of that 7th Volume of Trials only tell us, he was tried by a ſpecial Commiſſion of Oyer and Terminer at the *Marſhalſea* in *Southwark*, on the 25th of *June* 1685. That he was indicted for printing and publiſhing a Treaſonable Paper againſt his Majeſty and the Government, entitled, *The Declaration of* James *Duke of* Monmouth, *and the Noblemen, Gentlemen, and others, now in Arms*, &c. That the Evidence was plain againſt him; and that the Priſoner making little or no Defence, was found guilty of High Treaſon, received Sentence of Death, and was executed at *Kennington-Common* in *Surry*, on *Monday* the 29th of *June* 1685. Such imperfect Pieces have the Collectors of the 7th and 8th Volumes of Trials thought fit to introduce into that Work, in which, no doubt, they were governed by their Maſters the Bookſellers, who are for putting in every thing that may enlarge the Volume and enhance the Price, where they know there are ſome good things in the firſt Part of a Work that will carry off the additional Rubbiſh.

1685. 1 Jac. II.

The Trial of TITUS OATES, for Perjury, in the Court of *King's-Bench*, on the 8th of *May* 1685. 1 *Jac.* II.

1685. 1 Jac. II. Omers Students Duty Evidence.

Oates's firſt Trial for Perjury.

His Challenges.

THE Defendant was permitted to ſit within the Bar, that he might the more conveniently order his Papers, and manage his Defence. The Jurors being called, he challenged ſome of them, becauſe they had been upon the Grand Jury, and found the Bill againſt him; which was allowed to be a good Cauſe of Challenge.

The Names of the twelve that were ſworn, were,

The Jury.

Sir *William Dodſon*,	*Robert Bedingfield*,
Sir *Edmund Wiſeman*,	*Thomas Rawlinſon*,
Richard Aley,	*Roger Reeves*,
Thomas Fowlis,	*Ambroſe Iſted*,
Thomas Blackmore,	*Henry Collier*, and
Peter Pickering,	*Richard Howard.*

The Indictment.

The Indictment charged the Defendant with artful and corrupt Perjury, in that he had, on the 17th of *December* 1678, ſworn, there was a treaſonable Conſult of Jeſuits held at the *White-horſe* Tavern in the *Strand*, in the County of *Middleſex*, the 24th of *April* in the ſaid Year 1678, at which the Jeſuits *Whitebread*, *Fenwick*, and *Ireland*, the ſaid *Titus Oates*, and forty or fifty more Jeſuits, were preſent; and that they ſeparated themſelves into ſeveral Companies, or Clubs, and came to a Reſolution to murder the King: And that he, the ſaid *Titus Oates*, carried the ſaid Reſolution from Chamber to Chamber to be ſigned by the ſaid Jeſuits; whereas in Truth and Fact, he, the ſaid *Titus Oates*, was not preſent at any ſuch Conſult on the 24th of *April* 1678, nor carried any ſuch Reſolution from Chamber to Chamber to be ſigned: And ſo the ſaid *Titus Oates*, on the ſaid 17th of *December* 1678, did commit willful and corrupt Perjury.

The King's Counſel, having opened the Indictment, proceeded to produce their Evidence: And firſt the Record of *Ireland*'s Conviction was read; then Mr. *Foſter* was ſworn, and gave the following Teſtimony, (*viz.*)

Foſter's Evidence.

I was ſo unhappy to be on that Jury by whom Mr. *Ireland*, *Pickering*, and *Grove*, were tried in *December* 78. I ſaw Mr. *Oates* ſworn as an Evidence for the King; and he depoſed, That there was a Meeting of ſeveral Jeſuits at the *White-horſe* Tavern in the *Strand*, upon the 24th of *April* 1678; and that Mr. *Ireland*, *Whitebread*, and *Fenwick*, were preſent at the Meeting, and that there they did conſult the Death of the King, and the altering of

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of Religion; and ſome went, and others came. At laſt they reduced themſelves into ſeveral ſmaller Companies or Clubs, and came to a Reſolution, that *Pickering* and *Grove* ſhould aſſaſſinate the King; for which the one was to have 1500 Pounds, and the other 30,000 Maſſes ſaid for him; and that this Reſolution was drawn up by one *Mico*, and he (*Oates*) himſelf, went with it to ſeveral of their Chambers: He went to *Whitebread*'s Chamber, and ſaw *Whitebread* ſign it: He went to *Fenwick*'s Chamber, and ſaw *Fenwick* ſign it; and went to *Ireland*'s Chamber, and ſaw *Ireland* ſign it, upon the 24th of *April*, 78. I am poſitive in this, becauſe I took Notes at the Trial, being a Juryman; and afterwards compared them with the Trial, and found they agreed; and I have kept theſe Notes by me ever ſince.

Oates demanded, if he ſwore they reſolved to kill the King, at the *White-horſe* Tavern, or that Reſolution was made after they ſeparated into leſſer Clubs: Mr. *Foſter* anſwered, They came to a Reſolution, you ſaid, at the *White-horſe* Tavern; and it was there drawn up by one *Mico*, I think; and it was carried by you for every one to ſign it from Chamber to Chamber; for, I remember, you were asked the Queſtion, Whether you ſaw them ſign it? And you anſwered, That you did carry it, and ſaw them ſign it.

Oates demanded, how he came to remember all this after ſo long Time: Mr. *Foſter* anſwered, Truly it is ſo long ago, that had I not taken theſe Notes at the Trial, I had not been able to give ſo good an Account.

Omers Students their Evidence.

Then about twenty Gentlemen, who were Students at the *Engliſh* College at St. *Omers*, when Mr. *Oates* was a Student there, depoſed, That they were ſure he was at the ſaid College from *Chriſtmas* to *June* 1678, and was not abſent from the College during that Time, unleſs a Day or two in *January*, when he went to *Watton*, a Town in that Neighbourhood: And theſe Witneſſes mentioned ſuch Circumſtances to confirm their Teſtimony, as ſhewed they could not eaſily be miſtaken; as that Mr. *Oates* always dined at a Table by himſelf in the College-hall; for, being a Man in Years, he pretended he could not eat as the young Students did, and therefore ſat at a little Table by himſelf, next to the Table of the Fathers, to which all the Students made their Reverence before they ſat down. Others depoſed, he was appointed Reader in the Sodality, and that he read there at the ſame Time he had ſworn he was in *London*, except a few Days he was in the Infirmary. Others remembered he was at St. *Omers* at that Time, by his being with them at certain Sports and Recreations they uſed then; and ſeveral more by other Circumſtances. And when the printed Trial of the Jeſuits was brought over to St. *Omers*, they were amazed to find *Oates* ſwear he was at a Conſult at *London* the 24th of *April*, when the whole College knew he was at St. *Omers*. *Haggerſtone* depoſed, That there was, indeed, a Congregation of the Jeſuits held in *London* in *April* 78, as was uſual, once in three Years, to chuſe a Procurator, and other Buſineſs relating to the Society: And that he ſaw two of the Fathers go from St. *Omers* to that Congregation; but he remembered very well that *Oates* remained there then, for he frequented his Company all that Time; and when the Fathers, *viz.* Mr. *Williams* and Mr. *Marſh*, returned to St. *Omers*, the Defendant, *Oates*, asked this Witneſs, if they had been at the Conſult? Others depoſed, That *Oates* was ſo remarkable for his Stories and ridiculous Actions, and quarrelling with every Body in the College, that if he had been out of the College ſo long as to go to *London*, and back again, every body muſt have miſſed him.

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The Lord *Gerrard*, who was a Student at St. *Omers* when the Defendant was there, depoſed, That *Oates* came to St. *Omers* in *December* 77, and he never heard he was abſent till *June* 78, and that he remembered him particularly the 25th of *March* 78, when Mr. *Oates* deſired to be appointed Reader to the Sodality, and that he was conſtant in his reading on Sundays and Holidays for five or ſix Weeks: That he remembered his being confirmed by a Catholick Biſhop, who was there, on St. *Auſtin*'s Day, the 26th of *May*, N. S. That when the News of the Plot's being diſcovered came to St. *Omers*, it was wondered at by all the Scholars, how *Oates* could be ſo impudent to pretend he was at ſuch a Conſult the 24th of *April* 78, when all the College ſaw him every Day in *April* and *May* at St. *Omers*, as much as a Man could be ſeen in a Family; and that no Scholar came or went away but it was the common News of the Houſe.

Mr. *Samuel Morgan*, a beneficed Clergyman of the Church of *England*, depoſed, that he was a Student at St. *Omers* in the Year 78, and had been five Years reconciled to the Church of *England*: That he remembered *Oates* came to St. *Omers* about a Fortnight before *Chriſtmas* 77, and went away in *June* 78, and did not remember he was abſent during that Time, except one Night at *Watton*: That *Ireland*'s Trial being brought to the College, wherein it was ſaid, Mr. *Oates* had ſworn the 24th of *April* 78, he was at a Conſult of the Jeſuits at the *White-horſe* Tavern, where they reſolved to kill the King; having it then freſh in his Memory, he found *Oates* was at St. *Omers* that very Day, by a particular Circumſtance; for he was playing at Ball that Day, and ſtruck the Ball over into a Court, and borrowed Mr. *Oates*'s Key to fetch it.

Oates Defence

The Court directing Mr. *Oates* to enter upon his Defence, he objected to the Indictment, that the Aſſignment of the Perjury did not purſue the Oath, as it was ſet forth; for in the one Place the Word was *ſignand'*, and in the other *ſignat'*; and if it were *ſignat'* in the Evidence that was given, it ought to be *ſignat* in the Perjury aſſigned. The Court told him that they were then upon the Fact, and that this Objection would be ſaved to him if he were convicted, but it was not proper now. Beſides, he ſhould remember, there were two Perjuries aſſigned; the one upon the firſt Part of his Oath, *viz.* That he was preſent at a Conſult the 24th of *April* 78, *Ubi re vera*, he

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he was not there; and if he were forſworn in that Point, it would eaſily be believed he was forſworn in the other Point, *viz.* That he did not carry the Reſolution from Chamber to Chamber, *&c.*

In the next Place, he deſired the Opinion of the Court, Whether the Evidence did prove the Words he was ſaid to ſwear, as they were laid in the Indictment?

The Court anſwered, they thought them fully proved; but that was a Point of Fact which the Jury were to try.

Then the Defendant produced a Copy of the Record of *Ireland*'s Conviction; which was proved to be a true Copy by Mr. *Percival:* And he deſired to have Counſel aſſigned him to argue this Point of Law, *viz.* Whether the Convictions and Attainders of *Ireland* and *Whitebread*, of a treaſonable Conſult the 24th of *April*, 78, ought not to be taken as a legal Proof of the Fact, ſo long as thoſe Attainders remained in Force? And whether the Averment of their being falſe, ought to be received againſt thoſe Records?

The Court anſwered, That though that remained a good Record, and unimpeachable ſtill; yet it was lawful to ſay, The Verdict was obtained upon the Teſtimony of ſuch a one, who forſwore himſelf; and for that particular Perjury the Offender might be proſecuted.

Oates. If your Lordſhip rules that for Law, I will go on: And firſt, I ſhall ſubmit it to your Conſideration, Why the Preſentment, and the finding this Bill for Perjury, has been ſo long delayed; ſince it appears, that the ſame Witneſſes were at the Trial of the five Jeſuits, or might have been produced then? And I muſt obſerve, that my Caſe is very hard, ſeeing the Subſtance of my Teſtimony received ſuch Credit, that the Jury were told, upon bringing in their Verdict, That all the Objections againſt the Evidence, were then fully anſwered: That there was nothing that the Priſoners had been wanting in to object, which could be objected; and that the Thing was as clear as the Sun: And yet, after ſix Years time, I muſt be called in Queſtion for Perjury, in my Teſtimony of that Part of the Popiſh Plot with which the King and Kingdom, four ſucceſſive Parliaments, all the Judges of *England*, and three Juries, were ſo well ſatisfied. The Evidence I gave, they induſtriouſly endeavoured to falſify ſix Years ago, by ſixteen St. *Omers* Youths, who were examined at *Whitebread*'s and *Langhorn*'s Trials, in neither of which were they believed, becauſe of their Religion and Education, and becauſe their Inſtructors were Men of known Artifice; and if my Evidence were true then, it muſt needs be ſo ſtill; for Truth is always the ſame: And I deſire your Lordſhip and the Jury would obſerve, that though the King's Counſel are againſt me now, yet they are alſo againſt themſelves. Mr. Sollicitor was Counſel for the King at *Langhorn*'s Trial; and Sir *Robert Sawyer*, at Sir *George Wakeman*'s: And can it be ſuppoſed, that it is the Love of publick Juſtice, that is the Cauſe of this Attempt to falſify my Evidence, after ſo many Trials, in which it has been credited and confirmed? Can any thing tend more to ſubvert the Methods of Juſtice, and frighten Witneſſes from diſcovering Conſpiracies? Had the King, his Peers, his Commons and Judges, no Honour, no Juſtice or Underſtanding? Shall thoſe Juries be ſaid to have drawn the innocent Blood of thoſe Men upon their own Heads, and the Nation? As if I am perjured, it muſt be innocent Blood that was ſhed upon it.

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Court. Neither Judges or Jury have any Share in that Blood: That is your own moſt certainly.

Oates. My Lord, if you pleaſe to give me Leave to proceed in my Evidence, I deſire theſe Records of Conviction may be read, which are my firſt Proof of the Conſult; and I ſhall then bring Witneſſes, *viva voce*, to prove what I did ſwear at thoſe Trials was true.

L. C. J. The Queſtion now is, Not whether there was a Conſult; but whether you can prove your ſelf to be here on the 24th of *April*, 78? At which Time it is agreed on all Hands, there was a Conſult, as is uſual, once in three Years.

Oates. I ſhall not go about to prove, that I was not then at St. *Omers*; but that I was actually in *London:* But to introduce this, it will be neceſſary for me to read the Records of Conviction of *Whitebread* and *Ireland.*

Then the Record of *Ireland*'s Conviction was read in *Engliſh.*

Oates. Now read *Whitebread*'s Attainder; I will not trouble the Court with the whole Record.

Clerk of the Crown. Thomas White, *alias* Whitebread, William Harcourt, *alias* Harriſon, John Fenwick, John Gavan, *and* Anthony Turner, *were found guilty of High-Treaſon, and attainted; and Execution awarded againſt them upon that Attainder.*

Oates. Now I ſhall prove, That at the Trial of *Ireland*, I gave ſo ſatisfactory an Evidence againſt *Whitebread* and *Fenwick*, that my Lord Chief Juſtice *Scroggs* ſaid, *It might be ſufficient to ſatisfy a private Conſcience, though it was not a legal Proof, there being but one Witneſs.*

To which Mr. *Blaney* was called.

He depoſed, That he had looked upon his Notes, but could not find exactly the Words that Mr. *Oates* repeated to him; but there was ſomething to that Purpoſe.

Oates. Did not my Lord Chief Baron ſay to the Jaylor, *You muſt underſtand they are no way acquitted, the Evidence is ſo full againſt them by Mr.* Oates's *Teſtimony, that there is no Reaſon to acquit them: It is as flat as by one Witneſs can be?*

Blaney. There is ſuch a Paſſage in my Notes.

Oates. See what my Lord Chief Juſtice *Scroggs* ſaid in ſumming up the Evidence againſt *Ireland*, viz. *When the Matter is accompanied with ſo many other Circumſtances, which are material Things, and cannot be evaded or denied, it is impoſſible almoſt, for any Man, either to make ſuch a Story, or not to believe it when it is told.*

Blaney.

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Blaney. I find ſuch a Paſſage in my Notes.

Oates. And in ſumming up the Evidence againſt *Ireland*, *Pickering* and *Grove*, had he not this Expreſſion; *You have done, Gentlemen, live very good Subjects, and very good Chriſtians, and like very good Proteſtants; and now much good may their* 30000 *Maſſes do them?*

Blaney. There is ſuch an Expreſſion in my Notes.

Oates. Have you the Notes of *Whitebread*'s Trial?

Blaney. No, I have them not here.

Oates. Then I muſt deſire the printed Trials may be read.

L. C. J. No, they are no Evidence.

Oates. Then give me leave to mention what your Lordſhip ſaid about your Satisfaction with the Evidence: You were then Recorder of *London.*

L. C. J. Ay, with all my Heart: And whatever I ſaid I will own.

Oates. Will your Lordſhip pleaſe to be ſworn then?

L. C. J. No, there will be no need for that; I will own any thing I ſaid then.

Oates. When your Lordſhip gave Judgment of Death upon the five Jeſuits and *Langhorn*, ſpeaking of the Objections that had been made againſt the Evidence, you ſaid, *Your ſeveral Crimes have been proved againſt you; you have been fully heard, and ſtand convicted of thoſe Crimes you have been indicted for.*

L. C. J. I believe I might ſpeak to the ſame Purpoſe.

Oates. And when the Jury brought in their Verdict againſt the five Jeſuits, you ſaid, *Gentlemen, There has been a long Evidence againſt the Priſoners; they were all indicted, arraigned, and tried for High-Treaſon, depending upon ſeveral Circumſtances. They can none of them ſay, the Court refuſed to hear any Thing they could ſay for themſelves; but upon a long Evidence, and a patient Hearing of the Defence they made, they are found Guilty; and for any thing appears to us, it is a juſt Verdict you have given.*

L. C. J. I might ſay ſomething to that Purpoſe at that time; and no doubt, as the Caſe then ſtood, the Jury did find an unexceptionable Verdict.

Oates. And, my Lord, when you were Counſel for the King in *Colledge*'s Trial at *Oxford*, addreſſing yourſelf to the Jury, you had this Expreſſion: *We come not here to trip up the Heels of the Popiſh Plot, by ſaying, That any of them who ſuffered for it, died contrary to Law.*

L. C. J. Deceive not yourſelf; all this you have inſiſted on hitherto, has not been to the Purpoſe, or is any ſort of Evidence in this Caſe. What my Lord Chief Juſtice *Scroggs* ſaid at any of thoſe Trials, or what I ſaid, or any other Perſon who was Counſel or Judge upon the Bench; it was but our Opinion on the Fact, as it occurred to our preſent Apprehenſions, and is no Evidence or Binding to this Jury. And there is no doubt, but thoſe Juries did believe the Evidence you gave then, or they would not have convicted the Priſoners. I do not diſcommend you for inſinuating theſe Things, as introductive and preparative to your Defence; but it is no Evidence one way or other. We have many times, in *Weſtminſter-Hall*, Verdict againſt Verdict: And in theſe Caſes, we give our Opinions according to the preſent Teſtimony that is before us.

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Oates. If then I prove, my Lord, that *Ireland* was engaged in a Deſign againſt the late King's Life, and was a Prieſt and a Jeſuit; will not this be a collateral Evidence to render my Credit ſufficient, and ſupport my Teſtimony?

L. C. J. It may give ſome Credit to your Teſtimony; but it is not, of it ſelf, ſufficient upon this Indictment. Nay, I will ſuppoſe there was a Conſult of Jeſuits in the *Strand*, the 24th of *April*, 78, where theſe, you ſay, were all preſent, and did come to the Reſolution you mention; and yet you will not be innocent if you were not there too, as you ſwear. Therefore give us ſome Teſtimony, to ſatisfy us you were there, if you would ſet all right again. Call two or three Witneſſes, to prove you were in Town the 22d, 23d, or 24 of *April*, it would be the beſt Defence you could make.

Oates. I will follow your Directions, my Lord.

Oates. Then *Cecilia Mayo* was ſworn.

Oates. Pray give the Court an Account, if you did not ſee me in *London* the latter End of *April*, or the Beginning of *May*, 1678?

Oates's Evidence, to prove he was at London at the Conſult.

Mayo. My Lord, I ſaw him the latter End of *April*, at my Maſter, Sir *Richard Barker*'s, where I then lived; and he came thither again in a few Days: I remember it by this Circumſtance; Sir *Richard* was ſick all the Month of *April*, and in the Country, and came to Town but now and then; and Mr. *Oates* came when he was abſent: And a young Man that lived in the Houſe, came and told me, there was Mr. *Oates* in a ſtrange Diſguiſe, and he believed he was turned Quaker. I had never ſeen Mr. *Oates* before then.

L. C. J. How do you know that to be Mr. *Oates* then?

Mayo. The Family knew him, and they told me it was he. My Lord, he came three or four Days afterwards to the Houſe, and then the young Man came and told me, Parſon *Oates* was turned Jeſuit: And coming to Sir *Richard*'s Lady's Siſter, ſhe ſaid to him, I hear you are turned Jeſuit, and we can have no Society with you now; but he ſtaid Dinner with them, and moſt part of the Day. *Then he came the latter End of* May: *Whitſuntide* was in *May* that Year, and I know he came the ſecond time before *Whitſuntide*; for we uſed to Waſh and Scour before that Time; and I was ſending to a Woman to help Waſh and Scour, when the young Man told me he was there.

L. C. J. What was the Name of that young Man you ſpeak of?

Mayo. His Name was *Benjamin*; but he is dead.

L. C. J. Is Sir *Richard Barker* living?

Mayo. He is, my Lord; but he is not well, or he would have been here.

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L. C. J. Who dined with him when he dined there?

Mayo. There was my Lady's Sister, Madam *Thurrel*, and her two Sons: She is in *Wales*, but her Sons are dead.— There was one Dr. *Cocket* too, who is in *Wales* at present. And there were two of my Lady's Daughters, that are living in *Lincolnshire*, I think.

L. C. J. It is a great Misfortune to have so many dead, or so far remote.

Oates. My Lord, six Years makes a great Alteration in a Family.

Att. Gen. Mr. *Oates* has had Time enough to send for his Witnesses, for he has had Notice of his Trial this half Year. Pray, Mrs. *Mayo*, What coloured Cloaths had Mr. *Oates* when you saw him first?

Mayo. He had a whitish Hat, and coloured Cloaths.

John Butler, Coachman to Sir *Richard Barker*, deposed, That, as he remembered, the first Time he saw Mr. *Oates* was in *May* (78,) before the Plot was discovered, That he came to his Master's in a Disguise, having a white Hat flapping over his Eyes, his Hair cut close to his Ears, and a grey short Coat on; and the next Time he saw him at his Master's he had a Cinnamon-coloured Coat, a long black Peruke, a black Hat with a green Ribbon, and green Cuff-strings at his Wrists; and that he dined at his Master's about seven Times.

The Chief Justice then demanding of Mrs. *Mayo*, *Butler*'s Fellow Servant, how often *Oates* dined at her Master's Sir *Richard Barker*'s, affirmed, He dined there but once, and that he had on a grey Coat, a grey Hat, and a short brown Wig; and that he afterwards came in black Cloaths, and a long brown Peruke.

The Chief Justice observing there were several Contradictions in their Evidence, *Oates* said, These Things were very lean Stuff to perjure a Witness upon: That his Lordship was not so strict with the St. *Omers* Witnesses, And what did it signify, Whether the Wig were long, or short, black or brown?

The Chief Justice replied, There was no other Way to detect Perjury, but by such Circumstances: In *Susanna*'s Case the Perjury was discovered by Circumstances.

Philip Page deposed, That he was Servant to Sir *Richard Barker*, and *Oates* came thither disguised in a light-coloured Coat, a broad-brimmed Hat, and his Hair cut short to his Ears, and asked him for Dr. *Tongue* and Sir *Richard*; and he thought this was in *May* 78; but could not be positive what Month or Year it was.

Mr. *Walker* deposed, He met *Oates* between St. *Martin's-lane* and *Leicester-fields*, in a Disguise, between *Lady-day* and the latter end of *April*, 78.

The Chief Justice demanded, where he lodged or dieted all that while he pretended to be in Town? *Oates* answered, That was not now the Question. If he proved he was not at St. *Omers* in the Months of *April* and *May*, but here in *London*, he proved the St. *Omer*'s Evidence to be false; and it was not to be expected, as he was engaged among Papists, and afterwards an Evidence to discover their Treasons, they would come to testify any thing in his Behalf now. 1685. 1 Jac. II.

Then he called the Earl of *Huntington* as a Witness for him, and desired his Lordship would give an Account, What Credit he had in the House of Lords upon his Discovery.

The Earl answered, He believed Mr. *Oates* found a good Reception in the House of Lords, which was founded upon an Opinion, that he was an honest Man; but since that Time it appearing there were so many and great Contradictions, Falsities, and Perjuries in his Evidence, upon which so much innocent Blood had been shed, he believed a great many that were concerned in the Trials of those unfortunate Persons were heartily afflicted and sorry for their Share in it: And he believed, most of the House of Peers had altered their Opinion of this Man's Credit, and looked upon his Evidence to be very false.

Mr. *Oates* called a great many other Persons of Quality, Peers, Judges, and Commoners; some of whom did not appear, and the rest testified nothing to his Advantage, but rather the contrary; particularly, the Lord Chief Baron, of whom *Oates* desired, That his Lordship would declare the Satisfaction he received concerning the Fairness and Fullness of the Evidence given at the Trials of *Whitebread* and *Langhorne*. To which the Chief Baron answered, There were a great many Persons, and Gentlemen of good Families, who came from St. *Omers*, and gave Evidence of Mr. *Oates*'s being there when he said he was in *London*. *Oates* demanding further, If the Jury believed them at that Time? the Chief Baron answered, he could not tell what the Jury did, but he never had any great Faith in Mr. *Oates* himself: Whereupon *Oates* replied, He was not at all concerned at this: He valued himself more upon his Innocency and Integrity than any Man's good Opinion whatever: He would stand to what he had sworn with his last Breath, and seal it, if Occasion was, with his Blood. The chief Justice answering, It were Pity but that it were to be done by his Blood, *Oates* replyed, Ah, my Lord, I know why all this is, and so may the World very easily too; but this will not do to make the Plot disbelieved.

Oates's subornation of Witnesses to support the Credit of the Plot.

The King's Counsel then called Mr. *Smith* to depose, That *Oates* suborned him to perjure himself: But the Chief Justice refused to hear the Testimony of a Man who came to swear he had perjured himself at a former Trial.

Then they produced Witnesses, who proved that *Oates* would have suborned *Clay* at the Trial of the five Jesuits.

Mr. *Haward* deposed, That *Clay* was not at Dinner at his House in *May* 78, as *Clay* had deposed.

And a Paragraph of *Oates*'s Narrative was read, wherein he had sworn, *That he returned to St.* Omers, *three or four Days after the Consult at the* White-horse.

Whereupon Mr. Attorney observed, That *Oates*'s Witnesses swore he was in *London* the latter end of *May*; which could not be true, if *Oates* himself swore true in his Narrative.

Then

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Then a Reſolution of the Houſe of Lords was read, at *Oates*'s Deſire, importing, That they believed the Popiſh Plot.

And another Reſolution, for taking up Capt. *Berkley*, for villifying *Oates*'s Evidence.

He proceeds in his Defence

Being directed to go on with his Defence, he objected, That the Papiſts were not legal Witneſſes, becauſe they were Parties in the Cauſe; and deſired Counſel to argue that Point of Law. To which the Chief Juſtice anſwering, That was no Point of Law, *Oates appealed to all his Hearers, if he had Juſtice done him.* The Lord Chief Juſtice then replied, He was an impudent Fellow; he muſt appeal to none but the Court and the Jury: They ſhould ſtop his Mouth if he did not behave himſelf as he ought: He would ſuffer none of his Commonwealth Appeals to the Mob.

Oates then objected, That the Witneſſes were bred up in Seminaries, againſt Law: The Chief Juſtice replied, Every Man that was bred a Diſſenter was bred up againſt Law.

He inſiſted, That a Witneſs for the King could not be indicted of Perjury, or the Plot called in queſtion now.

The Chief Juſtice anſwered, This was nothing to the Purpoſe. After which, Mr. *Oates* proceeded to ſum up the Evidence for himſelf, and obſerved, That Mrs. *Mayo* came and gave her Evidence voluntarily, without any Hopes of a Reward, but out of a Love to Juſtice; and therefore inſinuated, that her Teſtimony was not to be ſuſpected; for People ſeldom perjured themſelves, but where there was Malice or Intereſt in the Caſe. Then he repeated the Evidence of *Butler* and *Page*, and ſaid, He had *ſubpœna'd* Sir *Richard Barker*, to confirm the Evidence of theſe People. And he did expect that Mr. *Smith* would have been examined: But he perceived the Court were render of that Point, as knowing, it would then eaſily have been ſeen, upon which Side he was ſuborned.

Court. It was to do you Right, we refuſed to have him ſworn; but if you conſent to it, he ſhall be examined ſtill.

Oates. My Lord, the Evidence on which I am indicted for Perjury, is the ſame that was given ſix Years ago. There was there ſixteen Witneſſes produced againſt me; but what Credit did they receive? Now, if the Evidence I gave then was to be believed, though oppoſed by ſo many Witneſſes, what new Objection does ariſe, which was not then urged, and received an Anſwer? And I hope thoſe Paſſages of Heat, that have fallen from me, ſhall not make me fare the worſe in your Judgment. I called ſome Noble Lords to teſtify for me; but either the Diſtance of Time has wrought upon their Memories, or the Difference of the Seaſon has changed their Opinion: So that they now disbelieve what they believed before, and perhaps for as little Reaſon as ———

L. C. J. As they believed you at firſt.

Oates. Yes, truly, my Lord; for I cannot expect, that a Man who believes without a Principle, ſhould not recant that Belief without a Reaſon ——— I name no body.

L. C. J. But the Nobility, that are preſent, and have been Witneſſes in this Cauſe, are all Perſons of that Honour, that the Court is bound to vindicate them from theſe ſcandalous Reflections; but only I think, a Slander from your Mouth is very little Scandal.

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Oates. Nor from ſomebody's elſe neither: I find, my Lord, I am not to be heard with Patience.

L. C. J. You do not deſerve to be heard at all: Can't you ſpeak without Reflections?

Oates. Was ever Man dealt with as I am? Or had ſuch Evidence offered againſt him? Here are the Youths of St. *Omers* Seminary, Sir *George Wakeman*, and my Lord *Caſtlemain*, known Papiſts; and perhaps Popiſh Recuſants convict too. And the Record of my Lord's Acquittal is brought as an Evidence of my being perjured; when all the World knows, he came off, becauſe there was but one Witneſs againſt him. And *Wakeman*'s Acquittal too is brought, and he ſwears, That what I depoſed againſt him was falſe; but had it not been for two diſhoneſt Perſons, (one of them is now in my Sight) we could at that Time have proved five thouſand Pound paid him, and that he gave a Receipt for it. This, I am ſure, had I been a Witneſs for the Fanatick Plot; I had never been queſtioned, though my Evidence had been falſe: But the Papiſts have now a Turn to ſerve, and come to bear this Teſtimony on purpoſe to falſify my Evidence, and bring off the Popiſh Lords, who now ſtand impeached of High-Treaſon. But, I hope, as the Court would never admit Indictments of Perjury againſt the Witneſſes in my Lord *Shaftesbury*'s Caſe, ſo you will not admit it here. My Lord, it is not me they proſecute, but the whole Proteſtant Intereſt. Do they not, hereby, arraign the Proceedings of ſeveral Parliaments? of all the Courts of Juſtice, and the Verdicts of thoſe Juries that convicted the Traitors? For my Part, I care not what becomes of me; but the Truth will one Time or other appear: And ſince I have not the Liberty to argue what is moſt material for my Defence, I appeal to the great God of Heaven and Earth, and once more in his Preſence, and before this Auditory do avow, That my Evidence of the Popiſh Plot is true in every Part of it, and will expect from Almighty God the Vindication of my Integrity and Innocence. Having concluded his Defence, He ſaid, he was troubled with the Gout and Stone, and deſired that he might not be put in Irons again, he being only a Debtor to the King upon a Civil Account; and if he were convicted on theſe Indictments, he could be but in Execution for a Treſpaſs; and therefore thought he ought not to be ſo handled. The Marſhall informed the Court, That it was but the laſt Night, Ropes were brought into his Chamber to favour his Eſcape. Then the Court directed he ſhould be kept *in ſalva & arcta Cuſtodia.*

Then Mr. Sollicitor ſummed up the Evidence for the King; but, before he had made any great Progreſs, Mr. *Oates* ſaid, he was ill, and deſired Leave of the Court to withdraw.

Then Mr. Sollicitor proceeded; and having ſummed up the Evidence that had been given for the King, he obſerved, That, of the 20 Witneſſes

1685. 1 Jac. II. Witneſſes produced, not above two or three of them were at the former Trials; though, indeed, they teſtified the ſame Things that were atteſted then; but with many other Circumſtances and Particulars. That to this, indeed, *Oates* had objected, that ſeveral Witneſſes came from St. *Omers* before, but were not believed; but that the Men were convicted, condemned and executed upon his Teſtimony. That he had alſo brought a Counter-proof, and endeavoured to ſhew, he was actually in *England*, when the St. *Omers* Witneſſes had ſworn him to be in the College.

As to the Evidence of *Page*, Mr. Sollicitor obſerved, That he was not poſitive either to the Month or Year he ſaw Mr. *Oates*; and as for *Walker*, the Parſon, he being asked, what Circumſtances he knew the Time by, ſaid, It was a Year and a Quarter before the Plot was diſcovered; which was a Year before *Oates* pretended to be at the Conſult; and therefore could do him no Service.

As to the Evidence of Mrs. *Mayo*, and *Butler*, he obſerved, they contradicted one another: For ſhe depoſed, That the firſt Time *Oates* came, ſhe did not ſee him; and *Butler* ſwears, ſhe looked out of the Window, and did ſee him as well as he: And, ſhe ſaid, he was in grey cloaths, a white Hat, and a ſhort Peruke; and *Butler* ſaid, he had no Peruke, but his Hair cut ſhort to his Ears. Then, the ſecond Time, ſhe ſwears, he was in black cloaths, and an indifferent long Peruke, and that the Peruke was brown. And *Butler* ſwears, he was in Cinnamon-coloured Cloaths, and a long black Peruke; ſo that the Witneſſes could not be reconciled to one another. He obſerved too, That ſhe had ſworn, *Oates* was at her Maſter's a Week before *Whitſuntide*, which was the 19th of *May*: And this contradicted Mr. *Gerrard*'s Teſtimony, who ſwears, they were both confirmed the 16th, at St. *Omers*; which was ſo remarkable a Circumſtance, that there was no Room to think Mr. *Gerrard* miſtaken.

And farther, That Mr. *Oates* himſelf had contradicted his own Witneſſes; for he had ſworn he went over with the Fathers three or four Days after the Conſult, which was the 24th of *April*; and they atteſt that he was here in the Middle of *May*: And if it ſhould be admitted the Conſult continued five or ſix Days, as he had ſuggeſted, yet that would not bring it to the Time they had ſworn to.

That falſe Witneſſes were often detected by ſmall Circumſtances, but that theſe were very remarkable; and it was impoſſible they could both ſwear true.

That the Evidence of *Clay* the Prieſt, on which ſuch Streſs was laid at a former Trial, was not only taken away by Mr. *Howard*'s Teſtimony, but the additional Crime of Subornation was now fixed upon *Oates*, who it appeared, had threatned *Clay* he would hang him, if he did not ſwear what he ſuggeſted to him: And it was well known what Fears ſuch People lay under at that time.

That it was impoſſible Mr. *Oates* could be ſo long in Town as he pretended, and be ſeen by no body but thoſe few Perſons he mentioned, conſidering his large Acquaintance; and that he appeared ſo publickly, as his Witneſſes depoſed. 1685. 1 Jac. II.

That though he had lodged at the Houſes of Perſons that did not care to give their Evidence in this Matter, yet it was ſtrange he could not produce one Circumſtance to prove his Lodgings at any Place, during that Time, if he could not have the Teſtimony of the Landlord of the Houſe: And that none of thoſe he had converſed with, or was intimate withal, ſhould ſee him, or be able to give an Account of him, was one of the ſtrangeſt things in the World.

That indeed he inſiſted upon it, That the calling his Credit in queſtion, was to arraign the Juſtice of the Nation, the Wiſdom of the Parliament, and the Honeſty of the Juries, who convicted thoſe he had accuſed. But the Sollicitor urged, That if the Thing was duly conſidered, the not puniſhing this heinous Offence with the utmoſt Severity the Law would allow, now theſe Circumſtances had appeared to make it evident, would be a much more greater Reproach to the Nation.

That it was ſtrange, indeed, that the Defendant ſhould ever obtain that Credit he once had: But it was not then imagined, that any Man on Earth could become ſo impudent as to expoſe himſelf before the High Court of Parliament, and the great Courts of Juſtice, and there tell a moſt infamous Lie, to deprive Men of their Lives. The Hardineſs of the Attempt, was one great Inducement to the Belief of it; becauſe no Man could be preſumed to dare the doing of ſuch a Thing, if he had not had ſome Foundation of Truth to build upon. And when he had made this Diſcovery of a moſt horrid and bloody Conſpiracy, to murder the King, overturn the Government, and maſſacre all the Proteſtants in the Kingdom; it was natural enough for the Parliament to be alarmed, and take all imaginable Care to prevent the Accompliſhment of ſo much Miſchief. If we conſider too, how much eaſier it was for him to relate his Evidence in a continued Story, than afterwards it was to maintain it, when he was oppoſed by them that were accuſed, who beſt knew by what Means to prove him falſe.

That the Care the Parliament took to diſappoint any Deſigns of this Nature, and the Means they uſed for the Security of the King and Kingdom, and the Preſervation of our Religion and Lives (which was previous to the Trials) naturally put the whole Nation under great Apprehenſions of Danger, and made the Way much eaſier for him to be believed. Under theſe Circumſtances (and theſe improved by deſigning Men) came thoſe unhappy Perſons to be tried; which leſſens our Wonder, if under theſe Diſadvantages, while the Men who tried them were under theſe Fears and Apprehenſions, they had the ill Fortune to be convicted. But when Men had a little overcome their Fears, and began to conſider his Evidence more calmly, *Oates* ſoon loſt his Credit, and the Men he afterwards accuſed, were all acquitted.

Nor was this Proſecution any Reflection on the Proteſtant Religion, whoſe Cauſe he falſely

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falſly aſſumed. The Proteſtant Religion had no Share in the Invention, and needed not the Support of a Lie. It was rather a Vindication of our Religion, to puniſh ſuch Offenders; and the proper Way to maintain the Juſtice of the Nation, and wipe off that Reproach that this Man's Perjury has brought upon it.

The Chief Juſtice's Directions to the Jury.

Then my Lord Chief Juſtice ſummed up the Evidence, and gave his Directions to the Jury: And to the Obſervations Mr. Sollicitor had already made, he added, That the dreadful Apprehenſions People were under of their Religion, the Subverſion of the Government, of the King's being murdered, and of their Throats being to be cut by the Papiſts, at the Time of *Ireland*'s Trial, was arrived to that Height, and *Oates*'s Diſcovery of thoſe impending Dangers ſo much credited, that all other People appeared below him; and greater Reſpect was ſhewn him, than to the Branches of the Royal Family. And in publick Societies, ſometimes, this profligate Villain was careſſed and drank to, and ſaluted by the Name of THE SAVIOUR OF THE NATION. And that it was no Wonder, if under ſuch a Conſternation, or rather Infatuation, of all ſorts of People, all of the *Romiſh* Perſuaſion were looked on with an evil Eye; and the Conviction of thoſe who were accuſed, rendered too eaſy. He obſerved, That the principal Part of *Oates*'s Defence conſiſted in this, That becauſe he was believed formerly, before his Villany was detected, they therefore ſhould believe him now, notwithſtanding his Perjury had been diſcovered; and that, to the poſitive Teſtimony of twenty-two Witneſſes, who had ſworn he was at St. *Omers*, he had not made the leaſt Shadow of an Objection, but only that they were Papiſts, and he was a Proteſtant. But his Lordſhip obſerved, there were Raſcals of all Perſuaſions; and he thought it not much for the Honour of the Church, that *Oates* called himſelf a Proteſtant: That they knew Dr. *Oates* had been very liberal to himſelf; he had given himſelf Baptiſm, and given himſelf the Doctor's Degree, and now he gave himſelf the Title of the Reforming Proteſtant, Mr. *Oates*. That we had Proteſtant Shoemakers, and Proteſtant Joiners, and all ſorts of true Proteſtant Raſcals; but it would become the Jury to aſſert the Honour of their Religion, by diſowning any Fellowſhip with ſuch Villains, or their Actions.

That beſides the Evidence againſt him, they ſhould conſider the Improbability of his Teſtimony: That fifty Perſons ſhould meet together at a Tavern, and come to a Reſolution to kill the King, and ſubvert the Government, and alter the Religion: And that this Reſolution being drawn up at the Tavern, they ſhould ſeparate themſelves into leſſer Club and Companies, and none of them ſign it when they were all together, and among themſelves; but ſhould afterwards have it carried up and down from one Houſe to another, and find no Body to truſt with it but Mr. *Oates*, who was not one of their Order, and did not appear to have any Credit amongſt them; when the Affair was of that Importance, that, if diſcovered, it muſt ſubject them to preſent Deſtruction, and ruin their whole Party. Could it be believed, that any Man ſhould be ſo void of Senſe and Reaſon, and that of fifty together, and thoſe reputed the ſubtileſt of Mankind, there ſhould not be one Man that ſhould take Care of a more rational Management of ſo great and hazardous an Undertaking? When they were met together, and might have diſpatched the Buſineſs in a quarter of an Hour, that they ſhould ſeparate themſelves into ſeveral Parts of the Town, and truſt a Reſolution of that Nature in Mr. *Oates*'s Pocket; in whom, if they had more Confidence than they ſeemed to have, yet it was Folly and Madneſs to give him that Opportunity of deſtroying them all, and making his own Fortune: And that, if there were no other Evidence than the Teſtimony of the Thing, his Lordſhip ſaid, it would have gone a great Way with him; but that there being the ſuperadded Teſtimony of twenty-two Witneſſes, there was no room left to doubt of the Falſity of his Evidence.

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That as to the Buſineſs of *Smith*, though the Court, in their private Judgments, did believe the Thing, yet they thought it not fit to permit, that Perſons ſhould, upon their Oaths, confeſs themſelves guilty of Perjury, and afterwards give Evidence againſt others; yet by the Records of Parliament, and other Evidence, there was enough to make that Matter clear. For by *Oates*'s Narrative, it appears, That his firſt Evidence tended to bring *Smith* into the Diſpleaſure of the People; for his way was to frighten thoſe he deſigned to deal with, and thereby force them to comply with his Deſigns. And there could not be a more plauſible Accuſation at that Time, than to charge a Man with ſaying ſomething againſt the Parliament, or with being in a Combination to ſubvert the Proteſtant Religion: But when he has a Turn to ſerve by him, then this Man, on whom he had fixed ſuch an odious Character, he tells us is really no Papiſt, but is engaged in Service for his King and Country; and has Mr. *Oates*'s Paſs-port, which was a thing of no ſmall Advantage to him at that Seaſon. This was, with great Reaſon, made uſe of by the King's Counſel, as an Evidence of his tampering: For the Man ſuddenly alters his Opinion of one he had before accuſed, and produces him as an honeſt Man to give Evidence for him. And this, they urge, muſt be intended to be done by Practice and Threatnings: And the rather, for that it had been proved, that he did actually practiſe upon *Clay* in like Manner. And my Lord Chief Juſtice concluded, that if the Witneſſes for the King ſwore true, as he ſaw no Colour of an Objection againſt their Teſtimony, then *Oates* was the moſt perjured Villain upon the Face of the Earth.

Then the Court told the Jury, they might drink before they went from the Bar, but they did not deſire it; and having withdrawn a quarter of an Hour, they returned with this Verdict. *Oates convicted.*

That the Defendant was GUILTY of the Perjury whereof he was Indicted.

The Chief Juſtice told them, he was ſatisfied in his Conſcience, they had given a juſt Verdict, to which the reſt of the Judges Aſſented; and then the Court aroſe.

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Oates's 2d Trial for Perjury.

The Trial of TITUS OATES for Perjury, in the Court of *King's-Bench*, on the 9th of *May*, 1685. 1. *Jac.* II.

The Indictment.

THE Indictment ſet forth, that the Defendant *Titus Oates*, at the Trials of *Ireland*, *Pickering*, and *Grove*, on the 17th Day of *December*, in the 30th Year of the late King *Charles* II. did falſly ſwear, and give Evidence to the Jury who tried that Cauſe, That the ſaid *William Ireland*, was in Town upon the firſt or ſecond Day of *September* 1678. Whereas in Truth, the ſaid *William Ireland* was not in Town on the firſt or ſecond Day of *September* 1678; and ſo the ſaid *Titus Oates*, did commit wilful and corrupt Perjury.

The Indictment further ſets forth, That the ſaid *Titus Oates*, at the Trials of *Whitebread*, *Fenwick*, and other Jeſuits, on the 13th of *June*, in the 31ſt Year of the late King, did falſly ſwear, and give Evidence to the Jury who tried that Cauſe, That *William Ireland* took his Leave of him, the ſaid *Titus Oates*, and others, at the Chamber of the ſaid *Ireland*, then being in *Ruſſel-Street*, *Weſtminſter*, between the 8th and 12th Days of *Auguſt*, 1678. Whereas in Truth, the ſaid *William Ireland*, did not take his Leave of the ſaid *Titus Oates*, or any other Perſon at his Chamber in *Ruſſel-Street*, between the ſaid 8th and 12th Days of *Auguſt*, and ſo the ſaid *Titus Oates* did again commit wilful and corrupt Perjury.

The King's Counſel, having opened the Indictment and the Evidence, produced the Records of the ſaid two Trials mentioned in the Indictment, and then called the Witneſſes:

The Evidence.

Whereupon Mr. *Harriot* and Mr. *Waterhouſe* were ſworn, and Mr. *Harriot* depoſed, That at the Trial of the five Jeſuits, *Oates* did poſitively ſwear, That Mr. *Ireland* the Jeſuit did take Leave of him and others at the ſame *Ireland*'s Chamber in *Ruſſel-ſtreet*, betwixt the 8th and 12th of *Auguſt* 1678. *He was Foreman of that Jury.*

Sol. Gen. What ſay you, Mr. *Waterhouſe*?

Waterhouſe. I was of that Jury too. *Oates* depoſed, that Mr. *Ireland* took his Leave of him the 12th of *Auguſt*. My Lord Chief Juſtice *Scroggs* then asked him, Are you ſure it was the Twelfth? And then he ſaid, he would not be poſitive it was the 12th; but between the 8th and 12th it was, I am poſitive upon my Oath.

Oates. Mr. *Harriot*, did I ſwear that he took his Leave of me, or I took my Leave of him?

Mr. *Harriot.* You ſwore that *Ireland* took his Leave of you and others.

Oates. Did Mr. *Harriot* take Notes at the Trial?

Mr. *Harriot.* Yes, I did; and it was my Manner, in all Trials I was concerned as a Juryman, to read the Trials ſtrictly over when they were printed, and compare them with my Notes: And this I found to be in the printed Trial, according to my Notes.

Oates. Mr. *Waterhouſe*, you did not take Notes: Pray, how come you to remember that I was ſo poſitive, as to the Time betwixt the 8th and 12th of *Auguſt*?

Mr. *Waterhouſe.* Becauſe my Lord Chief Juſtice made a Stop, when you ſaid it was the 12th of *Auguſt*, and bid you conſider; and you conſidered it, and did affirm poſitively, That it was between the 8th and 12 of *Auguſt*.

Mr. *Foſter* was ſworn.

Sol. Gen. Pray tell what you remember Mr. *Oates* ſwore at Mr. *Ireland*'s Trial, about Mr. *Ireland*'s being in Town.

Mr. *Foſter.* I was one of the Jury at the Trial of Mr. *Ireland*, *Pickering*, and *Grove*; and Mr. *Oates* and Mr. *Bedloe* were ſworn as Witneſſes for the King: And Mr. *Bedloe* depoſed, That there was a Meeting at *Harcourt*'s Chamber, and *Ireland*, *Pickering*, and *Grove* were there; and that this was the latter End of *Auguſt*. Mr. *Ireland* made his Defence, and endeavoured to prove, That he was not in Town from the Beginning of *Auguſt* to the Middle of *September*, and brought ſeveral Witneſſes. But upon his denying to be here the latter End of *Auguſt*, Mr. *Oates* did come and ſwear; I am certain (ſays he) that the 1ſt or 2d of *September* he was in Town; for then I had of him twenty Shillings.

Oates. Was I poſitive that he was here in Town the firſt or ſecond of *September*?

Mr. *Foſter.* You were poſitive to the firſt or ſecond; I have it in my Notes.

Mr. *Byfield*, another of *Ireland*'s Jury, was ſworn.

L. C. J. What did *Oates* ſwear?

Mr. *Byfield.* Mr. *Oates* did poſitively aſſert, That *Ireland* was here in Town the firſt or ſecond of *September*; and to confirm it, he ſaid he received of him twenty Shillings.

Then Mrs. *Ireland*, the Mother of him that was executed, his Siſter *Anne Ireland*, and two more Women, depoſed, that the ſaid Mr. *Ireland* went out of Town on *Saturday* the 3d of *Auguſt* 1678, and that he returned to his Lodgings in Town again, being in the ſame Houſe where his ſaid Mother and Siſter lodged, on the 14th of *December* following. The Lord *Aſton* depoſed, that Mr. *Ireland* came to his Houſe, at *Stnaden* in *Hertfordſhire*, on the 3d of *Auguſt*: That on *Monday* the 5th of *Auguſt*, Mr. *Ireland*, accompanied him to St. *Albans*, where he met his Brother and Siſter *Southcoat*, and that they all travelled together to *Tixhall*, his Lordſhip's Houſe in *Staffordſhire*, where they arrived the 8th of *Auguſt*.

Sir *Edward Southcoat* depoſed, That on *Monday*, the 5th of *Auguſt*, he lay with the Lord

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Lord *Aſton* and Mr. *Ireland*, at the *Bull* at St. *Albans*; and that they ſet out together the next Day, and travelled to *Tixhall*, the Lord *Aſton*'s Seat, in *Staffordſhire*, where they arrived on *Thurſday* following: That they remained there till *Tueſday* after, and then went to St. *Winifred*'s *Well* in *Wales*, returning to *Tixhall* again the 16th of *Auguſt*; and Sir *Edward* named every Houſe they lay at on the Road in this Journey. He alſo depoſed, That he ſet out with Mr. *Ireland*, from *Tixhall*, on *Monday* the 9th or 10th of *September*; and the fourth Day they reached his Father's Houſe, at *Kingſton* in *Surry*; and, on *Saturday* following, Mr. *Ireland* went from his Father's Houſe to *London*.

Mr *John Southcoat* gave the ſame Account of the Journey with the Lord *Aſton* and Mr. *Ireland*, from St. *Alban*'s to *Tixhall*, and St. *Winifred*'s *Well*; and of Mr. *Ireland*'s returning to *London* in the Middle of *September*; which he remembered the better, having bought Mr. *Ireland*'s Horſe at the Time he returned to Town: And this Circumſtance Sir *Edward* alſo remembered.

Oates demanding if Mr. *Southcoat* was ſure that *Ireland* was in his Company from the 5th of *Auguſt* to the 16th? Mr. *Southcoat* anſwered, Yes, every Day; he remembered it very well; but where Mr. *Ireland* was from the 16th of *Auguſt* to the Time he returned to *London*, theſe Witneſſes could not ſay; only that they ſaw him ſeveral Times in *Staffordſhire* during that Interval.

Harriſon, Sir *John Southcoat*'s Coachman, depoſed, That he drove his Maſter from St. *Alban*'s to *Tixhall*, and from thence to *Holywell* in *Wales*, in *Auguſt* 78; and that Mr. *Ireland* was in their Company all the Time.

The former Witneſs depoſed, That in *September* he returned, with Mr. *Ireland*, to his Maſter's Houſe, near *Kingſton* in *Surry*; and that Mr. *Ireland* having ſold his Horſe to Mr. *John Southcoat*, his Maſter's Son, he went with Mr. *Ireland* to his Lodgings in *Ruſſel-Street*, in Town, on *Saturday* the 14th of *September*, and brought the Horſe back to his Maſter's.

This Account, the Chief Juſtice obſerved, agreed with what the Women depoſed, That *Ireland* returned to his Lodgings, in Town, a Fortnight before *Michaelmas*; and, directing his Speech to the Defendant *Oates*, ſaid: Thus far it is as clear as the Sun at Noon-day. —— I muſt tell you, *prima facie*, it is ſo ſtrong an Evidence, that, if you have any Senſe, you muſt be concerned at it.— Upon my Faith, I have ſo much Charity for you, as my Fellow Creature, as to be concerned for you.

Oates anſwered, *'Tis not two Straws Matter whether you are or no; I know my own Innocence.*

The Chief Juſtice replied, Thou art the moſt impudently hardened Wretch that ever I ſaw.

Oates replied, You may think what you will, my Lord; but theſe Popiſh Traitors will ſwear any thing, and ſuborn Witneſſes upon Witneſſes againſt me, to diſcredit the Popiſh Plot.

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George Hobſon depoſed, That he lived at the Lord *Aſton*'s, and that Mr. *Ireland* came to his Lordſhip's Houſe, at *Standen* in *Hertfordſhire*, on *Saturday* the 3d of *Auguſt*, 78; and he travelled with the Lord *Aſton*, and Mr. *Ireland*, to *Tixhall*, and ſaw *Ireland* every Day, from the 3d of *Auguſt* to the 16th.

Several other Witneſſes depoſed, That Mr. *Ireland* came to *Tixhall* the 8th of *Auguſt*, 78, where he ſtaid till the 13th, then went to *Holywell* in *Wales*, and returned to *Tixhall* the 16th.

Mrs. *Harwell* depoſed, That Mr. *Ireland* came to her Houſe, at *Wolverhampton* in *Staffordſhire*, on the 17th of *Auguſt*, 78, and ſtaid there till *Monday* the 26th, and then returned to *Tixhall*, as he ſaid: That he came to her Houſe again on the 4th of *September*, and on the 7th of *September* went away from her Houſe for good and all.

Oates demanding, if this Witneſs was at *Ireland*'s Trial, ſhe anſwered, No; but ſaid ſhe heard, on the 19th of *December*, 78, that Mr. *Ireland* was tried the 17th, two Days before; and Mr. *Oates* had ſworn he was in Town, when they could prove he was in *Staffordſhire*: And ſhe ſent away a Meſſenger immediately to a Friend in *London*, to acquaint him, that Mr. *Ireland* was falſly accuſed, and to petition his Majeſty, that they might bring up Witneſſes to prove Mr. *Ireland* was in *Staffordſhire* when *Oates* ſwore he was in Town: And the King ſtaid the Execution five Weeks; but at length he was executed.

A great many more Witneſſes depoſed, They ſaw Mr. *Ireland* at *Wolverhampton* at the Times the laſt Witneſs mentioned.

Sir *Thomas Whitegrave*, a Juſtice of Peace, depoſed, He ſaw Mr. *Ireland* on *Tixhall* Bowling-Green, on *Thurſday* the 29th of *Auguſt*.

Mr. *Fowler* depoſed, He ſaw him at *Etchinghill* in *Staffordſhire*, the 27th of *Auguſt*, 78, and at *Tixhall* Bowling-Green the 29th.

Several other Witneſſes confirmed the Teſtimony of the two laſt.

Mr. *Fallas* depoſed, That on *Saturday*, the 31ſt of *Auguſt*, 78, he was hunting with Mr. *Ireland* in Mr. *Gerrard*'s Park, and they killed a Buck.

Other Witneſſes depoſed, They ſaw Mr. *Ireland* at Dinner at Mr. *Gerrard*'s, on the 1ſt of *September* 78.

Other Witneſſes depoſed, They ſaw *Ireland* at Dinner, at Mrs. *Crompton*'s Houſe, at *Millage* in *Staffordſhire*, on *Monday* the ſecond of *September*, 78.

Mr. *Pendrel*, and Mrs. *Pendrel*, depoſed, That Mr. *Ireland* came to their Houſe, at *Boſcobel* in *Staffordſhire*, the 2d of *September*, 78, and went from thence the 4th of *September*.

The King's Evidence being finiſhed, Mr. *Oates* proceeded in his Defence, and ſaid,

Mr. Oates's Obſervations on the King's Evidence.

I am not the only Evidence of Mr. *Ireland*'s being in Town in the Month of *Auguſt*; nor the only Witneſs that he was in Town about the Time I mentioned in *September*.

My Lord, the firſt Thing I ſhall offer to your Conſideration is, the Hardſhip I lie under, of being put to diſprove what the King's Counſel

1685. 1 Jac II. Counſel now charge me with, after ſix Years Time. Now, Why has the Proſecution of this pretended Perjury been delayed ſo long? When it appears, the Witneſſes to prove it were known ſix Years ſince; and there has been no new Fact diſcovered that was not then known: There is no Reaſon can be aſſigned for this Delay, but to render it the more difficult for me to maintain the Evidence I then gave, ſo many Perſons being ſince dead, or gone beyond the Seas; and many things that were then freſh, now grown out of Memory: And if ſuch Practice is to be admitted, no Witneſs is ſafe in giving his Teſtimony againſt a Conſpirator.

And here, my Lord, is only a bare Point of Time upon which this Perjury is aſſigned; the Subſtance of the Evidence, I gave at the Trial of Mr. *Ireland*, and the reſt, about the Popiſh Plot, is not pretended to be diſproved: Let it be remembered, that *Ireland* was convicted of a treaſonable Reſolution to murder the late King, and not for being in Town in *Auguſt* or *September*, 78; which is the Perjury now aſſigned. And, my Lord, 'tis unreaſonable to tie up Witneſſes, who come to diſcover Conſpiracies, to ſpeak poſitively to every little Circumſtance of Time and Place, and ſuch Niceties; it is uſual to ſpeak with Latitude in thoſe Caſes; and, I believe, I did not confine my ſelf either to the 1ſt or 2d, 5th, 6th, 7th or 8th; but, my Lord, that he was in *September* there, I am poſitive; therefore I muſt beg the Opinion of the Court, Whether Mr *Foſter* did prove I was poſitive to the 1ſt and 2d Days of *September*, 78.

L. C. J. The Evidence is plain, that you did ſwear poſitively to thoſe two Days, and mentioned this material Circumſtance to confirm it, That either the 1ſt or 2d of *September* you received 20 Shillings of him in Town. Now, that Circumſtance of his Kindneſs, was not a Circumſtance either of Time or Place.

Oates. Then, my Lord, the firſt thing I ſhall offer, is the Record of Mr. *Ireland*'s Conviction of High Treaſon.

L. C. J. It is admitted, of all Sides, that *Ireland* was convicted and attainted of Treaſon.

Oates. Then, my Lord, let it be obſerved, that the principal Part of Mr. *Ireland*'s Defence, was an Endeavour to prove, he was not in Town between the 8th and 12th of *Auguſt*, nor the 1ſt or 2d Days of *September*, which are the Times now in Iſſue; and to prove this, Mr. *Gifford* and his Siſter and Mother were produced at Mr. *Ireland*'s Trial; and Mr. *Whitebread*'s Trial being ſix Months after, he endeavoured alſo to prove, that Mr. *Ireland* was out of Town at thoſe Times, and produced Mr. *Gifford*, and ſeveral other Witneſſes, to prove it, to the Number of ſixteen: And, notwithſtanding all thoſe Witneſſes, the Jurors who tried Mr *Ireland*, and the Jurors who tried Mr *Whitebread* and the other four Jeſuits, found them all Guilty. And my Lord Chief Juſtice *Scroggs* obſerved, That the Priſoner's Defence conſiſted only in catching at a Point of Time; and that it was moſt plain, a villanous Plot was diſcovered: All which ſhews the Fullneſs and Satisfactorineſs of the Proof given by me and *Bedloe*. And, I muſt further obſerve, That though Mr. *Ireland*, by his falſe Witneſſes, preſſed this Matter as far as he could then, yet, when the Jury brought him in Guilty, the Chief Juſtice expreſſed the Satisfaction of the Court, and ſaid, Gentlemen, You have done like very good Chriſtians, that is, like very good Proteſtants. And, at the Trial of the five Jeſuits, the Chief Juſtice ſays, That the Jeſuits were very exact at catching at a Point of Time; but that was a thing which no Man could preciſely charge his Memory withal; and therefore perſuades the Jury, that That ſhould not be too ſtrictly the Meaſure of their Judgments about Truth and Falſhood, (the Miſtake of 7 or 8 Days); and that they were not to lay too great a Weight upon the Point of Time: Now if too great a Weight be not to be laid upon a Point of Time, then this Charge againſt me is of no Weight at all. Beſides, my Lord, it ought to be conſidered, That if this were the great Objection then, and then anſwered, it ceaſes to be an Objection now. 1685. 1 Jac II.

I ſhall offer the Teſtimony of Mr. *Bedloe*, who is dead, and at his Death confirmed all that he had ſworn of the Popiſh Plot to be true; and affirmed, he had rather ſpoken leſs than the Truth, than more: And to this I deſire my Lord Keeper may be called, who took his Examination.

L. C. J. It is very well known to the World, and particularly to a worthy Gentleman who ſits by you, (pointing to Mr. *North*) That Mr *Bedloe*, when he was ſick, did make ſome ſuch Proteſtations.

Then Mr. *Blaney* was ſworn.

Oates. Pray, Mr. *Blaney*, ſee in your Notes of *Ireland*'s Trial, if *Bedloe* did not ſwear, that Mr. *Ireland* was in Town the latter end of *Auguſt*, 78.

Mr. *Blaney.* He ſaid it was in *Auguſt*: He would not be poſitive to a Day; but he thought it the latter end.

Oates. Then, my Lord, I deſire Mr. *Jenniſon*'s Depoſition of Mr *Ireland*'s being in Town, taken before Sir *Edmund Warcup*, I may call ſome Witneſſes to make Proof of.

L. C. J. We cannot admit that in Evidence, unleſs the King's Counſel will conſent.

Oates. Then I ſhall prove what he ſwore at another Trial.

L. C J. Why, is he dead?

Oates. It has coſt me a great deal of Money to ſearch for him, but I cannot hear of him.

L. C. J. Though in Strictneſs, we ſhould not admit ſuch Evidence, unleſs the Party be dead; yet, if you can prove any thing he ſwore at another Trial, we will indulge you ſo far.

Oates. Have you the Record of Sir *George Wakeman*'s Trial, Sir *Samuel Aſtry*?

L. C. J. Put it in: And now, Mr. *Oates*, prove what you can.

Then Mr. *Oates* demanded of Mr. *Blaney*, If he could remember what *Jenniſon* ſwore at that Trial; but Mr. *Blaney* could remember nothing of it.

Mr.

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Mr. *Oates* desired Sir *Edmund Warcup* might be examined about the Deposition he took of *Jennison*, concerning *Ireland*'s being in Town the 19th of *August*: Which the King's Counsel said they would consent to, if *Oates* would admit *Jennison*'s Letter under his Hand to be read, wherein he owned he was mistaken in his whole Evidence about that Matter.

To which Mr. *Oates* consented; and Sir *Edmund Warcup* was examined; but he said, he had delivered the Deposition to the King and Council, and could not remember the Particulars.

Then Mr. *Oates* called *Sarah Batten*.

He demanded of her, If her Name was not *Pain* formerly; and, if she did not give Evidence at Mr. *Ireland*'s Trial? But it appearing he was mistaken in the Person, he examined her no further.

Mr. *Oates* called Mr. *Percival*, Mr. *Vaughan*, Sir *Michael Wharton*, and several others; but they did not appear: He said he had served them all with *Subpœna*'s, but they would not come; and then he proceeded in his Defence.

His further Defence.

My Lord, Both *Bedloe* and *Sarah Pain* have sworn, That *Ireland* was in Town in *August*, as well as my self; and, I think, I am hardly used, that after Witnesses are dead, or gone out of the Way, I should have such a Part of my Testimony called in Question. *Jennison*'s Evidence has formerly been made use of, and approved, as is well known to those who sat *Judges* upon my Lord Viscount *Stafford*. And, my Lord, as I hope for Salvation, all that I have sworn about Mr. *Ireland*'s being in Town, between the 8th and 12th of *August*, 78, and the Beginning of *September*, is true; and though there are a great many Witnesses produced against me this Day, a great Part of them do not come up to the 8th or 12th of *August*: And, I desire your Lordship will remark to the Jury, what little Credit these Witnesses had at the Trials of *Ireland* and the five Jesuits: And, I believe, I am the first Precedent, of a Person's being indicted for Perjury, for being a Witness for the King, in such a Case as this, after six Years elapsed, and Verdict upon Verdict, and Judgment and Execution upon those Verdicts; and when no new Objection is offered, but what was then urged; and no Circumstance occurs now, but what was as conclusive then, unless the Change of the Season. And at those Trials all the Judges of *England* were Commissioners of *Oyer* and *Terminer*; and fully debated and discussed these Matters, and saw all these Objections fully answered and confuted. Had I been Witness in any Cause but a Popish Conspiracy, I had met with fairer Quarter: But at this Rate, it is safer for a Papist to be a Traitor, than for a Protestant to discover a Popish Plot. I hope you will consider my Witnesses are either in Places unknown, or, are such as, considering the Times, dare not appear; yet, I hope, you that are sworn to do Justice, will not suffer me to be ruined, by the false Testimony of the Papists, who are Parties; for they have a Turn to serve, and are resolved to wreak their Vengeance upon me: Now they have Hopes of bringing in their Religion, and would welcome it with my Ruin: Their Eyes now see what their Hearts so long have wished, the Death of a great Man, who died lately, and against whose Life they so often and so long conspired. Had this been their first Conspiracy, the Truth of it might have been disputed; but if you cast your Eyes upon the Reigns of Queen *Elizabeth*, King *James*, and King *Charles*, what can be averred against those numerous Records of their Conspiracies? And then surely, my Discovery will not be deemed so improbable a Thing. And I hope the Jury will consider, That the Men who are Witnesses against me, their very Religion is Rebellion; and their Principles and Practices pernicious to our Government. And, my Lord, if *Coleman*'s Correspondence with *La Chaise*, the *French* King's Confessor, for promoting Popery in *England*, be considered, it is a Demonstration of the Plot, and sufficiently vindicates me. ——My Lord, I have a Favour to beg: I had but an ill Night, and am now in great Pain; I desire you would assign me Counsel to argue the Errors in Yesterday's Indictment; and give me a Week's Time to prepare and instruct my Counsel: To which the Court agreed; but told him, by the Rules of the Court, he ought to have but four Days. Then he desired he might have Liberty to withdraw; to which also the Court agreed.

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Mr. Solicitor's Reply.

Then Mr. Solicitor proceeded to make his Observations on the Evidence, and the Prisoner's Defence, and said,

Gentlemen of the Jury, you have seen between forty and fifty Witnesses produced, to shew that it is impossible, that what *Oates* did swear can be true: He says, indeed, that this is in a Circumstance of Time wherein it is difficult for a Man to be positive to a Day; and that, it is usual with Witnesses, in Points of Time, to swear with a Latitude: But, Gentlemen, should we grant this false Doctrine to be true, (and false certainly it is, and of most pernicious Consequence it must be, if, when Men are charged with Things that depend upon Time and Place, the Witnesses should not be kept to those Circumstances) yet this, I say, if granted, can do him no manner of Service in the Case before you: For between the 3d of *August* and the 14th of *September*, which includes both Times he swears to, and gives him a Latitude of above twenty Days besides, there is not a Moment of Time wherein his Oath can be true.

Gentlemen, you have observed how the Witnesses have given you an Account of every particular Day of both Months, from the 3d of *August*, that Mr. *Ireland* left *London*, to the 14th of *September*, when he returned thither again. And, that their Testimony might the more evidently appear to be true, they have given you such remarkable Circumstances, why they remembred the particular Times they swear to, as renders it impossible they can be mistaken. *Then Mr. Solicitor summed up the Evidence that had been given; after which he proceeds:* And now let the World judge, if there be any Room left to suppose, that any one Word Mr. *Oates* has deposed can be true; even allowing him that Latitude of Time he desires, and says all Witnesses ought to be allowed: No, there is not a Moment wherein he can verify one Tittle of his Evidence, as to *Ireland*'s being in Town; and this sure, I may call Demonstration, that what *Oates* has sworn is utter-

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ly falſe. Gentlemen, the Jury that tried *Ireland* had not this Evidence: Indeed, ſome that went out of Town with him, and one or two from *Wolverhampton*, were at the Trial of the five Jeſuits; but not more than five or ſix in all of the forty odd that now appear; and for want of theſe, *Ireland* unfortunately ſuffered: For ſo, I ſhall take leave to ſay, it was unfortunately.

And there is one Thing Mr. *Oates* lays great Streſs upon, and would have you think he is hardly dealt with; becauſe this Proſecution has been ſo long delayed.——But, Gentlemen, with Sorrow we muſt remember, that there was a Time when the City of *London* was ſo corrupted, that it was made a Refuge and a Sanctuary for High-Treaſon: When the King could have no Juſtice there, and Men lodged themſelves within thoſe Walls as a Protection for their Conſpiracies. The Time has been, when Indictments were preferred, and the moſt convincing Evidence given the Grand Jury, even to the Satisfaction of all who heard it, and yet they have refuſed to find the Bill; and not only ſo, but they were ſo abetted by the Rabble, that it was ſcarce ſafe for a Judge to ſit upon the Bench; and therefore it is no Wonder an Indictment was not preferred againſt *Oates* at that Time, when the plaineſt Proof againſt ſuch Criminals could not be admitted. This may give ſufficient Satisfaction Why it has been delayed; and may caution every Man, how they fall into the ſame Circumſtances again.

But Gentlemen, you have heard the Evidence to prove this Fact: And it is plain to a Demonſtration, If you believe that Mr. *Ireland* was ſeen by theſe People at all, he was ſeen at thoſe very Times they have particularly declared: For, upon Conſideration of the Circumſtances, it is impoſſible it ſhould be at any other Times: And ſo I leave it to you to conſider, whether the Defendant be perjured, or not.

The Chief Juſtice directs the Jury.

Then the Chief Juſtice proceeded to direct the Jury, and obſerved, That every Perſon that had been executed for the Popiſh Plot, truely called *Oates*'s Plot, had to a Man denied it at their Deaths; and took it upon their Salvations they were innocent: Whereas, there was not a Man concerned in the *Rye-Houſe* Plot, who had the Confidence to deny it at his Execution: And as to Mr. *Oates*'s Inſinuation, That it was hard he ſhould be brought to Trial, after ſo much Time elapſed; ſuch were the Misfortunes of thoſe Times, when theſe Perjuries were committed, that even the Fountain of Mercy itſelf was ſtopped; and even that compaſſionate Prince King *Charles* II. was compelled to permit the Execution of *Ireland*, againſt his Inclinations, rather than give Diſturbance to his People; there having been a Verdict and Judgment in the Caſe: But it was well known by them that were near his Perſon, how often he expreſſed his Concern for having conſented to this Execution; and that he reflected on it with Regret to his dying Day, as his Royal Father did on the Buſineſs of my Lord *Strafford:* Nor ought theſe Things to be remembered as a Reflection on the Memory of thoſe Princes, but with Infamy to thoſe who were the Cauſes of them. Unhappy was it for the Prince, when the Times were ſo tumultuous, that he was compelled to reſtrain his Mercy, where he thought it due, rather than ſeem to ſtop the Current of Juſtice: And as to *Oates*'s Objection, that the Witneſſes were Papiſts, it happened that ſeven or eight of them were Proteſtants: Not but he thought Roman Catholicks good Witneſſes in Point of Law: And he was ſatisfied, Lying was as much the Talent of a Presbyterian, as it could be of a Papiſt. Nay (it was as inſeparably incident to a Presbyterian) and ſuch ſniveling, canting, whining Knaves, to lye, as it was to ſpeak: That *Oates* mightily inſiſted, that, becauſe he was believed before, it would caſt a Reflection on former Juries to disbelieve him now: But if that Opinion was to prevail, it were impoſſible Perjury could ever be detected. The Nation was then in a Hurry and Surprize; and it was not then ſuppoſed there could be ſuch Villains upon Earth, as impudently to ſwear High-Treaſon againſt their Fellow-Subjects, when there was no Truth in the Accuſation. But the Eyes of all honeſt Men were now opened: They had ſeen the Effects of their Credulity; and it concerned them to ſhew their Reſentment to the World. *And having ſummed up the Evidence, he concluded in this Manner:* It is incumbent on you, Gentlemen, to try theſe Facts according to your Evidence; and it is incumbent on us, who ſit here as Judges, to ſee the Law executed. And God forbid, but we ſhould uſe our utmoſt Endeavours to inflict the greateſt Vengeance, that the Juſtice of the Nation can permit us to inflict upon ſuch Villains, who have contracted ſo much Miſchief and Reproach on us, and ſo much Guilt upon themſelves.

The Jury withdrawing, returned in half an Hour, and gave a Verdict, that the Priſoner was GUILTY.

Oates convicted.

Mr. *Oates*'s Counſel afterwards moving in Arreſt of Judgment, was allowed a conſiderable Time to prepare his Exceptions to the Indictment; and being brought into Court on the 26th of *May*, Mr. Attorney ſaid, that four Exceptions were delivered to him the Night before by Mr. *Wallop*; but neither Mr. *Wallop*, nor any of the Defendants Counſel, thought fit to argue them. The Exceptions were theſe:

His Exceptions to the Indictment,

1. That a Witneſs ſworn on Behalf of the King in a Proceſs of High-Treaſon, cannot be puniſhed for Perjury by the King.

2. That it does not appear, that the Indictments of *Ireland*, *&c.* found in *Middleſex*, were legally tranſmitted into *London*; and conſequently, all the Proceedings thereupon, were *coram non Judice.*

3. That the Perjuries aſſigned, are foreign to the Iſſue.

4. It is *Reſolutio Signat'* in that Part of the Indictment, that mentions what the Defendant ſwore; and in the Perjury aſſigned, it is *Reſolutio ſignand'*; which is no good Aſſignment of the Perjury.

anſwered

To theſe Exceptions it was anſwered by Mr. Attorney and the Court.

1. That the firſt Exception was a plain Miſtake of the Indictment; for the Defendant was not indicted upon the Statute: And, at Common Law, he might be proſecuted for the King, though he was a Witneſs for the King before: And that, if Witneſſes, who came and forſwore themſelves to take away Mens Lives, could not be

1685. 1 Jac. II. be called in Queſtion Criminally for the King, (at whoſe Suit only, a Man could be proſecuted for his Life, unleſs in Caſe of Appeals) it would be an Encouragement to Villany, and make the Proceſs of Law to become an Inſtrument of the greateſt Cruelty in the World.

2. As to the ſecond Exception, That it did not appear, *Ireland*'s Indictment, *&c.* was well tranſmitted from *Middleſex* to *London*, that was well enough; for it being recited they were ſo, and ſo indicted, it ſets forth, That the Trials were had upon Records there depending, before the Commiſſioners of *Oyer* and *Terminer*, and *Goal-Delivery*: And it ſhall be intended, that they were well brought before them.

3. That as to the third Exception, That the Perjuries aſſigned were foreign to the Matters in Iſſue; it was apparent, that one of the Indictments was in the expreſs Points of the great Treaſon charged againſt them, *viz.* The Conſult on the 24th of *April*. And that for the other, the Time was very material; becauſe it was impoſſible that *Ireland* could be Guilty of the Treaſon ſworn againſt him at his Chamber in *Ruſſel-ſtreet*, between the 8th and 12th of *Auguſt*, if he were not then in Town. Nor could he be privy to the Treaſon ſworn by *Bedloe*, the latter End of *Auguſt*, or the Beginning of *September*, in *Harcourt*'s Chamber, if he were out of Town from the 3d of *Auguſt*, to the 14th of *September*.

4. To the fourth Exception, That he ſwore he ſaw them ſign it, and the Perjury aſſigned is, that he did not carry it to be ſigned; they anſwered, That it was alledged, that he falſly and corruptly ſwore that he was preſent; and that he carried the Reſolution to be ſigned, and ſaw them ſign the Reſolution. Now, 1. It is ſaid he was not there. 2. He carried no ſuch Reſolution to be ſigned; and that there was no Occaſion to ſay he did not ſee it ſigned; for, if he was not there, nor did carry it, he could not ſee them ſign it. Beſides that, if any one Part of the Oath he ſwore proved falſe, that was ſufficient to maintain the Verdict; but here it was notoriouſly plain, that it was falſe throughout.—— And my Lord Chief Juſtice ſaid, That all the Judges of *England* had been conſulted, That if the Law would admit of it, he might receive ſuch a Judgment for this Offence, as might be adequate to the Crime, and deter others from committing the like again.

That by the ancient Laws of *England*, Perjury was puniſhed with Death: That, afterwards, it was puniſhed by cutting out the Tongue. And now, by the unanimous Opinions of all the twelve Judges, it was reſolved, that by the Law, Crimes of this Nature were left to be puniſhed according to the Diſcretion of this Court, provided ſuch Judgment extend not to Life or Member.

Then, the Judges having conſulted together, Mr. Juſtice *Wythens* pronounced the Sentence, *viz.*

That the Defendant ſhould pay 1000 Marks upon each Indictment: That he ſhould be ſtripped of his Canonical Habits: That he ſhould ſtand in the Pillory before *Weſtminſter-Hall* Gate, on the *Monday* following, for an Hour, with a Paper over his Head, declaring his Crime; but that, firſt, he ſhould walk with it round all the Courts in the Hall.

On the ſecond Indictment, the Judgment was, That he ſhould ſtand in the Pillory, the *Tueſday* following, at the *Royal-Exchange*: That the next *Wedneſday*, he ſhould be whipped from *Aldgate* to *Newgate*; and on the *Friday* following, he ſhould be whipped from *Newgate* to *Tyburn*, by the Hands of the Common Hangman: That the 9th of *Auguſt*, every Year of his Life, he ſhould ſtand in the Pillory before *Weſtminſter-Hall* Gate; the 10th of *Auguſt* at *Charing-Croſs*; and the 11th, over againſt the *Temple*; and the 2d of *September*, at the *Royal-Exchange*; and on the 24th of *April*, every Year, at *Tyburn*.

1685. 1 Jac. II.

Remarks on the two Trials of Oates for Perjury.

Biſhop *Burnet* ſeems to be one of thoſe who believed the Popiſh Plot, in Part, and yet did not give much Credit to *Oates*'s Teſtimony; but rather thinks he was perjured in ſome Particulars, as appears from his firſt Volume of Poſthumous Hiſtory. In the Character he gives *Oates*, he ſays,

He was an ignorant Man; proud, ill-natured, and haughty; and Complaints had been exhibited againſt him, for very indecent Expreſſions concerning the Myſteries of Chriſtianity. He had been alſo preſented for Perjury (before the Popiſh Plot was heard of), and, being Chaplain to a Man of War, was diſmiſſed upon Complaint of ſome very Unnatural Practices, not to be named. That being admitted Chaplain to the Duke of *Norfolk*, and diſcovering an Inclination to Popery, *Hutchinſon*, a Jeſuit of that Family, had the Honour of his Converſion. That *Hutchinſon* told him, (the Biſhop) that *Oates* was in ill Terms with the Jeſuits: They allowed him but nine Pence a Day, of which he complained, and *Hutchinſon* often relieved him: That the Jeſuits wanting to get rid of *Oates*, ſent him beyond Sea, *&c.*

In another Part of that Hiſtory, the Biſhop relates, That *Oates* came to him, and ſaid, He was one of them that was marked out to be killed; and the ſame Compliment he had paid to *Stillingfleet* before; but he thought he made that Honour too cheap, when he told them *Tongue* was to be ſerved in the ſame Manner: That the ſame Time *Oates* broke out into a mighty Fury againſt the Jeſuits, and ſaid, *He would have their Blood:* And he (Dr. *Burnet*), to divert him, demanding What it was that prevailed on him to change his Religion, and turn Papiſt? *Oates* ſtood up, and laying his Hands on his Breaſt, ſaid, *God and his holy Angels knew he never changed, but went amongſt them on Purpoſe to betray them:* Which (the Biſhop ſays) gave him ſuch a Character of *Oates*, *That he never after gave any Regard to what he ſaid, or ſwore.*

The Authors of *Rapin*, on the other Hand, though they profeſs the greateſt Veneration for Biſhop *Burnet*; and ſometimes inſinuate, that the Facts related by that illuſtrious Hiſtorian (as they call him) ought to be received without Heſitation, by all Mankind; take the Liberty here to contradict him, and pay no Regard to the Opinion he had conceived of *Oates*. They do not only ſay, that the Sentence, and the Execution of it, was barbarous; but affirm it to be miraculous, that *Oates* eſcaped with his Life, after ſo ſevere a Whipping; from whence, I preſume, they would have us infer, that Hea-

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1685. 1 Jac. II. ven wrought a Miracle, to aſſert the Innocence of the Man, and the Juſtice of his Cauſe.

But ſurely the Compilers of *Rapin*, if they had not been partial to *Oates*, would have given us Biſhop *Burnet*'s Opinion of him, on whoſe Authority they rely abſolutely in other Caſes; nor would they have repreſented ſome Parts of the Evidence againſt *Oates*, as they do; particularly where they inſinuate, that the Witneſſes from *St. Omers were the very ſame*, that had appeared and given *the ſame Evidence* at the Jeſuits Trials: Whereas ſeveral of thoſe Witneſſes were not the ſame; and there were a great many more, and other Witneſſes from *St. Omers* at this Trial, than were at the Trials of the Jeſuits; and their Teſtimony differed in ſeveral Circumſtances: And this the Authors of *Rapin* could not but know, as they appear to have peruſed all thoſe Trials. To ſuch Lengths will Party carry ſome People, to aſſert downright Falſities, and hazard their Reputation to ſuch a Degree, as to render all the other Facts they relate ſuſpected! 1685. 1 Jac. II.

But that which muſt ſatisfy all the World, that both Houſes of Parliament, even after the Revolution, were convinced that *Oates* was guilty of the Perjuries wherewith he was charged, is, That when he applied to them to get the Judgment againſt him reverſed, they refuſed it, and he remained perjured upon Record to his dying Day; though the Miniſtry thought fit to allow him three hundred Pounds *per Annum* for his Life, becauſe ſome People imagined he was inſtrumental in the Revolution.

And notwithſtanding the Authors of *Rapin* think the Puniſhment was too ſevere, Biſhop *Burnet*, whoſe Authority they rely upon in other Caſes, ſays, he thought it too little, if he was guilty; intimating, that nothing leſs than his Life could atone for the many Murders he had committed by his Perjuries.

1685. 1 Jac. II. Liſle's *Trial.*

The Trial of ALICE LISLE, Widow, for *High-Treaſon*, before the Lord Chief Juſtice *Jeffries*, the Lord Chief Baron, and other Commiſſioners of *Oyer* and *Terminer*, held at the City of *Wincheſter*, for the County of *Southampton*, on the 27th of *Auguſt*, 1685. 1 *Jac.* II.

The Indictment.

THE Indictment charges, That *Alice Liſle*, of the Pariſh of *Ellingham* in the County of *Southampton*, Widow, did, on the twenty-eighth Day of *July*, in the firſt Year of the King, intend to depoſe and put his Majeſty to Death; and the Overt-Act, laid as an Evidence of this, was, that ſhe, the ſaid *Alice Liſle*, well knowing one *John Hicks* of *Keinſham* in the County of *Somerſet*, Clerk, to be a falſe Traitor, and to have traitorouſly conſpired the Death of the King, and raiſed War and Rebellion againſt him, did, at her Dwelling-Houſe in *Ellingham* aforeſaid, entertain, conceal, and comfort, the ſaid *John Hicks*, and gave him Meat and Drink, againſt the Duty of her Allegiance, *&c.*

Pollexfen *opens the Evidence.*

Mr. *Pollexfen*, of Counſel for the King, in opening the Evidence, obſerved, That the Priſoner *Alice Liſle*, was the Widow of one *Liſle* ſufficiently known, (being one of the Regicides that ſat in Judgment againſt King *Charles* I. and afterwards condemned the Lord *Capel*, *&c.*) That the Perſon ſhe was charged with entertaining, was a Conventicle-Preacher, and one of the moſt active in *Monmouth*'s late Rebellion, being perſonally in the Battel, and perſuading and inciting others to join with the Rebels.

The Witneſſes being called, Mr. *Pope*, Mr. *Fitzherbert*, and Mr. *Taylor*, were ſworn; who depoſed, That being taken Priſoners by the Rebels, Mr. *Hicks* came to them, and would have perſuaded them to have been of that Party; telling them that *Monmouth* was a good King, and a Proteſtant, and a great deal to that Purpoſe; reflecting on the Government and the Perſon of the King; and ſaying, He wondered what they (the Priſoners) could ſay for themſelves, who being Proteſtants, ſerved a Popiſh Prince, and would not obey a Proteſtant King; or to that Effect.

Then *James Dunne*, a Baker, was ſworn, who depoſed, That a ſhort black Man came to his Houſe at *Warminſter* in *Wiltſhire*, and deſired him to go on a Meſſage to Mrs. *Liſle*'s at *Ellingham* in *Hampſhire*, being about thirty Miles from *Warminſter*; and the Subſtance of his Meſſage was, to enquire of Mrs. *Liſle*, whether ſhe would entertain one *Hicks*: That he went to *Ellingham* accordingly on the *Saturday*, and met with one *Carpenter* the Lady's Bailiff; and asking him, if his Lady would entertain *Hicks*? *Carpenter* ſaid, He would have nothing to do with it; and thereupon he (the Witneſs) went to Mrs. *Liſle*, and asked her the Queſtion; and ſhe anſwered, He ſhould tell the Man, that they ſhould come the *Tueſday* following, in the Evening, and ſhe would entertain him: That he thereupon came back to his Houſe, and returned this Anſwer to the Man that employed him to go to Mrs. *Liſle*'s.

Dunne being asked, If there were one or two Men that came to his Houſe, to enquire what the Lady ſaid? he anſwered, There were three in all: There was the little black Man, that brought the Meſſage firſt, and two more; one was a fat black Man (*Hicks*) and the other was a thin black Man (*Neltborp*:) That they ſtaid at his Houſe about three or four Hours; viz. from ſeven to eleven, on the *Saturday* Morning, and then they all ſet out together on Horſe-back

1685. 1 Jac. II. back to go to Mrs. *Liſle*'s: That they went through *Deverel*, *Chilmark*, and *Sutton*, and came to *Saliſbury-Plain*; and not knowing the Way further, he hired one *Barter* to be their Guide.

It being demanded, How he came not to know the Way, when he went to the Lady's Houſe but the *Saturday* before?

He anſwered, The ſame *Barter* was his Guide the *Saturday* before, and had appointed to meet him again at the Plain the *Tueſday* following, and conduct him and his Friends to the Lady *Liſle*'s Houſe, (*Moyle's-Court*) at *Ellingham*: That they did not go the ſame Way to the Lady's the laſt Time, as they did the firſt, the Gentlemen being unwilling to go that Way, and ſo they went a good Way about.

Being asked what Reward they gave *Barter* for his Pains? *Dunne* anſwered, He gave *Barter* half a Crown the firſt Time, and the fat black Man gave him a Crown the laſt Time; and they parted with *Barter*, before they came to Mrs. *Liſle*'s Houſe, having got another Guide.

It being demanded, If he did not ask the Gentlemen the Reaſon they deſired to be concealed, and to go to the Lady's privately? He ſaid, Yes; and that the fat Man anſwered him, they were in Debt: That he came to the Lady *Liſle*'s Houſe with the Gentlemen, and put his Horſe in the Stable; but the Gentlemen alighted at the Gate, and what became of their Horſes he could not tell, it being dark: That he ſaw nobody at the Houſe till next Morning, but *Carpenter* the Lady's Bailiff, who came with a Candle and Lanthorn, and gave his Horſe Hay; and a young Girl that ſhewed him (*Dunne*) the Way to his Chamber: That he neither eat nor drank in the Houſe, only ſome Cake he carried in his Pocket.

This he averred in the moſt ſolemn Manner, upon his Oath ſeveral Times; but being ſtrictly examined by the Chief Juſtice, after the other Witneſſes had given ſome Light into the Matter, he acknowledged, That it was *Hicks* that employed him to go to the Priſoner's, the Lady *Liſle*'s Houſe, to know whether ſhe would entertain him: That the Lady asked him, Whether *Hicks* had been in the Army, or not? And he told her, He did not know that he was; and ſhe replied, They might come: That when they came to the Lady *Liſle*'s on *Tueſday* Night, ſome-body took the Gentlemen's Horſes at the Gate, and they went in; and when he (*Dunne*) had put up his Horſe, he went up with *Carpenter* to the Lady's Chamber, where were both *Hicks* and *Nelthorp*: That he heard the Lady bid them Welcome to her Houſe; and either *Carpenter* or the Maid brought up the Supper; and he (*Dunne*) eat and drank with them. It being demanded, What Diſcourſe they had at the Table? He ſaid, at firſt, he could not remember; but, at length, he ſaid there was ſome Diſcourſe about *Nelthorp*, who went by the Name of *Crofts*, but he thought he was called *Nelthorp* in the Chamber; adding, *That the Lady asked* Hicks, *Who that Gentleman was? and he ſaid it was* Nelthorp, *as he remembered.*

The Chief Juſtice demanded, *If there was no Diſcourſe about the Battel, and of their being in the Army?*

Dunne anſwered, *There was ſome ſuch Diſcourſe.* 1685. 1 Jac. II.

The Chief Juſtice asking again, What the Diſcourſe was? *Dunne* replied, *They did talk of Fighting*; but he could not exactly tell what the Diſcourſe was.

Barter being ſworn, depoſed, That he ſhewed *Dunne* the Way to the Lady *Liſle*'s Houſe, at *Moyle's-Court*, on the *Saturday*: That he met him the *Tueſday* after with two Gentlemen, and conducted them towards *Moyle's-Court*; but deſiring to go a more private Way than he knew, they got another Guide, and diſmiſſed him; whereupon he went to Colonel *Penruddock's*, and informed him that the Men were gone to the Lady *Liſle*'s Houſe: For he had acquainted the Colonel the Day before, that *Dunne* had deſired him to conduct two Men thither on the *Tueſday*, whom he ſuſpected to be Rebels; and the Colonel had agreed to take them on the Plain; but they going another Way, he apprehended them the next Morning at the Lady's Houſe.

That when this Witneſs (*Barter*) came to *Moyle's-Court* with *Dunne* on the *Saturday*, *Dunne* produced a Letter, but *Carpenter* the Bailiff would not meddle with it; and he ſuppoſed *Dunne* gave it to the Lady himſelf: That the Lady came out into the Kitchen, and asked them ſeveral Queſtions; and talking with *Dunne* apart, ſhe laughed; and he (*Barter*) asking *Dunne* as they went Home, what ſhe laughed at? *Dunne* anſwered, She aſked him, If he (*Barter*) knew any thing of the Concern; and he anſwering, No, ſhe laughed.

Being asked, What Diſcourſe he had with *Dunne*, the firſt Day he went to Mrs. *Liſle*'s, *Barter* anſwered, He told him the Men had half a ſcore thouſand Pounds a Year a-piece: That he (*Dunne*) ſhould make a very fine Booty of it; he ſhould never want Money again; and that he had concealed the Men in his Houſe ten Days: But *Dunne* denied he ever concealed them, or ſaid any Thing about the Value of their Eſtates, or that ever he produced a Letter at the Lady *Liſle*'s, but delivered his Meſſage by Word of Mouth: And ſaid, the Queſtion the Lady asked him was, Whether *Barter* knew *Hicks* was a Presbyterian Preacher?

Colonel *Penruddock* being ſworn, depoſed as follows: *Barter* came to my Houſe on the *Monday* Morning, and told me he had been with one *Dunne*, upon a Journey to Mrs. *Liſle*'s Houſe, to get Entertainment for ſome People; and that they had appointed to meet him the *Tueſday* following, between Eleven and Twelve upon *Salisbury-Plain*; and there, if I pleaſed, I might take them. I ordered him to go according to the appointed Time, and withall I ſent a Servant of my own, to watch when they came by; but it happened, I ſuppoſe by their taking another Way, that he miſſed of them; but *Barter* left Word that, in caſe he did not find them there, we muſt conclude he was gone with them to my Lady *Liſle*'s Houſe: And he told me withall, ſays he, I believe they are Rebels, becauſe he that deſired me to be their Guide, ſaid the ſame to me: So early the next Morning I took ſome Soldiers with me, and beſet my Lady *Liſle*'s Houſe: It was a pretty while before I could get any body in the Houſe to hear: At length that Man that they ſay was

1685. 1 Jac. II. the Bailiff, *Carpenter*, came out; and I ſaid to him, Friend, you had beſt be free and ingenuous, and diſcover who are in your Lady's Houſe; for I am ſure there were ſome Strangers came thither laſt Night: Let me know who they are, and ſhew me what Part of the Houſe they are in? He did confeſs to me there were Strangers in the Houſe, and pointed to ſuch a Part of the Houſe: But pray, ſays he, do not tell my Miſtreſs of it. Accordingly we went in, and immediately we took Mr. *Hicks* and this ſame *Dunne* in the Malt-houſe.

L. C. J. Was *Dunne* taken in the Malt-houſe?

Col. Penruddock. Yes; he had covered himſelf with ſome ſort of Stuff there.

L. C. J. Well, what did you do then?

Col. Penruddock. My Lady coming to us, I told her, Madam, you have done very ill in harbouring Rebels, and giving Entertainment to the King's Enemies. Saith ſhe, I know nothing of them; I am a Stranger to it. Pray, ſaid I, Madam, be ſo free and ingenuous with me, and ſo kind to yourſelf, as, if there be any other Perſon that is concealed in any Part of your Houſe (for I am ſure there is ſome body elſe) to deliver him up, and you ſhall come to no further Trouble: She denied it, and ſaid, I know nothing of them; but he went on and ſearched; and at laſt diſcovered the other Man *Nelthorp*, hid in a Hole by the Chimney.

Dowding being ſworn, depoſed, That he was with Colonel *Penruddock* when he beſet the Lady *Liſle*'s Houſe: That they called almoſt half an Hour before they got in: That having found two Men, they came to the Lady; and ſhe ſaid, She knew nothing of any Body's being in the Houſe; and that *Dunne* the Witneſs had covered himſelf up in a Hole in the Malt-Houſe: He depoſed further, That he ſaw *Hicks* at *Salisbury* the Day before this Trial; and that he acknowledged his being in the Duke of *Monmouth*'s Army.

Mrs. *Carpenter*, the Bailiff's Wife, being ſworn, depoſed, That the Night Mr. *Hicks* and Mr. *Nelthorp* came to her Lady's, ſhe dreſſed the Supper, and carried it up to their Chamber, and her Husband took the Diſhes of her at the Door; and that my Lady was there. It being asked if her Lady uſed to ſup below Stairs or above? She anſwered, Her Lady uſed to ſup below.

The Chief Juſtice demanding of *Carpenter* the Husband, If *Dunne* offered him a Letter for his Lady? He anſwered, No; *Dunne* asked him, if his Lady would give Entertainment to one *Hicks* and another Perſon; and he asked, who the other Perſon was? But *Dunne* ſaid, He did not know him.

The Chief Juſtice asking *Carpenter*, Where he ſaw the two Gentlemen? He ſaid, He ſaw them firſt in the Room, where they ſupped and lay; and that his Lady was there at Supper: But that he never heard *Nelthorp*'s Name mentioned, till after he was taken next Morning.

Mrs. Liſle's Defence. Mrs. *Liſle* entring upon her Defence, ſaid, She did not know of any body's coming to her Houſe but *Hicks*; and had never heard that he was in the Army: She was informed he abſconded, and Warrants were out againſt him, for preaching at private Meetings; and for that Reaſon ſhe ſent to him to come at Night: As to *Nelthorp*, ſhe did not know who he was, till after he came into her Houſe: That ſhe abhorred both the Principles and Practices of the late Rebellion; ſhe ſhould have been the moſt ingrateful Perſon living, had ſhe acted any thing againſt the preſent King, conſidering how much ſhe was obliged to him for her Eſtate: Had ſhe been tried in *London*, ſhe could have had my Lady *Abergavenny*, and ſeveral other Perſons of Quality, to have proved how much ſhe deteſted the late Rebellion, and ſpoke againſt it; for ſhe was all that Time at *London*, and ſtaid there till after the Duke of *Monmouth* was beheaded. 1685. 1 Jac. II.

That ſhe was adviſed, and ſo ſhe thought it would have been, *That ſhe ſhould not have been tried as a Traitor for harbouring* Hicks, *till he was convicted of being a Traitor*: That ſhe did not know it was *Nelthorp* that came to her Houſe; had ſhe heard his Name, ſhe ſhould have remembred he was in a Proclamation. As to what had been teſtified, that ſhe denied *Nelthorp* to be in her Houſe; ſhe was then in a great Conſternation and Fear of the Soldiers, who were very rude, and could not be reſtrained by their Officers from robbing and plundering her Houſe. She begged the Court would not entertain an ill Opinion of her, becauſe of thoſe falſe Reports relating to the late King, as if ſhe was conſenting to the Death of King *Charles* I. for ſhe was not out of her Chamber that Day the King was beheaded, and believed ſhe ſhed more Tears for him than any Woman then living, as the Lady *Marlborough*, the Lord Chancellor *Hyde*, and twenty more, could teſtify, if they were living.

That ſhe was come down into the Country but a Week when *Dunne* came to her from Mr. *Hicks*, to know if he might be received at her Houſe; and ſhe told him he might come on *Tueſday* in the Evening, and he ſhould be welcome: That ſhe had no Intention to harbour him, but as a Nonconformiſt Miniſter; which ſhe knew was not Treaſon. It could not be imagined ſhe ſhould hazard her own Life, and the Ruin of her Children, to harbour *Nelthorp*, a Man ſhe never knew, but had heard he was in a Proclamation.

Then ſhe called *George Creed*, as a Witneſs for her; who teſtified, That he heard *Nelthorp* ſay, that the Lady *Liſle* (the Priſoner) did not know of his coming, or know his Name; nor did he tell his Name, till he was taken by *Penruddock*.

The Chief Juſtice anſwered, She was not indicted for harbouring *Nelthorp*, but *Hicks*.

Mrs. *Liſle* went on, and ſaid, She never ſo much as wiſhed the Rebels Succeſs: She knew the King was her Sovereign, and ſhe would have ventured her Life to ſerve him: She knew it was his Due, and ſhe owed him all ſhe had in the World; and though ſhe could not fight for him herſelf, her Son did; he was actually in Arms on the King's Side in this Buſineſs; ſhe inſtructed him early in the Principles of Loyalty, and ſent him thither; it was ſhe that bred him up to fight for the King: And, ſhe obſerved, That *Keynſham*, where *Hicks* was ſaid to be in Arms, was not in this County.

The

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The Chief Juſtice anſwered, The Treaſon ſhe committed was in this County; and then proceeded to ſum up the Evidence, and direct the Jury. He ſaid, this was a Caſe of very great Example, and very great Weight; wherein the Intereſt of the Publick, and the Life of a Perſon of Quality and Fortune, was put into their Hands: That they were not to be moved by Compaſſion for the Priſoner, or the Allegations and Proteſtations of her Innocence, on the one Hand, or to be influenced by any Thing that came from the Court or the learned Counſel, on the other; but were to be guided entirely by the Evidence, which he ſhould repeat with all Faithfulneſs and Integrity, as he ſhould anſwer it before the great Judge of Heaven and Earth.

The Chief Juſtice directs the Jury.

The Chief Juſtice proceeded to ſhew the Miſeries that attended the Grand Rebellion; which, he obſerved, would have been all repeated, if the Rebels under *Monmouth* had met with Succeſs: And, having gone through the Evidence, made ſome ſevere Reflections on the Priſoner and her Family. He ſaid, ſhe pretended much to Religion and Loyalty, and declared how much ſhe wept at the Death of King *Charles* the Martyr, owning the great Obligations ſhe had to the late King, and the preſent; and that ſhe had not had a Being, or any Thing to maintain it for twenty Years paſt, but from their Bounty; and yet, no ſooner was one in the Grave, but ſhe forgot all Gratitude, and entertained thoſe that were Rebels againſt his Brother and Succeſſor. He would not ſay what hand her Husband had in the Death of that bleſſed Martyr; ſhe had enough to anſwer for her own Guilt: And, he confeſſed, it ought not to be any Ingredient in this Caſe, what ſhe was in former Times: Whether ſhe rejoiced at the Death of King *Charles* I. or not; that ought not to influence them in this Caſe.

But he thought it a great Aggravation of her Fault, that when Colonel *Penruddock* came to ſearch the Houſe, ſhe denied the Traitors: And obſerved, that the Father of this very *Penruddock* alſo was a Martyr, and died for his Fidelity to the Crown: And who was his Judge they all knew, (*Liſle the Regicide, the Priſoner's Huſband*). God Almighty was a juſt God; and it might be worth her Conſideration, how God had been pleaſed to make uſe of the Colonel as the Inſtrument in this Buſineſs.

Our Forefathers, (ſays the Chief Juſtice), have been deluded; but the Deception, I hope, is now at an End. Gentlemen, upon your Conſciences be it: The Preſervation of the Government, the Life of the King, the Safety and Honour of our Religion, and the Diſcharge of our Conſciences, as loyal Men, good Chriſtians, and faithful Subjects, are at Stake: Neither Age or Sex are to move you, who have nothing elſe to conſider, but the Evidence of the Fact you are to try: I charge you, therefore, as you will anſwer it at the Bar of the Laſt Judgment, to deliver your Judgment according to Conſcience and Truth.

The Jury put ſome Caſes of Law.

The Jury being about to withdraw, one of them deſired his Lordſhip to inform them, Whether, in Point of Law, it was the ſame Thing, and equally Treaſon, to relieve and harbour a Traitor, before he was convicted, as as it was to relieve and harbour him after Conviction?

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The Chief Juſtice anſwered, It was the ſame Thing: For, if *Hicks* had been wounded in the Rebels Army, and had come to the Priſoner's Houſe, been entertained, and died there of his Wounds, and ſo could never have been convicted, ſhe was nevertheleſs a Traitor.

The Jury having been out a conſiderable Time, returned into Court; and ſaid, they had ſome Doubt upon them, Whether there was ſufficient Proof, that the Priſoner knew *Hicks* had been in the Army? The Chief Juſtice anſwered, they were Judges of the Proof; but he thought there was no Difficulty in it: Did not ſhe, (ſays he), enquire of *Dunne*, whether *Hicks* had been in the Army? and when he told her, he did not know, ſhe did not ſay, ſhe would refuſe him if he had been there, but ordered him to come by Night? By which it was evident ſhe ſuſpected it; and when he and *Nelthorp* came, diſcourſed with them about the Battel and the Army? He thought this a plain Proof. The Foreman anſwered, They did not remember it was proved ſhe asked any ſuch Queſtions when they were there.

The Chief Juſtice replied, Sure, you do not remember any Thing that is paſſed. Did not *Dunne* tell you there was ſuch Diſcourſe, and ſhe was by, and *Nelthorp*'s Name was named? But, if there was no ſuch Proof, the Circumſtances, and Management of the Thing, was as full a Proof as could be.

Here Mrs. *Liſle* would have ſpoke; but the Chief Juſtice told her, ſhe muſt not ſpeak now.

Then the Jury laid their Heads together; and, after a quarter of an Hour's Debate among themſelves, they gave a Verdict, that ſhe was GUILTY.

She is convicted.

The Chief Juſtice commended the Verdict; and ſaid, he thought the Evidence full and plain; and if he had been amongſt them, ſhould have found her guilty, if ſhe had been his own Mother; and on *Friday*, the 28th of *Auguſt*, paſſed Sentence upon her, that ſhe ſhould be burnt as a Traitor that Afternoon: But, upon the Interceſſion of ſome of the Prebendaries of the Church of *Wincheſter*, ſhe was reprieved till *Wedneſday* the ſecond of *September*.

Sentenced to be burnt.

In the mean Time a Letter was ſent by the Lords *St. John* and *Abergavenny*, to the Earl of *Clarendon*, to deſire him to repreſent to his Majeſty, that the Priſoner had been a Favourer of the Royaliſts in the late Times of Uſurpation: Which Letter the Earl of *Clarendon* read to his Majeſty. A Petition was alſo preferred to the King, that the Execution might be changed from Burning to Beheading; and might be reſpited four Days. To which his Majeſty anſwered, That he would not reprieve her one Day; but for altering the Sentence, he would do it, if there were any Precedents for it. Whereupon ſeveral Precedents were offered of altering the Sentence; as that of the Duke of *Somerſet*, who was condemned to be hanged for Felony in the Reign of *Edw.* VI. and that of the Lord *Audley*, for Felony, 7 *Car.* I. Queen *Catharine Howard*, condemned for Treaſon, in the Reign of *Hen.* VIII. The Counteſs of *Saliſbury*, 32 *Hen.* VIII. and *Jane Grey* in the firſt

Precedents of altering the Sentence.

Year

1685. 1 Jac. II. Year of Queen *Mary*. Whereupon the King ſigned a Warrant for Beheading Mrs. *Liſle*; ordering both the Head and Body to be delivered to her Friends, to be interred decently and privately.

This Warrant being delivered to the Sheriff of *Hampſhire*, ſhe was, on *Wedneſday* the ſecond of *September* in the Afternoon, carried to the Place of Execution, being a Scaffold erected in the Market-Place of *Wincheſter*: Where, having delivered a Paper to the Sheriff, and performed her Devotions, ſhe ſubmitted to the Block, and her Head was ſevered from her Body.

She is beheaded.

Gentlemen, Friends, and *Neighbours*,

Her Paper left with the Sheriff.

" IT may be expected that I ſhould ſay ſomething at my Death, my Birth and Education being near this Place. My Parents inſtructed me in the Fear of God; and I now die of the reformed Religion; always being inſtructed in that Belief, that if Popery ſhould return into this Nation, it would be a great Judgment. I die in Expectation of Pardon of my Sins, and Acceptation with the Father, by the imputed Righteouſneſs of *Jeſus Chriſt*; he being the End of the Law for Righteouſneſs to every one that believeth. I thank God, through *Chriſt Jeſus*, I depart under the Blood of Sprinkling, that ſpeaketh better Things than that of *Abel*; God having made this Chaſtiſement an Ordinance to my Soul. I did as little expect to come to this Place, on this Occaſion, as any Perſon in this Nation; therefore let all learn not to be high-minded, but fear. The Lord is a Sovereign, and will take what Way he ſeeth beſt to glorify himſelf by his poor Creatures; therefore I humbly deſire to ſubmit to his Will, praying of him, that in Patience I may poſſeſs my Soul.

" The Crime was, my entertaining a Non-conformiſt Miniſter, who is ſince ſworn to have been in the Duke of *Monmouth*'s Army. I am told, if I had not denied them, it would not have affected me: I have no Excuſe but Surprize and Fear; which I believe my Jury muſt make uſe of to excuſe their Verdict to the World. I have been told, that the Court ought to be Counſel for the Priſoner: Inſtead of Advice, there was Evidence given from thence; which, (though it was but Hearſay), might poſſibly affect my Jury. My Defence was ſuch as might be expected from a weak Woman; but, ſuch as it was, I never heard it repeated again to the Jury.

" But I forgive all Perſons that have wronged me; and I deſire that God will do ſo likewiſe. I forgive Colonel *Penruddock*, although he told me, he could have taken thoſe Men before they came to my Houſe.

" As to what may be objected, that I gave it under my Hand, that I diſcourſed with *Nelthorp*; that could be no Evidence to the Court or Jury, it being after my Conviction and Sentence.

" I acknowledge his Majeſty's Favour in revoking my Sentence; and I pray God to preſerve him; and that he may long reign in Peace, and the true Religion may flouriſh under him.

" Two Things I have omitted to ſay, which is, That I forgive him who deſired to be taken from the Grand Jury, and put upon the Petty Jury, that he might be the more nearly concerned in my Death; and return humble Thanks to God, and the Reverend Clergy that aſſiſted me in my Impriſonment. 1685. 1 Jac. II.

Sept. 1685. ALICIA LISLE.

This Attainder of Mrs. *Liſle* was made void by an Act of 1 *W. & M.* reciting, that ſhe was indicted of High-Treaſon, for entertaining the ſaid *John Hicks*, though he was not at the Time of her Trial attainted, or convicted of any ſuch Crime; and this by a Verdict injuriouſly extorted and procured by the Menaces and Violences, and other illegal Practices of the Lord *Jeffries*, Baron of *Wem*, then Chief Juſtice, and Chief Commiſſioner of *Oyer* and *Terminer*. *The Attainder reverſed.*

This Trial ſufficiently manifeſts the little Care Biſhop *Burnet* uſed, to inform himſelf of the Truth of the Facts he relates, even in Inſtances where he might have done it with all the Eaſe imaginable. Either he thought it beneath him to aſk a Queſtion, and that it might be a Reflection on his Underſtanding, to be thought ignorant of any Occurrence that happened in his Times, as he calls them; or he deſignedly relates the Facts directly contrary to the Truth, for the Sake of his Party; or purely for the Sake of Lying; it not being eaſy to conceive why he ſhould miſreport ſome Paſſages, where the Truth would not have been at all diſadvantagious to his Friends, if it had appeared in its proper Colours. *Remarks*

Speaking of this Trial, he ſays, That the Night after *Monmouth*'s Defeat, *Hicks* and *Nelthorp* eſcaped from the Army, and came to Mrs. *Liſle*'s Houſe for Shelter: That *Hicks* told her the Occaſion; whereupon ſhe immediately ordered a Servant to give an Information againſt them to a Juſtice of Peace, and in the mean while to ſuffer them to eſcape; but on a ſudden the Houſe was ſurrounded by a Party, who took both them, and her for harbouring them: That *Jeffries* procured a Promiſe from the King not to pardon her: That there was no Proof ſhe knew the Perſons were Rebels; nor were they in any Proclamation: But *Jeffries* charged the Jury in a violent Manner; and turned them back twice, threatening them with an Attaint: Whereupon at length they brought her in guilty; and ſhe expreſſed great Joy, that ſhe ſuffered for an Act of Charity and Piety.

Now, in the firſt Place, *Hicks* and *Nelthorp* did not come to Mrs. *Liſle*'s Houſe the Night after *Monmouth*'s Defeat; for the Battle of *Sedgmore* was fought on the 6th of *July*, and *Hicks* and *Nelthorp* did not come to her Houſe till the 28th of *July*. Mrs. *Liſle* ſays in her Defence, That ſhe was at *London* at the Time of the Battel, and when the Duke of *Monmouth* was beheaded; and did not come into the Country above a Week before theſe two Gentlemen were taken at her Houſe; which was three Weeks after the Battle of *Sedgmore*: How the Biſhop, therefore, came to ſay they fled to her Houſe the Night after the Battel; or for what Reaſon he forged this Tale, I cannot conceive.

1685. 1 Jac. II. Fernley's Trial. *The Indictment.*

He

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It is equally true, that they were not in any Proclamation; for Mrs. *Liſle* herſelf ſays in the Trial, She knew *Nelthorp* was in a Proclamation.

He ſays alſo, that *Jeffries* gave Evidence himſelf, that they confeſſed they were with *Monmouth*: But I cannot ſee what Occaſion there was for this, when there were three Witneſſes, that ſwore poſitively *Hicks* was in *Monmouth*'s Army; and would have perſuaded them to join the Rebels.

As to Mrs. *Liſle*'s ſending to inform a Juſtice of Peace, that *Hicks* and *Nelthorp* were at her Houſe, as ſoon as they came; it appears, they ſupped and lay all Night in her Houſe; and were not taken till the next Morning: Nor did ſhe ever mention her ſending to inform a Juſtice of the Peace of there being there, as ſhe certainly would have done, in her Defence at the Trial, if ſhe had ever given any of her Servants ſuch Orders.

He alſo abuſes his Friend, Mrs. *Liſle*, when he ſays, ſhe expreſſed great Satisfaction, that ſhe died for performing an Act of Piety and Charity: For it is evident, ſhe expreſſed herſelf quite otherwiſe; declared her Deteſtation of Treaſon and Rebellion, and prayed for the King with her laſt Breath; which does not agree with that pretended Joy, for having harharboured and concealed his Enemies.

Nor is it true, that the Jury were turned back twice, and threatened with an Attaint: They, indeed, deſired to be ſatisfied in two Points. 1. Whether it was Treaſon to receive a Rebel before he was convicted: To which the Court anſwered, It was. 2. They doubted whether *ſhe knew Hicks* was in the Army: To which the Chief Juſtice anſwered, The Priſoner's ordering them to come in the Night, was a ſtrong Preſumption of it; but the talking of the Battel at Supper, left them no Room to doubt of it. Whereupon the Jury, without withdrawing again, gave their Verdict, that ſhe was guilty. And perhaps the only Thing that deſerves Cenſure in this Trial was, the convicting her of High-Treaſon, for harbouring *Hicks* before he was convicted of Treaſon. There is no Doubt to be made that it is High-Treaſon, *knowingly* to harbour a Traitor before he is convicted: But the Act for reverſing the Attainder ſeems to intimate, that a Perſon cannot be tried for receiving or harbouring a Traitor till that Traitor is convicted; and in this I am apt to think Mrs *Liſle* had Injuſtice done her. I do not doubt her Guilt; but yet I think ſhe was not legally convicted. As to the other Inducements mentioned in the Act, relating to the Chief Juſtice's Menaces, theſe, poſſibly, were thrown in by Friends. I do not find the Chief Juſtice uſed any Threats, either to the Jury or Witneſſes; unleſs when he examined *Dunne*, who notoriouſly prevaricated, and forſwore himſelf at this Trial, by his own Confeſſion; and from whom the Truth was extorted with the utmoſt Difficulty.

1685. Jac. II.

1685. 1 Jac. II. Fernley's Trial.

The Trial of JOHN FERNLEY, Barber-Surgeon, for *High-Treaſon*, at the *Old-Baily*, *London*, on the 18th of *October*, 1685. 1 *Jac.* II.

1685. 1 Jac. II.

The Indictment.

THE Indictment charges the ſaid *John Fernley* with High-Treaſon; for that, on the 20th of *Auguſt*, in the firſt Year of the King, at the Pariſh of St. *Mary White-Chapel*, in the the County of *Middleſex*, knowing one *James Burton* to be a falſe Traitor and Rebel, he did harbour, conceal, and ſuſtain him, in his Manſion-Houſe, ſituate in the ſaid Pariſh; againſt the Duty of his Allegiance, *&c.*

The King's Counſel firſt produced the Record of *Burton*'s Outlawry: After which *Burton* himſelf was ſworn as a Witneſs againſt the Priſoner.

Burton depoſed, That coming home to his Houſe in *Wapping*, from *Monmouth*'s Army in the *Weſt*, his Wife got him a Lodging at Mr. *Fernley*'s: That he dined with *Fernley* on the *Sunday*, and they diſcourſed of *Monmouth*'s Army being routed; and he believed he told *Fernley* he was there.

Burton's Wife depoſed, That ſhe took the Lodging for her Husband, at *Fernley*'s, becauſe ſhe thought he was not ſafe at Home: That Mrs. *Fernley* was her Acquaintance; and they dined together at *Fernley*'s on *Sunday*.

Mr. *Reynolds* depoſed, That having a Warrant from the Lieutenant of the Tower, in *Auguſt* laſt, he apprehended *Burton* in *Fernley*'s Houſe: That he was got up a Chimney, and fell down with the Soot about his Ears, as they were looking for him.

Then *Burton*'s Pardon was produced, to make him a Legal Witneſs.

Fernley, in his Defence, ſaid, That *Burton* came to lodge at his Houſe on the *Friday*; but he knew nothing of his being there till the *Sunday* following, when they dined together; and *Burton* told him how he made his Eſcape: That one *Gaunt* came to his Houſe after Dinner, and asked for Mr. *Burton*; and being brought in, *Gaunt* told him, in a little Time he ſhould have a Paſſage for him beyond the Sea: That ſome Gentlemen were gone, and others were about going; particularly Colonel *Danvers* and Major *Wildman*: That he intended, the next Morning, to have acquainted a Magiſtrate with this, and have apprehended them all; for *Gaunt* had promiſed to come again, and he had *Burton* ſecure in his Houſe already, being himſelf a Conſtable: He had no Deſign to conceal *Burton*; eſpecially, as he knew there was an 100 *l.* offered in the Proclamation for taking him; and he was a poor Man, and had no Obligation to conceal him, and ruin himſelf and his Family. Fernley's *Defence.*

The Court told him, if he had had a loyal Heart, he would have ſecured both *Burton* and *Gaunt*, and not have concealed *Burton* ſeven

1685. 1 Jac. II. or eight Hours in his Houſe after he knew of his Treaſons.

The Priſoner anſwered, He propoſed to have ſeized both *Danvers* and *Wildman*, when he had learned of *Gaunt* where they were; for he knew there was a Proclamation out againſt them; and this Deſign would have been defeated, if he had taken up *Gaunt* or *Burton* that Evening: What he had done, was with a Deſign to ſerve the King.

The Court replied, If he had had an honeſt Intention, he would have acquainted ſome Juſtice of Peace with the Matter.

Then the Priſoner called Witneſſes to his Reputation: One of them ſaid, *Fernley* was a Barber, and uſed to ſhave him; and he looked upon him to be a ſober Man: Another teſtified, That he went to Church, behaved himſelf very well, and he never heard him ſpeak againſt the Government. He called ſome others; but they did not come into Court. 1685. 1 Jac. II.

Then the Lord Chief Juſtice *Jones* directed the Jury, and obſerved, That *Burton*, whom the Priſoner harboured, was not only in *Monmouth*'s Rebellion; but was outlawed for being in the *Rye-Houſe* Conſpiracy; and had been abſent from his own Houſe two Years on that Account: That he confeſſed *Burton*'s being in his Houſe, and his acquainting him that he had been in the Rebellion; and left it to them, whether there was not ſufficient Evidence againſt him. *The Chief Juſtice directs the Jury.*

The Jury found him GUILTY. *He is convicted.*

The Sentence and Remarks will be found at the End of Alderman Corniſh's *Trial, who was tried the ſame Day.*

1685. 1 Jac. II. Ring's *Trial.*

The Trial of WILLIAM RING, for *High-Treaſon*, at the *Old-Baily, London*, on the 19th of *October*, 1685. 1 *Jac.* II. 1685. 1 Jac. II.

The Indictment. THE Indictment charges the ſaid *William Ring* with High-Treaſon; for that on the 20th of *July*, in the firſt Year of the King, in the Pariſh of St. *Clement Danes*, in the County of *Middleſex*, he, well knowing *Joſeph Kelloway* and *Henry Lawrence* to be Traitors and Rebels, did harbour, conceal, and ſuſtain them in the Dwelling-Houſe of him the ſaid *William Ring*, ſituate in the Pariſh and County aforeſaid; againſt the Duty of his Allegiance, *&c.*

The Conviction of Kelloway *and* Lawrence. The King's Counſel producing the Records of *Kelloway*'s and *Lawrence*'s Convictions, it appeared they had been indicted of High-Treaſon, in levying War againſt the King; and that they confeſſed the Indictment on the Araignment; and the uſual Judgment of High-Treaſon had been pronounced on them.

The Evidence. Then the Witneſſes were called to prove that *William Ring*, the Priſoner, did receive and harbour them, between the Time the Treaſon was committed, and their Conviction.

Barrington depoſed, He ſaw *Kelloway* and *Lawrence* at *Ring*'s Houſe in *Wyche-Street*, the Day after they came to *London* from the Duke of *Monmouth*'s Army in the *Weſt*.

Barrow depoſed, That he heard *Ring* confeſs before the Lord Mayor, that *Lawrence* and *Kelloway* told him, they had both been in the late *Weſtern* Rebellion in *Monmouth*'s Army; and that he had lodged them two or three Nights afterwards in his own Houſe. *The Evidence.*

Criſp alſo depoſed, That *Ring* confeſſed he lodged them ſeveral Nights after they told him they fled from *Monmouth*'s Army in the *Weſt*.

Then *Ring*'s Examination was read: Wherein he confeſſed he lodged *Lawrence* and *Kelloway* ſeveral Nights after they had told him they had been in *Monmouth*'s Army, (which was routed); and that they left their Horſes at *Newbury*.

Ring, in his Defence, ſaid, That he acknowledged he lodged them; but he did not know they had been in the Rebellion; and that he was frighted, when he ſet his Hand to the Examination, and did not know what he did. *Ring's Defence.*

The Jury found *Ring* GUILTY.

See Alderman Corniſh's *Trial, for the Sentence and Remarks.*

The

1685. 1 Jac. II. Gaunt's Trial.

The Trial of ELIZABETH GAUNT, Wife of *William Gaunt*, for *High-Treaſon*, at the *Old-Baily, London*, on the 19th of *October*, 1685. 1 *Jac.* II.

1685. 1 Jac. II.

The Indictment. THE Indictment charges the ſaid *Elizabeth Gaunt* with High-Treaſon; for that, on the 24th Day of *September*, in the 30th Year of the late King *Charles* II. in the Pariſh of St. *Mary White-Chapel*, in the County of *Middleſex*, ſhe, the ſaid *Elizabeth Gaunt*, well-knowing one *James Burton* to be a falſe Traitor and Rebel, in a certain Houſe, to the Jurors unknown, did, knowingly, ſecretly, and traitorouſly ſuſtain and maintain, and Meat, Drink, and five Pounds in Money, for the Maintenance and Suſtinence of the ſaid *James Burton*, to him did maliciouſly and traitorouſly deliver; againſt the Duty of her Allegiance, *&c.*

The Attorney-General, in opening the Evidence, obſerved, That the Priſoner and her Husband were the great Brokers for carrying over Traitors beyond Sea; ſuch as the Lord *Shafteſbury*, and others.

The Evidence. *Burton* being ſworn, depoſed, That he was concerned with the two *Rumbolds*, and others, in the *Rye-Houſe* Plot; and that the Conſpirators intended to have killed the late King *Charles* II. That *Keeling* making a Diſcovery, he (the Witneſs) was put into a Proclamation, and thereupon abſconded: That about two Months afterwards, the Priſoner, Mrs. *Gaunt*, came to him, and told him, there were ſome Perſons about to make their Eſcape; and took him along with her to a little Brewhouſe in *Half-Moon-Alley* in *Biſhopſgate-Street*, and carrying him up Stairs into a Room, he found the two *Rumbolds* there: That he lay there all Night, and went with one of the *Rumbolds* next Morning to *Whitechapel*, where they took Horſe, and rode to *Rochford*-Hundred, and waited there two Days, when a Veſſel they were to embark on, came down; but finding it leaky, and ill-mann'd, and the Weather bad, they came back to *London*, where he (this Witneſs) lay a great many Months after: And Mrs. *Gaunt* came to him again, and told him, there were two Perſons going, and he might have a Paſſage: And a Boat being ready at the Water-ſide, carried him to *Graveſend*, from whence he went to *Amſterdam*; and that Mrs. *Gaunt* furniſhed him with about five Pounds in Money.

It being demanded, How Mrs. *Gaunt* came to take ſo much care of him? He ſaid, he ſuppoſed, becauſe ſhe knew her Husband was concerned: That her Husband would have gone with him and Captain *Walcot* to view what Condition the *Tower* was in: And Capt. *Walcot*, when *Gaunt* was with them, ſaid, he had a Deſign to take a Houſe over againſt the *Tower*, and put ſome Men into it, to break into the *Tower*.

Mary Gilbert, *Burton*'s Daughter, depoſed, That Mrs. *Gaunt* came to their Houſe, the Night her Father went away, and carried him to a Houſe without *Biſhopſgate*; where ſhe (the Deponent) ſaw a Man with one Eye, a full-ſet Man, full of Pockholes, (*Rumbold*): And being asked, Why her Father went away? She ſaid, on account of the Proclamation.

Mrs. *Burton*, the Wife of *Burton*, being ſworn, depoſed, That Mrs. *Gaunt* came to enquire after her Husband, and told her, if he was willing to go away, ſhe would take care: And it being demanded, Why Mrs. *Gaunt* came to ſecure her Husband? ſhe ſaid, It was becauſe he was in the Proclamation; and for Fear her Husband ſhould know any Thing againſt Mrs. *Gaunt*'s Husband.

Then *Burton*'s Pardon was produced, to ſhew he was a Legal Witneſs.

Mrs. Gaunt's Defence. The Court demanding of the Priſoner, What ſhe ſaid to this Evidence? ſhe anſwered, She did not contrive to ſend *Burton* away.

Being told, Two Witneſſes had ſworn it, and again demanded, Whether ſhe did or not? ſhe anſwered, She did not come there to tell them what ſhe did: And being asked, If ſhe did not know *Burton* was in the Proclamation about *Rombold*'s Plot? She anſwered, *It's like I might*.

The Chief Juſtice's Directions to the Jury. The Chief Juſtice, in his Direction to the Jury, told them, If they thought ſhe did know, or believe, *Burton* to have been guilty of that Treaſon, and that ſhe did help to convey him away, as the Witneſſes had ſworn, by giving him Money, and ſolliciting him ſeveral Times to be gone, they ought to find her guilty.

The Jury brought her in GULTY.

See the End of the next Trial, for the Sentence, Remarks, &c.

The

1685. 1 Jac. II. Cornish's Trial.

The Trial of HENRY CORNISH, Esq; for *High-Treason*, at the *Old-Baily, London*, on the 19th of *October*, 1685. 1 *Jac.* II.

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The Indictment. THE Indictment charges the said *Henry Cornish* with High-Treason, in compassing the Death of the late King *Charles* II. And the Overt-Act laid as an Evidence of it, was, That on the 30th of *May*, in the 35th Year of the said King *Charles* II. at the Parish of St. *Michael Bassishaw*, *London*; he did maliciously and traitorously (knowing *James* late Duke of *Monmouth*, *William Russel* Esq; Sir *Thomas Armstrong* Knight, and divers other Traitors and Rebels, to have conspired the Death of the said King), then and there promise, That he the said *Henry Cornish* would be aiding and assisting to them in carrying on the said Treason; against the Duty of his Allegince, *&c.*

Moves to put off his Trial. Mr. *Cornish* being arraigned, moved to put off his Trial: He said, He had no Counsel, no Pen, Ink, or Paper, allowed him: That his Children had petitioned his Majesty last Night, and he referred them to the Judges.

The Attorney-General answered, He had Pen and Ink as soon as he petitioned for it; and the King had left him to the Course of the Law, that he could not consent to put off the Trial; nor did he see any Reason, why Mr. *Cornish* should be in a better Condition than other Prisoners; he had not deserved so well of the Government.

Refused.

Mr. *Cornish* replied, The Lord *Russel* had seven or eight Days allowed him.

The Court said, My Lord *Russel*'s Trial was put off but till the Afternoon, and those that were tried there, had generally no Notice at all: However, if one Man had a particular Favour, another could not claim it: That it was almost a Week since he was apprehended, and he knew what he was charged withall.

Mr. *Cornish* said, It did not appear by the Warrant, Whether he was committed for Treason against this King, or the last: But not being able to obtain more Time, the Jurors were called; of whom Mr. *Cornish* having challenged thirty-five, the following Gentlemen were sworn.

The Jury.

Thomas Rawlinson,	*William Cloudesley*,
Thomas Langham,	*Richard Holford*,
Ambrose Istead,	*William Longboat*,
Thomas Pendleton,	*Stephen Coleman*,
John Price,	*Robert Clavel*,
Thomas Oneby,	*William Long*.

Colonel Rumsey's *Evidence.* Mr. *Rumsey* being called as a Witness for the King, deposed, That the latter End of *October*, or the Beginning of *November*, 1682, he was sent by the Lord *Shaftesbury* to the Duke of *Monmouth*, the Lord *Russel*, Lord *Grey*, Sir *Thomas Armstrong*, and Mr. *Ferguson*, (who were then met at Mr. *Sheppard*'s House) to know their Resolution: And that they told him, they were disappointed by Mr. *Trenchard*: He had not been there a Quarter of an Hour, but Mr. *Sheppard* was called, who went down, and brought up Alderman *Cornish*: The Alderman coming into the Room, made his Excuse he did not come sooner; and said, He could not stay with them, because they were to meet that Night about their Charter: Whereupon *Ferguson* pulled a Paper out of his Bosom; which the Company told him they had read, and desired the Alderman to read it; but *Ferguson* read it to him, and being asked, how he liked it, he said, very well: That in this Paper there were two Points, which he remembred very well, one was, *That they would declare for Liberty of Conscience*; *and the other* was, *That all those that would assist in the Insurrection, who had any Church or Crown-Lands, in the late War, should have them restored:* It was a Declaration to be dispersed on the Rising.

Mr. Attorney demanding, If there was a rising intended at that Time? *Rumsey* answered, Yes; and they met therefore for that Purpose: And Mr. *Trenchard* was the Man to manage the Business about *Taunton*; and he disappointed them

Being asked again, What his Message to them from the Lord *Shaftesbury* was? he answered, It was to know what Issue they had come to about the Rising, and to press them to it; and represent that such a Matter was not to be long kept on Foot; either they should come to a Resolution to rise, or let it fall for Good and all: And Mr. *Cornish* said, *He liked it very well, and that poor Interest he had, he would join with it.*

Here Mr. *Cornish* declared, he never was at any Consult at Mr. *Sheppard*'s; but he had had great Dealings with him: Mr. *Rumsey* said, Mr. *Cornish* and he had great Concerns together, while he (*Rumsey*) managed the Customs at *Bristol*: Mr. *Cornish* had returned between three and four thousand Pounds for him: He was a very honest Gentleman; and *Rumsey* appealed to himself, If he thought he took any Delight in appearing against him?

Cornish demanded, Why he had not accused him all this while? *Rumsey* answered, I think I suffer for it, and not you: You say I accuse you falsly: Then Mr. *Cornish* you don't stand there, nor I here.

Mr. Attorney demanding, If he never had any Discourse with the Prisoner at other Times? *Rumsey* answered, They had been acquainted fourteen Years, but he never heard him speak any Thing of this Nature before.

Goodenough, who had been Under-Sheriff to Mr. *Cornish*, being sworn a Witness for the King, deposed, That he knew nothing of the Business of the Lord *Russel*; but that an Insurrection was intended in *London*: They designed to divide the City into twenty Parts; and out of each Part to raise 500 Men, to make an Insurrection: They were to take the *Tower*, and drive the Guards out of Town.

That some Time before this, in *Easter*-Term, 1682, he happened to be at Mr. *Cornish*'s House,

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House, and saying to him, the Law will not defend us now, though never so innocent; some other Way must be thought on; Mr. *Corniſh* answered, I wonder the City is so unready, and the Country so ready: And he (this Witness) replied, There was something thought of to be done here; and in the first Place the *Tower* ought to be seized: Whereupon Mr. *Corniſh*, after a short Pause, said, *I will do what I can*, or, *what Good I can*: That afterwards Mr. *Corniſh* meeting him on the *Exchange*, asked how Affairs went, which he understood to relate to what they discoursed of before; but he never met him afterwards.

Here Mr. *Corniſh* bid *Goodenough* remember all his Tricks; and demanded, If any one was present when he had that Discourse with him? *Goodenough* answered, No; it was in his little Room in his own House.

Mr. Corniſh's Defence.

Mr. *Corniſh*, in his Defence, said, It was strange he should meet *Rumsey* and the rest of the Conspirators at Mr. *Sheppard*'s; and yet, by *Rumsey*'s own Evidence, never speak to him of the Matter afterward; and declared solemnly, in the Presence of God, he knew nothing of it: He objected also, that *Rumsey* was not a good Witness, because he had not his Pardon: But the Court ruled, he was a good Witness, if he could shew no Record of his Conviction.

His Witnesses.

Then the Prisoner called several Witnesses, to shew he had no Intimacy or Friendship with *Goodenough*; and that *Bethel*, the other Sheriff, in a Manner compelled him to suffer *Goodenough* to be their Under-Sheriff.

Mr. *Jekyl*, and others, deposed, That Mr. *Corniſh* declared, *Bethel* would put *Goodenough* upon him for his Under-Sheriff; and he said, he would not have him (as he remembred), because he was obnoxious to the King and Government: And Mr. *Gosfright* deposed, That Mr. *Corniſh* told *Bethel* he would fine, and not hold the Shrievalty, if *Goodenough* was Under-Sheriff; and he believed Mr. *Corniſh* was never reconciled to him; from whence Mr. *Corniſh* inferred, how unlikely it was, he should trust him with Secrets of this Nature.

Dr. *Calamy*, the Minister of his Parish, deposed, That Mr. *Corniſh* came to Church constantly with his Family, received the Sacrament once a Month; and he never heard him say a disrespectful Word of the Government, during the two Years he was Minister there.

Some other Witnesses gave the Prisoner a good Character, as to his Loyalty and Reputation in the World.

Mr. Sheppard examined after the Jury were withdrawn.

Then the Chief Justice directed the Jury, and seemed to be of Opinion, the Prisoner was guilty. The Jury being withdrawn a considerable Time, were returning with their Verdict; when Mr. *Corniſh* desired Mr. *Sheppard* might be examined, as an Evidence for him: Which Mr. Attorney opposed, as very irregular, after the Jury was gone out: However, Mr. *Sheppard* appearing, the Jury came into Court again; and the Prisoner was indulged so far, as to have Mr. *Sheppard* examined.

Mr. *Sheppard* deposed, That at one of the Meetings of the Conspirators at his House, Mr. *Corniſh* came thither, to speak with the Duke of *Monmouth*, or some of the Company; but did not stay half a quarter of an Hour: That he (*Sheppard*) came up, and went out with him; and, that there was not one Word read, or any Paper produced, while he was there: He remembred indeed, there was a Declaration read; *Ferguson* pulled it out of his Shoe: But he was positive there was no Paper read to Mr. *Corniſh*; for he was not looked upon to be of the Company: And Mr. *Corniſh* was at his House but once, when the Duke of *Monmouth* was there.

The Lord Chief Justice *Jones* then observed, There was a Cabal of Rebels met together, and Mr. *Sheppard* brought up the Prisoner to them without their Leave; which was scarce credible, unless he knew him to be one of the Company.

Mr. Attorney also observed, That *Sheppard* swore at a former Trial, he had Orders from the Company not to bring up any Person.

Sheppard answered, They desired he would let none of his Servants come up; and that he fetched them Wine, and what they wanted: But he could safely say, Mr. *Corniſh* knew nothing of their Business.

Rumsey examined again.

Mr. *Rumsey*, being confronted with Mr. *Sheppard*; again deposed, That as soon as Mr. *Corniſh* had made an Excuse for not coming sooner, all the Company gathered about him; and somebody said, They would tell him what they had done: They said, the Declaration had been read, which *Ferguson* had prepared, and that Mr. *Corniſh* should hear it read; and with that Mr. *Sheppard*, though he denied it, did take the Candle and hold it; and while the Company stood round the Prisoner, *Ferguson* pulled the Declaration out of his Pocket, and it was read, and Mr. *Corniſh* approved it; and said, *With that small Interest*, or *little Interest*, *he had*, *he would assist*; or Words to that Effect.

Then Mr. Solicitor made his Observations on the Evidence, and said,

Mr. Solicitor's Observations on the Evidence and Defence.

Gentlemen, There hath been a very great Indulgence given to the Prisoner, and it is to shew you what Tenderness a Court of Justice hath, and always will have, of the Lives of the King's Subjects: After a full Evidence, though he had neglected his Defence, yet you were again sent for into Court, to hear what further Evidence he had to offer to you; I cannot but observe, this looks like a subtile Contrivance on the Prisoner's Part: You see what Endeavours have been made by Mr. Attorney General, to have had *Sheppard* here a Witness for the King; you have observed he hath told you he had a *Subpœna* for him, but he was absent; in what Company he was absent Yesterday, he hath told you, with Mr. *Corniſh*'s Son: This Morning he was not to be found after he had received this *Subpœna* from Mr. *Corniſh*; he stays without, and gives no Notice; but when you are withdrawn, can send Intelligence to Mr. *Corniſh*, that he had something to say, that he hopes will excuse him now: What that is, I must beg you a little to observe. Truly, I am very glad, for the Satisfaction of all Men, that Mr. *Sheppard* hath now been here; and he is so far from invalidating any one Part of the Testimony, that by all the Circumstances you can collect from this Evidence that is given, it is a Corroboration of it: Mr. *Corniſh* was accused of being present at Consultations that have been held against the Life of the King, and for raising Rebellion at Mr. *Sheppard*'s House: His excusing his not coming there, is a sufficient Argument, to prove he was privy to their Meeting; he hath

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gone on further, and proved to you the reading the Declaration. Now what ſays *Sheppard* to this Witneſs? Mr. *Corniſh*, by the Way, I muſt obſerve to you, before did deny his being there: He had been ſometimes in Company with *Ferguſon*; but he did not like the Man, he ſays, becauſe of his Morals: Now the Witneſs he hath produced, hath given you this Teſtimony, That Mr. *Corniſh* hath been there in that Company; That he came in ſuch a Manner, that no Man but muſt be ſatisfied he was privy to their Deſigns, and did know of their Meeting; for he came when the Duke of *Monmouth*, and the reſt of the Conſpirators, were there met in private, with a direct Charge to Mr. *Sheppard*, that is the Witneſs, that they ſhould be ſo private, that no one Servant ſhould come up into the Room; yet Mr. *Sheppard* tells you, That when Mr. *Corniſh* came, he carried him up into the Room, without ſo much as acquainting any one of the Company, that Mr. *Corniſh* had a Deſire to come; but brings him up as if he were (and I make no Doubt, but you will imagine he was) one of the Company: When he comes there, he ſays, his Buſineſs is with the Duke of *Monmouth*, the Head of that Conſpiracy: And he himſelf tells you, he never had any Dealings with the Duke of *Monmouth* in his Life; What can a Man imagine of that Man, that had no Dealings with the Duke of *Monmouth*, to find him out in a Place where no Mortal could know, and none was to know; and coming to him at that Time, and at that Place, under thoſe Circumſtances of Concealment; no Man almoſt but, out of his own Mouth, muſt believe that he was privy to that Conſpiracy: Therefore, though this Witneſs doth ſeem to forget ſome Part of the Evidence, the reading the Declaration and holding the Candle, yet theſe are ſuch Circumſtances, that in themſelves do carry a Proof of the Charge, and do confirm all the reſt that the Witneſs hath ſaid; and this muſt be a great Satisfaction to you, that he was there preſent, and privy to that Deſign. And ſo I leave it to your Conſideration.

He is convicted.

The Jury withdrawing again, returned in a ſhort Time, and brought in Mr. *Corniſh* GUILTY.

Sentence paſſed on Fernley, Ring, Gaunt, *and* Corniſh.

Then all the Priſoners that had been tried that Day, were ſet to the Bar, *viz.* *John Fernly*, *William Ring*, *Elizabeth Gaunt*, and Mr. *Corniſh*; and Sentence was pronounced on them as Traitors.

The three firſt executed at Tyburn.

Fernley and *Ring* were afterwards executed at *Tyburn*; and Mrs. *Gaunt* was burnt, in Purſuance of her Sentence.

Mr. Corniſh *executed in* Cheapſide.

Alderman *Corniſh* was drawn from *Newgate* to *Cheapſide*, where a Gallows was erected for his Execution, on the 25th of *October*, 1685; where he began a Speech, to the People, but did not finiſh it. He ſaid,

His Speech.

" I AM come here this Day, condemned " to die; but God is my Witneſs, the " Crimes laid to my Charge, were falſly and " maliciouſly ſworn againſt me by the Witneſ- " ſes: For I never was at any Conſult, nor any " Meeting, where Matters againſt the Govern- " ment were diſcourſed of. I never heard or " read any Declaration, nor ever acted any " Thing wilfully againſt the Government. I " confeſs, through the Juſtice of God, my pri- " vate Sins have brought me to this infamous " End: Yea, it were juſt with God, not only to " deprive me eternally of his Preſence, but to " condemn me to everlaſting Torments; but " through *Jeſus Chriſt*, I hope to be eternally " bleſſed: Yea, as to the Crimes for which I " ſuffer, on the Words of a dying Man, I am " altogether innocent. I bleſs God I was from " my younger Years brought up, and have " for ſome Years continued, a Proteſtant, in " the Communion of the Church of *England*; " in which Communion I now die. I have " often partaken in the Ordinances, the bleſſ- " ed Effects and Comfort whereof I now feel " in this my Agony. I bleſs God, I was " born under a Government, in the Conſtitu- " tion of which I did ever acquieſce, and in " which I was once a Member; at which Time, " I did according to the beſt of my Under- " ſtanding: (*Here, it is ſaid, he was interrupted* " *by one of the Sheriffs. Then he went on, and* " *ſaid,*) I bleſs God, I was born in a Land of " Light, where the Goſpel hath been preach- " ed in Power and Purity: He might have " brought me forth in a Land of Darkneſs and " Ignorance; but bleſſed be God, for *Jeſus* " *Chriſt* — (*The Perſon who publiſhes this Speech ſays, more of it could not be taken, becauſe of the Noiſe of the People, and Interruption of one of the Sheriffs; and whether thus far be genuine, we have a great deal of Reaſon to queſtion: He adds,*) That the Alderman intreated the Sheriff to intercede with his Majeſty, to be kind to his poor Wife and Children: And the Sheriff promiſing him to wait on his Majeſty the next Day about it, he replied, " Mr. Sheriff, " I thank you; the Lord reward you a thou- " ſand fold: The Lord put it into your Hearts " to be kind to the Widows and Fatherleſs; " it is your Duty. The Lord put it into the " Hearts of all good People to pray for me".

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And having finiſhed his Devotions, the Executioner did his Office.

His Attainder reverſed.

The Attainder of Alderman *Corniſh* was reverſed by Act of Parliament, in the firſt Year of King *William* and Queen *Mary*.

Remarks on the firſt laſt Trials.

Biſhop *Burnet*, mentioning theſe Trials, in his Poſthumous Hiſtory, Vol. 1. ſays, That Mrs. *Gaunt* was a mighty pious charitable Woman; and that there was no other Witneſs againſt her, but the Perſon ſhe harboured, beſides her Maid, which he thinks was not legal Evidence; and reflects on the Court, for directing the Jury to convict her; eſpecially there being no Proof, that ſhe knew the Perſon ſhe harboured was a Rebel. He adds, That Woman died with great Conſtancy, *and rejoyced ſhe was made the firſt Martyr for Religion.*

This is another notorious Inſtance of this Right Reverend Prelate's being given to Leaſing-making, as his Countrymen call it: For, in the firſt Place, Mrs. *Gaunt* was not ſo much as charged with *harbouring Burton*, but with maintaining him and giving him Money; which Facts were proved upon her by *Burton*, his Wife, and Daughter; nor was there any Maid of Mrs. *Gaunt*'s called as an Evidence againſt her. It was alſo proved, that ſhe aſſiſted *Burton* to make his Eſcape; and that the

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the Priſoner and her Husband made it their Buſineſs to conceal and convey Rebels and Traitors beyond Sea, and actually conveyed over the Lord *Shaftesbury*, and ſeveral more of the Biſhop's Friends; for which Reaſon, I preſume, he gives her thoſe Epithets, of Pious and Charitable. It is plain alſo, from the Trial, that ſhe knew *Burton* was in the Proclamation: She did not deny it, when the Court demanded, if ſhe did not know that *Burton*'s Name was in the Proclamation about *Rumbold*'s, or the *Rye-Houſe* Plot; but anſwered, *It's like, I might:* Which ſurely, the Biſhop could never look upon as a Proof of her being unacquainted with it. But there was further Evidence, that ſhe knew of the Proclamation, and the Priſoner's Guilt: It appears in the Trial, that the Reaſon ſhe maintained *Burton*, and took ſuch Care to ſend him away, was, for Fear he ſhould become an Evidence againſt her own Husband, and not out of Friendſhip to *Burton*; much leſs did ſhe do it as an Act of Piety and Charity, unleſs ſhe looked upon the concealing and conveying away Traitors and Rebels, to be Acts of Piety and Charity.

But, whatever were the Motives ſhe went upon, it muſt be acknowledged to be a very baſe Action in *Burton*, to come in as a Witneſs againſt a Perſon who had maintained him in his Diſtreſs, and ſaved him from the Gallows: A Man of any Spirit or Generoſity, would have choſen Death rather than Life, upon ſuch Terms. And ſuch Inſtances as this, and that other of *Fernley*, who harboured the very ſame treacherous *Burton*, would make Men very cautious how they harboured their beſt Friends on ſuch Occaſions as theſe. *William Ring*, who harboured *Lawrence* and *Kelloway*, alſo is another unhappy Inſtance of the Ingratitude and Baſeneſs of ſome Men, who can ſacrifice their beſt Friends and Benefactors, to ſave their own Lives.

As to Mr. *Corniſh*, it was certainly his own Witneſs, Mr. *Sheppard*, that hanged him. There was but one Witneſs againſt him, namely, Colonel *Rumſey*, till *Sheppard* appeard; for as to *Goodenough*, his Teſtimony was trifling; and no Jury would ever have found a Man guilty of High-Treaſon upon it. But when Colonel *Rumſey* had ſworn, that Alderman *Corniſh* was at that treaſonable Conſultation at Mr. *Sheppard*'s with the Duke of *Monmouth*, the Lord *Ruſſel*, *Armſtrong*, and *Ferguſon*; and that he heard the Declaration read, which they deſigned to publiſh on the intended Inſurrection, and approved of it: And Mr. *Sheppard* depoſed alſo poſitively, that the Alderman was at his Houſe; and, that he carried him into that very Company, without asking any Queſtions, as *Rumſey* had depoſed: Here were two poſitive Witneſſes of his being at that treaſonable Conſult: And his Friend *Sheppard*'s diſagreeing with *Rumſey*, as to that Circumſtance of his hearing the Declaration read, could not avail him: There was ſo ſtrong a Preſumption that *Corniſh* was an Accomplice, that the Jury could ſcarce doubt of it, after both Witneſſes had ſworn poſitively he was there, and introduced without any Queſtions asked, when the Company, met upon ſuch a Deſign, deſired they might be private; and that even *Sheppard*'s own Servants might not come up: Is it to be ſuppoſed, after this, that Mr. *Sheppard* would have carried up a Gentleman, without their Leave, who was not a Confederate with them? However, if it was not ſuch Teſtimony as ought to have prevailed on the Jury to convict him, it was certainly legal Evidence at leaſt. We have ſeen Men convicted upon Evidence in other Reigns, that has neither been ſo ſtrong, or ſo legal as this.

The Alderman's Friends were apprehenſive *Sheppard*'s Evidence would do him more Hurt than Good, and had kept him out of the Way till the Jury were juſt returning: And, as one obſerves, there was a kind of Fatality in his appearing then; for, if he had not, his Friend probably had been acquitted.

The Trial of CHARLES BATEMAN, Surgeon, for *High-Treaſon*, at the *Old-Baily*, *London*, on the 9th of *December*, 1685. 1 *Jac.* II.

1685. 1 Jac. II. Bateman's Trial.

The Indictment.

THE Indictment charges the ſaid *Charles Bateman* with High-Treaſon, in conſpiring the Death of the late King *Charles* II. for that he, the ſaid *Charles Bateman*, on the 30th Day of *May*, in the 35th Year of the ſaid late King, at the Pariſh of St. *Dunſtan's in the Weſt*, in the Ward of *Farringdon-without*, being aſſembled with divers other Rebels and Traitors, did promiſe and undertake to be aiding and aſſiſting in ſeizing the Perſon of the ſaid King, taking the *Tower* of *London*, ſurpriſing the City, the *Savoy*, and the Royal Palace of *Whitehall*, againſt the Duty of his Allegiance, *&c.*

Keeling's Evidence.

The King's Witneſſes being called, *Joſiah Keeling* was ſworn, who gave a General Account of the Plot, and depoſed, That the Conſpirators having divided the City into twenty Parts, Mr. *Bateman* was pitched upon as a fit Perſon to manage one of theſe Diviſions, in order to an Inſurrection, the ſeizing of the City, *&c.*

The Priſoner obſerving, that this Evidence did not affect him; the Court declared the Jury were to take no further notice of it, than as a General Proof of the Plot.

Lee's Evidence.

Thomas Lee being ſworn, depoſed, That he was ſent by Sheriff *Goodenough* to the Priſoner, to diſcourſe with him concerning the intended Diviſion of the City into twenty Parts; and he obſerved the Priſoner was no Stranger to the Deſign: That he conſented to it, and deſired to talk with Mr. *Goodenough* about it: That he went with the Priſoner, at another Time, to the late Duke of *Monmouth*'s, and having diſcourſed with ſome of his Grace's Family, he told this Witneſs, that the Duke was willing to engage in the Buſineſs; and had ſeveral Horſes kept

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kept in the Country, to be in a Readineſs when Things ſhould come to Extremity: That he went with the Priſoner alſo to a Tavern, where was propoſed, the ſeizing the King, the *Tower*, *Whitehall*, &c. and the Priſoner ſaid, he would not be wanting therein: And that they had other Diſcourſe tending to an Inſurrection; and particularly the Priſoner ſaid, he intended to take a Houſe near the *Tower*, and place Men in it, in order to ſurprize it; and that he had had ſeveral Conferences with Sea-Captains about that Affair.

Goodenough's *Evidence.*

Goodenough depoſed, That being at the Tavern with *Wade*, the Priſoner, and other Conſpirators, the Priſoner did not only approve of their Deſign, but promiſed to uſe his Intereſt in raiſing Men; and ſaid, he would not only aſſiſt in the Diviſion allotted him, but in ſurpriſing the *Savoy*, and driving the Guards out of Town.

Bateman's *Defence.*

Mr. *Bateman* urged, in his Defence, the Improbability of his being engaged in ſo deſperate a Deſign; and demanded the Reaſon he was not proſecuted ſooner, the Witneſſes having ſworn they were ſpoken ſo long ſince.

The King's Counſel replied, That *Goodenough* was not to be had, till after the Rebellion in the *Weſt*; and *Keeling*'s ſingle Teſtimony was not ſufficient to convict him.

Then the Priſoner called one *Baker*, a broken Shoe-maker, to invalidate *Lee*'s Teſtimony, who ſaid, That *Lee* deſired him to inſinuate himſelf into the Priſoner's Company, and talk with him of State Affairs, in order to entrap him; but no great Weight was laid upon this Evidence, it being ſuppoſed the Witneſs was hired to blaſt *Lee*'s Credit.

He is convicted,

The Priſoner was found GUILTY: And being called to hear Judgment on *Friday* the 11th of *December*, he objected, That *Goodenough* was not fully pardoned: But the Court informed him, that, as to the Outlawry, he was pardoned, and the Pardon allowed in the Court of *King's-Bench*; and for any thing elſe he was not proſecuted. Then Sentence was paſſed on the Priſoner as a Traitor; and he was executed at *Tyburn* on the 18th of *December*.

condemned, and executed.

Remarks on Bateman's *Trial.*

The Enemies of the Government reported, that Mr. *Bateman* was a Madman; and charged it on the Miniſtry, as a great Piece of Barbarity, to try and execute a Man that was diſtracted: But it is evident *Bateman* was not mad, when he was commited to *Newgate*, by the Confeſſion of his Friends; nor at the Time of his Execution: For they tell us, he made a very Pious and Chriſtian *Exit*: And ſhould the Court neglect to try a Man that pretends to be mad, when he is brought before them, every Criminal would make the ſame Pretence. No doubt the Court were ſatisfied Mr. *Bateman* counterfeited; and it is a ſtrong Preſumption he did, ſince it appears he was not mad before or after: The Court were ſo indulgent, indeed, to allow his Son to write for him, and aſſiſt him in his Defence, when he affirmed he was not well, which ſome make an Argument of the Priſoner's Madneſs: Particularly thoſe worthy Hiſtorians, the Authors of *Rapin*, who turn every Favour their Friends receive, into a Hardſhip; and clamour againſt their Governors, for what they ought to return them Thanks.

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Biſhop *Burnet* ſays, The ſending Mr. *Bateman* to that diſmal Priſon of *Newgate* made him mad: I preſume he means, he was ſeized with Horror at the Thoughts of his approaching Trial; for a Friend of his, that has given us the following Character of the Man, only ſays, *He grew melancholy; and appeared little leſs than diſtracted, when he came upon his Trial.*

Mr. Bateman's *Character, by a Friend,*

" Mr. *Bateman* was a Man of good Senſe, " good Courage, and good Company; of a very " large and generous Temper, and of conſider- " able Repute and Practice in his Calling; a " great Lover and Vindicator of the Liberties " of the Kingdom; and of more Intereſt than " moſt of his Station. Being kept cloſe Priſo- " ner in *Newgate*, the Windows and Rooms " all dark, and little or no Company, having " been a free, jolly Man, and uſed to Conver- " ſation and Diverſion, he ſoon grew deeply " melancholy, that when he came on his " Trial, he appeared little leſs than diſtracted. " However, he was found guilty; and juſt be- " fore his Execution, very much recovered " himſelf, dying as much like a Chriſtian, and " with a Preſence of Mind inferior to few that " have ſuffered."

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Hampden's *Trial.*

The Trial of JOHN HAMPDEN, Eſq; for *High-Treaſon*, on the 30th of *December*, 1685. 1 *Jac.* II.

1685. 1 Jac. II.

The Indictment.

THE Indictment charges the Priſoner with High-Treaſon, in conſpiring the Death of the late King *Charles* II. and the Subverſion of the Government; for that the ſaid *John Hampden*, on the 20th of *July*, in the 35th Year of the ſaid late King, at the Pariſh of St. *Giles's in the Fields*, in the County of *Middleſex*, did traitorouſly meet, and conſult with *James* Duke of *Monmouth*, and divers other Traitors, how to procure great Sums of Money, and levy Forces to raiſe a Rebellion within this Kingdom, againſt the Duty of his Allegiance, &c.

Objects, he had been fined &c. ready for this Offence.

Mr. *Hampden* objected, That he ought not to be queſtioned for this Fact again, becauſe he had been tried and convicted of the ſame two Years ſince; and was now a Priſoner in Execution for his Fine: But he ſhould wave all Manner of Pleas, and throw himſelf upon the King's Mercy.

Pleas to the Juriſdiction of the Court.

The

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He confeſſes the Charge. Is condemned.

The Chief Juſtice anſwered, He had never yet been tried for Treaſon; (*but for a Miſdemeanor*); and he muſt either plead Guilty or Not guilty: Whereupon he pleaded GUILTY; acknowledged, he had highly offended his Majeſty, and begged the Chief Juſtice would intercede for him. Whereupon his Plea was recorded; and Mr. Recorder pronounced the uſual Sentence in Caſes of High-Treaſon.

Is it poſſible, after the Convictions and Confeſſions of ſo many principal Conſpirators, to doubt of the Plot that was carried on by the Duke of *Monmouth*, the Lord *Shaftesbury*, &c. againſt King *Charles* II?

Mr. *Hampden* was afterwards pardoned by King *James*, and yet appeared one of his greateſt Enemies at the Revolution.

1685. 1 Jac. II. *Remark.*

1685. 1 Jac. II.

Lord Delamere's Trial.

The Trial of HENRY Lord DELAMERE, for *High-Treaſon*, before the Lord Chancellor *Jeffries*, Lord High Steward, *pro hac vice*, and thirty Peers, his Tryers, on the 14th of *January*, $168\frac{5}{6}$. 1 *Jac.* II.

1685. 1 Jac. II.

The Indictment.

THE Indictment was found by the Grand Jury of the County Palatine of *Cheſter*, and charged the Priſoner with High-Treaſon, in compaſſing the Death of the King; for that, on the 14th Day of *April*, in the firſt Year of his Majeſty's Reign, at *Mere*, in the ſaid County of *Cheſter*, he, the ſaid *Henry* Lord *Delamere*, did traitorouſly aſſemble, conſult, and agree, with *Charles Gerrard* Eſq; and others falſe Traitors, to raiſe Money and Forces to make a Rebellion, and to ſeize the City of *Cheſter*, with the Magazines there; and that afterwards, on the 27th of *May*, in the Year aboveſaid, he took a Journey from *London* to *Mere* aforeſaid, to accompliſh his ſaid traitorous Intentions; and that, on the 4th of *June*, in the ſaid Year, at *Mere* aforeſaid, in further Proſecution of his ſaid traitorous Purpoſes, he did invite divers of his Majeſty's Subjects to join with him and the ſaid other Traitors; againſt the Duty of his Allegiance, &c.

His Lordſhip being arraigned, and required to hold up his Hand, inſiſted, that by his Privilege of Peerage, he need not hold up his Hand; and the Lord High Steward was of Opinion, it was not material, whether he did or not, if they were ſatisfied he was the ſame Perſon that was indicted.

The Lord *Delamere* deſiring to be informed, Whether he was to addreſs himſelf to his Grace, or to the Lords Triers, was anſwered, He muſt direct what he had to ſay, to the Lord High Steward, who was Judge of the Court, but not one of the Triers.

A Plea to the Juriſdiction of the Court.

Then his Lordſhip preſented a Plea in Paper, ſigned with his own Hand, to the Juriſdiction of the Court; inſiſting, 1. That he ought to be tried by the whole Body of the Peers in Parliament; becauſe the Parliament was ſtill in Being, under a Prorogation, and not diſſolved. 2. Becauſe the Houſe of Lords was already poſſeſſed of the Cauſe, it having been agitated there the laſt Seſſion:

To which it was anſwered, That, if the King pleaſed to try a Peer in Parliament, the Record was brought into the Houſe, and they proceeded there as in other Caſes; all the Peers being Judges. Thus it was in a Time of Seſſion of Parliament; but when the Parliament was prorogued, then the Proceedings were before the Lord High Steward: Nor was the Houſe of Lords poſſeſſed of the Cauſe: There was nothing depending there, that could ouſt this Court of its Juriſdiction: Nothing but a Petition, and the King's Anſwer, that he intended a ſpeedy Proſecution of this Lord: There was not ſo much as an Indictment returned thither, or found during that Seſſion. And Inſtances were given of the Lord *Cornwallis*, and the Lord *Morley* being tried by Commiſſion during a Prorogation of Parliament.

The Lord *Delamere* obſerved, That in theſe Trials the Queſtion never came under Debate: To which the Lord High Steward anſwered, That it would have been Error in the whole Proceedings, if the Court had not Juriſdiction; and the Judges would not have let Things paſs in that Manner, if they had been erroneous: Beſides, there were a great many other Inſtances to be given; he had only mentioned theſe as late Precedents within Memory.

Then the Priſoner deſired, he might have Counſel to argue theſe Points; but was anſwered, the Objections were trifling: However, if he had Counſel ready, they would hear them; for a Priſoner muſt always be ready to anſwer a Plea to the Juriſdiction of the Court; and his Lordſhip having no Counſel ready, his Plea was over-ruled: And his Lordſhip pleaded *Not-guilty*.

The Plea over-ruled.

Then the Lord High Steward made the following Speech upon the Occaſion.

Lord High Steward.

My Lords,

Lord High Steward's Speech.

" I KNOW you cannot but well remem-
" ber, what unjuſt and inſolent Attempts
" were made, upon the rightful and unalter-
" able Succeſſion to the Imperial Crown of theſe
" Realms, under the Pretence of that, which
" has been ſo often found to be the Occaſion of
" Rebellion, I mean the ſpecious Pretence of
" Religion, by the fierce, froward, and fa-
" natical Zeal of ſome Members of the Houſe
" of Commons, in the laſt Parliaments, under
" the late King *Charles* II. of ever bleſſed Me-
" mory.

" Which, by the wonderful Providence of
" Almighty God, not prevailing, the chief
" Contrivers of that horried Villany conſulted

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" together, how to gain that Advantage upon " the Monarchy by open Force, which they " could not obtain by a pretended Courſe of " Law.

" And, in order thereto, it is too well known, " how they had ſeveral treaſonable Meetings, " made bold and riotous Progreſſes into ſeve- " ral Parts of the King's Dominions; thereby " endeavouring to debauch the Minds of the " well-meaning, though unwary and ignorant, " Part of the King's Subjects.

" But theſe their evil Purpoſes, it pleaſed " God alſo to fruſtrate, by bringing to Light " that curſed Conſpiracy againſt the Life of his " Sacred Majeſty, King *Charles* II. as alſo a- " gainſt that of our Dread Sovereign, that now " is, whom God long preſerve.

" Theſe helliſh and damnable Plots, one " would have thought, could not have ſurvi- " ved the juſt Condemnation and Execution of " ſome of the chief Contrivers of them; eſpe- " cially conſidering, that, after it had pleaſed " Almighty God to take to himſelf our late " merciful and dread Sovereign, no ſooner was " his Sacred Majeſty, that now is, ſeated in the " Royal Throne of his Anceſtors, but he made " it his utmoſt Endeavours, not only to con- " vince the World, that he had quite forgot " thoſe impudent and abominable Indignities " that had been put upon him, only for being " the beſt of Subjects, and the beſt of Bro- " thers; but did alſo give forth the moſt be- " nign Aſſurances imaginable to all his loving " People, that he would approve himſelf to " be the beſt of Kings.

" And farther to evince the Reality of theſe " his gracious and heroick Reſolutions, he im- " mediately called a Parliament; and therein " repeated and ſolemnly confirmed his former " Royal Declarations, of having a particular " Care of maintaining our eſtabliſhed Laws " and Religion: With which that wiſe, great, " and loyal Aſſembly were ſo fully and per- " fectly ſatisfied, that they thought they could " not make ſufficient Returns of Gratitude for " ſuch gracious and Princely Condeſcenſions.

" And yet, my Lords, while the King and " the Parliament were thus, as I may ſay, en- " deavouring to out-do each other in Expreſ- " ſions of Kindneſs, that wicked and unnatural " Rebellion broke out; and thereupon, the " Arch-Traitor, *Monmouth*, was by a Bill, " brought into the Lower Houſe, and paſſed " by the general Conſent of both Houſes, (and " I could wiſh, my Lords, for the Sake of " that Noble Lord at the Bar, that I could ſay " it had paſſed by Conſent of every particular " Member of each Houſe), juſtly attainted " of High-Treaſon.

" My Lords, What Share my Lord at the " Bar had in thoſe other Matters, I muſt ac- " quaint you, is not within the Compaſs of this " Indictment, for which you are to try him as " his Peers; for that is for a Treaſon alledged to " have been committed by him in his Majeſty's " Reign that now is.

" Give me Leave, my Lords, to detain you " with a Word or two more upon this Occa- " ſion; and that is, To let you know, That " as my Lord at the Bar may with great Safety " and Security to himſelf, rely on your Lord- " ſhip's Candour and Integrity, that you will " be tenderly careful, and ready to acquit him " of the Treaſon whereof he is accuſed, if up- " on the Evidence that ſhall be given you, you " ſhall find him innocent: So I muſt tell you, " the King has an entire Confidence in your " Reſolution, Fidelity, and good Affections " to him, that you will not, by Reaſon of the " Priſoner's Quality, and Nearneſs to you, as " being a Peer of this Realm, acquit him if he " ſhall appear to be guilty.

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" My Lords, I have one Thing further to " mind your Lordſhips of; That, according to " the uſual Forms of Proceedings in theſe " Caſes, if your Lordſhips have any Queſtions " to propound, wherein you would be ſatis- " fied, as to any Matter either of Fact or Law, " your Lordſhips will be pleaſed to put thoſe " Queſtions to me; and I ſhall take Care to " give your Lordſhips the beſt Satisfaction I " can."

The Lord *Delamere* deſiring he might have one to write for him, it was granted.

Then the King's Witneſſes were called; and firſt the Lord *Howard* of *Eſcrick* was ſworn, who gave a General Account of the Lord *Shafteſbury*'s Conſpiracy, as at the Trials of the Lord *Ruſſel* and Colonel *Sidney*, which Plot was previous to this for which the Priſoner was indicted; but it was ſuggeſted by the King's Counſel, that the Conſpirators were, many of them, the ſame in both Conſpiracies. Lord Howard's Evidence.

The Lord *Grey* being ſworn next, depoſed as follows. About the Time when the Election of Sheriffs was ſo much conteſted in the City of *London*, the Duke of *Monmouth* and my Lord *Shaftesbury* began to diſcourſe about making uſe of that, as an Opportunity to accompliſh their Deſign; for they thought the Ferment ſo high, that Men would eaſily be diſpoſed to an Inſurrection: And they propoſed to procure a Riſing in three Parts of the Kingdom at once: One in *Cheſhire*, where the Duke of *Monmouth* was to be; and there he was to be adviſed by my Lord *Macclesfield*, my Lord *Brandon*, my Lord *Delamere* that then was, and the Priſoner at the Bar, what Gentlemen were proper to apply to for joyning in the Deſign: The ſecond was in *London*, which was the Province aſſigned my Lord *Shafteſbury:* And the third in the *Weſt*, which was committed to the Care of my Lord *Ruſſel*. The Duke of *Monmouth* did accordingly go his Progreſs into *Cheſhire*; and on his Return, was taken into Cuſtody of the Serjeant at Arms. Upon which Sir *Thomas Armſtrong* was ſent Poſt to Town to get an *Habeas Corpus*, and to deliver a Meſſage to me, to be communicated to my Lord *Ruſſel* and my Lord *Shaftesbury*, which was to this Effect: That he had been kindly received by the Gentlemen of the County, and had diſcourſed the Matter with them; and found them all inclined very much to his Satisfaction: That upon his being arreſted, he had been adviſed to make his Eſcape into *Cheſhire* and riſe immediately; but that he would not do a Matter of that great Importance without the Approbation of his Friends. Lord Grey's Evidence.

Soon after the late King's Death, the Duke of *Monmouth* was at *Amſterdam* with my Lord *Argyle*;

1685. 1 Jac. II. *Argyle*; and underſtanding an Inſurrection was deſigned in *Scotland*, he ſent Captain *Matthews* into *England*, with a Meſſage to Major *Wildman*, deſiring him to procure a Meeting with my Lord *Macclesfield*, my Lord *Brandon*, my Lord *Delamere* and Mr. *Charlton*, and acquaint them, that he had received a full Account of my Lord *Argyle*'s Affairs, and the Preparations that had been made for it; and accordingly he had ordered his own Affairs to join with him. He likewiſe ſent *Craig* with a Meſſage to the ſame Purpoſe, to other Friends in *London*; and he diſpatched one *Batteſcomb* into the *Weſt*, to prepare Things there. When *Craig* returned back again to the Duke, he gave him an Account, that Major *Wildman* had procured a Meeting with thoſe Lords and Gentlemen that I mentioned before, who were all of Opinion that the Duke ſhould go for *Scotland*: There was likewiſe a particular Meſſage from Major *Wildman* to the Duke of *Monmouth*, that he deſired he would bring over with him a Broad Seal, to ſeal Commiſſions with, and to take upon him the Title of King. The other particular Branches of the Meſſage I do not ſo well remember; but only this, He was particularly asked, If the Priſoner at the Bar was there? And he ſaid, He was.

Jones came ſome Time after *Craig*, and gave an Account of other Things conformable to what *Craig* had ſaid; and was ſent back again to *England* by the Duke of *Monmouth*, to give an Account of his being ready to ſail. By all Diſcourſes with the Duke, he depended very much upon *Cheſhire*; and was reſolved to have landed and begun there; but he conſidered the Perſons to be applied to there, were Men of great Quality and Intereſt in their Country, and able to manage Things without his Aſſiſtance. But in the *Weſt*, the Friends he relied on, were not of that conſiderable Quality, and therefore he choſe to land there.

Wade's Evidence. Mr. *Wade* being ſworn, depoſed, That he was with the Duke of *Monmouth* and the Earl of *Argyle* in *Holland*, when they were concerting Meaſures for the Invaſion of *Great Britain*; and that, after a Conference on this Subject, the Duke of *Monmouth* ſent over Captain *Matthews* to his Friends in *Cheſhire*, and amongſt the reſt to the Lord *Delamere* by Name, deſiring them to be in Readineſs to aſſiſt him when he ſhould land: That when the Duke landed at *Lyme*, he ordered his March ſo that he might meet with his *Cheſhire* Friends, namely, towards *Glouceſter*, to gain the Poſſeſſion of *Glouceſter*-Bridge; which giving him the Command of the River *Severn*, the *Cheſhire*-Men, if they had roſe, as was expected, might have eaſily aſſembled, and joined him: That *Jones* coming over to *Holland*, to know the Reaſon the Duke ſtaid ſo long, his Friends in *England* expecting him long before; he was diſpatched to *England* again, to aſſure Major *Wildman*, the Lord *Macclesfield*, the Lord *Delamere*, and Lord *Brandon*, that he was coming, and deſired their Forces might be ready to aſſiſt him.

Goodenough's Evidence. *Richard Goodenough* alſo depoſed, That *Jones* was ſent by the Duke of *Monmouth* from *Holland*, to give the Lord *Delamere* Notice to be ready againſt the Time he landed; and to deſire he would take Care of himſelf, that he was not ſecured by the Government at *London*: Adding, That he heard the Duke of *Monmouth* ſay, He hoped my Lord *Delamere* would not break his Promiſe with him. 1685. 1 Jac. II.

Jones, being ſworn, depoſed, That being ſent over from *Holland* by the Duke of *Monmouth*, he ordered him, as ſoon as he came to *London*, to ſee for Captain *Matthews*, Sir *Thomas Armſtrong*'s Son-in-Law, and deſire him to acquaint the Lord *Macclesfield*, the Lords *Brandon*, and *Delamere*, that he was reſolved to ſet out for *England*, the Day after this Witneſs came away: That the Duke alſo gave him a Paper of Inſtructions ſealed up, which he was not to open, till he came to Sea; and told him Captain *Matthews* was to ſend one Poſt to the Place named in his Inſtructions, to receive Intelligence of his Landing, that the Lords above-mentioned might have Notice of it before the Court, and repair to their reſpective Stations: And the Duke directed, that if *Matthews* was out of the Way, he ſhould apply himſelf to *Wildman*; but that he ſhould not, by any Means, deliver the Meſſage to thoſe Lords himſelf.

That the Deponent coming from *Holland*, the 22d of *May*, broke open his Inſtructions, when he was at Sea; wherein was written to this Effect: Taunton *in* Somerſetſhire *is the Place to which all are to reſort: The Perſons to be acquainted with the Time of landing, are, the Lords* Macclesfield, Brandon, *and* Delamere: *The Coach to be ſent to Mr.* Savage's, *the* Red-Lion *in* Taunton: *The Expreſs was appointed to return to Captain* Matthews's *Lodgings, at Mr.* Blake's; *and if he did not receive the Meſſage, he was to appoint one to receive it.*

That this Witneſs arrived at *London*, the 27th of *May*, and ſent for Mr. *Diſney*; who told him, *Matthews* and *Wildman* were both out of Town: Whereupon he delivered his Meſſage to *Diſney*; who ſaid, He would do what he could to convey the Meſſage to them: And the Witneſs then went out of Town, and met the Duke of *Monmouth* at *Lyme*, where he landed; and acquainting the Duke with what he had done, he ſeemed troubled, that *Matthews* was out of Town.

Story's Evidence. *Story*, being ſworn, depoſed, That on the 28th of *May* laſt, one *Brand* told him, That *Jones* was returned from *Holland*, with a Meſſage from the Duke of *Monmouth*; and that the Duke had reſolved to march to *Taunton*: That this Meſſage was delivered to *Diſney*, in the Abſence of Captain *Matthews*; and, that *Diſney*, after he received the Meſſage from *Jones*, had ſome Diſcourſe with the Lord *Delamere*: That the ſame Night the Lord *Delamere* went out of Town with two Friends, a By-way through *Enfield-Chace* to *Hatfield*. And this Witneſs heard the Duke of *Monmouth* ſay, at *Shipton-Mallet*, That his great Dependance was upon the Lord *Delamere*, and his Friends in *Cheſhire*; but he was afraid they had failed him, or betrayed him, or ſome ſuch Words; adding, That he could have been ſupplied elſewhere, if he had not depended on them.

The Evidence of Vaux. *Vaux* depoſed, That he went out of Town with Lord *Delamere*, on the 27th of *May*, about nine or ten o' Clock at Night; That his Lordſhip went by the Name of *Brown*: They came

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came to *Hoddesdon* the same Night about twelve, and from thence went to *Hitchin*, and the next Day this Witness returned to *London*; and his Lordship continued his Journey into *Cheshire* to see his Son: That two Gentlemen went out of Town with him, one of their Names *Edlin*.

Edlin deposed, That he went with his Lordship and *Vaux* to *Hitchin*, on the 27th of *May*, as *Vaux* had testified.

Other Witnesses deposed, That his Lordship went by the Name of *Brown*; and that the Duke of *Monmouth*'s Declarations were directed to him by that Name.

Hope's Evidence.

Hope, the Landlord of the *Three-Tuns* in *Coventry*, deposed, That his Lordship went to and from *London* five Times, between the Coronation and the first of *June:* And, that he was at his House the 21st of *June*, and talked with this Witness, concerning an Encounter between the King's Troops, and those of the Duke of *Monmouth*; particularly he said, If the Duke of *Albemarle* was killed, as was reported, he was killed by his own Men; and that the Duke had several Field Pieces and Arms for 30,000 Men; shewed him the Towns the Duke marched through in a Map; and said, He was afraid there would be a great many bloody Noses, before the Business was ended.

Saxon *the principal Witness.*

Then *Saxon*, the principal Witness, was sworn, and deposed, That about the third or fourth of *June* last, he was sent for to *Mere*, the Lord *Delamere*'s House; and when he came there, he was carried into a lower Room; where he saw my Lord *Delamere*, Sir *Robert Cotton*, and Mr. *Crew Offley:* They told this Witness, he had been recommended to them by the Lord *Brandon*, as an honest useful Man, and they hoped he would prove so.

That they had sent to the Duke of *Monmouth* in *Holland*, and received an Answer by *Jones*; and, on the Receipt of that Answer, the Lord *Delamere* came Post from *London*, under a borrowed Name: That they designed to have raised 10,000 Men for the Duke, by the first of *June*; but found they should not be able to raise them till *Midsummer*; because they must get 40,000 *l.* first, for their Subsistence: And asked the Witness, if he would undertake to carry a Message to the Duke of *Monmouth*? And when he told them he would, the Lord *Delamere* gave him eleven Guineas, and five Pounds in Silver, for his Journey: And he did hire a Horse, and delivered his Message to the Duke of *Monmouth*.

The Lord High Steward demanding, How the Lord *Brandon* came to recommend him to these Gentlemen? he answered, That being in private with the Lord *Brandon*, he complained of the Unfairness of an Election, that had been carried against him at *Lancaster*; and said, The Country were resolved to make it a Pretence for an Insurrection: They had an Intention to send for the Duke of *Monmouth* and make him King; and they must make use of such Men as him, (the Witness) that had an Interest in the Country, to stir up the People to Arms; and that the Lord *Gerrard* shewed him a Letter he had written to the Duke of *Monmouth*, which he saw afterwards at *Bridgwater*.

The Lord *Delamere* demanding of *Saxon*, If he ever employed him before, that he should trust him with such Secrets? And what was the Business he was to do?

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Saxon answered, He never was employed by his Lordship before, nor in his Company: But his Business now was, to inform the Country of the Time of the Rising: He was a publick Tradesman at *Middlewich*, and much acquainted with the ordinary Sort of People.

Lord Delamere desires Time to make his Defence.

The Lord *Delamere* being ordered to enter upon his Defence, desired he might have Time till the next Morning, to review his Notes.

To which the Lord High Steward answered, He doubted, whether that could be done by Law: For he took this Court to be of the same Nature as the ordinary Courts of Judicature; and in those Courts, after Evidence given, the Jury could not be adjourned; but must proceed in their Enquiry, till they were agreed on their Verdict: And the Matter being proposed to the Judges, they withdrew into the Exchequer-Chamber to consider of it: The Lords Triers also withdrew, leaving the Lord High Steward upon the Bench.

The Judges being returned, declared, That this was a Matter wholly new to them: They did not remember, whether it had ever been done; or that it had been questioned, whether it might be done? That where the Trial was by a Jury in an Inferior Court, the Law was clear, the Jury, once charged, can never be discharged, till they have given their Verdict: And the Reason was, for Fear of Corruption, and tampering with the Jury: But that was no Reason in this Case; because the Lords Triers were Persons of that Integrity and Honour, that it was not to be presumed, they could be prevailed on by such Means.

That in the Trials of Peers in Parliament, the Matter had been adjourned from Day to Day, and the Evidence given by Parcels; and there the Danger of tampering was equal: But whether the Lords, being Judges in that Case, and in this, only in the Nature of a Jury; whether that made any Difference, they submitted to his Grace; who being of Opinion, that they ought not to adjourn, the Lord *Delamere* proceeded in his Defence, and observed,

No Time being allowed him, he enters upon his Defence.

That there had been a great many Witnesses produced; but little legal Evidence that affected him: That *Saxon* was the only Man that said any thing positively against him: The rest was but Hear-say, or such remote Circumstances as might be talked to any Evidence against another Person; were only urged, for want of greater Matters to charge him with.

Witnesses produced to discredit Saxon.

Then he called several Witnesses to discredit *Saxon*. One deposed, He pretended to have Orders to receive Money, and had no such Orders: Another, That *Saxon* owed him seven Pounds, and gave him Bond but for six: To which *Saxon* replied, There was but six due: A third said, That an Old Woman told him, *Saxon* received five and twenty Shillings for her, of one *Hildage*, and never paid it her: And a fourth, That *Saxon* sent him a Letter for Money he owed him, and set a Bailiff's Name to it: And another, That *Saxon* owed several People Money; and did not pay them, as he had promised.

Whereupon the Lord High Steward said, They must not think to take off the Credibility of a Witness by an Old Woman's Tale; and,

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it was a hard Caſe, if any one owed Money, and could not pay it, his Teſtimony was not to be credited for that Reaſon.

Then the Lord *Delamere* called Witneſſes, to prove that neither Sir *Robert Cotton*, or Mr. *Offley*, were at his Houſe, at the Time that *Saxon* had ſworn he ſaw them with him at *Mere*.

Billing, a Servant of Sir *Robert Cotton*'s, depoſed, That he came to his Houſe at *Weſtminſter*, the tenth of *April*, and remained there till the latter End of *July*.

Margaret Davis depoſed, That Sir *Robert* came to Town the tenth of *April*, and did not go out of Town till *Auguſt*.

Mrs. *Sidney Lane* depoſed, That Sir *Robert Cotton* came to Town in *April*, and remained there till the latter End of *June*.

Several other Witneſſes confirmed the Teſtimony of theſe. Sir *Willoughby Aſton* depoſed, That Mr. *Offley* was at his Houſe, from the twenty-fourth of *May*, to the fourth of *June*, and then returned to his own Houſe at *Crew-Hall*; which was confirmed by Mr. *Offley*'s Servant.

Two of the Lord *Delamere*'s Brothers, and other Witneſſes, depoſed, That his Lordſhip was in *London*, the third, fourth, and fifth of *June*.

Then the Lord High Steward acquainted the Lord *Delamere*, That he would do well to give an Account where he was, from the twenty-eighth of *May*, to the third of *June*.

Lord Delamere ſpeaks in his Defence.

Lord *Delamere*. If your Grace pleaſe, I hope I ſhall give you full Satisfaction in that, by and by: But I hope now I have ſatisfied your Grace, and the reſt of my Lords, that none of us three, whom this Fellow has mentioned, were at *Mere*, when he ſays we were.

My Lord, I cannot help it, if People will tell falſe Stories of me; but I hope your Lordſhips will conſider the Credibility of it. Is it to be imagined, I would take a Man I knew nothing of, upon another Man's Word, into ſo great a Confidence, as to employ him about a Buſineſs of this Nature? I beſeech your Lordſhips to look upon him; Does he look as if he were fit to be employed for the raiſing 10,000 Men? Does he ſeem to be a Man of ſuch conſiderable Intereſt in his Country? A Fellow, that I have ſhewn to be of no Reputation in his Country; nay, of a very ill one. And could we have none to employ, in a Matter of this Moment, but ſuch a Fellow, as his Neighbours would not take his Word for any Thing? Beſides, he is ſtill a Priſoner; and your Lordſhips will not forget, he ſwears to ſave himſelf, having been a Rebel by his own Confeſſion; and has not, as I am informed, his Pardon yet, which renders his Teſtimony ſuſpected.

As to my going down on the 27th of *May*, and my frequent riding Poſt to and fro, I ſhall now ſatisfy your Lordſhips of the Reaſon of my Journies. The firſt Time I went down, which was between the Coronation and the Meeting of the Parliament, was to take Poſſeſſion of a Leaſe, of a conſiderable Value, which was renewed to me by the Biſhop: I made ſome Haſte, becauſe of an Intimation that the Biſhop lay very ill; and this I ſhall prove.

Mr. *John Edmonds* was called.

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Other Witneſſes of the Priſoner's.

He depoſed, That upon the fifth of *May*, my Lord *Delamere* deſired him to be Witneſs to his taking Poſſeſſion of an Eſtate, upon a Leaſe of my Lord Biſhop of *Cheſter*'s; and that my Lord went into a Houſe, next to the Deponent's (at *Boden* in *Cheſhire*), and there did take Poſſeſſion: That it was a Leaſe for Lives; and the Biſhop was ſo ill at that Time, that he ſpoke to no body.

Mr. *Henry* was called.

He depoſed, That he was appointed Attorney, and delivered the Poſſeſſion to my Lord *Delamere*, the fifth of *May*.

Lord *De la Mere*. The next Time I have to ſpeak to, is the 27th of *May*, when I went down to ſee a ſick Child; but had not gone ſo ſuddenly, if I had not had Notice there was a Warrant out againſt me. And when I was at my Houſe in *Cheſhire*, my Wife ſent me Word my eldeſt Son was ſo ill, that I muſt make Haſte up, if I would ſee him alive; and that as to the Warrant, it was a Miſtake.

Mrs. *Kelſey* was called.

She depoſed, That ſhe was at my Lord's Houſe in the Country, when he came down; and he ſaid, the Reaſon of his coming was, becauſe he heard there was a Warrant for taking him up: And beſides, his little Son was ill.

My Lord *Delamere* deſired his Mother might be a Witneſs.

She depoſed, That ſhe ſent him Word his little Son was ill; and that thereupon my Lord came down; and that, while he was in the Country, my Lady, her Daughter, ſent for her Son up Poſt, becauſe his eldeſt Son was dangerouſly ill in Town.

Mrs. *Kelſey* depoſed further, That my Lord came down on *Sunday* Night, and ſtaid till *Tueſday* Morning.

L. H. S. *Tueſday* the ſecond, you came away, ſhe ſays; and upon *Wedneſday*, the third of *June*, your Brother ſays you were in Town.

Lord *Delamere*. It was ſo, my Lord: I came Poſt through *Coventry*; and that was the Time *Hope* ſpeaks of, that I told him I had come another Way into *Cheſhire*. I came back the common Way, my Wife having ſent me Word, the Buſineſs of the Warrant was a Miſtake.

Mr. *Kelſey* was called.

He depoſed, That my Lord came down to his Houſe, at Eleven on *Sunday* Night, and took Horſe for *London* at three on *Tueſday* Morning; and that the Deponent had Letters by him, which gave an Account my Lord was in Town on the *Wedneſday*.

Sir *Thomas Millington*, the Phyſician, was called.

He depoſed, That my Lord's Son was ſo very ill at that Time, that he acquainted my Lady, he thought he would not recover.

Then my Lord *Delamere* proceeded in his Defence, and ſaid:

Lord Delamere's Obſervations on the Evidence.

My Lords, I acknowledge, I did go at that Time privately, a By-Road, and by the Name of *Brown*: But as for *Jones*, who, it is ſaid, came from *Holland* that Day, I appeal to himſelf, and I call God to Witneſs, I never ſaw the Man before now; never in my Life: Nay, till after I was made a

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Priſoner upon this Account, I never ſo much as heard of his Name: And your Lordſhips ſee by the Proofs, that all that has been ſaid againſt me, except what this Fellow *Saxon* has teſtified, is but Hear-ſay, nay indeed, but Hear-ſay upon Hear-ſay, at the third and fourth Hand.

My Lords, if People will make uſe of my Name, and ſay this, and that, and the other, and among themſelves talk of Meſſages ſent to me; can I, or any Man in the World help it? At this Rate, who can be innocent? If a Man muſt be guilty, becauſe others intend to draw him into Treaſon: For there is no more in the utmoſt, that this Proof can amount to. It is at the Pleaſure of any two Men in the World, to take away the Lives, Honours, and Eſtates, of any of your Lordſhips, if it be a Proof ſufficient, to make you guilty of Treaſon, for them to ſwear you were intended to be drawn into Treaſon.

And my Lords, as to the Truth of the Thing itſelf, that there was any Meſſage or Correſpondence between the late Duke of *Monmouth* and me, I call God to Witneſs, I have neither wrote nor ſent Letter or Meſſage to him, or received Letter or Meſſage from him theſe three Years. I cannot tell what Expectation he might have concerning me, or any body elſe: It is very probable he might have Expectation of Aſſiſtance from ſome body; and that, without ſuch Expectations, he would not have made the Attempt he did: But, my Lords, all that is nothing to me; I had no Correſpondence, either by Letters, or Meſſages, with him: So that all that has been ſaid upon that Point of his Expectations, and what he declared, I muſt give the ſame Anſwer to, that I gave to the Evidence about *Jones*'s Meſſage; That admitting it to be true, he did declare ſo, yet, no Proof being made of an actual Correſpondence, it is no more but an Intention in him to draw Men into Commiſſion of Treaſon; and, if that be allowed for Proof of Guilt, I muſt repeat it again, There's no Man can be innocent.

Upon the whole Matter, my Lords, I muſt leave my Caſe to the Conſideration of your Lordſhips: I am not Maſter of ſo much Law or Rhetorick as the King's Counſel, to plead in my own Cauſe: And I have had but little Time to recollect, and apply my Defence to my Accuſation: But I hope, what Evidence I have offered, has given your Lordſhips full Satisfaction, that I am not guilty of what I ſtand charged with.

And, after all that has been ſaid, my Lords, I would beg your Lordſhips to conſider this, That, in caſe I were guilty of theſe Things, and were conſcious to myſelf of having been engaged in an Affair of this Nature; can any Man imagine, I could have been ſo hardy, as to have ſurrendred myſelf upon the King's Proclamation: Nay, if I, with thoſe two other Gentlemen, that he has named, had had any Tranſactions of this Kind, with ſuch a Fellow as he has been made appear to be by his Neighbours, that muſt needs be thought a Man of no Faith, becauſe of no Reputation; though he gives himſelf a great Character, as a Man of great Intereſt, of wonderful Diſpatch and Dexterity, in the Management of ſuch Matters; ſo as at the firſt Sight to put this large Confidence in him; Can it be imagined, I ſo little regarded my own Life, and all that is dear to me, as to have ſurrendred myſelf, were it not that I was certain of my own Innocence and Integrity? Life itſelf, my Lords, is to be preferred above all Things, but Honour and Innocence: And *Job* ſaith, Skin for Skin, and all that a Man hath, will he give for his Life; and why ſhould I be preſumed to have ſo little a Value for it, as voluntarily to deliver up myſelf to Deſtruction, had I been conſcious that there was any one who could really teſtify any thing that could hurt me.

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Beſides, my Lords, this very Fellow *Saxon* is but one Evidence; and how far you will believe him, I muſt ſubmit it to you; but ſurely one Witneſs will never be ſufficient to convict a Man of Treaſon, though Thouſands of Hear-ſays, and ſuch trivial Circumſtances, be tacked to it; eſpecially when they are tacked to an Evidence, which, I dare ſay, your Lordſhips are far from thinking deſerves any Credit. My Lords, I deſire your Leave to ask this one Queſtion; Would not any of your Lordſhips think himſelf in a bad Condition, as to his Fortune, if he could produce no better Evidence to prove his Title to his Eſtate, than what has been produced againſt me this Day, to take away my Life? And if ſuch Evidence as this would not be ſufficient to ſupport a Title to an Eſtate, certainly it never can be thought ſufficient to deprive a Man of Life, Honour, Eſtate, and all.

My Lords, I am not the only Man that has been, or may be, falſly accuſed: God knows how ſoon the Misfortune of a falſe Accuſation may fall to the Lot of any of your Lordſhips; I pray God it never may: But ſince that may happen, I queſtion not, but your Lordſhips will be very cautious, how, by an eaſy Credulity, you give Encouragement to ſuch a Wickedneſs: For Knights of the Poſt will not end in my Trial, if they proſper in their Villany; and perhaps it may come home to ſome of your Lordſhips, if ſuch Practices be encouraged, as I cannot but firmly believe they will not.

My Lords, the Eyes of all the Nation are upon your Proceedings this Day; nay, I may ſay, your Lordſhips are now judging the Cauſe of every Man in *England*, that ſhall happen to come under like Circumſtances with myſelf, at any Time hereafter: For accordingly as you judge of me now, juſt ſo will inferior Courts be directed to give their Judgments, in like Caſes, in Time to come.

Your Lordſhips very well know, Blood once ſpilt can never be gathered up again; and therefore, unleſs the Caſe be very clear againſt me, you, I am ſure, will not hazard the ſhedding of my Blood upon a doubtful Evidence. God Almighty is a God of Mercy and Equity: Our Law, the Law of *England*, is a Law of Equity and Mercy; and both God and the Law require from your Lordſhips, Tenderneſs in all Caſes of Life and Death; and, if it ſhould be indifferent, or but doubtful to your Lordſhips (which, upon the Proofs that I have made, I cannot believe it can be) Whether I am innocent or guilty, both God and the Law require you to acquit me.

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My Lords, I leave myſelf, my Cauſe, and all the Conſequences of it, with your Lordſhips; and I pray the All-wiſe, the Almighty God, direct you in your Determination.

Mr. Solicitor ſums up the Evidence, and applies it.

Then Mr. Solicitor ſummed up the Evidence for the King, and ſaid:

May it pleaſe your Grace, and you, my Noble Lords, the Peers of my Lord *Delamere*, the Priſoner at the Bar;

The Evidence that hath been given againſt this Noble Lord, is of two Natures. Part of it is poſitive Proof, and Part is Circumſtantial: And, though it be allowed, there muſt be two Witneſſes in Caſes of Treaſon; and that Circumſtances, though never ſo ſtrong and ſufficient to fortify one poſitive Proof, do not, nor can make a ſecond poſitive Witneſs; yet, I crave leave to ſay, that there may be Circumſtances ſo ſtrong and cogent, ſo violent and neceſſary, to fortify a poſitive Teſtimony, that will in Law amount to make a ſecond Witneſs, ſuch as the Law requires.

My Lords, I do not ſay every Circumſtance will do it; but ſuch as is neceſſarily and violently tending to the ſame Thing that was poſitively proved. As for Example:

If a Man comes and ſwears againſt another, that he ſaid he would go immediately and kill the King; and another Man, that did not hear thoſe Words, comes and teſtifies his lying in Wait, which was an Action indifferent in itſelf, yet, when applied to the poſitive Proof, he will be a ſecond Witneſs to ſatisfy the Law, which requires two Witneſſes in Treaſon.

I muſt confeſs, my Lords, when we would make Circumſtances to be a ſecond Evidence, they muſt be ſuch as are neceſſarily tending to fortify the poſitive Evidence, that was given by the ſingle Witneſs. Now, whether that be ſo in this Caſe, I muſt, as becomes me, leave to your Lordſhips Conſideration: It is not my Buſineſs to carry the Evidence farther than it will go; and, I am ſure, it is not my Duty to let it loſe any of its due Weight; and if it have not that Force it ought to have, I ſhould be to blame, as not having done what belongs to me to do: I will therefore ſtate the Fact to your Lordſhips plainly, as it ſtands upon the Proof, and ſubmit the whole to your Lordſhips Determination.

My Lords, our poſitive Proof, with which I crave Leave to begin, is but one ſingle Witneſs; and that is *Saxon*; and his Evidence is this: That being in *Cheſhire*, where he lives, he was ſent for, about the 3d or 4th of *June* laſt, to my Lord *Delamere*'s Houſe at *Mere*, and there he was brought into a lower Room, where he ſaw my Lord *Delamere*, Sir *Robert Cotton*, and Mr. *Crew Offley*: That my Lord *Delamere* told him he had received a Meſſage lately by one *Jones*, that was ſent from the Duke of *Monmouth*, whereby he underſtood that the Duke would ſpeedily be in *England*; and that they muſt provide Men and Arms to aſſiſt him when he came: That he was a Man recommended to them by my Lord *Brandon*; and that, upon his Recommendation, they had thought fit to intruſt him in the Matter; and withall told him, they were to raiſe 40,000 *l.* and 10,000 Men in that County. He telis you, likewiſe, theſe Gentlemen gave him eleven Guineas, and five Pounds in Silver, to go of an Errand for them to the Duke of *Monmouth*; which he undertook to do, and hired a Horſe to that Purpoſe. 1685. 1 Jac. II.

This, my Lords, is the poſitive Proof; and this, I muſt acknowledge, ſtanding ſingle, and by itſelf, will make but one Witneſs; but, whether the Circumſtances that have been offered to your Lordſhips by the other Witneſſes, be ſuch violent Circumſtances as neceſſarily tend to fortify and ſupport that poſitive Evidence, and ſo will ſupply the Defect of a ſecond Witneſs, is the next Queſtion that I am to conſider; and I ſhall take them into Conſideration in the ſame Order that the Evidence was delivered.

The firſt Step, my Lords, that was made, as to any Evidence that toucheth this Noble Lord at the Bar, was what was teſtified by my Lord *Grey*; for as to the other Part of the Evidence, that related to the Conſpiracy in general, I need not trouble your Lordſhips with a Repetition of it. That there was ſuch an one is notoriouſly known; but, I ſay, that Part of the Evidence in his Hiſtory of the Conſpiracy, which my Lord *Grey* brought home to my Lord *Delamere*, was this:

That upon the firſt Meetings and Conſultations, it was reſolved upon, That the Duke of *Monmouth* ſhould go into *Cheſhire*, to make an Intereſt there; and among the Perſons that he was directed to go to, and to apply to for Advice there, as Perſons fit to be truſted, this Noble Lord was one.

That upon the Duke of *Monmouth*'s Return out of *Cheſhire*, he did give his Confederates here in Town an Account how well he had been received; and, that he liked all Things very well there. This, my Lords, is the firſt Circumſtance that has been offered to you, to ſhew that he had a Confidence in my Lord *Delamere*, as a principal Support of his Deſigns at that very Time.

The next that we offer is, this Meſſage of *Jones*; and for that our Evidence has fully and plainly made it out to your Lordſhips, that *Jones* did go over into *Holland*; and his Buſineſs there was an Errand from *Diſney* and Major *Wildman*, and the Confederates here. The Effect of his Meſſage was, That it was their Opinion, that the Duke of *Monmouth* ſhould go for *Scotland* and join with my Lord *Argyle*: But upon the Receipt of the Meſſage, he being angry, ſaid, it was too late for ſuch a Meſſage now, and he would come into *England*, for he was ready to ſail; and thereupon he did ſend this ſame *Jones* back again into *England*, upon a Meſſage, to inform the Lords, and others of his Party, among whom my Lord *Delamere* was one, that he would have them betake themſelves into their ſeveral Countries, and not ſtay to be taken or clapped up here; for that he did underſtand was the Deſign: And this Meſſage was delivered in Writing: How that the Duke of *Monmouth* did write a Note, and give it to *Jones*, is verified by my Lord *Grey*'s Teſtimony too; and this ſealed up; and he was not to open it till he came to Sea; and when he did open it, he found it containing a Signification of the Place where he was to land, and where he was to rendezvous, which was *Taunton*, and who were the Perſons that were to have Notice of it; among whoſe Names we find my Lord

1685. 1 Jac. II. Lord *Delamere*'s to be one: But he likewiſe tells you, he was not the Man that was to carry the Meſſage to theſe Perſons, but he was to deliver it to *Matthews* or *Wildman*; and they were to tranſmit it to the other Perſons.

He tells you, likewiſe, That when he came to Town, which was the 27th of *May*, he met neither with *Matthews* nor Major *Wildman*: Whereupon being at a Loſs what he ſhould do with his Meſſage, for want of thoſe other Perſons, he acquainted *Diſney*, that was executed, with his Errand, who promiſed to take Care that it ſhould be delivered.

This, my Lords, is all *Jones*'s Evidence: For *Jones* does not ſay, that he himſelf acquainted, or that *Diſney* did acquaint my Lord *Delamere* with the Meſſage.

But here, my Lords, is the main Circumſtance that renders the Matter ſuſpicious: That very Night *Jones* came to Town, and *Diſney*, being acquainted with the Meſſage, had undertaken to get it delivered, does my Lord *Delamere*, at ten of the Clock at Night, go out of Town, in Company with two Friends, under the Diſguiſe of the Name of *Brown*, and by a Bye-Road, and ſo goes down to his own Houſe in *Cheſhire*: This, I ſay, is the Circumſtance that renders the Thing ſuſpicious.

Now, my Lords, if we do prove, by ſuch ſufficient Evidence as may make the Matter manifeſt to you, that my Lord *Delamere* had Notice of *Jones*'s Meſſage; (for, upon that Point, the Caſe will turn, whether he had Notice, ſuch a Meſſage was brought, that ſuch Things were in Agitation, ſuch Preparations made, and that they were all to go into the Country), then, I ſay, his going down is a violent Preſumption he had an Intent to comply with the Meſſage, and join in the Deſign.

But now, my Lords, comes the Queſtion, the main Queſtion, How it is made out that he had Notice, *Jones* brought ſuch a Meſſage?

Jones, indeed, my Lords, does not ſay, that he himſelf imparted it to him, or that *Diſney* told him he had communicated it; but I think there is another Witneſs, and that is *Story*, who ſaith, That *Brand*, one that knew of the Meſſage, did acquaint him, that my Lord had received it at the Coffee-Houſe, and that Night went out of Town.

It is true, my Lords, this is but a Hearſay; but that which followed being Matter of Fact, my Lord's going out of Town that Night, ſo late in the Night, and in ſuch an unuſual ſuſpicious Manner, gives more Credit to the Relation, than a bare Hearſay could have of itſelf.

For, unleſs there be ſome good Account given of my Lord's thus going out of Town, it is a kind of neceſſary Preſumption that he was acquainted with the Meſſage, part of which was, that he ſhould go out of Town; and if ſo, it can have no other Conſtruction, with Submiſſion, than to be in purſuance of, and complying with, the Directions of that Meſſage brought him from the Duke of *Monmouth*.

My Lords, to carry this a little farther: There were two Witneſſes produced, that went out of Town with him: They ſeem, indeed, unwillingly to give their Evidence; but I ſhall faithfully repeat what Teſtimony they gave: Their Names were *Vaux* and *Edlin*.

Vaux ſaith, He met my Lord *Delamere* at the *Rummer*-Tavern in *Queen-Street* the 26th Day of *May*, which was the Day before *Jones* came to Town; and that then he appointed to go out of Town the next Day, which was the 27th, and accordingly he did go. 1685. 1 Jac. II.

Edlin ſaith, He met *Vaux* at the *Cuſtom-Houſe* upon the 27th of *May* in the Morning; and being deſired by him to go with him out of Town, he did ſo, and there was with him a Gentleman whoſe Name was *Brown*, and who now appears to be my Lord *Delamere*; they went in Company with him as far as *Hitchin*, where they left him upon *Thurſday* the 28th at Noon.

This Evidence is produced to ſhew, that my Lord did go out of Town at that Time, and in that Manner, as has been alledged; and that theſe Perſons went with him, to conduct him a private Way, that he ſhould not go the common Road. Your Lordſhips will conſider what Anſwer hath been given to this, and what Account my Lord *Delamere* has given of himſelf.

Another Thing, my Lords, that renders this Matter ſuſpicious, is the Name which my Lord was pleaſed to aſſume to diſguiſe himſelf by; it being a Name by which the Party uſe to call my Lord in their Diſcourſes of him; and to prove that, we have likewiſe produced two Witneſſes, *Babington* and *Paunceford*.

Babington ſays, That in their Conſultation there were Diſcourſes of my Lord *Delamere*, under the Name of *Brown*; and once at a Tavern, when my Lord *Delamere* was named by one of the Company, he was preſently catched up for it, and replied to, You mean Mr. *Brown*; and, it ſeems, that was the Canting Name under which they diſcourſed of my Lord *Delamere*.

The other Witneſs, *Paunceford*, tells you, That being at *Diſney*'s Houſe, and concerned with him in Printing the late Duke of *Monmouth*'s Declarations, (for the Printing of which *Diſney* was executed) one *Lock* came for ſome of thoſe Declarations for Mr. *Brown*; and they were to be ſent into *Cheſhire*. So that, though your Lordſhips obſerve the Witneſs ſaith ſome body elſe was called by the Name of *Brown*, yet you have had no Account given you, that there was another *Brown* in *Cheſhire*.

It is true, indeed, my Lords, that theſe are only Things that *Diſney* ſaid, and *Lock* ſaid: But I muſt take leave to ſay, it is very ſuſpicious, that if my Lord went out of Town into *Cheſhire*, under the Name of *Brown*, and ſome Perſons did, on the Behalf of *Brown*, come for Declarations to be ſent into *Cheſhire*, and my Lord commonly, in that Part, went by the Name of *Brown*, that thoſe Declarations were for my Lord; and that will be a great Evidence of his Correſpondence with *Monmouth*.

But, I confeſs, my Lords, all this while our Proof is Circumſtantial; and, indeed, there is no poſitive Proof but that of *Saxon*; and in him our Proof muſt center; for without him, I muſt acknowledge, nothing that has been offered will be Proof againſt my Lord upon this Indictment: For bare Circumſtances, and bare Suſpicions, will be no Proof againſt any Man, but

1685. 1 Jac. II. but ſuch as are violent and neceſſary; and thoſe joined to a poſitive Proof, ſuch as the Law requires.

Now then, my Lords, I come to the Conſideration of what Weight and Streſs is to be laid upon this poſitive Evidence of *Saxon*: And here, I muſt confeſs, there are Objections made to this Teſtimony, to which I cannot readily give an Anſwer; for *Saxon* has ſworn, that he was there at ſuch a Time; and that he was ſent for and entertained, as a Perſon recommended by my Lord *Brandon*, as fit to be entruſted with the Secret, and capable of being imployed to ſtir up the Country, in order to the Proſecution of a Deſign they had on Foot to raiſe a Rebellion; and he does charge Sir *Robert Cotton* and Mr. *Crew Offley* to have been there at the ſame Time.

The Evidence, my Lord, that has been produced to falſify this poſitive Witneſs, in the Point of Sir *Robert Cotton*'s being there, has been five or ſix Witneſſes, who teſtify Sir *Robert Cotton*'s being in Town, and not elſewhere, from the 10th of *April* to the latter End of *July*: And I do not ſee what we have to ſay in anſwer to their Teſtimony. I muſt agree the Proof to be full in that Point; and if the Evidence they give be true, I cannot ſay that *Saxon*'s Evidence can be true in that Point.

Likewiſe, as to Mr. *Offley*, Sir *Willoughby Aſton* and others have teſtified, that he was not at my Lord *Delamere*'s at the Time *Saxon* ſpeaks of; for he gives you an Account where he was every Day, from the 26th of *May* to the 4th of *June*; and his own Servants bring him to his Houſe upon the 4th of *June* in the Evening, which is quite another Way than from Sir *Willoughby Aſton*'s to my Lord *Delamere*'s: If this likewiſe be true, what *Saxon* ſays cannot be true; I muſt agree to it.

There is another Thing that is offered on my Lord *Delamere*'s Part; That he was himſelf in Town at that Time that *Saxon* ſays he was at *Mere*. But here, indeed, the Matter ſeems to be a little more ſtrange and dubious, that my Lord ſhould make ſo much Haſte down, as to go out late at Night, and ſo cautiouſly as to go by a wrong Name; and yet to ride to Town again the Poſt-way, to be here juſt the 3d of *June*, when *Saxon* ſwears he was in *Cheſhire*.

I muſt confeſs there is the Proof of his two Brothers, that ſay, they ſaw him in Town the 3d and 4th of *June*. There is, likewiſe, ſome Account given of his going out of Town; that it was upon a Meſſage received from his Mother, that his Child in the Country was ſick; and indeed he did go a By-way, and change his Name, for fear of a Warrant, in a Meſſenger's Hand, that was out againſt him to apprehend him.

Now, my Lords, I do not hear any Thing that has been offered, that there was any ſuch Warrant, or any Diſcourſe to ground that Apprehenſion upon: My Lord had the firſt and only Apprehenſion of a Warrant; but upon what Reaſons, he himſelf beſt knows, this Apprehenſion made him go out of Town ſo privately: He ſays, becauſe he would not be prevented of ſeeing his ſick Child.

But how comes it to paſs, that my Lord makes ſuch a ſpeedy Return? By the Proofs it appears, he did not get there till *Sunday* Night, and upon the *Tueſday* Morning comes Poſt for *London*.

The Account he gives of that, is this, his Haſte was to ſee another Child that was here ſick in Town. For he had received an Expreſs from his Wife on the *Monday*, to acquaint him that the Coaſt was clear, and there was no Warrant out againſt him; but, if he intended to ſee his Child alive, he muſt make haſte up to Town; and, accordingly, upon the *Tueſday* Morning early he ſets out, and upon the *Wedneſday* in the Evening is here in Town again. 1685. 1 Jac. II.

But with Submiſſion, my Lords, there is no good Account given by this Noble Lord, what Reaſon there was for ſo many Poſt-Journeys backward and forward, as had been teſtified to have been made within a very little Compaſs of Time: For, beſides this of his Return Poſt upon the 2d of *June*, there is only an Anſwer given to one of the reſt, which is that of the 5th of *May*, when, he ſaith, he went to take Poſſeſſion of the Land that he held by Leaſe, then renewed to him by the Biſhop; which being of ſome Value to his Lordſhip, and the Biſhop being ſick, he thought it neceſſary to go down Poſt himſelf, and would not be content to receive Livery by Attornment. This is the only Anſwer that is given to all thoſe Times of his riding Poſt, that have been given in Evidence.

Theſe are Matters of Suſpicion that are offered to your Lordſhips; but, I confeſs, Matters of Suſpicion only, unleſs clear, poſitive, probable Proof be joined with them, will not weigh with your Lordſhips to convict a Man of High-Treaſon, where two Witneſſes are required. But whether theſe Matters of Suſpicion be ſuch violent and neceſſary Preſumptions as tend to fortify the poſitive Teſtimony, I muſt leave that to the Conſideration of your Lordſhips.

Mr. Solicitor having finiſhed his Obſervations, The Lord High Steward, in his Directions to the Lord's Triers, ſaid, That he thought fit to rectify that Miſtake of the Priſoner's, that there was a Neceſſity of having two poſitive Witneſſes to convict a Man of Treaſon; for that there may be ſuch other ſubſtantial Circumſtances joined to one poſitive Teſtimony, that, by the Opinion of all the Judges of *England*, ſeveral Times has been adjudged and held to be a ſufficient Proof.

Then the Peers withdrew; and within half an Hour returned with their Verdict; that my Lord *Delamere* was NOT GUILTY.

Remarks on Lord Delamere's Trial.

There is not much queſtion to be made, but there was a Correſpondence between the Duke of *Monmouth* and the Lord *Delamere*. We find, that the Duke bent his March towards *Glouceſter*, in order to poſſeſs that Bridge, which would have opened a Communication with his *Cheſhire* Friends; but meeting with a Repulſe at *Briſtol* and *Bath*, he was forced to return to *Bridgwater*; and the *Cheſhire* Gentlemen were ſo fortunate, as not to declare themſelves till the Duke was defeated.

The Evidence of *Saxon* might be true in the main; but it was plain he was miſtaken in Point of Time, and was a Man but of an indifferent Character, which gave the Lords a fair Handle to acquit his Lordſhip: But, had *Saxon*'s Teſtimony been credited, the Circumſtances ſworn to by the other Witneſſes were ſo ſtrong, that he might have been convicted upon them:

1685. 1 Jac. II. them: Had the Lords Tryers believed, that the Lord *Delamere* went out of Town on purpose to prepare Matters for the Reception of the Duke of *Monmouth*, and believed *Saxon*'s positive Testimony, That he was sent by the Lord *Delamere* on a Message to the Duke of *Monmouth*, who was then in actual Rebellion, they must have convicted him: Several Men have been convicted, both before and since, on Circumstances that were not so strong, when added to one positive Proof. 1685. 1 Jac. II.

1686. 2 Jac. II. Godwin *and* Hales.

The Trial between ARTHUR GODWIN, Plaintiff, and Sir EDWARD HALES, Bart. Defendant, *in an Action of Debt for* 500 *l. grounded upon the Act of* 25 Car. II. *for not taking the Oaths and Tests*; in the Court of *King's-Bench*, *Pasch.* 1686. 2 *Jac.* II.

1686. 2 Jac. II.

The Declaration for the Penalty of 500 l. *incurred by the Defendant's not taking the Oaths.*

THIS was an Action popular brought against Sir *Edward Hales*, upon the Statute 25 *Car.* II. *cap.* 2. for the Penalty of 500 *l.* wherein the Plaintiff declares, That whereas it was provided by the said Statute, that every Person in Office, *&c.* shall within three Months after his Admittance into such Office, take the Oaths and Test, on Pain of Disability, and the Forfeiture of 500 *l.* to him that will sue for it: The Defendant, notwithstanding, having a Commission to serve the King as a Colonel of Foot, and not having taken the said Oaths and Test, did execute the said Office, and continue to act by colour of the said Commission, after the Expiration of the said three Months, for which he was indicted and convicted at the Assizes for *Kent*, whereby the Action accrued to the Plaintiff for the Penalty of 500 *l.*

A Dispensation pleaded.

The Defendant pleaded, That before the Time limited by the said Acts was expired, he had a Dispensation under the Broad Seal, to act *Non obstante* that Statute.

The Plaintiff demurs, and the Defendant joins in Demurrer.

To which Plea the Plaintiff demurred; and the Defendant joined in Demurrer.

Mr. Northey's *Argument for the Plaintiff.*

This Case coming to be heard before the Court of *King's-Bench*, Mr. *Northey*, who argued for the Plaintiff, insisted, That the Defendant could not be admitted to plead this Matter in Bar of the Action; because he ought to have pleaded it to the Indictment; and he having not pleaded it, then the Law would construe it to be a Waiving of the Pardon, as the Case was in *Brook's Abridgment*, *Charter of Pardon* 15. In Case of an Indictment for Murder, one that has pleaded Not guilty, cannot plead a Pardon afterwards, unless dated after the Plea of Not guilty: That this Action was in the Nature of an Execution on a Judgment; and if the Defendant should be received to plead this Plea now, he would falsify the Indictment that was found against him; for, if the Offence was pardoned, he ought not to have been indicted.

But, admit the Defendant might plead this Plea, it was no Bar to the Plaintiff's Action; for though the King might dispense with several Penal Laws in some Cases, that Prerogative was bounded with some Statutes he could not dispense, wherein the Subject was interested, 4 *Inst.* 135. So the King could not license a Man to make a Nusance, or commit a Murder; and this was an Act wherein all the King's Subjects had an Interest.

The King could not dispense with the Statute against Simony; or with the Statute against Buying and Selling of Offices: A Man that was disabled to take an Office, the King could not capacitate him; and cited the Case of *Thomas* and *Sorrel*, *Vaughan* 534.

That by this Statute it was enacted, That every Officer should take the Oaths; and if he neglected it, he was disabled to hold his Office: And the King could never enable a Man whom the Law had disabled, 3 *Inst.* 154. As to the Case in 12 *Coke* 18. where it is said, That no Act of Parliament can bind the King from any Prerogative which is solely and inseparably annexed to his Person, but that he may dispense with it by a *Non obstante*; and the Instance in the Case of Sheriffs upon the Statute 23 *Hen.* VI. He held, That this Case was not Law: But, admitting it was Law, that could be no Rule to guide this Case by; for that Statute was made rather to deprive the King of his Power of making Sheriffs, and so consequently commanding his Sheriffs not to serve him, than to disable the Subject, and thereby restraining the King's Prerogative, which was so inherent in him.

But by this Statute of 25 *Car.* II. the King's Prerogative was not touched; for the King might grant the Office to any of his Subjects; and it was only a Direction to the Subject to qualify himself for the King's Service: And, if he was incapable of serving the King, it was through his own Fault and Neglect, and he was punishable for the same, as in the Case of Sir *John Read*, in 27 & 28 *Car.* II. In the *Exchequer*: He was made and sworn Sheriff of *Hertfordshire*, and neglected to take the Oaths, by reason whereof the Office became void; and afterwards there was an Information exhibited against him upon this Statute, for neglecting to take the said Oaths, and execute the said Office; whereupon he was convicted, and fined. And the Court was of Opinion, that no Subject could put himself out of a Capacity to serve the King, but for so doing he was punishable: That in the Law relating to Sheriffs, the Dispensation was in the Patent; but in this Case the Dispensation was after the Patent, which made

1686. 2 Jac. II.

Mr. Solicitor's Argument for the Defendant.

made a Difference; and for theſe Reaſons, he prayed Judgment for the Plaintiff.

Mr. Solicitor General, Sir *Thomas Powis*, argued on the other Side, and inſiſted, That though it was admitted the Defendant ought to have pleaded the Diſpenſation to the Indictment, it did not appear but that he did.

That, if they ſtood upon this as an Eſtoppel, they ought to have relied upon it, and replied, that he had the Diſpenſation at the Time of the Indictment, and refuſed to plead it.

And as to the ſecond Point, Whether the King can diſpenſe with the Statute? It was admitted, that the King might in many Caſes diſpenſe with an Act of Parliament: It was obſerved in 2 *Inſt.* 496. that the King's Prerogative was as much the Law of *England* as any other Law whatſoever; and the King may, upon any Cauſe moving him, in reſpect of Time, Place, or Perſon, by a *Non obſtante*, diſpenſe with any particular Perſon, ſo that he ſhall not incur the Penalty of the Statute. *Coke* 36, 37. *Vaughan* 333, 347. And *Glanvile*, in his Argument *p.* 205. admits a Power in the King to diſpenſe with Penal Laws: Though the Conſent of the Lords and Commons was required to the making an Act of Parliament, yet it was the King that gave Sanctions to the Laws: And moſt of the antient Statutes began in the Form of Charters or Grants, as appeared by 8 *Coke* 19. And the Intent and Meaning of Acts of Parliament were every Day extended and altered by the Deciſions of the Judges, according to a better Rule of Reaſon and Juſtice than the Words would bear, *Hob.* 229. And Statutes which have been made againſt Common Right, have been conſtrued void. 8 *Coke* 118.

That there was a Diſtinction made in our Books between *Malum in ſe* and *Malum prohibitum*. The former the King cannot diſpenſe with; but the latter he may: As where the Statute generally prohibits any Thing under a Penalty, which was lawful before; there the King may diſpenſe with ſuch an Act, the Subject receiving no Injury by ſuch Diſpenſation, *Vaughan* 343. *Dyer* 5. 2. It was enacted, that none ſhould convey Wine into *England* out of *Gaſcony*, but in *Engliſh* Ships, and the King granted a Licence to one to import Wine in any Ships, notwithſtanding the Statute, 28 *Coke* 32. *Vaughan* 352, 353. That the Caſe in queſtion was a *Malum prohibitum*; neither was the Diſpenſation any Damage to the Subject: If it was a Wrong, it was to the King himſelf; and the King might diſpenſe with what related to himſelf.

Mr. Solicitor alſo diſtinguiſhed between Acts of Parliament which concerned Property, and thoſe which concerned Government: Acts of Parliament which concerned Property, he admitted, the King could not diſpenſe with; but thoſe which concerned Government he might; otherwiſe great Inconveniencies muſt often happen. There might be ſuch Exigencies of State, as might force him to it, ſuch as were unforeſeen at the Time of the making the Law: It might ſo happen by a Viciſſitude of Times, that thoſe Laws which were made for the Preſervation of the Government, might turn to the Deſtruction of the Government, if the King could not diſpenſe with them: By the Law of *England*, every Merchant was at Liberty to trade with Countries in Amity with *England*; and yet it was admitted on all Hands, if the King was apprehenſive of an Invaſion, he might lay an Embargo upon their Shipping, take their Men out of them, and put a Stop to their Trade, for the Defence and Preſervation of the whole Kingdom. The King alſo might dig in any Man's Lands for Salt-Petre, to enable him to defend the whole Kingdom: The common Law, in ſuch Caſes, had ſuch a Regard for the Prerogative, that the Intereſt of private Perſons was not conſidered.

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That this Statute of 25 *Car.* II. was made indeed to diminiſh the King's Prerogative; but at the ſame Time to ſecure him from his Enemies, and for the Preſervation of the Government; and the King was the beſt Judge what was for his own Security, and the Preſervation of the Government.

No Act of Parliament could diſcharge the Subject from his Allegiance he owed the King; every one was bound to ſerve his Prince when required: Therefore no Act of Parliament could diſable any Man to ſerve the King.

But it was objected, That this did not make a Man incapable, but by his own Election: If this were ſo, it would be in the Election of one or all the King's Subjects, to incapacitate themſelves to ſerve the King, and ſo the King would be unſerved; as in the Caſe of Sir *John Read*, cited on the other Side: He neglected to take the Oaths, and ſo the Office of Sheriff became void; and if the next, and every other ſucceeding Sheriff, had neglected to take them, how could the King's Buſineſs, or the Bnſineſs of the County, have been done? There were ſeveral Statutes, which the King by his Prerogative might diſpenſe with: As the Statute of 36 *Hen.* VI. which enacted, That no Man ſhould be Sheriff of one County two Years: Yet it was reſolved by all the Judges, that the King might diſpenſe with it. The Statute of 4 *Hen.* IV. 31. enacts, That no *Welchman* ſhall be a Juſtice of Peace, or Civil Officer in *Wales*; and yet the King diſpenſes with it. The Statutes of 8 *Rich.* II. and the 33 *Hen.* VIII. 24. enact, That no Man ſhall be Juſtice of Aſſize in the County where he was born; and yet the King, by a ſpecial *Non obſtante*, diſpenſes with it.

As to the Statutes mentioned, which the King could not diſpenſe with, as thoſe relating to Simony and Uſury; here was no Reſtriction of the Subject's Service; but the King might have the Benefit of it notwithſtanding: As to the Statute of 5 *Edw.* VI. 16, againſt buying and ſelling Offices; that Statute diſabled the Party on doing ſuch an Act to take an Office; the making the Bargain being prior to the taking of the Office; ſo that he could never legally have the Office veſted in him; which made a wide Difference between that Statute and this: Here the Defendant was actually poſſeſſed of the Office, and the King only diſpenſed with his taking the Oaths and Teſt: And for theſe Reaſons he prayed Judgment for the Defendant.

The Chief Juſtice delivers his Opinion.

The Chief Juſtice, in delivering his Opinion of this Caſe, ſaid, If the King could not diſpenſe

1686. 2 Jac. II. diſpenſe with this Statute, he could not diſpenſe with any Penal Law: And he was of Opinion, the Defendant might plead this Diſpenſation and Pardon to the Action of Debt, though he did not plead it to the Indictment: For the Jury below might have gone againſt the Direction of the Court; and that ſhould not conclude the Court of *King's-Bench:* That this being urged as an Eſtoppel, it could not bind, becauſe the Plaintiff was not Party to the firſt Suit.

As to the ſecond Point, There was no Law whatever, which the ſupreme Law-giver might not diſpenſe with; as the Laws of God might be diſpenſed with by God, as was done in the Caſe of *Abraham*'s offering up *Iſaac*.

It was impoſſible for the wiſeſt Lawgiver, to foreſee all Caſes that may happen; and therefore there muſt be a Power lodged ſomewhere to diſpenſe with the Laws: As to the Caſe of Simony, he did agree it was *malum in ſe*; and therefore the King could not diſpenſe with it: Nor could he diſpenſe with the Statutes of Uſury, or Non-Reſidence, becauſe the Subject had a Benefit by the Obſervation of them: And as to the buying and ſelling Offices, the Party was diſabled *to take* any ſuch Office by the Contract; ſo that the Diſability was incurred, before the Office was veſted in him, which Diſability the King could not remove: And ſo he agreed it would have been in this Caſe, if the Defendant had, by his Neglect, or Refuſal to take the Oaths, rendered himſelf incapable, before he had received a Diſpenſation: But the King's Diſpenſation, coming before the Diſability incurred, did prevent it.

That the Caſe of a Sheriff was much ſtronger than this; for that Statute diſabled the Party to take, and the King to grant; and ſays expreſly the King ſhall not diſpenſe with it by a *Non obſtante*; and yet it was the Opinion of all the Judges of *England*, That the King had Power to diſpenſe with that Statute, which had been accounted good Law, ever ſince the Reign of *Hen.* VII. and never queſtioned till now: The Practice had ever been, according to that Reſolution: And, if that were not Law, ſome Sheriffs would not be lawful Sheriffs; and conſequently could have no Power to return *Jones*; nor had the Judges Power conſequently, to try and give Judgment upon Offenders; they ſhould take the Opinion therefore of the reſt of the Judges: And, if that Caſe was not Law, the Judges Patents, who went into their own Counties, were alſo illegal; for their Patents were *Non obſtante's* to 23 *Hen.* VIII. 34. and ſo they had no Authority to go their Circuits.

His Lordſhip, having conſulted the Judges, delivered their Opinions in open Court, on *Monday* the 21ſt of *June*, in the following Manner.

The Judgment of the whole Court of King's-Bench.

In the Caſe of *Godwin* and *Hales*, wherein the Defendant pleads a Diſpenſation from the King, It is doubted, whether or no the King had ſuch a Prerogative? Truly, upon the Arguments before us, it appeared as clear a Caſe as ever came before the Court: But becauſe Men fancy I know not what Difficulty, when really there is none, we were willing to give ſo much Countenance to the Queſtion in this Caſe, as to take the Advice of all the Judges of *England:* They were all aſſembled at *Serjeant's-Inn*, and this Caſe was put to them; and the great Caſe of the Sheriff's was put, Whether the Diſpenſation in that Caſe were legal? becauſe upon that depended the Execution of all the Law of the Nation: And I muſt tell you, that there were ten upon the Place that clearly delivered their Opinions, That the Caſe of the Sheriffs was good Law; and, that all the Attainders grounded upon Indictments, found by Juries returned by ſuch Sheriffs, were good and not erroneous; and conſequently, that Men need not have any Fears or Scruples about that Matter. And, in the next Place, they did clearly declare, that there was no imaginable Difference between that Caſe and this; unleſs it were, that this were the much clearer Caſe of the two, and liable to the fewer Exceptions.

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My Brother *Powel* ſaid, He was inclined to be of the ſame Opinion: But he would rather have ſome more Time to conſider of it: But he has ſince ſent my Brother *Holloway*, to let us know that he does concur with us. To theſe eleven Judges there is one Diſſenter, Brother *Street*; who yet continues his Opinion, That the King cannot diſpenſe in this Caſe: But that is the Opinion of one ſingle Judge, againſt the Opinion of eleven. We were ſatisfied in our Judgments before; and having the Concurrence of eleven out of twelve, we think we may very well declare the Opinion of the Court to be, That the King may diſpenſe in this Caſe; and the Judges go upon theſe Grounds.

Five Reſolutions of the Judges.

1. That the Kings of *England* are Sovereign Princes.

2. That the Laws of *England* are the King's Laws.

3. That, therefore, it is an inſeparable Prerogative in the Kings of *England*, to diſpenſe with penal Laws in particular Caſes, and upon particular neceſſary Reaſons.

4. That of thoſe Reaſons, and thoſe Neceſſities, the King himſelf is ſole Judge: And then, which is conſequent upon all,

5. That this is not a Truſt inveſted in, or granted to the King by the People; but the antient Remains of the Sovereign Power and Prerogative of the Kings of *England*; which never yet was taken from them, nor can be. And therefore ſuch a Diſpenſation, appearing upon Record to come Time enough to ſave him from the Forfeiture, Judgment ought to be given for the Defendant,

Quod querens nil capiat per billam.

The Chief Juſtice's Vindication of this Judgment.

The Chief Juſtice, Sir *Edward Herbert*, being very ſeverely reflected on for this Judgment, as if he had thereby eſtabliſhed a Diſpenſing Power, and entirely ſubverted the *Engliſh* Laws and Conſtitution, publiſhed a Vindication of it.

And firſt, to ſhew what this Diſpenſing Power was, he cited the Caſe in the Lord *Coke*'s 11th Report, Pag. 88. where it is ſaid, *Diſpenſatio mali prohibiti eſt, de jure Domino Regi conceſſa propter impoſſibilitatem prævidendi de omnibus particularibus:* And *Diſpenſatio eſt mali prohibiti provida relaxatio, utilitate, ſeu neceſſitate penſata:* For true it is, (ſays the Book), That inaſmuch as an Act of Parliament, which generally prohibits

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hibits any Thing upon a Penalty that is popular, or only given to the King, may be inconvenient to divers *particular Perſons*, in Reſpect of Perſon, Time, or Place; for this Purpoſe, the Law gives a Power to the King, to diſpenſe with *particular Perſons:* And in the 7th *Rep.* p. 63. in the Caſe of Penal Statutes, it was reſolved 2 *Jac.* I. by all the Judges of *England*, That the King may diſpenſe with any particular Perſon: That he ſhall not incur the Penalty of the Statute, though it be an Act made *pro bono publico:* And that this is a Truſt and Confidence inſeparably annexed to the Royal Perſon of the King. He cited theſe two Caſes, he ſaid, To ſhew that a Diſpenſation was, in its own Nature, particular, and given to particular Perſons by Name; which was all the Power that was aſcribed to the King, by their Judgment. And it was an unreaſonable Miſtake in People, who talked of a diſpenſing Power: As if the King's Declaration of Liberty of Conſcience (whereby all the Laws that concern Religion, were at once totally ſuſpended, and laid to Sleep) were warranted by it; whereas this Caſe had no Reſemblance of that.

Then he cites the Caſe in the Year-Books of *Hen.* VII. Fol. 11. & *Hen.* VII. Fol. 12. which ſay, The King may diſpenſe with a prohibited Evil; though not with that which was evil in itſelf: And *Vaughan*'s Reports, in the Caſe of *Thomas* and *Sorrel*, p. 333. who diſcourſing of this Caſe, ſhews, how a Diſpenſation differs from a Pardon.

That a Diſpenſation does *Jus dare*, and makes a Thing, prohibited to all others, lawful to be done by him that hath it: And therefore the King cannot diſpenſe with *mala in ſe*; becauſe they never were, and can never be lawful.

From which Caſes he forms this Syllogiſm; Whatever is not prohibited by the Law of God, but was lawful before any Act of Parliament made to forbid it; the King, by his Diſpenſation granted to a particular Perſon, may make lawful again to that Perſon, who hath ſuch Diſpenſation, though it continues unlawful to every body elſe: But to execute any Office without taking the Oaths and the Teſt, antecedent to any Act of Parliament made to forbid it, was lawful.

Therefore the Diſpenſation granted to Sir *Edward Hales*, did make it lawful for him to do ſo; though it continued unlawful for any body elſe.

In this Argument, the Premiſes were none of their own, he obſerved: The Authority of the Books they had them from, were never queſtioned; and it could not be criminal in the Judges, to draw a neceſſary Concluſion from Premiſes and Book-Caſes, that have been taken for Law ſo many Ages.

Then he cited the aboveſaid Caſe, Where it was reſolved by all the Judges of *England*, 2 *Hen.* VII. That the King might diſpenſe with the Statute of 23 *Hen.* VI. which enacted, *That no Man ſhould be Sheriff for above one Year.*

That this Caſe had been cited, as adjuged in ſeveral Books of great Authority; and it had been the conſtant Practice to have Diſpenſations in all Kings Reigns, ever ſince that Reſolution.

Then, having anſwered ſome leſs material Objections that were made to this Doctrine, he comes to the grand Point, namely, *That if the King have a Power to diſpenſe with one, he may diſpenſe with twenty, or with an hundred; and ſo the Deſign of the Statute would be entirely defeated.*

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The grand Objection

To this the Chief Juſtice anſwers, That from the Abuſe of a Thing, to draw an Argument againſt the Thing itſelf, is no Conſequence at all. It muſt be acknowledged, that there was a high Truſt repoſed in the King; and if the King would violate his Truſt, there were none of his Prerogatives but might be abuſed, to the Ruin of his People; of which he gave theſe Inſtances.

1. He obſerved, That it was granted, the King might pardon Murder or Robbery; and yet, if the King ſhould pardon every Murder and every Robbery, it were better to live among Savages.

2. The King might create any Man a Peer, and thereby give him a Vote in Parliament: And if the King ſhould abuſe his Power, ſo far as to create 10,000 Peers, or confer that Honour upon every body that asked it; no Doubt, but this would tend to the Deſtruction of the Conſtitution: And yet, in either of theſe Caſes, if the Judges ſhould determine, the King had ſuch a Prerogative, it would be unreaſonable to object, That theſe Prerogatives might be abuſed; and therefore the Judges had given a pernicious Judgment.

When they gave Judgment in Sir *Edward Hale*'s Caſe, they could neither know, nor prevent (if they did) any ill Uſe the King might make of his Power: They could only ſay upon their Oaths, whether the King had ſuch a Power or not; and for this they had not only the great Authorities above cited; but much greater than thoſe, namely, two Conceſſions of all the Commons of *England* aſſembled in Parliament, That this diſpenſing Power was lodged in the King; and that too, when they were contending with the Crown, about the Violation of the Laws.

1. The firſt was *Rot. Parl.* 1 *Hen.* V. *n.* 15. *Tit. Prerogative.* "There the Commons pray, "That the Statute for voiding Aliens out of the "Kingdom, may be kept: To which the King "agrees, ſaving his Prerogative, That he may "diſpenſe with whom he pleaſes; and upon "this the Commons anſwered, That their In"tent was no other, nor ever ſhould be, by "the Grace of God. And in the ſame Parlia"ment, when the Commons prayed, That the "Statutes of Proviſors, Statutes of the ſame "Nature as that in this Caſe, (for they were "made againſt the Court of *Rome*'s encroaching "Juriſdiction in *England*); when they prayed, "That theſe might be put in Execution; they "themſelves inſerted in their Petition, a Saving "for the King's Prerogative, and then he a"greed to it.

2. "The next and plaineſt Conceſſion of the "Commons, is 3 *Car.* I. upon a Debate be"tween the two Houſes, concerning the Pe"tition of Right: Where the Commons ſay, "p. 205. There is a Truſt inſeparably repoſed "in the Perſons of the Kings of *England*; but "that Truſt was regulated by Law: For Ex-

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" ample, Where Statutes were made to prohi-
" bit Things, not *mala in ſe*, but only *mala*
" *quia prohibita*, under certain Forfeitures and
" Penalties, to accrue to the King, and to the
" Informers that ſhall ſue for the Breach of
" them; The Commons muſt, and ever will,
" acknowledge a Regal and Sovereign Preroga-
" tive in the King, touching ſuch Statutes:
" That it is in his Majeſty's abſolute undoubted
" Power to grant Diſpenſations to particular
" Perſons, with the Clauſes of *Non obſtante*, to
" do as they might have done before thoſe Sta-
" tutes, wherein his Majeſty's conferring Grace
" and Favour to one, does no Wrong to o-
" thers: But there is a Difference between thoſe
" Statutes, and the Laws and Statutes whereon
" the Petition is grounded: By thoſe Statutes,
" the Subject has no Intereſt in the Penalties
" (which are all the Fruit ſuch Statutes can pro-
" duce, until by Suit or Information, he be-
" come entitled to the particular Forfeitures);
" whereas the Laws and Statutes mentioned in
" the Petition, are of another Nature: Laws
" not inflicting Penalties on Offenders, *in malis*
" *prohibitis*; but Laws conferring or confirm-
" ing an inherent Right and Intereſt of Liber-
" ty and Freedom on the Subjects of this
" Realm, as their Birth-Rights and Inheritan-
" ces deſcendible to their Heirs and Poſterity;
" Statutes Incorporate in the common Law,
" over which, with Reverence be it ſpoken,
" there is no Truſt in the King's Sovereign
" Power, or Prerogative Royal, to enable
" him to diſpenſe with them; or to take from
" his Subjects, that Birth-Right or Inheritance
" which they have in their Liberties, by Vir-
" tue of the common Law, and of theſe Statutes.

As to that Objection, That this Law was made for the Intereſt of Religion; and all Offences againſt Religion were *mala in ſe*, and therefore not to be diſpenſed with:

He anſwered, It was true, That all Offences directly againſt Religion, as it was conſtituted ſuch by the divine Law, were *mala in ſe*, and not to be diſpenſed with; and in this Caſe the Parliament was bound, as well as the King; an Act of Parliament, made in that Senſe, againſt Religion, was utterly void: But human and politick Conſtitutions, though made for the Intereſt of Religion; as they had a Beginning, ſo they were alterable by the ſame Power that made them. The King might diſpenſe with a Prieſt's holding two Benefices, though the Laws againſt Pluralities were made for the Intereſt of Religion; and he might diſpenſe with a Baſtard's entering into Prieſt's Orders.

But he found it was further objected, That though theſe high Truſts and Prerogatives might be allowed to a Proteſtant Prince; yet, the acknowledging them to be veſted in a Prince of a contrary Religion to that eſtabliſhed by Law, muſt end in the Deſtruction of that eſtabliſhed Religion.

To which he anſwered, That the Promoters of the Bill of Excluſion urged the ſame Argument: If you leave him King (ſaid they), he will have all the Prerogatives of a King, and thoſe Prerogatives may be made inſtrumental, to the Ruin of your Religion; which could not be denied by the Gentlemen on the other Side, that oppoſed that Bill: Their only Reply was, *Fiat Juſtitia, ruat Cœlum:* It is his Right, and we muſt not do Evil that Good may come: we muſt not do Wrong, no not to promote the Intereſt of Religion itſelf. 1686. 2 Jac. II.

The ſame Argument, (ſays the Chief Juſtice), that weighed with them, to aſſert the Right of Succeſſion to the Crown; and conſequently to all Prerogatives together, was the Rule we had to guide us in giving Judgment in this Caſe, concerning a particular Branch of them. We muſt not break our Oath, or give Judgment contrary to what ſeemed to us to be Law, let the Conſequence be what it will.

Laſtly, he obſerved, it had been objected, That all this was a Contrivance, an Informer ſet up; and all but a feigned Action.

But he could truely ſay, he never heard of this Action till it was actually brought; however, he ſaw no Hurt in it, if it had been ſo: The Law was well tried, and ſettled in a feigned Action, as in a true: There were feigned Actions directed every Day out of *Chancery* for this Purpoſe; and why the King might not direct ſuch an Action to be brought to ſatisfy himſelf, whether he had ſuch a Power; and, if he had, that the People might acquieſce in it, he could not conceive: And, if there were any indirect Means uſed for obtaining Opinions, he declared he knew nothing of it: He ſtood upon his Innocence, and defied all the World to lay any thing of this Nature to his Charge.

It ſeems to be admitted on all Hands, that where the Subject had any Property or Intereſt veſted in him by a Statute, the King could not diſpenſe with ſuch Statute: And, if this be ſo, ſurely the King cannot diſpenſe with a Statute, in which *all*, or *moſt* of his Subjects are concerned in Point of Intereſt; with a Statute made for the Preſervation of that Religion, which is a Part of our Conſtitution; and by the ſuſpending whereof, the Enemies of the Government are let in to ruin it: Had not King *James* Proteſtant Subjects enough (ſays Sir *Robert Atkyns*) to bear Offices? and are Popiſh Recuſants the fitteſt Perſons to be truſted with the Defence of the Proteſtant Religion, and with our Lives and Eſtates; which are all concerned more or leſs in every publick Office and Truſt? *Remarks on the Reſolutions of Goodwin and Hale.*

Are thoſe Perſons, who have a Dependance on the See of *Rome*, and a foreign Power, fit to be truſted with the Militia, with our Fortreſſes and Sea-Ports? Is not this to commit the Lamb to the Cuſtody of the Wolf?

The Act of 25 *Car.* II. is not levelled againſt the *Opinions* of the Roman Catholicks; they may keep their Religion ſtill, if they like it. But is there any Neceſſity of their being in Offices: Muſt they needs be Guardians of the Proteſtant Religion? The Penalties laid on them by this Act, as has been obſerved, is not purely for their Opinion, but for their preſuming to undertake Offices and Truſts, for which they have been adjudged and declared unfit, both by King and Parliament. I ſhall only add, That the very ſame Arguments hold againſt admitting the Diſſenters of any Kind into Offices and Places of Truſt: Nay, they may be juſtly looked upon as the more dangerous Enemies to the Church of *England* of the two; inaſmuch as they are more numerous, have a greater Intereſt and Influence in the Kingdom, and can ſwallow any Oaths and Teſts occaſionally; and even

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even commit, what they call, the groſſeſt Idolatry, to poſſeſs themſelves of Places, which may give them Opportunities of diſtreſſing and betraying that eſtabliſhed Church, which they thus occaſionally intrude into. They take the Sacramental Teſt, as *Judas* did the Sop, with Malice in their Hearts againſt the very Prieſthood from whoſe Hands they receive it; which is ſuch an abominable Piece of Hypocriſy, that even Jeſuits abhor; and the Diſſenters are conſcious that all Mankind muſt deteſt and abhor them for it: Which is one great Reaſon, no doubt, of their labouring ſo indefatigably, and employing every Artifice to get thoſe Teſts repealed, which are acknowledged to be the beſt Barrier of the Conſtitution in Church and State.

1686. 2 Jac. II.

The Trial of SAMUEL JOHNSON, Clerk, for a *Miſdemeanor*, before the Court of *King*'s-*Bench*, on the 21ſt of *June*, 1686. 2 *Jac.* II.

1686. 2 Jac. II. *Johnſon's Trial.*

The Indictment.

THIS is a very imperfect Piece. The Editors of the *State-Trials* only tell us, an Information was preferred againſt Mr. *Johnſon*, for a Miſdemeanor, in publiſhing two ſeditious Libels: The one, *An Addreſs to the Army and Navy*; inciting the Soldiers to mutiny againſt their Popiſh Officers, and not be made Tools to introduce Popery: And the other declaring, that Reſiſtance was lawful, where their Religion and Rights were invaded.

His Condition, and Sentence.

Of which being convicted, he was ſentenced to pay 500 Marks, to ſtand three Times in the Pillory, and to be whipped from *Newgate* to *Tyburn:* That he was afterwards degraded by the Biſhops of *Durham*, *Rocheſter*, and *Peterborough*; and then whipped with a Whip of nine Cords, and received 317 Laſhes.

The Execution of it.

The Judgment voted cruel and illegal.

That after the Revolution, *viz.* on the 11th of *June* 1689, the Parliament voted, That the Judgment given againſt Mr. *Johnſon*, was illegal and cruel; and that the degrading him by a Power derived from the High Commiſſion, was illegal.

That he was recommended to King *William* for Preferment; but never had any given him: However, that Prince ſettled three hundred Pounds a Year upon him out of the *Poſt-Office* for his own and his Son's Life; gave Mr. *Johnſon* a thouſand Pounds in Money, and his Son a Place of an hundred Pounds *per Annum*.

300 l. per Ann. *ſettled on him by King* William.

1686. 2 Jac. II. *Biſhop of London's Proſecution.*

Proceedings againſt HENRY Lord Biſhop of *London*, before the Lords Commiſſioners, appointed by his Majeſty to inſpect Eccleſiaſtical Affairs, *Anno* 1686. 2 *Jac.* II.

1686. 2 Jac. II.

The Authority of the High-Commiſſion.

THE King's Eccleſiaſtical Commiſſion was directed to *William* Lord Archbiſhop of *Canterbury*, *George* Lord *Jeffries* Lord High Chancellor, *Lawrence* Earl of *Rocheſter* Lord Treaſurer, *Robert* Earl of *Sunderland* Lord Preſident of the Council and Principal Secretary of State, *Nathanael* Lord Biſhop of *Durham*, *Thomas* Lord Biſhop of *Rocheſter*, and Sir *Edward Herbert* Lord Chief Juſtice; who were impowered to exerciſe all Manner of Eccleſiaſtical Juriſdiction, and puniſh all Offences puniſhable by the Eccleſiaſtical Laws, and to correct and alter the Statutes in the Univerſities, and of all Cathedrals, Colleges, and Schools, *&c.*

The Biſhop's Caſe.

The Caſe of the Biſhop of *London* was this: Mr. *Atterbury*, the Meſſenger, delivered a Letter from his Majeſty to his Lordſhip on the 17th of of *June*, 1686, wherein the King obſerved, That, notwithſtanding his Directions concerning Preachers, dated the 15th of *March*, 1685, Dr. *John Sharp* had, in ſome Sermons, preſumed to make unbecoming Reflections, and uſed ſuch Expreſſions, as tended to beget in the Minds of his Hearers, an evil Opinion of his Majeſty and his Government, and to diſpoſe the People to Rebellion; and therefore commanded the Biſhop to ſuſpend the ſaid Dr. *John Sharp* from Preaching, till his Majeſty's Pleaſure were further known.

In anſwer to which my Lord Biſhop of *London* wrote to my Lord *Sunderland* the next Day, being the 18th of *June*, and ſent the Letter by Dr. *Sharp*; wherein he acquaints my Lord *Sunderland*, "He was concerned he could not "comply with his Majeſty's Commands: That "being to act as a Judge in this Caſe, he could "not condemn the Dr. till he had been cited, "and he had Knowledge of the Cauſe; but that "he had ſent to the Dr. and acquainted him "with his Majeſty's Diſpleaſure; and found "him ſo ready to make all reaſonable Satiſfaction, that he thought fit to make him the "Bearer of this Anſwer."

The *Sunday* following Dr. *Sharp* carried a Petition to *Windſor*, which was not permitted to be read.

On *Wedneſday*, the 4th of *Auguſt*, 1686, my Lord Biſhop of *London*, upon a Summons, appeared before the Commiſſioners at the Council-Chamber at *Whitehall:* Preſent the Lord Chancellor,

1686. 2 Jac. II. cellor, Lord Biſhop of *Durham*, Lord Treaſurer, Lord Biſhop of *Rocheſter*, Lord Preſiden, and Lord Chief Juſtice *Herbert*.

The Lord Chancellor demanded, Why my Lord Biſhop of *London* had not ſuſpended Dr. *Sharp*, according to the King's Command?

The Lord Biſhop of *London* anſwered, That he was adviſed, he could not legally do it but by Way of Citation, and hearing him.

Lord Chancellor: You ought to have known the Law better: The King is to be obeyed; and, if you have any Reaſons to offer, we are ready to hear you.

The Lord Biſhop of *London* deſired a Copy of their Commiſſion, and a Copy of his Charge: And, if he might not have a Copy of their Commiſſion, that he might read it, or hear it read. Then he was ordered to withdraw; and being called again in about a Quarter of an Hour, the Lord Chancellor acquainted him, That the Commiſſioners were of Opinion, his Requeſt could not be granted: That, if every one that appeared there ſhould demand a Sight of their Commiſſion, their whole Time would be taken up in reading of it: That the Proceedings of Courts of this Kind were not by Libels and Articles, but by Word of Mouth: And it was a ſhort Queſtion only they asked; *Why he did not obey the King?*

My Lord Biſhop of *London* deſired the Commiſſioners to conſider, he was a Peer, and a Biſhop; and he deſired to behave himſelf as becomes one in thoſe Capacities; and hoped, they would give him Time till the next Term to make his Defence.

The Commiſſioners ſaid, they thought that unreaſonable; but they would give his Lordſhip a Week's Time; and then adjourned to the 9th of *Auguſt*.

On the 9th of *Auguſt*, the ſame Commiſſioners being preſent, my Lord Biſhop of *London* came before them, attended by his Nephew, the Earl of *Northampton*, Sir *John Nicholas*, and his Brother, Sir *Francis Compton*.

My Lord Biſhop of *London* ſaid, He had not been able to meet with their Commiſſion till the Night before; though he was told, he might ſee it in every Coffee-Houſe.

The Lord Chancellor anſwered, They would admit no quarrelling at their Commiſſion; they were well aſſured of the Legality of it, or they would not be ſuch Fools to ſit there.

My Lord Biſhop of *London* ſaid, He deſired a Sight of their Commiſſion, becauſe, poſſibly, it might not reach him, being a Peer, and a Biſhop; and that he had not had Time to adviſe about it; and therefore deſired a Fortnight longer, (which was granted).

On *Tueſday*, the 23d of *Auguſt*, my Lord Biſhop of *London* appeared before the ſame Commiſſioners again.

Lord Biſhop. My Lord, I have conſulted thoſe that are very learned in the Laws, who tell me, that your Proceedings in this Court are directly contrary to the Statute Law; and they are here to plead it, if your Lordſhip will admit them.

Lord Chancellor. We will neither hear your Lordſhip, nor your Counſel, in the Matter: We are ſufficiently ſatisfied of the Legality of our Commiſſion.

Lord Biſhop. My Lord, I am a Biſhop of the Church of *England*; and by all the Law in the Chriſtian Church in all Ages, and by the particular Law of this Land, I am, in caſe of Offence, to be tried by my Metropolitan and Suffragans: I hope your Lordſhip will not deny the Rights and Privileges of Chriſtian Biſhops. 1686. 2 Jac. II.

Lord Chancellor. My Lord, you know our Proceedings are according to what has been done formerly, and that we have an Original Juriſdiction: This is ſtill queſtioning our Court.

Lord Biſhop. My Lords, Proteſting in my own Right to the Laws of the Realm, as a Subject, and the Rights and Privileges of the Church, as a Biſhop, I ſhall give in my Anſwer.

The Anſwer was accepted, and the Biſhop withdrew; and after half an Hour the Biſhop and his Counſel were called in; who were Dr. *Oldys*, Dr. *Hodges*, Dr. *Price*, and Dr. *Newton*; whom the Biſhop deſired might be heard.

They argued, That the Words of the King's Letter being, *That you ſuſpend him from Preaching*; this could not be done by our Laws without a Citation, and proceeding to Judgment thereupon: But if by that Expreſſion, only the Silencing the Dr. was intended, then the Biſhop had executed the King's Command in ſuch a Method as is obſerved in their Courts. *The Arguments at the Biſhop's Council.*

For where an eminent Perſon is accuſed, the Judges ſend him a Letter; and if he appears, and complies with the Judges Order, the Law is ſatisfied. Here the Biſhop ſent for Dr. *Sharp*, and adviſed him not to preach, till the King had received Satisfaction; and he had obſerved his Lordſhip's Directions, and has not preached to this very Day; ſo that his Majeſty's Command was in Effect fulfilled. That the Biſhop had done what was his Duty; he was bound to return his Reaſon to the King, why he did not do that which he commanded, and to expect his further Anſwer; which was done.

That if a Prince, or Pope, command any Thing unlawful, it is the Duty of a Judge *Reſcribere Principi*, and attend his further Pleaſure; and this is all he can do: That as in Nature no Man can be obliged to do that which is impoſſible, ſo in Policy no Man can be obliged to do an unlawful Act.

Lord Biſhop. If through Miſtake I have erred in any Circumſtance, I am ready to beg his Majeſty's Pardon; and ſhall be ready to make any Reparation I am capable.

The Biſhop withdrew for half an Hour, and then was called in, and acquainted, that the Commiſſioners would be there again on *Wedneſday* next, when his Lordſhip was directed to attend.

Die Lunæ, 6 Septem. 1686.

Lord Chancellor. You were deſired to appear this Day to hear your Sentence; which, to prevent Miſtake, we have ordered to be put in Writing. *He is ordered to attend his Sentence.*

Lord Biſhop. My Lord, may I have leave to ſpeak, before Sentence is read?

Lord Chancellor. My Lord, we have heard you and your Counſel already.

Then the Inſtrument of Suſpenſion was read by Mr. *Bridgman*, their Lordſhips Regiſter; *viz.*

By

1686. 2 Jac. II.

By his Majesty's Commissioners for Ecclesiastical Affairs, &c.

The Sentence.

Whereas, Henry *Lord Bishop of* London, *hath been convened before us for his Disobedience, and other his Contempts, mentioned in the Proceedings of this Cause; and the said Bishop being fully heard thereupon, We have thought fit, upon mature Consideration of the Matter, to proceed to this our Definitive Sentence; declaring, pronouncing, and decreeing, That the said* Henry, *Lord Bishop of* London, *shall, for his said Disobedience and Contempt, be suspended during his Majesty's Pleasure: And accordingly we do, by these Presents, suspend him the said Lord Bishop of* London; *peremptorily admonishing and requiring him, hereby, to abstain from the Function and Execution of his Episcopal Office, and from all Episcopal and other Ecclesiastical Jurisdiction, during the said Suspension, upon Pain of Deprivation and Removal from his Bishoprick.*

1686. 2 Jac. II.

Doctor *Sharp* was also suspended for a Time; but suffered afterwards to preach and exercise his Function again. *Dr. Sharp suspended, & restored.*

And the Bishop of *London*'s Suspension was taken off in the Year 1688, upon Advice of the Prince of *Orange*'s intended Imbarkation to invade *England*. *The Bishop's Suspension taken off.*

The Remarks on this Prosecution of the Bishop of London, *will be found intermixed with those on the Trials of the Seven Bishops, in the Year* 1688.

1686. 3 Jac. II.

Proceedings against the University of *Cambridge*, for not obeying the King's Mandate, in the Year 1686. 3 *Jac.* II.

1686. 3 Jac. II.

The Case of the University of Cambridge.

THE University received a Letter Mandatory by *Atterbury* the Messenger, from his Majesty, on the 9th of *February*, 1686-7, commanding them to admit *Alban Francis*, a *Benedictine* Monk, to the Degree of Master of Arts, without administring to him any Oath whatever: Whereupon the Senate being assembled, resolved to send up their Sense of this Matter to Doctor *Peachel*, the Vice-Chancellor, who was then in *London*; and Doctor *Smoult*, Professor of Divinity, was made Choice of by the Non-Regents, and Mr. *Norris*, Fellow of *Trinity*-College, by the Regents, to carry the Message; the Substance whereof was, That the House apprehended the Admission of Mr. *Francis*, without his taking the usual Oaths, was illegal and unsafe, and advised the petitioning his Majesty upon it; declaring, they were ready to join in the Petition, and make it their Act: And the Beadles were ordered to acquaint Mr. *Francis*, that the Senate were ready to admit him, provided he would take the Oaths. But Father *Francis* refused, insisting on the King's Dispensation.

The same Afternoon the Heads met, and sent a Letter to the Duke of *Albemarle*, their Chancellor, and another to the Earl of *Sunderland*, Secretary of State, by their Beadles; but they could not get Admission to the Earl of *Sunderland*: And soon after the University received another Letter from the King, dated the 24th of *February*, exactly the same as the Former, only with this Addition, That they should do it at their Peril. Whereupon a Letter was prepared for the Duke of *Albemarle*, and another for the Lord *Sunderland*, and sent up by Mr. *Braddock*, Fellow of *Catherine-Hall*, and Mr. *Stanhope* of *King's* College; and on *Sunday* the 3d of *March*, these Gentlemen waited on the Duke of *Albemarle*, who attended the King on Behalf of the University on the 14th, when his Majesty commanded his Grace to give him the Letter he received from the University; which he did, but received no Answer. They afterwards attended the Lord *Sunderland*, who told them, the King had seen the Vice-Chancellor's Letter, and was offended at the Proceedings of the University, and would shortly give them a further Answer: But they received no other Answer till *Sunday* the 9th of *April*, when *Atterbury* the Messenger came down to *Cambridge* with a Summons for the Vice-Chancellor to appear in Person, and the Senate by themselves, or their Deputies, before the Lords Commissioners for Ecclesiastical Affairs, in the Council-Chamber, on the 21st of *April*, to answer such Things as should be objected against them by his Majesty. *Summoned to appear before the High Commission.*

Whereupon the Senate deputed Dr. *John Peachel*, Vice-Chancellor; Dr. *John Eachard*, Master of *Catherine-Hall*; Dr. *Humphry Babington*, Fellow of *Trinity* College; Dr. *Thomas Smoult*, Fellow of St. *John*'s College; Doctor *William Cook*, Doctor of Civil Law, and Fellow of *Jesus* College; Mr. *John Billers*, Fellow of St. *John*'s, and publick Orator; Mr. *Isaac Newton*, Fellow of *Trinity* College, and Mathematical Professor; Mr. *James Smith*, Fellow of *Queen's*; and Mr. *George Stanhope*, Fellow of *King's* College. *The Deputies that attended.*

These Deputies appearing in the Council-Chamber on *Thursday* the 21st of *April*, before the Lord Chancellor *Jefferies*, the Lord *Sunderland*, President, the Lord *Mulgrave*, the Earl of *Huntington*, the Bishops of *Durham* and *Rochester*, and the Lord Chief Justice *Herbert*, Ecclesiastical Commissioners, the Summons was read; after which the Lord Chancellor demanded of Mr. Vice-Chancellor, Why he had not obeyed his Majesty's Commands in admitting Mr. *Francis*? *The Names of the High Commissioners.* *The Vice-Chancellor examined.*

1686. 3 Jac. II.

Mr. Vice-Chancellor anſwered, It was a Matter of great Concern, and deſired they might have Counſel and Time to prepare their Anſwer; and Time was given them till the *Wedneſday* following.

The Vice-Chancellor, *&c.* appearing again before the ſame Commiſſioners on *Wedneſday* the 27th of *April*, put in their Anſwer, which was entitled, *The Anſwer of the Univerſity and Senate of* Cambridge *to the Queſtion, Why they did not admit* Alban Francis *to the Degree of Maſter of Arts, without taking the ſaid Oaths*, &c.

The Anſwer of the Univerſity.

They anſwer, That by the Statutes of the 1ſt and 5th of *Eliz.* every Perſon, promoted to a Degree in the Univerſity, is required to take the Oath of Supremacy; and by 3 *Jac.* I. the Oath of Allegiance: That the Vice-Chancellor, and every Member of the Senate, had taken the ſaid Oaths, and were entruſted to ſee others take them in the Univerſity: And that in order to admitting the ſaid *Alban Francis* to the Degree of Maſter of Arts, the ſaid Oaths were offered to be adminiſtered to him; but he refuſed to take them.

That the admitting him without taking the ſaid Oaths, would have been contrary to the ſaid Statutes, and a Breach of Truſt in the Vice-Chancellor and Senate; and whether this Matter was proper for their Lordſhips Cognizance, they entreated them to conſider; inaſmuch as the taking the Degree of Maſter of Arts in the Univerſity, or the admitting and refuſing ſuch a Degree, was not a Matter Eccleſiaſtical, but of Lay and Temporal Cognizance.

And it was alſo enacted by a Statute of the 16 *Car.* I. That no new Court ſhould be erected within this Realm, which ſhould have like Power as the High Commiſſion Court then had, or pretended to have; but that every ſuch Commiſſion and Grant ſhould be void.

A further Examination.

The Anſwer being read, the Deputies were ordered to withdraw; and appearing at the Council-Chamber again on the 27th of *May*, the Lord Chancellor obſerved, that they alledged that their Oath prevented their obeying the King's Mandate, and demanded what that Oath was.

The Vice-Chancellor anſwered, He could not remember the very Words; but the Subſtance of it was, That he ſhould well and faithfully *præſtare*, or *adminiſtrare*, *munus*, or *officium*, *Procancellarium*.

Lord Chancellor. And do not you remember any Maſter of Arts made without Oaths?

Dr Cook. Not under the Quality of an Univerſity-Nobleman.

Lord Chancellor. Nay, good Doctor, you never were Vice-Chancellor yet; when you are, we will conſider you.

Vice-Chancellor. I cannot ſay I remember any.

Lord Chancellor. Did you never hear of Dr. *Light oot?*

Vice-Chancellor. My Lord, he did ſubſcribe the Th rty-nine Articles; and the Firſt of them is the King's Supremacy.

Lord Chancellor. And is Subſcribing Swearing, Doctor? 1686. 3 Jac. II.

Mr. *Stanhope.* As for Dr. *Lightfoot*, we were aware of that Objection, and therefore have provided an Anſwer to it, and are ready to make Proof that he did ſwear.

Lord Chancellor. Nay, look you now, that young Gentleman expects to be Vice-Chancellor too: When you are, Sir, you may ſpeak; but till then it will become you to forbear. Mr. Vice-Chancellor, when was it you received the Firſt of the King's Letters?

Vice-Chancellor. It was on *Aſhwedneſday*.

Lord-Chancellor. When you had read the Letter, why was not the Gentleman admitted?

Vice-Chancellor. The Senate ſent to deſire me I would forbear admitting Mr. *Francis*, till I had petitioned the King to revoke the Mandate.

Lord-Chancellor. Did you ever know any Mandate of the King's refuſed by the Univerſity before?

Vice-Chancellor. Yes, my Lord, about 15 or 16 Years ago, in the late King's Reign, a Mandate was given to one *Tatnel*, a Nonconformiſt Miniſter, and he refuſed to ſubſcribe and take the Oaths; whereupon the Univerſity petitioned the King, and he was pleaſed to recall his Mandate.

Lord Chancellor. How was it you knew the Minds of the Senate in this Buſineſs?

Vice-Chancellor. My Lord, the Houſe ſent up their Opinions by Dr. *Smoult* and Mr. *Norris*.

Lord Chancellor. But, Mr. Vice-Chancellor, you ought to take an Account of what is done in the Houſe yourſelf, and not from others: And how came this new Way of giving Opinions? Are not the Proctors uſually the Men that bring the Senſe of the Houſe to the Vice-Chancellor?

Vice-Chancellor. Not the Non-Regent, my Lord; they are not admitted into that Houſe, nor have any Thing to do there.

Then the Vice-Chancellor, *&c.* were ordered to withdraw; and being called in again half an Hour afterwards, to hear the Determination of the Commiſſioners, the Lord Chancellor pronounced the following Sentence.

Sentence pronounced against the Vice-Chancellor.

That the Vice-Chancellor ſhould be deprived of his Office, and not meddle afterwards with any Publick Buſineſs in the Univerſity: That he ſhould be ſuſpended ab officio & beneficio, *of his Maſterſhip of* Magdalen-*College, during his Majeſty's Pleaſure; and abſtain from the Function of Maſter of the ſaid College, during the ſaid Suſpenſion, on Pain of Deprivation of his Maſterſhip.* And it was further decreed, *That the Profits belonging to the ſaid Maſterſhip, ſhould, during the Suſpenſion, be applied to the Uſe of the College.*

The Deputies of the Senate appearing again before the Commiſſioners on *Thurſday* the 12th of *May*, and with them Dr. *Peachel* the Vice-Chancellor, the Lord Chancellor ſaid, The laſt Time they appeared there, the Lords Commiſſioners had thought fit to ſet a Mark of their Diſpleaſure on the Vice-Chancellor:

1686. 3 Jac. II. Univerſity reprimanded.

Chancellor: And that all the World muſt be ſenſible how obſtinate the Univerſity had ſhewn themſelves in refuſing to obey the King's Commands: But their Lordſhips conſidered there was a Difference between the Vice-Chancellor's Caſe and theirs; and therefore did not conclude them who repreſented the Senate with him. However, their beſt Courſe would be, by a ready Obedience to his Majeſty's Commands for the future, to make amends for the ill Example that had been given; and therefore, in the Words of the Scripture, he bid them *Go their way, and ſin no more, leſt a worſe thing come unto them*, directing them to ſend Copies of the Univerſity Statutes to be laid before the Commiſſioners.

1686. 3 Jac. II.

Two Orders of the Commiſſioners were afterwards ſent down to *Cambridge* by Mr. *Atterbury* the Meſſenger; the firſt directed to the Proctors, to proceed to the Choice of a new Vice-Chancellor, and the other to the Fellows of *Magdalen*-College.

To each of which was annexed a Copy of the Sentence, to be fixed upon the School-Doors, and the Gates of *Magdalen*-College: And on the 17th of *May* Dr. *Balderſon*, Maſter of *Emanuel*, was elected Vice-Chancellor.

The Remarks on theſe Proceedings will be ſeen at the End of the Trial of the ſeven Biſhops.

1687. 3 Jac. II. *The Caſe of Magdalen College.*

Proceedings againſt St. *Mary Magdalen* College in *Oxford.* 1687. 3 *Jac.* II.

1687. 3 Jac. II.

UPON the Death of Dr. *Henry Clerk*, Preſident of St. *Mary Magdalen* College, *Charles Aldworth*, Doctor of Laws, the Vice-Preſident, gave Notice of it in the Chapel on the 31ſt of *March* 1687. Whereupon the Fellows agreed to proceed to the Election of a Preſident on the 13th of *April* following; and the abſent Fellows were ſummoned to be preſent at it.

In the mean time, *(viz.)* on the 11th of *April*, came the King's Letter Mandatory, requiring the Fellows to elect Mr. *Anthony Farmer* their Preſident: And the Vice-Preſident read the Letter the ſame Day before the Fellows, in the Chapel after Evening Service, requiring them to attend again next Morning, in order to give their Anſwer to it.

All the Fellows meeting accordingly the next Morning, the Vice-Preſident read the Statute, *De electione Preſidentis*, and the Statute of 5 *Eliz.* againſt Corrupt Elections, as alſo the King's Letter: And their Anſwer being demanded, the Fellows ſaid, That they had a Petition lying before his Majeſty, and they ought not to proceed to Election till they had received his Majeſty Anſwer.

The Vice-Preſident and Fellows meeting again on *Friday April* 15, Dr. *Thomas Smith*, and Capt. *Bagſhaw*, two of the Fellows, acquainted the reſt from the Lord Preſident of the Council, That the King, having ſent his Letter to the College in Anſwer to their Petition, expected to be obeyed.

The Vice-Preſident demanding again, Whether they would elect and admit Mr. *Farmer*, in Obedience to the King's Letter? They anſwered, They deſired to proceed to Election; and Mr. *Farmer* not being a Perſon capable of being choſen by their Statutes, and this the laſt Day limited for the Election, they elected Mr. *John Hough*, Batchelor of Divinity; and he was immediately declared Preſident; and Mr. *Maynard* was appointed by the thirteen ſenior Fellows to preſent him to the Viſitor, in order to his Admiſſion. Mr. *Thomſon* and Mr. *Charnock* only declaring for Mr. *Farmer*; and on *Saturday* the 16th of *April* Mr. *Hough* was preſented to the Viſitor, and ſworn and admitted Preſident by his Lordſhip.

Mr. Hough elected Preſident.

The Vice-Preſident and Fellows were thereupon ſerved with a Citation dated 28 *May*, 1687. requiring them, or ſuch of the ſaid Fellows as they ſhould depute, to appear before his Majeſty's Commiſſioners for Eccleſiaſtical Affairs, in the Council-chamber at *Whitehall*, on the 6th of *June* following. *The Fellows ſummoned, before the High Commiſſion.*

Where the Vice-Preſident and Fellows deputed by the ſaid College appearing, and it being demanded, Why they did not obey his Majeſty's Letters, requiring them to elect and admit Mr. *Anthony Farmer* their Preſident, they gave in an Anſwer of the following Tenor, *(viz.)* *Demanded why they did not elect* Farmer.

That their College was a Body Corporate, governed by Local Statutes, granted and confirmed to them by King *Henry* VI. and other Kings of this Realm. That by thoſe Statutes the Perſon elected Preſident ought to be a Man of good Life and Converſation, and one who had been Fellow of the ſaid College, or of *New College*. To the Obſervation of which Statutes all the Fellows were ſworn, as well as that they would neither procure or conſent to any Diſpenſation of the ſaid Oath. *Their Anſwer.*

That inaſmuch as the ſaid Mr. *Farmer* had neither been Fellow of this College, or of *New College*, and had not thoſe Qualifications their Statutes required; and they could not comply with his Majeſty's Letter without violating their Oaths, and hazarding their legal Intereſt and Property; which they were bound by their Oaths to maintain: They repreſented the ſame in their humble Petition to his Majeſty. And having deferred their Election

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Election of a Preſident to the laſt Day limited by their Statutes, they did then elect the Rev. Mr. *John Hough*, B. D. a Fellow of their College, and every Way qualified, to be their Preſident, who had ſince been confirmed by the Biſhop of *Winton* their Viſitor. And that they might not lie under his Majeſty's Diſpleaſure, they did, on the 18th of *April*, make an humble Repreſentation thereof to his Majeſty by his Grace the Duke of *Ormonde*, their Chancellor, ſetting forth the indiſpenſable Obligations they were under to obſerve their Founder's Statutes. And to this Anſwer they added the following Reaſons, why they could not elect Mr. *Farmer*, *viz.*

They ſhew Farmer was diſqualified.

That he ſo misbehaved himſelf in *Trinity* College in *Cambridge*, that he received an Admonition from the Maſter of that College, in order to his Expulſion: And having left *Cambridge*, he taught School at *Chippenham* in *Wiltſhire*, under a Non-conformiſt Miniſter, without Licence. That in *September* 1683, the ſaid *Farmer* was entered in St. *Mary Magdalen* Hall in *Oxford*, where ſuch frequent Complaints were brought againſt him for his troubleſome and unquiet Temper, that, to preſerve the Peace of that Society, he was deſired to leave the ſaid Hall. That after he was admitted of *Magdalen* College, he declared that there was no Proteſtant but would cut the King's Throat. But at other Times he declared to the Fellows of the ſame College, that whatever he pretended, he was really a Member of the Church of *England*, and that he made Intereſt with ſome *Roman* Catholicks only to get Preferment by their means; and for that Reaſon was willing to be of their Religion.

That at the very Time his Majeſty's Letter came to the College in his Behalf, he was at *Abington* in very ill Company, where he continued drinking to Exceſs two or three Days and Nights, and among other Diſorders, was one of thoſe who in the Night-time threw the Stocks into the River: And that in general the ſaid *Farmer* was of ill Fame, as appeared by Letters and Certificates the ſaid Fellows were ready to produce, *and which were actually produced.*

The High Commiſſion decree Hough's Election void.

The Eccleſiaſtical Commiſſioners, however, proceeded on the 22d of *June* to declare the Election of Mr. *Hough* void, and decreed, that he ſhould be removed from the Preſidentſhip of the ſaid College: They likewiſe decreed, that Dr. *Aldworth*, the Vice-Preſident, ſhould be ſuſpended from that Office, and that Dr. *Fairfax's* Fellowſhip ſhould be ſuſpended for not obeying his Majeſty's Letters Mandatory for electing *Farmer*: His Majeſty alſo iſſued his Inhibition, forbidding the Fellows to elect any Perſon into a Fellowſhip, or other Place in the College, till his further Pleaſure was known.

The King's Mandate, to elect the Biſhop of Oxford their Preſident.

On the 14th of *Auguſt* following, the King ſent down another Mandate, authorizing and requiring the College to admit the Lord Bp. of *Oxford*, their Preſident; and with this Mandate came a Letter from the Lord *Sunderland* to the Fellows, directing them immediately to aſſemble and pay a ready Obedience to his Majeſty's Pleaſure herein, and ſend him an Account of their Proceedings. The Biſhop of *Oxford* alſo ſent them a Letter acquainting them he was indiſpoſed, and therefore deſired they would admit him their Preſident by Proxy. 1687. 3 Jac. II.

The Fellows attend the King at Chriſt-Church.

In the beginning of *September* 1687, his Majeſty, going to the *Bath*, and taking *Oxford* in his Way, ſent an Order to the Fellows of *Magdalen* College on the 4th of that Month, to attend him at *Chriſt-Church* that Afternoon; and the Fellows attending accordingly, the following Conference happened between his Majeſty and the Fellows.

King. What's your Name? Are you Dr. *Pudſey?*

Dr. *Pudſey.* Yes, may it pleaſe your Majeſty.

King. Did you receive my Letter?

Dr. *Pudſey.* Yes, Sir, we did.

King. Then you have not dealt with me like Gentlemen: You have done very uncivilly by me, and undutifully—Here they all kneeled, and Dr *Pudſey* offered a Petition, which his Majeſty refuſed to receive, and ſaid, You have been a ſtubborn turbulent College, I have known you to be ſo theſe Twenty-ſix Years; you have affronted me in this. Is this your Church of *England* Loyalty? One would wonder to find ſo many Church of *England* Men in ſuch a Buſineſs: Go Home, and ſhew your ſelves good Members of the Church of *England:* Get you gone; know I am your King; I will be obeyed, and I command you to be gone. Go, and admit the Biſhop of *Oxford* Head, Principal, I mean Preſident of the College. Let them that refuſe it look to it; they ſhall feel the Weight of their Sovereign's Diſpleaſure. As they were going, the King ſaid, he heard they had admitted a Fellow ſince his Inhibition: To which they anſwered, it was only a Confirmation of a former Election: The King ſaid, That was downright Diſobedience.

The Fellows offered again their Petition on their Knees.

King. Get you gone; I will receive nothing from you, till you have obeyed me, and admitted the Biſhop of *Oxford*. Upon which they went to their Chapel, and Dr. *Pudſey* propoſing, Whether they would obey the King, and elect the Biſhop of *Oxford*? They agreed, That the electing the Biſhop of *Oxford* being directly contrary to the Statutes and their Oaths, they could not apprehend it in their Power to obey his Majeſty in this Matter.

A Commiſſion from the High Commiſſion Court at Oxford.

October 19, Mr. *Atterbury* the King's Meſſenger fixed a Citation on the College and Chapel Doors, requiring the pretended Preſident and Fellows, and other Members of the College to appear before the Lords Commiſſioners, the Lord Biſhop of *Cheſter*, the Lord Chief Juſtice *Wright*, and Mr. Baron *Jenner*, in the Chapel on *Friday* Morning, *Oct.* 21.

On *Thurſday* the Lords Commiſſioners came to *Oxford*, attended with Three Troops of Horſe, which were quartered there.

They repair to Oxford.

On *Friday* Morning at Nine, they came into the outward Chapel; but no Seats being prepared there, they adjourned into the Hall, where their Commiſſion was read, which in general was the ſame with the former; only

theſe

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these Three, who came down, had been added to the other Lords, and were particularly impowered to visit *Magdalen* College only. Then the President and Fellows were called over, and all appeared who were in Town, except Dr. *Fairfax*; and Excuses were made for the absent.

Then the Bishop of *Chester* made a Speech, wherein he reprimanded them for their Disloyalty, affirmed that the Church of *England* taught an unlimited and unconditional Obedience; and laboured by Threats and Promises to induce them to comply with his Majesty.

The Fellows desiring a Copy of their Lordship's Commission, it was denied them; after which happened the following Dialogue between the Commissioners, and Dr. *Hough* the President.

Bishop of *Chester*. Dr. *Hough*, will you submit to this Visitation?

Dr. *Hough*. I do declare here, in the Name of my self and the greater Part of the Fellows, That we submit to the Visitation, as far as it is consistent with the Laws of the Land, and the Statutes of the College.

L. C. J. You cannot imagine that we act contrary to the Laws of the Land; and as to the Statutes, the King has dispensed with them.

Dr. *Hough*. My Lords, I find that your Commission gives you Authority to change and alter the Statutes, and make New ones, as you think fit. Now, we have taken an Oath not only to observe these Statutes, but to admit of no new Ones, or Alterations in these. This must be my Behaviour here; I must admit of no Alteration, and by the Grace of God never will.

Bishop of *Chester*. You have a Statute there for Mass, why don't you say Mass?

Dr. *Hough*. That Statute is taken away by the Laws of the Land, which oblige us to say Common-Prayer.

Bishop of *Chester*. Do you allow that an Act of Parliament can free you from the Obligation of a Statute?

Dr. *Hough*. I do not say but that his Majesty may alter our Statutes, or the Parliament may do it; but I, who have already taken an Oath to observe these Statutes as they now stand, and to admit of no Alteration by any Authority whatever, can obey no other: But those, who shall come after such Alterations shall be made, are not obliged to observe them; and that is our Case, as to the Statutes for Mass.

Then the Decree of the 22d *of* June, *declaring the President's Election to be void, was read.*

Bishop of *Chester*. Why did you not obey this Decree?

Dr. *Hough*. I was never cited before their Lordships, or heard in Person, or by Proxy: And I am the first Instance of any Man that was ever deprived of a Freehold (whereof he had been legally invested, and was possessed) without being summoned or heard.

Bishop of *Chester*. The King has, for the most Part, recommended to the Presidentship of this College.

Dr. *Hough*. I am the twentieth President, and only four of that Number have been recommended by the Crown; whereof Three were qualified for that Office.

The Petition of the College to his Majesty, before any Election.

Then the Petition of the College to his Majesty, dated the 9th of *April* was read, wherein they set forth, That having heard that his Majesty was about to recommend Mr. *Farmer* to them, (a Person who was incapable of that Office) they did humbly beseech him, either to leave them to a free Election, or to recommend a qualified Person.

Bishop of *Chester*. Why did you not stay for his Majesty's Answer?

Dr. *Hough*. We did, till the very last Day wherein we are limited to finish the Election; and my Lord *Sunderland* returned this Answer, in the King's Name, *That his Majesty expected to be obeyed.* Now, my Lord, We did no longer defer the Election, because our Statutes enjoin us to elect within such a Time; and we could not chuse the Person his Majesty recommended, because he was unfit: The Society therefore proceeded to the Election of another Person.

The Commissioners meeting again in the Common Room, on Saturday *the* 22*d of* October, *and the Fellows attending, they were all ordered to withdraw, except Dr.* Hough.

Bishop of *Chester*. Do you submit to the Decree of the Commissioners, whereby the Election is delared Null.

Dr. *Hough*. I cannot submit to that Sentence; because I think I cannot be deprived of my Freehold, but by Course of Law in *Westminster-Hall*, or by being some way incapacitated by the Founder's Statutes.

Bishop of *Chester*. Will you deliver up the Keys to the President whom his Majesty hath appointed?

Dr. *Hough*. There neither is, nor can be a President, so long as I live and obey the Statutes; and therefore I do not think fit to give up my Right, the Keys of my Lodgings.

Then the Fellows were called in; and the Bishop demanded again, Whether he would deliver up the Keys, and quit Possession of the Lodgings? The Doctor refusing it a second Time, the King's Proctor charged him with Contumacy, and the Bishop of *Chester* gave him the following Admonition.

Bishop of *Chester*. Dr. *Hough*, I admonish you to depart peaceably out of the Lodgings, and to act no longer as President, or pretended President of this College. Then they struck his Name out of the Book, and admonished the Fellows, and the rest of the Society, not to submit to his Authority.

Dr. Fairfax *was afterwards called in and examined alone.*

Bishop of *Chester*. What was the Cause of your Contempt, in not appearing Yesterday?

Dr. *Fairfax*. I thought my Suspension had eased me of that Trouble.

L. C. J. You must make your Supplication and Submission to the King.

Dr. *Fairfax*. They tell me this Business lies in your Lordship's Court (the *King's-Bench*) and only there.

Bishop of *Chester*. But will you submit to this Visitation?

1687. 3 Jac. II. *Here Dr.* Fairfax *read the following Words out of a Paper he held in his Hand.*

My Lords,

" I Have been ſummoned, and appeared in " this Cauſe, before the Lords Eccleſiaſtical " at *Whitehall*, with whom your Lordſhips " are now joined in Commiſſion; and then " gave in my Anſwer: I have nothing to add " to it, and find no Reaſon to retract it."

Biſhop of *Cheſter*. If your Suſpenſion was taken off, would you ſubmit to the Biſhop of *Oxford*?

Dr. *Fairfax*. Truly, my Lord, I cannot do it.

Then the Fellows were called in again; and it was demanded, Whether they would aſſiſt at the Admiſſion of the Biſhop of *Oxford* when he ſhould be inſtalled Preſident, by Virtue of the King's Mandate: To which they anſwered, They were under Oaths to the contrary; and therefore could not do it, (except Dr. *Pudſey* and Dr. *Smith*, who anſwered dubiouſly, and *Charnock*, who ſaid, He would aſſiſt).

At another Meeting of the Commiſſioners the ſame Afternoon, a Letter from Dr. *Pudſey* to the Earl of *Sunderland* was read, dated the 2d of *Auguſt)* importing that the Society, in anſwer to his Majeſty's Letter commanding them to admit the Biſhop of *Oxford*, agreed unanimouſly in this Anſwer, *That the Place was full:* Whereupon the Commiſſioners demanded of the Fellows ſeverally, If this was their Anſwer? And as many of them as were preſent acknowledged it was.

Dr Hough *proteſts againſt the Proceedings of the Commiſſioners.*

During this Examination, Dr. *Hough* the Preſident came into Court, and proteſted againſt all their Proceedings in Relation to his Deprivation, declaring they were illegal, unjuſt, and null; and appealed to the King in his Courts of Juſtice: At which the young Students and the Strangers giving a loud Hum, their Lordſhips were ſo incenſed, that they bound over Dr. *Hough* in the Sum of a 1000 *l.* to appear at the *King's-Bench* Bar on the 12th of *November*.

Then the Fellows were required to ſign the abovementioned Anſwer; which they all did, except *Charnock*: Wereupon the Biſhop of *Cheſter* ſaid, It was an unmannerly Anſwer, or to that Effect.

The Court meeting again on the 25th of *October*, Mr. *Wiggins*, Chaplain to the Biſhop of *Oxford*, produced an Inſtrument, impowering him to be inſtalled Preſident in the Room of his Lordſhip: Which being read, together with the King's Mandate for the Biſhop of *Oxford*, the Queſtion was put to two or three of the Seniors, Whether they would aſſiſt at this Inſtallment? Which they refuſing, the Court adjourned to the Chapel, where the Biſhop of *Cheſter* put Mr. *Wiggins* into the Preſident's Stall, and he took the Oath which the Statutes enjoin the Preſident at his Admiſſion, and the Oaths of Allegiance and Supremacy; and then their Lordſhips conducted him to the Door of the Preſident's Lodgings, where knocking three Times, and it not being opened, Mr. *Atterbury* and a Tipſtaff were ordered to fetch a Smith, and force it open, which was done, their Lordſhips being preſent: But none were aſſiſting except Mr. *Charnock*.

The Preſident's Ledge broke open and the Biſhop of Oxford's Proxy put in Poſſeſſion.

It being demanded of Dr. *Fairfax*, If he would ſubmit to the New Preſident? he ſaid he could not; becauſe he had a Legal Preſident already. Then the ſame Queſtion was put to the Society, who in the Afternoon returned this Anſwer, That whereas his Majeſty had been pleaſed by his Royal Authority to cauſe the Right Reverend the Lord Biſhop of *Oxford* to be inſtalled Preſident, They whoſe Names where thereunto ſubſcribed, did ſubmit to it as far as was lawful and agreeable to the Statutes of the College.

It being again demanded of Dr. *Fairfax*, if he would obey the Court and the Biſhop of *Oxford*, and he refuſing both, the Lords Commiſſioners ordered his Name to be ſtruck out of the Buttery-Book, and declared his Place to be void; which the Doctor proteſted againſt as illegal and unjuſt.

Then the Commiſſioners adjourned till *Wedneſday* Morning, requiring the Society to bring in their Anſwers to the following Queſtions: 1*ſt*, What Gifts and Proviſions have you for Entertainment of Strangers? 2*dly*, What is the Value of them? 3*dly*, How applied? 4*thly*, Where is the Place of Entertainment?

Wedneſday Octob. 26. 1687.

It was made appear to the Commiſſioners, that the Society was obliged to give in Charity 2 *l.* 3 *s.* 4 *d.* and that they gave, beſides *Communib Annis* almoſt 100 *l.* Upon which their Lordſhips commended their Liberality, and ſaid that Complaint was groundleſs.

Friday, October 28.

The Fellows were called in, and the Biſhop of *Cheſter* told them, His Majeſty expected ſome further Submiſſion; and that they ſhould own the Proceedings and Legality of the Court, and implore his Majeſty's Pardon: Whereupon they withdrew, and gave in the following Anſwer.

May it pleaſe your Lordſhips,

" WE have endeavoured in all our " Actions to expreſs our Duty in all " Humility to his Majeſty, and being con- " ſcious to our ſelves, that in the whole Con- " duct of the Buſineſs before your Lord- " ſhips, we have done nothing but what our " Oaths and Statutes indiſpenſably oblige us " to; we cannot make any Declaration, " whereby we acknowledge we have done any " Thing amiſs, having acted according to the " Principles of Loyalty and Obedience, ſo far " as we could, without doing Violence to our " Conſciences, or Prejudice to our Rights, " (One of which we conceive the electing " a Preſident to be) from which we are " ſworn upon no Account whatſoever to de- " part. We therefore humbly beg your " Lordſhips to repreſent this favourably, " with our utmoſt Duty to his Majeſty, whom " God grant long and happily to reign."

Upon

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Upon their Lordſhips peruſing the Anſwer, they expreſſed their Diſlike; and ſaid, It did not come up to what they had delivered on *Tueſday*.

To which Dr. *Bailey* ſaid, By the Word *Submit*, in their Anſwer on *Tueſday*, they did not intend any future Obedience to the Biſhop of *Oxford*; but meant it in Reverence to the King's Authority, inaſmuch as they did not oppoſe the Biſhop of *Oxford*'s Inſtallment. Upon this a freſh Queſtion was put to the Fellows, Whether they would obey the Biſhop of *Oxford*, as their Preſident, *licitis & honeſtis*? To which all, except one or two, anſwered, They could not obey the Biſhop of *Oxford* as their Preſident: And Mr. *Fulham* in particular being asked the Queſtion, ſaid, That Dr. *Hough*, being duly elected and admitted Preſident, had obtained ſuch a Right, that he could obey no other Perſon as Preſident.

Whereupon Mr. *George Fulham* was ſuſpended from the Profits of his Fellowſhip, during the King's Pleaſure: And the Court adjourned till *Wedneſday*, *November* the 16th, when Mr. *Joyner* and Mr. *Allibone* were entered Fellows in the Room of Dr. *Fairfax* and Mr. *Ludford*, deceaſed; all Oaths being diſpenſed with, beſides that of a Fellow.

Wedneſday, November 16*th*, *at Nine o'Clock in the Morning*.

The Lords Commiſſioners being ſate, ſent for the Buttery-Book; then called for Mr. *Joyner* and Mr. *Allibone*, and entered them actual Fellows: That done, the Fellows being called, and Reaſons given in for thoſe that were abſent, the Biſhop of *Cheſter* made a Speech to this Effect.

GENTLEMEN,

The Biſhop of Cheſter's Speech to the Fellows.

YOUR many Contempts, and wilful Diſobedience, have occaſioned this Viſitation, which will end at laſt in your Ruin. This Society of yours has been long exerciſed in the Methods of Quarrelling; has always been troubled with factious Spirits and teſty Mutineers, ever ſince the Reſtoration of the late King: You have encouraged Quarrels among yourſelves; Quarrels between yourſelves and Preſident; Quarrels, at length, between yourſelves and Viſitor: For I have often heard your late Viſitor complain, that this Society was ever ſtocked with an unquiet and turbulent Generation. By theſe Steps, from quarrelling with the Preſident and Viſitor, you have at laſt advanced to the higheſt Pitch of Inſolence, to quarrel with your Prince, and affront his Sacred Majeſty. I endeavoured before, at the Opening our Commiſſion, to make you ſenſible of the Scandal that your Diſobedience will bring upon your Religion; how much you ſtain and diſhonour your liberal and ingenuous Education in this Society.

You cannot but know his Majeſty is your Supream Ordinary; you cannot but have read in *Bracton*, who was 20 Years Lord Chief Juſtice under King *Henry* III. *Nemo preſumat de factis ejus diſquirere, nedum contra factum ejus venire.* All Diſobedience implys Pride; for no Man can diſobey his Governor, but he who thinks himſelf wiſer. The Reputation and Honour of a Prince at home, and his Reſpect abroad, are chief Standards of a Government; but theſe Pillars, as much as in you lies, you have endeavoured to ſhake; and unleſs his Majeſty's Honour and Right be vindicated by us, he can neither be feared at home, nor obſerved abroad. Your Puniſhment muſt be as publick as your Crime. It cannot be conceived but his Majeſty, in Juſtice, in Honour, in Clemency, and in his Royal Tenderneſs, could have proceeded otherwiſe than he has done. On the 1ſt of *April* it was publiſhed, that Dr. *Clerk* was dead; on the 11th, a Mandamus was directed to you, for chuſing Mr. *Farmer*; on the 9th, you preſented a Petition to the Lord Preſident; wherein you laid yourſelves proſtrate at his Majeſty's Feet, repreſenting to him the Incapacity of Mr. *Farmer*, deſiring the Benefits of his Gracious Declaration for preſerving your Rights and Properties, and beſeeching him to nominate another Perſon, qualified according to your Statutes, in the Election of whom you would ſhew your ready Obedience. So ſaid, and ſo done, Gentlemen, had been very well.

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But immediately after the Delivery of the Petition, you, not waiting his Majeſty's Anſwer, proceeded on *April* the 15th, to an Election of Dr. *Hough*: So that by this Act, which was plainly contrary to his Majeſty's Authority, whoſe Mandate did certainly imply an Inhibition, you directly confronted your former Promiſes of ready Obedience, and were reſolved to give the King nothing but good Words. When you had done this, as Men of ill Deſigns are always in Haſte for a Confirmation of it, you immediately went and ſurprized your Viſitor, and by that Means perſuaded him to confirm Dr. *Hough*, that very Day he received an Order from the Lord Preſident to the contrary.

Upon this News the King was much amazed, and required an Account of your Proceedings; therefore the Lords Commiſſioners iſſued out a Citation, and after hearing the Plea, upon mature Conſultation with the Learned of both Laws, judged the pretended Election of Dr. *Hough*, to be void and null, and him to be removed, by an Inſtrument dated the ———, which was affixed on the Gate. After this a Mandate was ſent on the —— to you, to elect the Biſhop of *Oxford*; upon which Terms his Majeſty was graciouſly pleaſed to diſpenſe with your Diſobedience thitherto; but this being diſobeyed, his Majeſty in Perſon, the 14th of *September*, ſent for you to *Chriſt-Church*, and required you immediately to elect the Biſhop of *Oxford* Preſident. You went ſtraight to the Chapel, a Place one would think ſhould have inſpired more Devotion and Awe of his Sacred Majeſty in you, and there contemptuouſly ſubſcribed and ſigned a Paper, directly thwarting his Majeſty's Command. The Ground of your Diſobedience you pretend, that you could not elect him; whereas you could not but know by a written Mandate that lay by you, that Admiſſion would have ſatisfied his Majeſty's Con-

1687. 3 Jac. II. Conſcience; the ſtale Topick of Rebellion was here brought to vindicate your petulant and contumacious Behaviour. You pretended that you were obliged by Oaths, and I am ſorry that at the ſame Time you forgot that of Allegiance: And, indeed, there is not a greater Sign of Hypocriſy, than partial Obedience. Had you any Reſpect to the Father of your Country, and your Mother the Church, you would have ſacrificed your pretended Scruples, as a Peace-Offering to the King. The beſt of us, I am ſure, have Reaſon to beg God and the King's Pardon; but you, as if his Majeſty reigned by Courteſy, would have a King under you, but none over you. You urged the Obſervance of your Statutes, of which, as it hath appeared, you have not been ſo conſtant obſervers. When your own Humour prompts you to a Diſpenſation, then you can readily embrace it; witneſs but that of being ſerved *per Maſculos*, by which great Scandals have come to this Society, by reaſon of Baſtards.

But when the King interpoſed, in whoſe Power alone it is to diſpenſe with them, then you preſently act according to ſuch Methods as theſe. None of theſe Pretences will eaſe you with wiſe and ſober Men.

This was the only Oppoſition his Majeſty in his Progreſs received: Wherever his Sacred Majeſty came, he worked a miraculous Converſion, except in *Oxford*; and ſo far ſatisfied every one with the Equity of his Proceedings, that none went away diſcontented from his Preſence, unleſs it was for this Reaſon, that they could not enjoy it any longer.

October the 20th, we came down, and upon opening our Commiſſion, I took care to repreſent to you the Heinouſneſs of your Offence, and to perſuade you to a ſerious Repentance; but all in vain.

For on *Saturday* Morning, we required you to admit and inſtall the Biſhop of *Oxford*; which all, except Three, refuſed. In the Afternoon Dr. *Hough*, having been deprived, and by us commanded to depart the College, came unto us without any Leave, but not without great Attendance; Circumſtances, I think, much unbefitting a Man pronounced Expelled, and there entered a Proteſtation againſt all that we had done, or hereafter ſhould do, as illegal, unjuſt, and null; which he delivered not in Writing, but by Word of Mouth, a Thing repugnant to the Nature of all Appeals, and, which was worſe, without the uſual *Salvo* to his Majeſty's Supream Power. When he had ſpoken it, there followed ſuch a tumultuous, ſeditious, and inſolent Hum, which if you yourſelves had not applauded, or at leaſt conſented to, it was impoſſible but that you would have diſcovered ſome of thoſe Mutineers. However, ſince his Carriage and Language gave Occaſion to it, it was thought fit that he only ſhould be obnoxious; and accordingly he was bound over.

On *Tueſday* we ourſelves cauſed the Biſhop of *Oxford* to be inſtalled by his Proxy; after which we propoſed to you, Whether, being nowinſtalled, you would ſubmit to him *licitis & honeſtis?* To which you gave an Anſwer under your Hands in the Affirmative. 1687. 3 Jac. II. You then alſo deſired us to repreſent your Caſe favourably to his Majeſty, giving all Aſſurance of your Loyalty and Obedience: But this Aſſurance of Submiſſion laſted not long; for on *Thurſday*, being required of us to ſubſcribe ſuch a Submiſſion to his Majeſty as we thought agreeable to your Duty, you required Time to conſult of it; and after Deliberation ſigned ſuch a Paper, which ſeemed rather to be a Proteſtation againſt your former Submiſſion, than an Acknowledgment of your Crime: Upon this we might juſtly, then, have proceeded to an Expulſion; but we thought fit, in Compaſſion to you, to take a Journey to *London*, and acquaint his Majeſty with your Diſobedience and ungrateful Behaviour. His Majeſty was extreamly amazed that his Clemency ſhould be deſpiſed; but yet, to your Comforts be it ſpoken, his Patience and Goodneſs extends as far as your Provocations can: But if you ſtill perſiſt in your Obſtinacy, thoſe that are too tall to ſtand, and too ſtubborn to bend, deſerve to be broken. And now I think I have ſaid enough to let you know, that the Fig-Leaves you have ſo artificially ſtitched together, are not ſufficient to cover your Nakedneſs. I wiſh to God you had the ſame Tenderneſs for your Concerns, as his Majeſty's Commiſſioners have for you; but if you ſtill perſiſt to oppoſe the Royal Power of the King, we, who are come to vindicate the Right and Honour of his Majeſty, reſolve to diſcharge our Conſciences and Duties to God and the King, without any Reſpect of Popularity; that is but the Paradiſe of Fools and Scorn of wiſe Men; and therefore, as for us, we have no more Regard to Peoples Diſlike, than what they dream. By Reaſon, therefore, of your late hypocritical Submiſſion, the Commiſſioners have thought fit, upon mature Conſideration, to draw up an Inſtrument which ſhall be read to you, to which if you ſhall immediately ſubſcribe, before you leave the Room, we ſhall leave you to his Majeſty's Pardon; and this we expect from you all, except Dr. *Thomas Smith* and Mr. *Charnock*, with whoſe Behaviour the King is ſo well ſatisfied, that he expect no more from them.

After which, a Form of Submiſſion was tendered to the Fellows, which all of them refuſed to ſubſcribe, except Dr. *Thomas Smith* and Mr. *Charnock*, and thereupon Sentence of Expulſion was pronounced againſt them by the Court.

In anſwer to which, one of the expelled Fellows, in the Name of the reſt, ſpoke to this Effect.

My LORDS,

" We profeſs all Duty to the King, and *The Proteſt of the Fellows.*
" Reſpect to your Lordſhips; but muſt beg
" Leave to declare, That we think ourſelves
" injured in your Lordſhips Proceedings, and
" therefore proteſt againſt them, and ſhall
" take all juſt and legal Ways to be relieved.

Soon after an Inſtrument was fixed on the College Gates, of the following Tenor.

By

1687. 3 Jac. II.

By his Majeſty's Commiſſioners of Eccleſiaſtical Cauſes, &c. particularly authorized and impowered to viſit St. Mary Magdalen *College, in the Univerſity of* Oxon.

The Sentence of Expulſion.

Whereas, in our Viſitation of the ſaid College, it appeareth unto us, that Dr. *Charles Aldworth*, Dr. *Alexander Pudſey*, Dr. *John Smith*, Dr. *Thomas Bailey*, Dr. *Thomas Stafford*, Mr. *Robert Almond*, Mr. *Manwaring Hammond*, Mr. *John Rogers*, Mr. *Richard Strickland*, Mr. *Henry Dobſon*, Mr. *James Bailey*, Mr. *John Davies*, Mr. *Francis Bagſhaw*, Mr. *James Fayrer*, Mr. *Joſeph Harwar*, Mr. *Thomas Bateman*, Mr. *George Hunt*, Mr. *William Cradock*, Mr. *John Gillman*, Mr. *George Fulham*, Mr. *Charles Pennyſton*, Mr. *Robert Hyde*, Mr. *John Terbury*, Mr. *Robert Holden*, and Mr. *Stephen Wilks*, Fellows of the ſame College, have been ſeverally guilty of Diſobedience to his Majeſty's Commands, and obſtinately contemned his Royal Authority, and do ſtill perſiſt in the ſame: We have thought fit, upon mature Conſideration thereof, to declare, pronounce, and decree, that the ſaid *Charles Aldworth*, &c. and every of them, be deprived and expelled from their reſpective Fellowſhips. Dated the 16th of *November*, 1687.

WHITEHALL, *December* 10.

His Majeſty's Commiſſioners for Cauſes Eccleſiaſtical, and for Viſiting all Cathedral and Collegiate Churches and Chappels, *&c.* met this Day, and taking into their Conſideration all that had paſſed in the Buſineſs of St. *Mary Magdalen*-College in *Oxford*, and the contemptuous and diſobedient Behaviour of Dr. *John Hough*, and ſeveral of the Fellows of that College, throughout the whole Proceeding, their Lordſhips declared, decreed, and pronounced, That Dr. *Hough*, Dr. *Charles Aldworth*, Dr. *Henry Fairfax*, Dr. *Alexander Pudſey*, Dr. *John Smith*, Dr. *Thomas Bailey*, Dr. *Thomas Stafford*, Mr. *Robert Almond*, Mr. *Manwaring Hammond*, Mr. *John Rogers*, Mr. *Richard Strickland*, Mr. *Henry Dobſon*, Mr. *James Bailey*, Mr. *John Davies*, Mr. *Francis Bagſhaw*, Mr. *James Fayrer*, Mr. *Joſeph Harwar*, Mr. *Thomas Bateman*, Mr. *George Hunt*, Mr. *William Cradock*, Mr. *John Gillman*, Mr. *George Fulham*, Mr. *Charles Pennyſton*, Mr. *Robert Hyde*, Mr. *Edward Terbury*, Mr. *Henry Holden*, and Mr. *Stephen Wilks*, ſhould be uncapable of receiving, or being admitted to, any Eccleſiaſtical Dignity, Benefice, or Promotion: And ſuch of them, who are not yet in Holy Orders, were adjudged incapable of receiving or being admitted into the ſame: And all Archbiſhops, Biſhops, and other Eccleſiaſtical Officers and Miniſters, were required to take Notice of the ſaid Sentence, and yield Obedience thereto.

1887. 3 Jac. II.

On the 17th of *January*, 1687, being the Day that the Thirty Demies of *Magdalen*-College, were, by Summons from the Biſhop of *Oxford*, their new Preſident, commanded to appear before him, and none appearing, Mr. *Charnock*, the new Vice-Preſident, ſtruck out of the Buttery-Book, the Names of Mr. ———, Mr. *Holt*, Mr. *Adams*, ſen. Mr. *Veſey*, and Mr. *Brabourn*, Maſters of Arts; Mr. *Hyde*, Mr. *Woodward*, Mr. *Watkins*, Mr. *Stacey*, Mr. *Sherwin*, and Mr. *Kenton*, Bachelers of Arts; and Mr. *Croſs*, Mr. *Buſh*, and Mr. *Wells*, Under Graduates.

Names of the Fellows and Students ſtruck out.

However, in the memorable Year 1688, when the King received Advice that the Prince of *Orange* was coming over, and that the Affections of his Subjects were generally alienated from him, by theſe and the like Arbitrary Proceedings, the Biſhop of *Winchester*, the Viſitor of *Magdalen*-College, was ordered to reſtore the excluded Fellows.

The Remarks on theſe Proceedings, will be found at the End of the Trial of the Seven Biſhops.

1688. 4 Jac. II.

The Trial of the ſeven Biſhops.

The Trial of the Moſt Reverend Father in God Dr. WILLIAM SANCROFT, Lord Archbiſhop of *Canterbury*; and of the Right Reverend Fathers in God Dr. WILLIAM LLOYD, Lord Biſhop of St. *Aſaph*; Dr. FRANCIS TURNER, Lord Biſhop of *Ely*; Dr. JOHN LAKE, Lord Biſhop of *Chicheſter*; Dr. THOMAS KENN, Lord Biſhop of *Bath* and *Wells*; Dr. THOMAS WHITE, Lord Biſhop of *Peterborough*; and Sir JONATHAN TRELAWNEY, Bart. Lord Biſhop of *Briſtol*, for a (pretended) Libel, before the Court of *King's-Bench*, in *Trinity* Term, *June* 15, 1688. 4 *Jac.* II.

1688. 4 Jac. II.

A ſhort ſtate of the Caſe.

KING *James* II. publiſhed a Declaration for Liberty of Conſcience, on the 27th of *April*, 1688. (in which was recited a former Declaration): And an Order of Council was made on the 4th of *May* following, commanding it to be read in the Time of Divine Service in all Churches and Chapels in the Cities of *London* and *Weſtminſter*, and within ten Miles thereof, on the 20th and 27th of *May* (being *Sundays*); and in all other Churches and Chapels in *England* on the 3d and 10th of *June*, which were likewiſe *Sundays*: And that the Biſhops ſhould cauſe the ſaid Declaration to be ſent to, and diſtributed in their reſpective Dioceſes, and order the ſame to be read by their Clergy.

The Biſhops and Clergy, about Town, aſſembled hereupon at the Archbiſhop's Palace at *Lambeth*, to adviſe what was proper to be done on this Occaſion: And after ſome Debate, the Archbiſhop, by the Advice of his Brethren that were preſent, wrote to all the Biſhops of his Province to come to Town, or ſend their Opinions of the Matter: And it being found that eighteen of the Biſhops, and the main Body of the Clergy, concurred in a Reſolution not to read the Declaration, his Grace the Archbiſhop, with Dr. *Lloyd*, and the other five Biſhops above-mentioned, drew up and ſigned the following Petition.

To the King's Moſt Excellent Majeſty;

The Biſhops Petition.

THE humble Petition of *William* Archbiſhop of *Canterbury*, and of divers of the Suffragan Biſhops of that Province (now preſent with him) in the Behalf of themſelves and others of their abſent Brethren, and of the inferior Clergy of their reſpective Dioceſes, humbly ſheweth,

That the great Averſeneſs they find in themſelves to the diſtributing and publiſhing in all their Churches Your Majeſty's late Declaration for Liberty of Conſcience, proceedeth neither from any Want of Duty and Obedience to your Majeſty, our Holy Mother the Church of *England* being both in her Principles, and in her conſtant Practice, unqueſtionably Loyal, and having (to her great Honour) been more than once publickly acknowledged to be ſo by Your Gracious Majeſty; nor yet from any Want of due Tenderneſs to Diſſenters, in relation to whom they are willing to come to ſuch a Temper as ſhall be thought fit when that Matter ſhall be conſidered and ſettled in Parliament and Convocation: But amongſt many other Conſiderations, from this eſpecially, becauſe that Declaration is founded upon ſuch a diſpenſing Power as hath been often declared illegal in Parliament, and particularly in the Years 1662, and 1672, and in the Beginning of your Majeſty's Reign; and is a Matter of ſo great Moment and Conſequence to the whole Nation both in Church and State, that *Your Petitioners cannot in Prudence, Honour, or Conſcience*, ſo far make themſelves Parties to it, as the Diſtribution of it all over the Nation, and the ſolemn Publication of it once and again, even in God's Houſe, and in the Time of his Divine Service, muſt amount to, in common and reaſonable Conſtruction.

Your Petitioners therefore moſt humbly and earneſtly beſeech Your Majeſty, that you will be graciouſly pleaſed not to inſiſt upon their diſtributing and reading Your Majeſty's ſaid Declaration.

And your Petitioners (as in Duty bound) ſhall ever pray, &c.

Committed to the Tower, by theſe Lords.

They are brought before the Court of King's-Bench.

On the 18th of *May*, two Days before the Declaration was to be read, the ſix Biſhops (the Archbiſhop being indiſpoſed) attended his Majeſty at *Whitehall* with their Petition; at which he appeared highly incenſed, and angrily told them, He had heard of it before, but did not believe it: He did not expect this from the Church of *England*, eſpecially from ſome of them: If he changed his Mind, they ſhould hear from him: If not, he expected his Commands ſhould be obeyed. To which the Biſhops replied, They reſigned themſelves to the Will of God, and then withdrew. The King finding his Declaration neglected, reſolved to proſecute the ſeven Biſhops,

They ſeverally except.

1688. 4 Jac. II. Bishops, whom he looked upon as the Occasion of it: And they were accordingly summoned to appear before the Council on the 8th of *June*, when these Prelates attending the Board, it was demanded of them, If they owned the Petition? To which they answered, As they stood there as Criminals, they hoped his Majesty would not take Advantage against them: But being pressed to own it by the Lord Chancellor *Jeffries*, the Archbishop at length confessed that it was written with his own Hand, and that the rest had signed it; and he hoped they had done nothing but what they could justify: Whereupon the Lord Chancellor demanded, If they would enter into Recognizances to appear in the Court of *King's Bench*, to answer this Misdemeanor? The Bishops answered, As they were Peers, they were not obliged to give Security on being charged with a Misdemeanor in the first Instance, and looked upon themselves to be bound in Duty to maintain the Rights of the Peerage, as well as the Rights of the Church. And *Jeffries* threatening to send them to the *Tower*, unless they withdrew their Petition, and obeyed the King's Declaration, they answered, *They were ready to go where-ever his Majesty pleased: That they hoped the King of Kings would be their Protector and Judge: They had acted according to Law and their own Consciences; and no Punishment should ever shake their Resolutions.* Whereupon a Warrant was drawn up to commit them to the *Tower* for framing and publishing a seditious Libel against his Majesty and his Government, as the Petition was called. Which Warrant was signed by the Lord Chancellor *Jeffries*, the Earl of *Sunderland*, President of the Council; the Lord *Arundel*, the Marquis of *Powis*, the Earls of *Mulgrave*, *Huntington*, *Peterborough*, *Craven*, *Murray*, *Middleton*, *Melfort* and *Castlemain*; the Lords *Dartmouth*, *Godolphin* and *Dover*, Sir *John Ernle*, Sir *Edward Herbert*, and Sir *Nicholas Butler*.

Summoned before the Council.

Committed to the Tower, by these Lords.

And as a Tumult was expected on the Commitment of the Bishops, they were ordered to be carried to the *Tower* by Water: However, the People came in Crowds to the *Thames*-side, applauding the Courage of the Bishops, and wishing them a happy Deliverance: And they were no sooner landed at the *Tower*, but the Officers and Soldiers of that Garrison fell upon their Knees, and begged the Blessing of those Right Reverend Fathers: Whereupon the King commanded some other Companies of Soldiers to march into the *Tower*, in whom he had more Confidence.

This short State of the Case seemed necessary to be premised, for the better understanding of the following Trial.

They are brought before the Court of King's-Bench.

On the first Day of *Trinity* Term, which fell on *Friday* the 15th of *June* this Year, the Court of *King's-Bench* being set, and all the four Judges upon the Bench, *viz.* The Lord Chief Justice (Sir *Robert Wright*), Mr. Justice *Holloway*, Mr. Justice *Powell*, and Mr. Justice *Allybone*.

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Mr. Attorney General, Sir *Thomas Powis*, moved the Court for an *Habeas Corpus*, returnable *immediate*, to bring up my Lords the Bishops; which being granted, Sir *Edward Hales*, the Lieutenant of the *Tower*, brought my Lord Archbishop, and the other six Bishops, into Court about Eleven o'Clock the same Day: And the Return being read, it appeared that their Lordships were committed to the *Tower* by Virtue of a Warrant under the Hands and Seals of *George* Lord *Jeffries*, Baron of *Wem*, Lord High Chancellor of *England*; *Robert* Earl of *Sunderland*, Lord President of the Council, and the rest of the Privy Council above-mentioned, *For contriving, making and publishing a seditious Libel in Writing, against his Majesty and the Government.*

The Return being filed, Mr. Attorney moved, That the Information he had preferred against his Grace, and the rest of my Lords the Bishops, might be read.

Whereupon Sir *Robert Sawyer*, of Counsel for my Lords the Bishops, moved that they might be discharged before any thing was read, because they were not legally committed. Mr. Sollicitor, Sir *William Williams*, said, in Behalf of the King, That this was an *Habeas Corpus* brought by his Majesty, and not by the Prisoners; and therefore they must see first what the King had to say to them.

Mr. Serjeant *Pemberton*, and Mr. *Finch*, two more of the Bishop's Counsel, still insisted that their Lordships ought to be discharged before the Information was read, 1. Because the Return said they were committed by such and such Lords of the Council, but not *in Council*; and those Lords had no Power (out of Council) to commit.

2. Because a Peer cannot be committed for a Misdemeanor, but ought to be served with the usual Process of a *Subpœna*.

Mr. *Pollexfen*, another of the Bishops Counsel, also urged, that my Lords the Bishops ought to be discharged before the Information was read: But it was ruled by the Court, 1. That every Commitment should be presumed to be pursuant to the Power of the Persons committing. And, 2. That the making a Seditious Libel was a Breach of the Peace, for which Security of the Peace might be required of them, notwithstanding their Privilege of Peerage: And thereupon the Information was ordered to be read.

Ruled, that the Bishops ought to give Security for their Appearance.

The Information set forth, That the King, out of his signal Clemency and gracious Intention towards his Subjects, by his Royal Prerogative on the 4th Day of *April*, in the 3d Year of his Reign, did publish his Royal Declaration, entitled, *His Majesty's Gracious Declaration to all his loving Subjects for Liberty of Conscience.* [Then the Declaration it self is inserted, the Purport whereof was] That it had always been his Majesty's Opinion, that Conscience ought not to be constrained, or People forced in Matters of meer Religion. That it was contrary to the Interest of Government, by spoiling Trade, depopulating Countries, and discouraging Strangers;

The Information.

1688. 4 Jac. II.

gers; and that it never obtained the End: That his Majeſty therefore had thought fit to iſſue forth this Declaration of Indulgence, making no doubt of the Concurrence of the two Houſes of Parliament, when they ſhould meet.

And firſt he declared, That he would protect and maintain the Clergy, and other Members of the Church of *England*, in the free Exerciſe of their Religion as by Law eſtabliſhed, and in the full Enjoyment of all their Poſſeſſions; but that the Execution of all Manner of Penal Laws for Nonconformity in Religion, ſhould be immediately ſuſpended: Provided that ſuch Nonconformiſts meet with their Doors open, and preach nothing that ſhould tend to the Diſturbance of the Government; and ſignify their Place of Meeting to ſome neighbouring Juſtice of Peace. And that his Majeſty might have the Benefit of the Service of all his Subjects, he further declared, That neither the Teſt, or the Oaths of Supremacy or Allegiance, ſhould be required to be taken or ſubſcribed by any Perſon, on their Admiſſion into Offices, for the future; and did grant a free Pardon to all thoſe who had committed any thing contrary to the ſaid Penal Laws: And he thought fit further to declare, That he would maintain all his Subjects in their Properties and Poſſeſſions, as well of Church and Abby-Lands, as in any other their Lands and Property whatſoever. and the Information further ſets forth, That on the 27th of *April*, in the 4th Year of his Majeſty's Reign, he publiſhed another Declaration, (which is recited in the Information) the Purport whereof was, That ever ſince his Majeſty had granted the aforeſaid Indulgence, he had made it his principal Care to ſee it obſerved without Diſtinction; which his Majeſty was encouraged to do by the Multitudes of Addreſſes he daily received from his Subjects of all Perſuaſions. That in purſuance of this great Work, he had been forced to make many Changes both of Civil and Military Officers, throughout his Dominions; not thinking any ought to be employed in his Service, who would not contribute towards the Peace and Greatneſs of his Country: And he conjured all his Subjects to lay aſide all private Animoſities and groundleſs Jealouſies, and to chuſe ſuch Members of Parliament, as might do their Part, to finiſh what he had begun, being reſolved to call a Parliament, which ſhould meet the following *November* at fartheſt.

And the Information further ſets forth, That on the 4th of *May*, 1688, it was ordered by his Majeſty in Council, That the ſaid laſt mentioned Declaration, bearing Date the 27th of *April* laſt, (in which the firſt is recited) ſhould be read in the uſual Time of Divine Service, on the 20th and the 27th of the ſaid Month of *May*, in all Churches and Chapels within the Cities of *London* and *Weſtminſter* and ten Miles thereof; and upon the 3d and 10th of *June* then next, in all other Churches and Chapels throughout the Kingdom; and that the Right Reverend the Biſhops ſhould cauſe the ſaid Declaration to be ſent and diſtributed throughout their ſeveral Dioceſes, to be read accordingly: And that the ſaid Archbiſhops and Biſhops, the 18th Day of *May*, in the ſaid 4th Year of his Majeſty's Reign, having conſpired and conſulted among themſelves to diminiſh the King's Power and Prerogative, did falſly, unlawfully, maliciouſly, and ſcandalouſly, make, compoſe, and write, a falſe, ſcandalous, malicious, and ſeditious Libel, under Pretence of a Petition, ſtiled, *The humble Petition*, &c. (which was alſo recited in the Information.)

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Which ſaid Libel, the ſaid Archbiſhop and Biſhops, having reſpectively ſubſcribed, did, on the ſaid 18th Day of *May*, in the ſaid 4th Year of the King, cauſe to be publiſhed in the Preſence of our ſaid Lord the King, in manifeſt Contempt of his Majeſty and of the Laws of this Kingdom, to the evil Example of others, and againſt the King's Peace, &c. Whereupon the ſaid Attorney General, in behalf of the King, prays Advice of the Court and Proceſs of Law, to be made out againſt the ſaid Archbiſhop and Biſhops, to anſwer the ſaid Lord the King, concerning the Premiſes, &c.

Signed { *Thomas Powis*, *William Williams*.

(*The Attorney and Sol. Gen.*)

The Biſhops move for Time to plead.

After the reading the Information, Mr. Attorney moved that my Lords the Biſhops might plead to it immediately; which was oppoſed by the Biſhops Counſel, and Time deſired to put in their Plea till the next *Michaelmas* Term.

but told, they muſt plead immediately.

But the King's Counſel inſiſting, That where a Man appeared upon a Recognizance, or was in Cuſtody, or appeared in *propria Perſona*, as a priviledged Perſon, he ought to plead at the firſt Inſtance: And Sir *Samuel Aſtry*, and the reſt of the old Officers of the Court affirming, That this was the conſtant Practice, it was ruled, That my Lords the Biſhops ſhould plead immediately, which Mr. Sollicitor obſerved, was no Hardſhip; for it was agreed on all hands, that in caſe of Life and Death, a Man muſt plead preſently; and *a fortiori*, he held it was ſo in the Caſe of a Miſdemeanor; for if a Perſon was not to be allowed Time when he pleaded for his Life, there was much leſs Reaſon he ſhould have Time to anſwer a Treſpaſs; (though where one appears upon a Summons indeed, according to the Practice of the Court, he has an Imparlance of courſe.)

The Biſhops offer a Plea in Paper.

This Point being ruled againſt the Biſhops, his Grace the Archbiſhop ſtood up, and offering a Paper to the Court, he ſaid,

My Lords,

" I tender here a ſhort Plea in Behalf of " myſelf and my Brethren the other De- " fendants; and I humbly deſire the Court " will admit of this Plea.

And the Chief Juſtice ſaying, It ſhould have been in Parliament; his Grace replyed, We will ſtand by it, my Lord; it is ſubſcribed by our Counſel, and we pray it may be admitted by the Court.

Then

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Then a Tranſlation of the Plea was read, which was as follows:

" And the aforeſaid *William* Archbiſhop of " *Canterbury*, *William* Biſhop of St. *Aſaph*, " *&c.* being preſent in Court in their own " Perſons, pray *Oyer* of the Information a- " foreſaid; and it is read to them: Which " being read and heard by them the ſaid " Archbiſhop and Biſhops, the ſaid Arch- " biſhop and Biſhops ſay, That they are " Peers of this Kingdom of *England*, and " Lords of Parliament; and each of them is " one of the Peers of this Kingdom of *Eng-* " *land*, and a Lord of the Parliament; and " that they being (as before is manifeſt) " Peers of this Kingdom of *England*, and " Lords of Parliament, ought not to be com- " pelled to anſwer inſtantly for the Miſde- " meanor aforeſaid, mentioned in the ſaid " Information exhibited here againſt them " in this Court; but they ought to be re- " quired to appear by due Proceſs in Law " iſſuing out of this Court here, upon the In- " formation aforeſaid, and upon their Ap- " pearance to have a Copy of the ſaid Informa- " tion exhibited againſt them, and reaſon- " able Time to imparl thereupon, and to ad- " viſe with Counſel learned in the Law con- " cerning their Defence in that Behalf, be- " fore they be compelled to anſwer the ſaid " Information. Whereupon, for that the " ſaid Archbiſhop and Biſhops were impri- " ſoned, and by Writ of our Lord the King " of *Habeas Corpus*, directed to the Lieute- " nant of the *Tower* of *London*, are now " brought here in Cuſtody without any Pro- " ceſs upon the Information aforeſaid iſſued " againſt them, and without having any " Copy of the ſaid Information, or any Time " given them to imparl or be adviſed: They " pray Judgment, and the Privilege of Peers " of this Kingdom, in this Caſe to be allowed " them; and that they the ſaid Archbiſhop " and Biſhops may not be compelled inſtant- " ly to anſwer the Information aforeſaid, *&c.*

Rob. Sawyer,
Hen. Finch,
Hen. Pollexfen.

Upon reading this Plea, Mr. Attorney ſaid, This was ſuch an unfair Way of Proceeding as would not be endured in an ordinary Caſe: And he hoped ſuch a Plea would not have ſo much Countenance as to be received in Court.

Mr. Serjeant *Pemberton* anſwered, They put in that Plea, and were ready to abide by it: That it was according to the Courſe of the Court, and ought to be received: That it was no ſuch great Diſreſpect to the Court to put the ſame Matter into a Plea, which had been deſired upon a Motion. But the Chief Juſtice replied, The Biſhops Counſel had not dealt ingenuouſly with the Court after four Hours Debate, and the Opinion of the Court delivered, to come and ſum up all the Arguments in ſuch a Plea as this; and ſo put them upon debating the Matter over again: And he thought the Court was not bound to receive this Plea, but might reject it, and oblige the Lords the Biſhops to plead over. And Mr. Juſtice *Holloway* and *Allybone* being of the ſame Opinion, (and only Juſtice *Powel* for receiving the Plea) it was agreed: After which the Biſhops ſeverally pleaded, *Not Guilty*. And the Trial was ordered to be at the Bar of the Court of *King's-Bench* that Day Fortnight. It was alſo ordered, that forty-eight Gentlemen ſhould be returned on the Pannel, and a Jury ſtruck in the Preſence of the Attornies and Sollicitors on both Sides: And the Biſhops in the mean time were admitted to Bail, his Grace of *Canterbury* entering into a Recognizance of 200 *l.* and the reſt of the Biſhops in 100 *l.* a-piece, to appear in Court that Day Fortnight; and ſo from Day to Day, till they ſhould be diſcharged. And the King's Counſel did not inſiſt on their giving any Security but their own Recognizances.

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The Plea being rejected, the Biſhops plead, Not Guilty.

They are bailed.

The Court ſitting again on *Friday* the 29th of *June*, and the Biſhops appearing, the Jury were called, conſiſting of the following Gentlemen, *viz.*

Sir *Roger Langley*, Bart. *William Avery*, Eſq;
Sir *William Hill*, Kt. *Thomas Auſten*, Eſq;
Roger Jennings, Eſq; *Nicholas Grice*, Eſq;
Thomas Harriot, Eſq; *Michael Arnold*, Eſq;
Jeof. Nightingale, Eſq; *Thomas Done*, Eſq; &
William Withers, Eſq; *Rich. Shoreditch*, Eſq;

The Jury being ſworn, the Information was read (which ſee above.) Then Mr. *Wright* opened the Information, and Mr. Attorney General ſpoke as follows on the Occaſion.

Mr. Attorney opens the Cauſe.

Mr. *Att. Gen.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, you have heard this Information read by the Clerk, and it has been likewiſe opened to you at the Bar; but before we go to our Evidence, perhaps it may not be amiſs for us, that are of Counſel for the King, now in the beginning of this Cauſe, to ſettle the Queſtion right before you, as well to tell you what my Lords the Biſhops are not proſecuted for, as what they are. Firſt, I am to tell you, and I believe you cannot your ſelves but obſerve, that my Lords are not proſecuted as Biſhops, nor much leſs are they proſecuted for any Point or Matter of Religion; but they are proſecuted as Subjects of this Kingdom, and only for a Temporal Crime, as thoſe that have injured and affronted the King to his very Face; for it is ſaid to be done in his own Preſence. In the next place, they are not proſecuted for any Non-feaſance, or not doing, or omitting to do any thing, but as they are Actors for cenſuring of his Majeſty and his Government, and for giving their Opinion in Matters wholly relating to Law and Government. And I cannot omit here to take Notice, that there is not any one thing which the Law is more jealous of, or does more carefully provide for the Prevention and Puniſhment of, than all Accuſations and Arraignments of the Government: No Man is allowed to accuſe even the moſt in-

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ferior Magiſtrate of any Misbehaviour in his Office, unleſs it be in a legal Courſe, though the Fact is true; no Man may ſay of a Juſtice of Peace to his Face, that he is unjuſt in his Office; no Man may come to a Judge, either by Word or Petition, and tell him, You have given an unjuſt, or an ill Judgment, and I will not obey it; it is againſt the Rules and Law of the Kingdom, or the like; no Man may ſay of the great Men of the Nation, much leſs of the great Officers of the Kingdom, that they do act unreaſonably, or unjuſtly, or the like; leaſt of all may any Man ſay any ſuch Thing of the King; for theſe Matters tend to poſſeſs the People, that the Government is ill adminiſtered, and the Conſequence of that is, to ſet them upon deſiring a Reformation, and what that tends to, and will end in, we have all had a ſad and too dear bought Experience; the laſt Age will abundantly ſatisfy us whither ſuch a Thing does tend: Men are to take their proper Remedies for Redreſs of any Grievances they lie under; and the Law has provided ſufficiently for that. Theſe Things are ſo very well known to all Men of the Law, and indeed to all the People of *England* of any Underſtanding, that I need not, nor will not, ſtand any longer upon it, but come to the Matter that is now before you Gentlemen to be tried. The Fact that we have laid, we muſt prove, rather to keep to the Formality of a Trial, than to pretend to inform you, or tell you what you do not know. It is publickly notorious to the whole World; but becauſe we muſt go on in the regular Methods of Law, we ſhall prove the Facts in the Order they are laid in the Information. Firſt, we take Notice, that his Majeſty, of his great Clemency and Goodneſs to his People, and out of his Deſire that all his Subjects might live eaſily under him (of which, I think, never Prince gave greater or more plain Evidence of his Intentions that way) the 4th of *April*, 1687. He did iſſue forth his Royal Declaration for Liberty of Conſcience; this Matter, without all Queſtion, was welcome to all his People that ſtood in Need of it; and thoſe that did not, could not but ſay the Thing, in the Nature of it, was very Juſt and Gracious; but preſently it muſt be ſurmiſed, That the King was not in earneſt, and would not, nor could not, make good his Promiſe. But, to take away all Surmiſes, his Majeſty was pleaſed, by his Declaration of the 27th of *April* laſt, not only to repeat his former Declaration, but likewiſe to renew his former Promiſes to his People, and to aſſure them, that he ſtill was, and yet is, of the ſame Opinion, that he had at firſt declared himſelf to be of.

Nay, we further ſhew you, that to the end that this Thing might be known to all his People, even to the meaneſt Men, who, it may be, were not willing, or able, to buy the Declaration; and that the King himſelf might be under higher Obligations, if it were poſſible, than his own Word, he was deſirous it ſhould be repeated in the Churches, and read in that Sacred Place, that all his People might hear what he had promiſed, and given his own Sacred Word for; and he himſelf might be under that ſolemn Tie and Obligation to keep his Word, by remembering, that his Promiſes had, by his own Command, been publiſhed in the Time of Divine Service, in the Houſe of God; and thereupon was the Order of Council made, that has been likewiſe read to you, which does direct, That it ſhould be read in all the Churches and Chapels in the Kingdom; and you have heard, and we ſhall prove, what a Return his Majeſty has had for this Grace and Kindneſs of his: You will find, when we come to read that which they call a Petition, all their Thanks his Majeſty had for his Favour and Goodneſs to his People, it is only hard Words and a heavy Accuſation, ſuch as a private Perſon would be able to bear; I will not aggravate the Matter, but only ſay thus much, That his Majeſty, who was always a Prince of as great Clemency as ever this Kingdom had, and who was repreſented, for all that, as a Prince of the greateſt Cruelty before his Acceſſion to the Crown by his Enemies, is now accuſed by his Friends for this Effect of his Mercy. My Lord, and Gentlemen of the Jury, his Majeſty reſented this ill Uſage ſo far, that he has ordered and thought fit to have a publick Vindication of his Honour in this Matter, by this Trial; and we ſhall go on to our Proofs, and we do not doubt, but you will do his Majeſty (as you do all other Perſons) Right.

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Then Proof was made of printing the two Declarations for Liberty of Conſcience, by the King's Order; and the Order of Council for reading the laſt Declaration, was proved. *The Biſhops Counſel object a Similitude of Hands is no Evidence.*

The Petition ſigned by the Biſhops alſo was produced in Court; and Sir *John Nicholas* depoſed, That he had it from the King's own Hand.

Mr. Attorney. I ſuppoſe my Lords the Biſhops will not put us to prove it; they will own their Hands.

Lord Chief Juſtice. Yes, Mr. Attorney, their Counſel will put you to prove it. I perceive your beſt way is to ask nothing of them.

Then Sir *Thomas Exton* was ſworn, and depoſed, that he believed the Body of the Petition to be the Archbiſhop's Hand-writing, as alſo the Archbiſhop's Name which was ſubſcribed to it.

Mr. *Brooks* depoſed, That he knew the Archbiſhop's Hand; and he believed the Name ſubſcribed to the Petition, was his Hand, as alſo the Petition itſelf: That he had alſo ſeen the Biſhop of St. *Aſaph*'s Hand-writing, and believed the Name ſubſcribed to the Petition, was his Hand: And he had ſeen a Letter from the Biſhop of *Ely* to the Biſhop of *Oxford*, and believed the Name ſubſcribed, to be the Biſhop of *Ely*'s Hand.

Mr. *Chetwood* depoſed, That he had formerly ſeen a Hand, ſaid to be the Biſhop of *Ely*'s, and he believed the Name ſigned to the Petition was his Hand.

Mr. *Middleton* depoſed, He had ſeen both the Archbiſhop's, and the Biſhop of *Ely*'s Hand-Writing; and believed the Names ſubſcribed to be theirs.

Mr.

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Mr. *Clavel* depoſed, That he knew the Biſhop of *Peterborough*'s Hand, and believed this to the Petition to be his.

Mr. *James* depoſed, That he had ſeen the Biſhop of *Briſtol* write ſeveral Times, and he believed the Hand to the Petition to be his.

Mr. *Powel* depoſed, That the Name ſubſcribed to the Petition, was like the Biſhop of *Chicheſter*'s Hand, *he believed.*

Mr. Sollicitor ſaid, This was not to be endured; there would be an End of all Teſtimony, if Witneſſes did not anſwer fairly the Queſtions they were asked.

Mr. Attorney ſaid, They had given Evidence ſufficient to have the Petition read, and deſired it might be read.

The Biſhops Counſel' object a Similitude of Hands is no Evidence.

Mr. Serjeant *Levinz*, We pray it may not be read till they prove it better, for they have only given Proof by Compariſon of Hands, which in Criminal Matters ought not to be received; and even that Compariſon is proved in ſuch an uncertain Manner, that it can be no Evidence to charge us.

Mr. Serjeant *Pemberton.* My Lord, in every petty Cauſe, where it depends upon Compariſon of Hands, they uſe to bring ſome of the Parties Hand-writing, and compare it in Court with what is endeavoured to be proved, that the Jury may compare them together and judge of the Likeneſs.

Lord Chief Juſtice. I take it, that the Witneſs himſelf is judge of the Compariſon; for if he does know the Parties Hand, and a Paper be offered him to prove it, he is to compare it in his own Mind.

Mr. Serjeant *Pemberton.* It was never admitted to be ſo, that I know of.

Mr. Sollicitor. You may remember ſeveral Caſes, and particularly *Sidney*'s.

Mr. *Pollexfen.* As to *Sidney*'s Caſe, that was in Treaſon; now in Treaſon there is always other Evidence brought, and this comes in but to ſtrengthen the other; but in this Caſe, it is the ſingle Evidence; there is nothing more for ought appears, but whether another believes this to be their Hands: Now, ſhall any one be condemned for what another *believes*, without other Proof?

Mr. Sollicitor. They ſay, proving of Similitude of Hands is no Evidence. When Witneſſes are dead, is it not the common Practice to produce Witneſſes to prove ſuch Men are dead, whoſe Names are ſet as Witneſſes to Deeds; and then ſwear they believe it to be the Hand-writing of thoſe Witneſſes?

Mr. *Finch.* The Evidence they have given of the Biſhops writing this Paper, they have laid to be done in *Middleſex*; and this being local, they muſt prove it to be written in *Middleſex*, where they have laid it, or they fail in their Proof. If they have given Proof of the Hand-writing, there is no Proof where that Hand was written; and therefore they are not yet got ſo far as to have it read againſt my Lords.

The Chief Juſtice and Mr. Juſtice *Allybone* were of Opinion, that there was Proof enough to have the Petition read; but Mr. Juſtice *Holloway* and Mr. Juſtice *Powel* being of another Opinion, the Chief Juſtice directed the King's Counſel to go on to ſome other Proof. Whereupon Mr. Sollicitor ſaid, They would prove the Confeſſions of the Biſhops; which he hoped would be believed by all Mankind.

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The Evidence of the Clerks of the Council, &c.

Then Mr. *Blathwayte* was ſworn, and depoſed, That on the 18th of this Inſtant *June*, my Lord Archbiſhop acknowledged his Hand to the Petition, (before the Council); and the reſt of the Biſhops, whoſe Hands were ſubſcribed to it, did then alſo reſpectively acknowledge, That it was ſubſcribed by them.

Mr. Serjeant *Pemberton.* What did my Lords the Biſhops ſay at the Time of their appearing in Council concerning the King's Pleaſure, Whether they ſhould anſwer or not?

Mr. *Blathwayte.* The firſt Time my Lords the Biſhops came into the Council, they anſwered, They humbly hoped, as they ſtood there as Criminals, his Majeſty would not take Advantage againſt them; however they would obey his Majeſty's Commands, and thereupon they were commanded to withdraw. The ſecond Time, as near as I can remember, they ſaid the ſame.

Sir *Robert Sawyer.* Were they asked, whether they publiſhed it?

Mr. *Blathwayte.* I think they were, and they denied it.

Mr. Serjeant *Pemberton.* When they came in the ſecond Time, did they deſire to know, If it were his Majeſty's Command they ſhould own it?

Lord Chief Juſtice. That I muſt not permit you to ask, Brother.

Mr. Attorney. I oppoſe the asking this Queſtion, unleſs they tell us what Uſe they would make of it.

Mr. Serjeant *Pemberton.* We ſhall make this Uſe of our Queſtion; if they anſwered under a Promiſe from his Majeſty, that it ſhould not be given in Evidence againſt them, I hope they ſhall not take Advantage of it.

Mr. Sollicitor. That is a very unmannerly Queſtion; this is to put ſomething upon the King, which I dare hardly name; and if they will be ſo preſſing, I deſire for the King that the Queſtion may be ſo entered.

Mr. Serjeant *Pemberton.* Record what you will; I am not afraid of you, Mr. Sollicitor.

Mr. Attorney. Mr. *Blathwayte*, anſwer, Whether there was any Promiſe made to my Lords the Biſhops from the King?

Mr. *Blathwayte.* There was none made; it was the third Time they came in that they owned it. My Lord Chancellor required them to anſwer, Whether they owned that Paper or no? and they, having prayed the King that no Advantage ſhould be taken againſt them for what they ſhould ſay, owned it: And his Grace the Archbiſhop ſaid, as to publiſhing it, That it was written with his own Hand, and that he had not made uſe of his Clerk.

Mr. Attorney. Did the King make any Promiſe or Declaration, that no Advantage ſhould be taken, or Uſe made of it?

Mr. *Blathwayte.* The King did not.

Then

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Then Mr. Sollicitor desired the Petition might be read; but the Bishop's Counsel answered, That the Writing and Contriving must be proved to be in *Middlesex*, for all was local, and the Party was to be acquitted, if it was not proved to be done in the County where it was laid.

The Chief Justice said, It was too soon to make these Objections, and that the Paper ought to be read.

The Bishops Counsel answered, If the Objection was saved to them, they should not oppose the Reading of it.

Then the Petition was read, and the Jury viewed it themselves.

Mr. Attorney. We shall leave our Evidence here, and hear what they can object to it.

Lord Chief Justice. What say you for the Defendants?

The Bishops Counsel proceed in their Defence.

Mr. *Finch.* My Lord, in short, we say, that hitherto they have totally failed, for they have not proved any Fact done by us in *Middlesex*; nor have they proved any Publication at all.

Lord Chief Justice. You hear that Mr. *Blathwayte* says, They owned it in *Middlesex.*

Mr. *Finch.* That is not a Publication sure, or any Evidence where it was done.

Mr. Serjeant *Levinz.* My Lord, in the first Place, we insist upon it, there is no Proof of the Fact being done in the County of *Middlesex*; and, in the next Place, this Information and Petition do not agree; for they set forth in their Information, *That my Lords the Bishops, under Pretence of a Petition, did make a Libel*, and have set forth no Petition at all; the Petitionary Part is omitted.

Sir *Robert Sawyer.* The Truth of it is, this Information has made a very deformed Thing of it; has left it neither Head or Tail: They stile it a Petition, but it is without any Direction to any body, and without any Prayer, for any Thing appears: There may be more in the Paper, than in the Information: If all were in, one Part might explain another.

Mr. Sollicitor. I wonder to hear that Objection from Sir *Robert Sawyer*, who has exhibited so many Informations for Libels in Pieces taken out of Books.

Mr. Attorney. Is there any Thing more frequent than only to recite the material Part, without setting forth the whole Book. They tell us we have set forth a Petition; we say no such Thing: We say in the Information, you composed a certain Libel, *pretensu petitionis*; in which are contained such and such Things.

Mr. Sollicitor. Take the Information as we have laid it, and I believe there are twenty Precedents of late Days; so was the Information against *Baxter*, so was the Information against *Johnson*, against Dr. *Eades*, and against Sir *Samuel Barnardiston*: They are all in this Form, *sic continetur*; but they say, we do not set out the Petition. We say, it is a Libel; and it is not the Name we rely on, but there is such a Libel, so we in our Information call it: If it be not a Libel, then are they very innocent; but if it be as we say, then it is not the Speaking ill Things in the Body of a Petition, and then giving it a good Title, and concluding it with a good Prayer, will sweeten this Crime, nor alter or alleviate it at all: We say a Libel is made *pretensu petitionis*, call it what you will; and that these Things are a Libel upon the King and Government. 1688 4 Jac. II.

As to the other Objection that is made, That here is no Evidence of a Publication; my Lord, I take it to be a Publication in itself: Is it possible for a Man to write a Libel, to set his Name, and part with it, and it shall come to the King's Hands, and this not to be deemed a Publication?

Attorney General. They bid us make out where this Libel was written or composed: Put the Case, a Man is found in *Middlesex* with a Treasonable Paper in his Pocket, and the Man is indicted here in *Middlesex*, for framing and composing such a Treasonable Libel, shall he be admitted to say, Pray prove where I made and composed it? For though you found it in my Pocket, yet I might do it in the County of *York*. This had been a very good Defence for Mr. *Sidney*, who was indicted, convicted, and attainted, for a Treasonable Paper, found in his Study, if this Doctrine were true; but then the King would be in a very woful Case. Here is a Paper that is found in the County of *Middlesex*, and this is there owned by you to be written and subscribed by you. Pray do you prove that it was written elsewhere?

Serjeant *Pemberton.* We will do it, for once: We will prove that my Lord Archbishop was not out of *Lambeth*-House in two Months before the Petition was delivered.

Then Mr. Nicholls *was sworn.*

He deposed, That his Grace of *Canterbury* did not stir out of *Lambeth* from *Michaelmas* last, till the Time he was before the Council.

Mr. *Finch.* This is *ex abundanti*; for in Point of Law, it is incumbent upon them to prove where it was done: And as to the 2d Part, the Publication, there is not a Tittle of Proof offered, but only their owning their Hands upon their Examination at the Council; and no Man did ever yet think, that the answering a Question and owning a Paper at the Council-Table, upon a Question put by the King himself, was a Publication of a Libel.

Sollicitor General. If the Paper be Libellous, wherever it is found, that is a Publication. These Gentlemen fancy, that unless there was a publick Delivery of this Paper abroad, nothing can be a Publication: But I rely upon it, their setting their Names to it made it their Paper, and wherever it went, that was a Publication of it: There is the Case of *Williams*, made use of by Mr. *Finch* in *Sidney*'s Trial, who wrote a Treasonable Letter, sealed it up, and sent it to the King: And there is Sir *Baptist Hicks*'s Case, and my Lady *Hatton*'s; there was only a Letter sealed up and delivered to the Party.

Mr.

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Mr. Recorder. Suppoſe a Man write a ſcandalous Letter from *London*, to a Judge at *Exeter*, and ſends it by the Poſt, and the Letter is received from the Poſt at *Exeter*, and there opened; would any Man make a Queſtion, Whether the Gentleman that ſent the Letter, may not be indicted and proſecuted for a Libel at *Exeter*, where the Libel was received?

Juſtice *Powel.* There is no Queſtion of that; but that comes not Home to our Caſe.

Sol. Gen. The Publication, we ſay, was here in *Middleſex*; and of that there is a clear Evidence, becauſe it was found there, and came from the King's Hand, to whom it was directed; and it could not come to the King's Hand out of their Cuſtody, without their Conſent.

Serjeant *Levinz.* My Lord, the Caſes that have been cited are all Law, but not one Tittle to this Purpoſe. In Sir *Baptiſt Hicks*'s Caſe, and *Williams*'s Caſe, it was proved, they all ſent them to the Places whither they were directed; but is there a Tittle of Proof that the Biſhops ſent it here? And for *Sidney*'s Caſe, there was Treaſon in the very Libel and Book that he made; and he was not indicted for Publiſhing, but for Treaſon in the Place where it was found, becauſe it was found in his Poſſeſſion: But was this ever in my Lord Archbiſhop's Poſſeſſion in *Middleſex*, or the reſt of the Biſhops, and were they publiſhing of it? If it had, then it had been their Act clearly: But that is the Thing wherein they are defective, that they do not prove that my Lords the Biſhops ſent or brought it here; but upon the Queſtion asked them by the King, they acknowledged it to be their Hands: So that there is no Proof of a Fact done here, but an Acknowledgment of a Fact done, nobody knows where.

Mr. *Pollexfen.* It cannot be a Crime to anſwer a Queſtion put by Authority; for it is the Duty of all Men to anſwer, when examined by a lawful Authority. If a Man comes before a Magiſtrate, and confeſſes any Thing, that indeed is Evidence, but it is not a Crime; for there is a great deal of Difference between Evidence and the Crime; but that this ſhould be both an Evidence and a Crime too, is a very ſtrange Conſtruction; and for the other Part, the writing it (I ſuppoſe) the Court is ſatisfied it was in another County.

Sir *George Treby.* The Evidence they have offered to prove the Publiſhing it, is a Confeſſion; this Confeſſion is teſtified by Mr. *Blathwayte*, who ſays, The Biſhops were asked at the Council, Whether they did ſubſcribe and publiſh this Paper? and that their Anſwer was, That they did *ſubſcribe*, but not *publiſh* it. Now a Confeſſion muſt be taken together, and muſt be admitted to be entirely true by them that produce it: They ſhall never be allowed to take out and uſe one Piece, and wave the reſt: So that the King's Counſel have plainly proved that the Biſhops did not publiſh this Paper; and yet this is the only Evidence upon which they would infer that they did publiſh it.

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L. C. J. It lies upon the King's Counſel to prove that my Lords the Biſhops did cauſe it to be publiſhed; for their owning their Hands does not amount to a Publication.

Further Evidence.

Then the Clerks of the Council were called in again; namely, Mr. *Blathwayte*, Mr. *Bridgman*, Sir *John Nicholas*, and Mr. *Pepys*; and it was demanded of them, Whether the Queſtion put to the Biſhops at the Council Board was, *Whether this was the Paper they delivered to the King?* Or, *Whether thoſe were their Hands that were to it?*

They all anſwered, That they owned their Hands; but they could none of them remember, that the Biſhops ſaid, That was the Paper they delivered to the King: *At which there was a great Shout.* Mr. Sollicitor ſaid, *Here's wonderful great Rejoicing that Truth cannot prevail.*

The Chief Juſtice beginning to direct the Jury, Mr. *Finch* interrupted his Lordſhip, and demanded, Whether this was Evidence or not? For if it was admitted to be Evidence, they had other Matter to offer in Anſwer to that Evidence, and in their own Defence.

The Chief Juſtice anſwered; If they had more to offer, Why did they conclude, and let him begin to direct the Jury? But ſince they ſaid, they had other Matter to offer, the Court would hear it.

Here Serjeant Levinz, *perceiving that the King's Counſel had ſent away for other Evidence, deſired his Lordſhip would go on with his Directions.*

But Mr. Sollicitor ſaid, he was glad the Biſhop's Counſel had given this Interruption; becauſe they ſhould now be able to clear this Point. There was a Fatality, he obſerved, in ſome Cauſes, and particularly in this: They muſt beg the Patience of the Court a little while; for they had Notice a Perſon of very great Quality was coming, that would make it appear, the Biſhops made their Addreſſes to him, that they might deliver the Petition to the King.

The Court ſtay for a Witneſs.

There being a conſiderable Pauſe, which the Biſhop's Counſel were uneaſy at, Oath was made, that Mr. *Graham* went for my Lord *Sunderland*, and he was coming.

Lord Sunderland's Evidence.

The Lord *Sunderland* appearing ſome Time afterwards, was ſworn, and depoſed, That before the Biſhops appeared in Council, the Biſhop of St. *Aſaph* and *Chicheſter* came to his Office (the Secretary's), and told him, they came in the Name of the Archbiſhop, and four more of their Brethren, *viz.* the Biſhops of *Ely*, *Bath* and *Wells*, *Briſtol*, and *Peterborough*, with a Petition to deliver the King, if he would give them Leave; and deſired to know of him, which was the beſt Way to do it; and he anſwered, he would know the King's Pleaſure, and bring them Word. That they offered him their Petition to read; but he would not read it, and went immediately to his Majeſty, and acquainted him with it: That the King commanded him to let them know, they might come when they would; which he acquainted them with, and they went for their Brethren, and attended his

1688. 4 Jac. II. Majeſty with their Petition in about an Hours time; but he was not in the Room when it was delivered to the King.

L. C. J. Truly there was a great Preſumption before, but there is a greater now; and I think I ſhall leave it with ſome Effect to the Jury. I cannot ſee but here is enough to put the Proof upon you: I think this is ſufficient Evidence of the Publication.

Mr. *Pollexfen.* The Archbiſhop was not there; and ſo there is no Evidence againſt him: And for the other ſix Lords, my Lord Preſident *(Sunderland)* does not ſay, That this is the Petition that they ſaid they had to deliver to the King; nor did he ſee them deliver it.

Mr. *Attorney.* Then we leave it fairly to the Jury on this Fact.

Mr. *Pollexfen.* If ſo, then we deſire to be heard in our Defence.

Sir *Robert Sawyer.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, you have heard this Charge which Mr. *Attorney* has been pleaſed to make againſt my Lords the Biſhops, and that is this: That they did conſpire to diminiſh the Royal Authority, and Regal Prerogative, Power, and Government of the King, and to avoid the Order of Council; and in Proſecution of this, they did falſely, maliciouſly, and ſeditiouſly, make a Libel againſt the King, under Pretence of a Petition, and did publiſh the ſame in the King's Preſence.

This, Gentlemen, is a very heinous and heavy Charge; but you ſee how ſhort their Evidence is: The Evidence they bring forth is only, that my Lords the Biſhops preſented the Paper to the King in the moſt private and humble manner they could; that which they have been ſo many Hours a proving, and which they cry up to be as ſtrong an Evidence as ever was given, proves it to be the fartheſt from Sedition in the doing of it, that can be; and you ſee what it is, it is a Petition to be relieved againſt an Order of Council, which they conceive they were aggrieved by: They indeed do not deal fairly with the Court, nor with us, in that they do not ſet it forth that it was a Petition.

L. C. J. That was over-ruled before.

Sir *Rob. Sawyer.* I do not inſiſt upon it now, ſo much as an Exception to the Information, as I do to the Evidence: They ſet this forth to be a ſcandalous Matter; but it only contains their Reaſons, whereby they would ſatisfy his Majeſty, why they cannot comply in a Concurrence with his Majeſty's Pleaſure; and therefore they humbly beſeech the King, and beg and requeſt him (as the Words of it are) that his Majeſty would be pleaſed not to inſiſt upon their diſtributing and reading of this Declaration; ſo the Petitioners on behalf of themſelves, and the whole Clergy of *England*, beg of the King that he would pleaſe not to inſiſt upon it.

Gentlemen, you may obſerve it, that there is nothing in this Petition that contains any Thing of Sedition in it, and it would be ſtrange this Petition ſhould be *Felo de ſe*, and by one Part of it deſtroy the other. It was laid indeed in the Information, that it was with Intent and Purpoſe to diminiſh the King's Royal Authority; but I appeal to your Lordſhip, the Court, and the Jury, whether there be any one Word in it that any way touches the King's Prerogative, or any Tittle of Evidence that has been given to make good the Charge: It is an Excuſe barely for their Non-compliance with the King's Order, and a begging of the King, with all Humility and Submiſſion, That he would be pleaſed not to inſiſt upon the reading of his Majeſty's Declaration upon theſe Grounds, becauſe the Diſpenſing Power, upon which it was founded, had been ſeveral Times in Parliament declared to be againſt Law; and becauſe it was a Caſe of that Conſequence, that *they could not in Prudence, Honour, or Conſcience, concur in it.* 1688. 4 Jac. II.

My Lord, Mr. *Attorney* has been pleaſed to charge in this Information, that this is a falſe, malicious, and ſeditious Libel; both the Falſity of it, and that it was malicious and ſeditious, are all Matters of Fact, which, with Submiſſion, they have offered to the Jury no Proof of: And I make no Queſtion but eaſily to demonſtrate the quite contrary.

For, my Lord, I think it can be no Queſtion, but that any Subject that is commanded by the King to do a thing which he conceives to be againſt Law, and againſt his Conſcience, may humbly apply himſelf to the King, and tell him the Reaſon why he does not that Thing he is commanded to do; why he cannot concur with his Majeſty in ſuch a Command.

My Lord, that which Mr. *Attorney* did inſiſt upon in the beginning of this Day (and he pretended to cite ſome Caſes for it) was, that in this Caſe, my Lords the Biſhops were not ſued as Biſhops, nor proſecuted for their Religion. Truly, my Lord, I do not know what they are ſued for elſe: The Information is againſt them as Biſhops; it is for an Act they did as Biſhops, and no otherwiſe; and for an Act they did, and do conceive they lawfully might do, with relation to their Eccleſiaſtical Polity, and the Government of their People as Biſhops.

The next thing Mr. *Attorney* offered was, That it was not for a Non-feaſance, but for a Feaſance. It is true, my Lord, it is for a Feaſance, in making of the Petition, but it was to excuſe a Non-feaſance, the not reading according to the Order; and this, ſure, was lawful for all the Biſhops, as Subjects, to do: And I ſhall ſhew it was certainly the Duty of my Lords the Biſhops, or any Peer of this Realm, to do the ſame in a like Caſe. It was likewiſe ſaid, They were proſecuted here for affronting the Government, and intermeddling with Matters of State: But I beg your Lordſhip and the Jury to conſider, whether there is one Tittle of this mentioned in the Petition, or any Evidence given of it: The Petition does not meddle with any thing of any Matter of State, but refers to an Eccleſiaſtical Matter, to be executed by the Clergy, and to a Matter that has Relation to Eccleſiaſtical Cauſes: So that they were not Buſy-bodies, or ſuch as meddled in Matters that did not relate to them, but that which was properly within their Sphere and Juriſdiction.

But

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But after all, there is no Evidence, nor any ſort of Evidence that is given by Mr. *Attorney*, that will maintain the leaſt Tittle of this Charge; and how he comes to leave it upon this ſort of Evidence, I cannot tell: All that it amounts to is, That my Lords the Biſhops being grieved in this Manner, made this Petition to the King in the moſt private and reſpectful Manner: And for him to load it with ſuch horrid black Epithets that it was done libellouſly, maliciouſly, and ſcandalouſly, and to oppoſe the King and Government, 'tis very hard; 'tis a Caſe of a very extraordinary Nature; and I believe my Lords the Biſhops cannot but conceive a great deal of Trouble, that they ſhould lie under ſo heavy a Charge, and that Mr. *Attorney* ſhould draw ſo ſevere an Information againſt them, when he has ſo little Proof to make it out.

My Lord, by what we have to ſay to it, we hope we ſhall give your Lordſhip and the Jury Satisfaction, that we have done but our Duties, ſuppoſing here has been a ſufficient Evidence of the Fact given, which we leave to your Lordſhip and the Jury.

My Lord, we ſay in ſhort, that this Petition is no more than what any Man, if he be commanded to do any thing, might humbly do, and not be guilty of any Crime. And my Lord, as to the Matter of our Defence, it will conſiſt of theſe Heads:

Firſt, We ſhall conſider the Matter of this Petition.

Secondly, The Manner of the delivering it, according as they have given Evidence here.

And, *Thirdly*, The Perſons that have delivered this Petition. And we hope to make it appear beyond all Queſtion, that the Matter contained in this Petition is neither falſe, nor contrary to Law, but agreeable to all the Laws of the Land in all Times. We ſhall likewiſe ſhew you, (though that appear ſufficiently to you already), that the Manner of delivering it was ſo far from being ſeditious, that it was in the moſt ſecret and private Manner, and with the greateſt Humility and Duty imaginable: And then, as to the Perſons, we ſhall ſhew you that they are not ſuch as Mr. *Attorney* ſays, who meddle with Matters of State that are out of their Sphere, but they are Perſons concerned, and concerned in Intereſt in the Caſe, to make this humble Application to the King. And when we have proved all this Matter, you will ſee how ſtrangely we are blackned with Titles and Epithets which we no ways deſerve, and of which, God be thanked, there is no Proof.

For, my Lord, for the Matter of the Petition we ſhall conſider two Things,

The firſt is, The Prayer, which is this: They humbly beg and deſire of the King, on Behalf of themſelves and the reſt of the Clergy, That he would not inſiſt upon the reading and publiſhing of this Declaration.

Surely, my Lord, there is nothing of Falſity in this, nor any thing that is contrary to Law, or unlawful for any Man that is preſſed to any thing, eſpecially by an Order of Council: And this is nothing but a Petition againſt an Order of Council; and if there be an Order that commands my Lords the Biſhops to do any thing that ſeems grievous to them, ſurely they may beg of the King that he would not inſiſt upon it.

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And for this Matter, they were ſo well ſatisfied about it, and ſo far from thinking that it was any Part of a Libel, that they left it out of the Information; and ſo have made a deformed and abſurd Story of it, without Head or Tail, a Petition directed to no body, and for nothing, it being without Title or Prayer; ſo that this is plain, it was lawful to petition.

Then, my Lord, the next thing is, the Reaſons which my Lords the Biſhops come to acquaint the King with, Why in Honour and Conſcience they cannot comply with, and give Obedience to this Order: And the Reaſons, my Lord, are two.

The firſt Reaſon that is aſſigned, is, the ſeveral Declarations that have been in Parliament (ſeveral of which are mentioned), that ſuch a Power to diſpenſe with the Law, is againſt Law; and that it could not be done but by an Act of Parliament; for that is the Meaning of the Word *Illegal*, that has no other Signification but unlawful; the ſame Word in Point of Signification with the Word *Illicite*, which they have uſed in their Information, a Thing that cannot be done by Law; and this they are pleaſed to tell the King, not as declaring their own Judgments, but what has been declared in Parliament; though if they had done the former, they being Peers of the Realm, and Biſhops of the Church, are bound to underſtand the Laws, eſpecially when (as I ſhall come to ſhew you), they are made Guardians of theſe Laws; and if any thing go amiſs, and contrary to theſe Laws, they ought to inform the King of it.

My Lord, the next thing is, becauſe it is a Thing of ſo great Moment, and the Conſequences that will ariſe from their publiſhing of this Declaration; and that too, my Lord, (for the latter I ſhall begin firſt with) there can be no Queſtion about, or any Pretence that this is libellous or falſe; for certainly it is a Caſe of the greateſt Conſequence to the whole Nation that ever was, therefore it cannot be falſe or libellous to ſay ſo.

My Lord, I would not mention this, for I am loth to touch upon things of this Nature, had not the Information it ſelf made it the *Giſt* of the Charge; for the Information (if there be any thing in it) ſays, That it was to diminiſh the King's Prerogative and Regal Power in publiſhing that Declaration.

Now, my Lord, what the Conſequence of this would be, and what my Lords the Biſhops meant by ſaying, It was a Cauſe of great Moment, will appear, by conſidering that which is the main Clauſe in the Declaration, at which my Lords the Biſhops ſcrupled, which is the main Stumbling-block to my Lords, and has been to many honeſt Men beſides, and that is this:

We do likewiſe declare, It is our Royal Will and Pleaſure, That from henceforth the Execution of all and all manner of Penal Laws in Matters Eccleſiaſtical, for not coming to Church, or not receiving the Sacrament, or for any other Non-conformity to the Religion eſtabliſhed; or for

4 1688. Jac. II *for or by Reaſon of the Exerciſe of Religion in any Manner whatſoever, be immediately ſuſpended, and the further Execution of the ſaid Penal Laws, and every of them, is hereby ſuſpended.*

Now, my Lord, this Clauſe is of ſome legal Effect and Signification, or it is not. If Mr. *Attorney*, or the King's Counſel, do ſay it is of no Effect in Law, then there is no Harm done: Then this Petition does no ways impeach the King's Prerogative, in ſaying it has been declared in Parliament, according as the King's Counſel do agree the Law to be.

But, my Lord, if it have any Effect in Law, and theſe Laws are ſuſpended by Virtue of this Clauſe in the Declaration, then certainly, my Lord, it is of the moſt diſmal Conſequence that can be thought of; and it behoved my Lords, who are the Fathers of the Church, humbly to repreſent it to the King.

For, my Lord, by this Declaration, and particularly by that Clauſe in it, not only the Laws of our Reformation, but all the Laws for the Preſervation of the Chriſtian Religion in general are ſuſpended, and become of no Force: If there be ſuch an Effect in Law wrought by this Declaration as is pretended, (that is) that the Obligation of Obedience to them ceaſeth; the Reaſon of it is plain, the Words cannot admit of ſuch a Quibble as to pretend that the Execution of the Law is not the ſuſpending of the Law; and that the ſuſpending the Execution of the Law is not a ſuſpending of the Law; for we all know the Execution of every Law, in its primary Intent, is Obedience to it; that of the Penalty comes in by way of Puniſhment and Recompence for their Diſobedience.

Now, my Lord, if this Declaration does diſcharge the King's Subjects from their Obedience to, and the Obligation from, thoſe Laws; then pray, my Lord, where are we? Then all the Laws of the Reformation are ſuſpended, and the Laws of Chriſtianity it ſelf, by thoſe latter Words [*or for or by Reaſon of Religion, in any Manner whatſoever*]; ſo that is not confined to the Chriſtian Religion, but all other Religions are permitted under this Clauſe: And thus all our Laws for keeping the Sabbath, and which diſtinguiſh us from Heathens, will be ſuſpended too.

My Lord, this is ſuch an Inconvenience as (I think) I need name no more; and it is a very natural Conſequence from that Clauſe of the Declaration; it diſcharges at once all Miniſters and Clergymen from performing their Duty in reading the Service of the Church; it diſcharges their Hearers from attending upon that Service.

When a Law is ſuſpended, the Obligation thereof is taken away; and thoſe that before thought themſelves bound to obey, now conclude they are not ſo obliged; and what a Miſchief that will be to the Church, which is under the Care of my Lords the Biſhops, your Lordſhip will eaſily apprehend.

Theſe Things, my Lord, I only mention, to ſhew the great and evil Conſequences that apparently follow upon ſuch a Declaration; which made my Lords the Biſhops decline obeying the Order, and put them under a Neceſſity of applying thus to the King, to acquaint him with the Reaſons why they could not comply with his Commands, to read this Declaration to the People, becauſe the Conſequences of it were ſo great, it tending naturally to lead the People into ſo great an Error, as to believe thoſe Laws were not in Force, when in Truth and Reality they are ſtill in Force, and continue to oblige them. 1688. 4 Jac II.

And that being the ſecond Reaſon in this Petition, I come next to conſider it, to wit, that the Parliament had often declared this pretended Power to be illegal; and for that, we ſhall read the ſeveral Records in Parliament, mentioned in their Petition, and produce ſeveral ancient Records of former Parliaments that prove this Point, and particularly in the Time of *Richard* II. concerning the Statute of Proviſors, where there were particular Diſpenſations for that Statute; the King was enabled to do it by Act of Parliament, and could not do it without.

L. C. J. Pray, Sir *Robert Sawyer*, go to your Proofs, and reſerve your Arguments till afterwards.

Sir *Rob. Sawyer.* My Lord, I do but ſhortly mention theſe Things; ſo that, my Lord, as to the Matter of this Petition, we ſhall ſhew you, that it is true, and agreeable to the Laws of the Land.

Then, my Lord, as to the Manner of delivering it, I need ſay no more, but that it is plain from their Evidence, that it was in the moſt private and humble Manner: And, as my Lord Preſident ſaid, Leave was asked of the King for them to be admitted to preſent it: Leave was given, and accordingly they did it.

We come then, my Lord, to the third Thing, the Perſons, theſe Noble Lords; and we ſhall ſhew they are not Buſy-bodies, but in this Matter have done their Duty, and meddled with their own Affairs: That, my Lord, will appear,

Firſt, by the general Care that is repoſed in them by the Law of the Land: They are frequently, in our Books, called *The King's Spiritual Judges*; they are intruſted with the Care of Souls, and the Superintendency over all the Clergy is their principal Care.

But beſides this, my Lord, there is another ſpecial Care put upon them, by the expreſs Words of an Act of Parliament; for, over and above the general Care of the Church, by Virtue of their Offices as Biſhops, the Act of 1 *Eliz. cap.* 2. makes them ſpecial Guardians of the Law of Uniformity, and of that other Law in his late Majeſty's Reign, where all the Clauſes of the Statute of 1 *Eliz.* are revived, and made applicable to the preſent State of the Church of *England.* Now in that Statute of 1 *Eliz.* there is this Clauſe:

And for the due Execution hereof, the Queen's Moſt Excellent Majeſty, the Lords Spiritual and Temporal, and all the Commons in this preſent Parliament aſſembled, do, in God's Name, earneſtly require and charge all the Archbiſhops and Biſhops, and other Ordinaries, that they do

1688. 4 Jac. II. *do endeavour themſelves, to the utmoſt of their Knowledges, that the due and true Execution hereof may be had throughout their Dioceſes and Charges, as they will anſwer before God for ſuch Evils and Plagues wherewith Almighty God may juſtly puniſh his People, for neglecting this good and wholſome Law.*

This is the Charge that lies upon the Biſhops, to take Care of the Execution of that Law; and I ſhall pray, by and by, that it may be read to the Jury.

Mr. Sol. Gen. That is very well indeed! To what Purpoſe?

Sir *Robert Sawyer.* So that, my Lord, by this Law it is plain, that my Lords the Biſhops, upon Pain of bringing upon themſelves the Imprecation of this Act of Parliament, are obliged to ſee it executed; and then, my Lord, when any Thing comes under their Knowledge, eſpecially if they are to be Actors in it, that has ſuch a Tendency to deſtroy the very Foundations of the Church, as the Suſpenſion of all the Laws that relate to the Church muſt do, it concerns them, that have no other Remedy, to addreſs the King, by Petition, about it.

For that, Mr. Attorney, my Lord, has agreed, That if a proper Remedy be purſued in a proper Court, for a Grievance complained of, though there may be many hard Words that elſe would be ſcandalous, yet, being in a regular Courſe, they are no Scandal: And ſo it is ſaid in *Lake*'s Caſe, in my Lord *Hobart*.

My Lord, we muſt appeal to the King, or we can appeal to nobody, to be relieved againſt an Order of Council, with which we are aggrieved; and it is our Duty ſo to do, according to the Care that the Law hath placed in us.

Beſides, my Lord, the Biſhops were commanded by this Order, to do an Act relating to their Eccleſiaſtical Function; to diſtribute it to be read to their Clergy: And how could they in Conſcience do it, when they thought Part of the Declaration was not according to Law?

Pray, my Lord, what has been the Reaſon of his Majeſty's conſulting of his Judges? And if his Majeſty, or any the great Officers, by his Command, are about to do any thing that is contrary to Law, was it ever yet an Offence to tell the King ſo? I always looked upon it as the Duty of an Officer or Magiſtrate, to tell the King what is Law, and what is not Law.

In *Cavendiſh*'s Caſe, in the Queen's Time, there was an Office granted of the Return of the Writs of Superſedeas, in the Court of *Common-Pleas*; and he comes to the Court and deſires to be put into the Poſſeſſion of the Office: The Court told him, They could do nothing in it, but he muſt bring his Aſſize: He applies to the Queen, and ſhe ſends, under the Privy Seal, a Command to ſequeſter the Profits, and to take Security to anſwer the Profits as the Judgment of the Law ſhould go: But the Judges there return an Anſwer, That it was againſt Law, and they could not do it: Then there comes a ſecond Letter re-

citing the Former, and commanding their Obedience: The Judges returned for Anſwer, They were upon their Oaths, and were ſworn to keep the Laws, and would not do it. 1688. 4 Jac. II.

My Lord, the like was done in the Time of my Lord *Hobart*: We have it reported in *Anderſon*, in a Caſe where a Prohibition had gone: There came a Meſſage from Court, that a Conſultation ſhould be granted; and that was a Matter wherein there were various Opinions, whether it was *ex neceſſitate*, or Diſcretionary: But there they returned, That it was againſt Law for any ſuch Meſſage to be ſent.

Now here, my Lord, is a Caſe full as ſtrong: My Lords the Biſhops were commanded to do an Act, which they conceived to be againſt Law, and they declined it, and tell the King the Reaſon; and they have done it in the moſt humble Manner that could be, by way of Petition. If they had done (as the Civil Law terms it) *reſcribere* generally, that had been lawful; but here they have done it in a more reſpectful Manner, by an humble Petition: If they had ſaid the Law was otherwiſe, that ſure had been no Fault: But they do not ſo much as that, but they only ſay, It was ſo declared in Parliament; and they declare it with all Humility and Dutifulneſs. So that, my Lord, if we conſider the Perſons of the Defendants, they have not acted as Buſy-bodies; and therefore, as this Caſe is, when we have given our Evidence, here will be an Anſwer to all the Implications of Law that are contained in this Information: For they would have this Petition work by Implication of Law, to make a Libel of it; but, by what I have ſaid, it will appear, there was nothing of Sedition, nothing of Malice, nothing of Scandal in it; nothing of the Salt, and Vinegar, and Pepper, that they have put into the Caſe. We ſhall prove the Matters that I have opened for our Defence; and then, I dare ſay, your Lordſhip and the Jury will be of Opinion, we have done nothing but our Duty.

Mr. *Finch* ſeconded Sir *Robert Sawyer*, and inſiſted, That the Power of abrogating Laws was as much a Part of the Legiſlature, as the Power of making Laws: That a Power to lay the Laws aſleep and ſuſpend Laws, was equal to the Power of abrogating them; for they were no longer in Being as Laws, while they are ſo laid aſleep or ſuſpended: Then if this Declaration was founded upon a Part of the Legiſlature, which muſt by all Men be acknowledged not to reſide in the King alone, but in the King, Lords, and Commons, it could not be a legal and true Power and Prerogative.

Mr. Serjeant *Pemberton* and Mr. *Pollexfen*, two more of the Biſhops Counſel, alſo maintained, That the Kings of *England* had no Power to ſuſpend or diſpenſe with the Laws; and that it was no Crime to petition the King, or inform him if he was miſtaken in Law: That it was allowed daily in *Weſtminſter-Hall* to argue againſt the King's Grants, and ſay he was deceived in his Grants: That the Laws of Uniformity were made upon a Foreſight of the Miſchiefs that might come by

1688. 4 Jac. II. falſe Religions in this Kingdom, and particularly to keep out the *Romiſh* Religion (*which was the very worſt of all Religions*) from prevailing amongſt us: That this was the very Deſign of the Act for eſtabliſhing the Teſt, entitled, *An Act to prevent Dangers that may happen from Popiſh Recuſants*; and if the King might ſuſpend the Laws of *England* which concerned Religion, they knew no other Laws but he might ſuſpend; and then how precarious the Lives, Liberties, and Properties of the Subjects would be, ought to be conſidered.

The Evidence produced for the Biſhops.

Then the Biſhops Counſel produced ſome Records, Statutes, and Declarations of Parliament, to ſupport the Doctrines they had advanced.

And firſt the Record impowering King *Richard* II. to diſpenſe with the Statute of Proviſors, was read.

By this Record it appears, That a Power was given by the Commons to the King, that he, with the Aſſent of the Lords, might diſpenſe with the Statute of Proviſors till the next Parliament, reſerving a Power to the Commons to diſagree to, and retract that Conſent of theirs, in the next Parliament, if they thought fit: And they proteſt that this Aſſent, which was a Novelty, and had not been done before that Time, ſhould not be drawn into Example or Conſequence for the Time to come; and pray the King, that their Proteſtation may be entered on Record in the Roll of Parliament; and the King commanded it to be done as they deſired.

Sir *George Treby* obſerved hereupon, That the Statute of Proviſors, thus diſpenſed with, was a Penal Law, and concerned Eccleſiaſtical Affairs, *viz.* The Collating and Preſenting to Biſhopricks, Benefices, *&c.*

Then the Journal of the Houſe of Lords being produced, his late Majeſty's Speech of the 18th of *February*, 1662, was read; wherein was a Clauſe, from whence the Defendants argued, That the King himſelf did not apprehend he had a diſpenſing Power, (*viz.*) *And yet, if the Diſſenters will demean themſelves peaceably and modeſtly under the Government, I could heartily wiſh I had ſuch a Power of Indulgence, to uſe upon Occaſion.*

Then the Biſhops Counſel proceeded to ſhew, That the Lords, in Compliance with the King's Deſire, ordered a Bill to be brought in, to enable his Majeſty to diſpenſe with the Act of Uniformity, or with any other Laws requiring Oaths, or Subſcriptions, or Conformity to the Diſcipline of the Eſtabliſhed Church.

Then Part of an Addreſs of the Commons, in Anſwer to the King's Speech, was read; wherein they tell his Majeſty, *That it was not adviſable to grant any Indulgence to thoſe Perſons, who preſumed to diſſent from the Act of Uniformity and the Religion eſtabliſhed: And that the Act of Uniformity could not be diſpenſed with, but by Act of Parliament.*

And Part of the King's Speech on the 5th of *February*, 1672, was read; wherein he ſays, *He had put forth a Declaration for Indulgence to Diſſenters.*

An Addreſs of the Commons, of the 4th of *February*, in Anſwer to it, was alſo read; wherein they ſay, *That they found themſelves bound in Duty to inform his Majeſty, That Penal Statutes, in Matters Eccleſiaſtical, cannot be ſuſpended but by an Act of Parliament*; and therefore beſeech his Majeſty that the ſaid Laws may have their free Courſe, untill it ſhall be otherwiſe provided for by Act of Parliament. 1688. 4 Jac. II.

The King's Meſſage in Anſwer to that Addreſs, was alſo read; (*viz.*) That his Majeſty did not pretend to the Right of ſuſpending any Laws, wherein the Properties, Rights, or Liberties of any of his Subjects, were concerned; nor to alter any Thing in the eſtabliſhed Doctrine or Diſcipline of the Church of *England*: But his only Deſign in this was, to take off the Penalties the Statutes inflicted on Diſſenters.

The the Commons Anſwer of the 26th of *February*, 1672, in Anſwer to the ſaid Meſſage, was read; wherein they tell his Majeſty, That the aboveſaid Anſwer to their Petition and Addreſs, is not ſufficient to clear the Apprehenſions that may juſtly remain in the Minds of his People, by his Majeſty's having claimed a Power to ſuſpend Penal Laws in Matters Eccleſiaſtical, and which his Majeſty did ſtill ſeem to aſſert in the ſaid Anſwer to be entruſted in the Crown, and never queſtioned in the Reigns of any of his Anceſtors: *Wherein they humbly conceived his Majeſty had been miſinformed*; ſince no ſuch Power was ever claimed or exerciſed by any of his Majeſty's Predeceſſors; and if it ſhould be admitted, might tend to the interrupting the free Courſe of the Laws, and altering the Legiſlative Power, which had been always acknowledged to reſide in the King and the two Houſes of Parliament: They therefore, with an Unanimous Conſent, became again moſt humble Suitors unto his Sacred Majeſty, that he would be pleaſed to give them a full and ſatisfactory Anſwer to their ſaid Petition and Addreſs; and that his Majeſty would take ſuch effectual Order, that the Proceedings in this Matter, might not for the future be drawn into Conſequence.

His Majeſty's Speech of the 8th of *March*, 1672, alſo was read; wherein he ſays, If there were any Scruple remaining with them concerning the Suſpenſion of Penal Laws, he then faithfully promiſed them, that what had been done in that Particular, ſhould not for the future be drawn either into Conſequence or Example; and that, as he daily expected from them a Bill for his Supply, ſo he aſſured them he ſhould as willingly paſs any other Bill they ſhould offer him, that might tend to the giving them Satisfaction in all their juſt Grievances.

Another Meſſage from his Majeſty to the Houſe, the next Day, by the Lord Chancellor, was alſo read; wherein he ſays, *That he had the laſt Night, in Purſuance of what he then intended and declared in the Morning, concerning the Suſpenſion of Penal Laws not being for the future drawn either into Conſequence or Example, cauſed the Original Declaration under the*

Great

1688. 4 Jac. II. *Great Seal, to be cancelled in his Preſence: Whereof the ſaid Lord Chancellor and ſeveral other Lords of the Council were Witneſſes.*

Then his Majeſty King *James* II's Speech to both Houſes, 9 *Nov.* 1685. after the ſuppreſſing *Monmouth*'s Rebellion, was read; wherein he ſays, *Let no Man take Exceptions that there are ſome Officers in the Army not qualified according to the late Teſts.*

And afterwards the Commons Addreſs thereupon, 16 *Nov.* 1685. wherein they ſay, That as to Part of his Majeſty's Speech, relating to the Officers of the Army not qualified for their Employments, *They did, out of their bounden Duty, humbly repreſent unto his Majeſty, that thoſe Officers could not by Law be capable of their Employments; and that the Incapacities they bring upon themſelves thereby, can no ways be taken off, but by Act of Parliament.*

That they were ready to paſs a Bill to indemnify them from the Penalties they had incurred; but did beſeech his Majeſty to give ſuch Directions therein for the future, that no Apprehenſions or Jealouſies might remain in the Hearts of his Majeſty's Subjects.

Then a Paragraph out of the Statute of 1 Eliz. *chap.* 2. *was read, Whereby the Biſhops are charged to ſee the Laws in relation to Uniformity executed, as they will anſwer it before God, for ſuch Evils and Plagues wherewith Almighty God may juſtly puniſh his People for neglecting that good and wholeſome Law.*

After which the Biſhops Counſel proceeded to make their Obſervations on the Whole; and firſt Mr. Serjeant *Levinz*.

Serjeant Levinz's Argument.

Mr. Serjeant *Levinz*. Now, my Lord, if your Lordſhip pleaſes, the Charge is a Charge for a Libel; and there are two Things to be conſidered.

Firſt, Whether the Biſhops did deliver this Paper to the King? But that we leave upon the Evidence that has been given; only we ſay, there has been no direct Proof of that.

In the next place, ſuppoſing they did deliver this Petition to the King, Whether this be a Libel, upon the Matter of it, the Manner of delivering it, or the Perſons that did it?

And with Submiſſion, my Lord, this cannot be a Libel, although it be true that they did ſo deliver it.

Firſt, my Lord, there is a little Diſingenuity offered to my Lords the Biſhops in only ſetting forth Part, and not the Whole; in only reciting the Body, and not the Prayer.

But, my Lord, with your Lordſhip's Favour, taking the Petitionary Part, and adding it to the other, it quite alters the Nature of the Thing; for it may be, a Complaint without ſeeking Redreſs might be an ill Matter; but here taking the Whole together, it appears to be a Complaint of a Grievance, and a Deſire to be eaſed of it.

With your Lordſhip's Favour, the Subjects have a Right to petition the King in all their Grievances; ſo ſay all our Books of Law; and ſo ſays the Statute of the 13th of the late King: They may petition, and come and deliver their Petition under the Number of Ten, as heretofore they might have done (ſays the Statute): So that they at all Times have had a Right ſo to do; and indeed if they had not, it were the moſt lamentable Thing in the World, that Men muſt have Grievances upon them, and yet they not to be admitted to ſeek Relief in an humble Way. 1688. 4 Jac. II.

Now, my Lord, this is a Petition ſetting forth a Grievance, and praying his Majeſty to give Relief. And what is this Grievance? It is that Command of his, by that Order made upon my Lords the Biſhops, to diſtribute the Declaration, and cauſe it to be read in the Churches. And pray, my Lord, let us conſider what the Effects and Conſequences of that Diſtribution and Reading is: It is to tell the People, that they need not ſubmit to the *Act of Uniformity*, nor to any Act of Parliament made about Eccleſiaſtical Matters, for they are ſuſpended and diſpenſed with. This my Lords the Biſhops muſt do, if they obey this Order: But your Lordſhip ſees, if they do it, they lie under an *Anathema* by the Statute of 1 *Eliz.* for there they are under a Curſe if they do not look to the Preſervation and Obſervation of that Act: But this Command to diſtribute and read the Declaration, whereby all theſe Laws are diſpenſed with, is to let the People know, they will not do what the Act requires of them.

Now, with your Lordſhip's Favour, my Lords the Biſhops lying under this Preſſure, the Weight of which was very grievous upon them, They, by Petition, apply to the King to be eaſed of it, which they might do as Subjects: Beſides, my Lord, they are Peers of the Realm, and were moſt of them ſitting as ſuch in the laſt Parliament, where (as you have heard) it was declared, ſuch a Diſpenſation could not be; and then in what a Caſe ſhould they have been if they ſhould have diſtributed this Declaration, which was ſo contrary to their own Actings in Parliament? What could they have anſwered for themſelves, had they thus contributed to this Declaration, when they had themſelves before declared that the King could not diſpenſe?

And that this was no new Thing, for it had been ſo declared in a Parliament before in two Seſſions of it, in the late King's Reign, within a very little Time one of another; and ſuch a Parliament that were ſo liberal in their Aids to the Crown, that a Man would not think they ſhould go about to deprive the Crown of any of its Rights: It was a Parliament that did as great Services for the Crown as ever any did; and therefore there is no Reaſon to ſuſpect that, if the King had had ſuch a Power, they would have appeared ſo carneſt againſt it.

But, my Lord, if your Lordſhip pleaſes, theſe are not the beginnings of this Matter; for we have ſhewed you, from the 15th of *Richard* the IId, that there was a Power granted by the Parliament to the King, to diſpenſe with a particular Act of Parliament; which argues, that it could not be without an Act of Parliament: And in 1662 it is ſaid expreſly, that they can not be diſpenſed but by an Act of Parliament. 'Tis ſaid ſo again in 1672, the King was then pleaſed to aſſume to himſelf ſuch a Power as is pretended to in this Declaration: Yet, upon Information from his

1688. 4 Jac. II. his Houſes of Parliament, the King declared himſelf ſatisfied that he had no ſuch Power, cancelled his Declaration, and promiſed that it ſhould not be drawn into Conſequence or Example. And ſo the Commons, by their Proteſtation, ſaid, in *Richard* II's Time, that it was a Novelty, and ſhould not be drawn into Conſequence or Example.

Now, my Lord, if your Lordſhip pleaſes, if this Matter that was commanded the Biſhops to do were ſomething which the Law did not allow of, ſurely then my Lords the Biſhops had all the Reaſon in the World to apply themſelves to the King, in an humble Manner to acquaint him Why they could not obey his Commands, and to ſeek Relief againſt that which lay ſo heavy upon them.

Truly, my Lord, Mr. *Attorney* was very right in the opening of this Cauſe at firſt; that is, That the Government ought not to receive Affronts, nor the inferior Officers are not to be affronted; a Juſtice of the Peace, ſo low a Man in Office, is not. For a Man to ſay to a Juſtice of Peace, when he is executing his Office, that he does not do right, is a great Crime; and Mr. *Attorney* ſaid right in it. But ſuppoſe a Juſtice of Peace were making of a Warrant to a Conſtable, to do ſomething that was not legal for him to do; if the Conſtable ſhould petition this Juſtice of the Peace, and therein ſet forth, Sir, You are about to command me to do a Thing which I conceive is not legal; ſurely that would not be a Crime that he was to be puniſhed for; for he does but ſeek Relief, and ſhew his Grievance in a proper Way, and the Diſtreſs he is under.

My Lord, this is the Biſhops Caſe, with Submiſſion: They are under a Diſtreſs, being commanded to do a Thing which they take not to be Legal; and they, with all Humility, by way of Petition, acquaint the King with this Diſtreſs of theirs, and pray him, that he will pleaſe to give Relief.

My Lord, there is no Law but is either an Act of Parliament, or the Common Law: For an Act of Parliament, there is none for ſuch a Power; all that we have of it in Parliamentary Proceedings is againſt it; and for the Common Law (ſo far as I have read it), I never did meet of any thing of ſuch a Nature, as a Grant or Diſpenſation that pretended to diſpenſe with any one whole Act of Parliament. I have not ſo much as heard of any ſuch thing mentioned by any of the King's Counſel: But here, my Lord, is a Diſpenſation that diſpenſes with a great many Laws at once: Truly I cannot take upon me to tell how many; there may be forty, or above, for ought I know.

Therefore, my Lord, the Biſhops lying under ſuch a Grievance as this, and under ſuch a Preſſure, being ordered to diſtribute this Declaration in all their Churches, which was to tell the People they ought to be under no Law in this Caſe, which ſurely was a very great Preſſure both in Point of Law and Conſcience too, they lying under ſuch Obligations to the contrary, as they did; with Submiſſion to your Lordſhip, and you Gentlemen of the Jury, if they did deliver this Petition, (Publiſhing of it I will not talk of, for there has been no Proof of a Publication, but a Delivering of a Petition to his Majeſty in the moſt ſecret and decent Manner that could be imagined) my Lords, the Biſhops are not guilty of the Matter charged upon them in this Information. It has been expreſly proved that they did not go to diſperſe it abroad, but only delivered it to the King himſelf: And in ſhort, my Lord, if this ſhould be a Libel, I know not how ſad the Condition of us all would be, if we may not petition when we ſuffer. 1688. 4 Jac. II.

Mr. *Finch.* My Lord, I challenge them to ſhew us any one Inſtance of ſuch a Declaration, ſuch a general Diſpenſation of Laws, from the Conqueſt till 1672: The firſt Umbrage of ſuch a Thing is that of *Car.* II. 1662; but your Lordſhip hears the Declaration of the Parliament upon it. Before that, as there was no ſuch Thing, ſo your Lordſhip ſees what the Parliament did to enable the King (not to do this Thing, but ſomething like it) in *Richard* the Second's Time, where you ſee the Parliament did give the King a Power to diſpenſe with the Statute of Proviſors for a Time; but at the ſame Time declared that very Grant of their own to be a Novelty, and that it ſhould not be drawn into Conſequence or Example.

My Lord, we ſhall leave it upon this Point: To ſuſpend Laws is all one as to abrogate Laws; for ſo long as a Law is ſuſpended, whether the Suſpenſion be Temporary, or whether it be for ever; whether it be at once or at ſeveral Times; the Law is abrogated to all Intents and Purpoſes: But the Abrogation of Laws is Part of the Legiſlature, that Legiſlative Power is lodged (as I ſaid before, and I could never find it otherwiſe in all our Law) in King, Lords, and Commons, ——.

Lord Chief Juſtice. You did open that before, Mr. *Finch.*

Mr. *Finch.* With this, my Lord, That my Lords the Biſhops, finding this Order made upon them to publiſh this Declaration, did what in Duty they were bound to do; and unleſs the Jury do find, that they have done that which is contrary to Law and to the Duty of their Places, and that this Petition is a Libel, and a ſeditious Libel, with an Intent to ſtir up Sedition among the People (we rely upon it), my Lords the Biſhops can never be found guilty upon this Information.

Lord Chief Juſtice. Have you now done, Gentlemen?

Mr. *Finch.* Yes, my Lord, till they give us further Occaſion: If they have any other Evidence to offer, we muſt anſwer it; if not, this the Anſwer we give to what they have ſaid.

Mr. Sollicitor General. We make no Bargin with you: If you have done, ſay ſo.

Lord Chief Juſtice. You muſt know, that you are not to have the laſt Word.

Mr.

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Mr. Sollicitor General. You have been three Hours already: If you have any more to ſay, pray conclude.

Mr. *Finch.* If they ſay they have no more Evidence, then we know what we have to do.

Lord Chief Juſtice. If you do ſay any thing more, pray let me adviſe you one thing; don't ſay the ſame Thing over and over again; for after ſo much Time ſpent, it is irkſome to all Company, as well as to me.

Mr. *Finch.* My Lord, we have no more Evidence to offer to your Lordſhip at preſent, unleſs they, by offering new Evidence, give us Occaſion to Reply upon them.

Lord Chief Juſtice. Gentlemen, you ſhall have all the Legal Favour and Advantage that can be; but, pray, let us keep to an orderly decent Method of Proceeding.

Sir *Robert Sawyer.* Pray, my Lord, favour me a Word before we conclude: My Lord, I do find very few Attempts of this Nature, in any King's Reign.

In the Reign of *Henry* IV. there was an Act of Parliament, that Foreigners ſhould have a free Trade in the City of *London*, notwithſtanding the Franchiſes of *London*: After the Parliament roſe, the King iſſued out his Proclamation, forbidding the Execution of that Law, and commanding that it ſhould be in Suſpence *uſque ad proximum Parliamentum*; yet that was held to be againſt Law.

Lord Chief Juſtice. Sir *Robert Sawyer*, that which you are to look to, is the Publiſhing of this Paper, and whether it be a Libel or no: And as to the Buſineſs of the Parliaments you mentioned, they are not to the Purpoſe.

Sir *Robert Sawyer.* My Lord, I ſay, I would put it where the Queſtion truly lies; if they do not diſpute the Point, then we need not labour it; but I do not know whether they will or no, and therefore I beg your Lordſhip's Favour to mention one Caſe more, and that is upon the Statute of 31 *Hen.* VIII. *cap.* 8. which enables the King by Proclamation in many Caſes to create the Law, which Statute was repealed, 1 *Edw.* VI. *cap.* 12. That very Act does recite, that the Law is not to be altered or reſtrained but by Act of Parliament, and therefore the Parliament enables the King to do ſo and ſo: But that was ſuch a Power, that the Parliament thought not fit to continue, and it was afterwards repealed; but it ſhews, that at that Time the Parliament was of the ſame Opinion, as to this Matter, that other Parliaments have been ſince.

Mr. *Somers.* My Lord, I would only mention the great Caſe of *Thomas* and *Sorrel* in the *Exchequer-Chamber*, upon the Validity of a Diſpenſation of the Statute of *Edward* VI. touching ſelling of Wine: There it was the Opinion of every one of the Judges, and they did lay it down as a ſettled Poſition, that there never could be an Abrogation or, a Suſpenſion (which is a Temporary Abrogation) of an Act of Parliament, but by the Legiſlative Power. That was a Foundation laid down quite through the Debate of the Caſe: Indeed it was diſputed, how far the King might diſpenſe with the Penalties in ſuch a particular Law, as to particular Perſons; but it was agreed by all, that the King had no Power to ſuſpend any Law: And, my Lord, I dare appeal to Mr. *Attorney General* himſelf, whether in the Caſe of *Godwin* and *Hales*, which was lately in this Court, to make good that Diſpenſation, he did not uſe it as an Argument then, that it could not be expounded into a Suſpenſion: He admitted it not to be in the King's Power to ſuſpend a Law; but that he might give a Diſpenſation to a particular Perſon, was all that he took upon him to juſtify at that Time.

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My Lord, by the Law of all civilized Nations, if the Prince does require ſomething to be done, which the Perſon (who is to do it) takes to be unlawful, it is not only lawful, but his Duty, *reſcribere Principi*; this is all that is done here, and that in the moſt humble Manner that could be thought of. Your Lordſhip will pleaſe to obſerve how far it went, how careful they were that they might not any way juſtly offend the King: They did not interpoſe, by giving Advice as Peers; they never ſtirred till it was brought home to themſelves; when they made their Petition, all they beg is, That it may not ſo far be inſiſted upon by his Majeſty, as to oblige them to read it; whatever they thought of it, they do not take upon them to deſire the Declaration to be revoked.

My Lord, as to Matters of Fact alledged in the ſame Petition, that they are perfectly true, we have ſhewn by the Journal of both Houſes. In every one of thoſe Years which are mentioned in the Petition, the Power of Diſpenſation was conſidered in Parliament, and upon Debate, declared to be contrary to Law; there could be no Deſign to diminiſh the Prerogative, becauſe the King hath no ſuch Prerogative.

Seditious, my Lord, it could not be, nor could poſſibly ſtir up Sedition in the Minds of the People, becauſe it was preſented to the King in private and alone: Falſe it could not be, becauſe the Matter of it is true: There could be nothing of Malice, for the Occaſion was not ſought, the Thing was preſſed upon them: And a Libel it could not be, becauſe the Intent was innocent, and they kept within the Bounds ſet by the Act of Parliament, that gives the Subject Leave to apply to his Prince by Petition, when he is aggrieved.

Then Mr. *Sollicitor* (Sir *William Williams*) ſummed upon the Evidence, and made his Obſervations on it for the King.

Mr. Sollicitor's Argument for the King.

Mr. Sollicitor General. My Lord, and Gentlemen of the Jury, I am of Counſel in this Caſe for the King, and I ſhall take Leave to proceed in this Method: Firſt, I ſhall put the Caſe of my Lords the Biſhops, and then conſider the Arguments that have been uſed in their Defence, and anſwer them as much as is Material to be anſwered; and then leave it to your Lordſhip, and the Jury's Conſideration, Whether what has been ſaid by theſe Gentlemen, weigh any Thing in this Caſe?

Firſt, my Lord, I take it for granted, and I think the Matter is pretty plain by this Time, by my Lord Preſident's Evidence and

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their own Confeſſion, that it is not to be diſputed but that this Paper was preſented by theſe Lords to the King: I think there is no great Difficulty in that Matter at all; but I juſt touch upon it, becauſe I would follow them in their own Method.

Then, my Lord, let us take this Caſe as it is, upon the Nature of the Petition, and the Evidence that they have given; and then let us ſee, whether that will juſtify the Thing that is done: For the Buſineſs of Petitioning, I would diſtinguiſh, and enquire, Whether my Lords the Biſhops, out of Parliament, can preſent any Petition to the King? I do agree, that in Parliament the Lords and Commons may make Addreſſes to the King, and ſignify their Deſires, and make known their Grievances there; and there is no doubt but that is a natural and proper way of Application: For in the Beginning of the Parliament, there are Receivers of Petitions appointed, and upon Debates, there are Committees appointed to draw up Petitions and Addreſſes; but to come and deduce an Argument, that becauſe the Lords in Parliament have done thus, (there being ſuch Methods of Proceedings uſual in Parliaments) therefore my Lords the Biſhops may do it out of Parliament, that is certainly a *Non ſequitur*; no ſuch Concluſion can be drawn from thoſe Premiſes.

My Lord, I ſhall endeavour to lay the Fact before you as it really is, and then conſider what is proper for the Court to take Notice of, as Legal Proof or Evidence: And I take it, all thoſe Precedents that they have produced, of what the Lords did, and what the Commons did, in Parliament, is no Warrant for them to ſhelter themſelves under, againſt the Information here in Queſton.

Here Mr. Juſtice Powel *ſpake aſide to the Lord Chief Juſtice, thus:*

Mr. Juſtice *Powel.* My Lord, this is ſtrange Doctrine; ſhall not the Subject have Liberty to petition the King, but in Parliament? If that be Law, the Subject is in a miſerable Caſe.

Lord Chief Juſtice. Brother, let him go on; we will hear him out, though I approve not of his Poſition.

Mr. Sollicitor General. The Lords may addreſs to the King in Parliament, and the Commons may do it; but therefore, that the Biſhops may do it, out of Parliament, does not follow: I heard nothing ſaid that could have given Colour to ſuch a Thing, but the Curſe that has been read in 1 *Eliz.*

But pray, my Lord, let us conſider that Evidence they have given; they have begun with that Record in *Richard* the Second's Time; and what is that? That the King may diſpenſe with the Statute of Proviſors, till the Meeting of the next Parliament, and a Proteſtation of the Commons at the End of it, Whether that be an Act of Parliament that is Declaratory of the Common Law, or Introductory of a new Law, *non conſtat*; and for ought appears, it might be a Declaratory Act; and if ſo, it is a Proof of the King's Prerogative of Diſpenſing. It might be an Act in Affirmance of the King's Prerogative, as there are a great many ſuch, we very well know; and generally moſt of the Laws in that Kind, are in Affirmance of the King's Power; ſo that the Law turns as an Argument for the King's Prerogative, and they have given him that which will turn upon themſelves: So it ſtood in *Richard* the Second's Time; but whether that be an Argument one way or other Concluſive, is left to your Lordſhip and the Jury.

Ay but, ſay they, there is no Execution of ſuch a Power, till very lately; and the firſt Inſtance they produce, is, that in the Year 1662: But your Lordſhip knows, that before the Reign of *Henry* IV. there was great Juriſdiction aſſumed by the Lords in Original Cauſes: Then comes the Statute of Appeals, 1 *Hen.* IV. which takes Notice, that before that Time, the Lords had aſſumed an Original Juriſdiction in all Cauſes, and would proceed, and determine them in Parliament and out of Parliament; and it fell out to be ſo great a Grievance, that it was thought neceſſary to to make a Law againſt it, that Appeals in Parliament ſhould be aboliſhed and deſtroyed; and then comes that Law in Favour of the Subjects of *England*, and that ſettles the Bounds between the King and the Lords, in a great meaſure: Before that Time, the Lords were grown very powerful, and where there is a Power, there always will be Applications: And what is the Effect of that Statute, 1 *Hen.* IV? for all that we endeavour is, to make Things as plain as can be, that no further Applications, no Accuſations, no Proceedings in any Caſe whatſoever, be before the Lords in Parliament, unleſs it be by Impeachment of the Commons; ſo that there is the *Salvo*; and the Uſe that I make of it, is this: The Commons, by that very Statute, did aboliſh the Power that the Lords had arrogated to themſelves; and Ordered, That they ſhould not meddle with any Cauſe, but upon the Impeachment of the Houſe of Commons, and eſtabliſh the Impeachment of the Commons, which is as antient as the Parliament, for that was never yet ſpoken againſt, the Power of the Commons impeaching any Perſon under the Degree of the Prince, and that is the regular legal Way; and ſo the Commons aſſerted their antient Right, and whatſoever the Lords took Notice of, muſt come by Application of the Commons; then Conferences were to paſs between the Houſes, and both Houſes, by Addreſſes, apply to the King: This is the proper Way and Courſe of Parliament, of which my Lord *Cook* ſays, It is known to few, and practiſed by fewer; but it is a venerable honourable Way, and this is the Courſe that ſhould have been taken by my Lords here, and they ſhould have ſtayed till the Complaint had come from the Commons in Parliament, and then it had been regular for them to addreſs to the King: But they were too quick, too nimble.

And whereas the Statute of *Henry* IV. ſays, That no Lord whatſoever ſhall intermeddle with any Cauſe, but by the Impeachment of the Commons, they interpoſe, and give their Advice before their Time; and if there be any Irregularity in Parliament, or out of Parliament, the Commons are to make their Complaint

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plaint of it; and a Man must not be his own Judge, nor his own Carver; nor must every Man create Difficulties of his own, nor set upon Petitioning in this Sort: But there I lay my Foundation, That in such a Matter as this, there ought to have been the Impeachment of the Commons in Parliament, before these Lords could do any thing: And I know nothing can be said for the Bishops more than this, that they were under an *Anathema*, under the Curse that Sir *Robert Sawyer* speaks of; and for Fear of that, they took this irregular Course. But some would say, Better fall into the Hands of God than of Men: Some would say so, (I say) I know not what they would say: But these being the Methods that these Lords should have taken, they should have pursued that Method: The Law should have carved out their Relief and Remedy for them; but they were for going by a new Fancy of their own.

My Lord, the Law continued thus, and was practised so till 3 *Hen.* 7. where the Grievance was found, that Offences in the Intervals of Parliament could not well be punished: And then comes the Statute that sets up the Court of Star-Chamber; and there Men were often brought to Judgment and Punishment for their Sins: And though very great Power was given them, yet they arrogated to themselves a greater; and therefore that Court is abolished by the Statute of 15 *Car.* I. And what is the Reason of abolishing that Statute? Because the Star-Chamber did not keep within their Bounds that the Law set them, but assumed to themselves a larger Power than the Law would allow; and grew very exorbitant and very grievous to the Subject. And another Reason was, which the Statute of 15 *Car.* I. founded it self upon, because there was nothing that was brought in Judgment before that Court, but might be relieved and remedied in the ordinary Methods of Justice in the Courts in *Westminster-Hall:* So that upon these two Considerations, because that Course was exorbitant, and because all the Sins and Misdemeanors that were punished there, might be punished in an ordinary way of Law in another Court, and therefore there was no Need of that Court; and so it was abolished, and the Subject was pretty safe. If there was a Crime committed here, a Man might come properly before your Lordship into this Court, and have it punished.

My Lord, they find Fault with the Words in the Information, and they say, Why are these Words put in, *seditious*, *malicious*? If the Matter be libellous and seditious, we may lawfully say so; and it is no more than the Law speaks; it results out of the Matter it self; and if it be a libellous Paper, the Law says, it is maliciously and seditiously done. And these Gentlemen need not quarrel with us, for so are all the Informations in all Times past; and 'tis no more than the *vi & armis*, which is Common Form. It may be said, How can the publishing of a Libel be said to be done *vi & armis*? That is only a Supposition of Law; and they may as well object to the Conclusion of the Information, that it was *contra Coronam, & Dignitatem Domini Regis.* If it be an illegal Thing, or a Libel, these are necessary Consequences: It is no more than the speaking of the Law upon the Fact.

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But, my Lord, let us a little consider, whether this Matter were warrantable, and whether they had any Warrant to do what was done: They pretend it was done upon this Account, That the King had set forth a Declaration, and had ordered them to read it; which to excuse themselves from, they make this Petition, or this Libel, (call it what you will): And they use this as the main Argument, That they say the King has done illegally; and they tell the King plainly so, that it is illegal: For they take Notice of this Declaration, and say it is illegal, because it is contrary to the Declarations of Parliament in 1662, 1672, and 1685.

Pray, my Lord, let us consider a little, whether there be any Declaration in Parliament that they have given Evidence of: Have they read any Declaration of the Parliament in 1662? What is a Declaration in Parliament, but a Bill that is passed by the King, Lords, and Commons? That we know to be the Meaning, and no other: If it pass the Commons it is no Declaration in Parliament; nay, if it pass the Lords and Commons, it is not a Declaration in Parliament, except it also pass the King. All these Things are Nullities, and the Law takes no Notice of them: We have it in our Books over and over; and no Court ought to suffer such Evidence to be given. I know these Gentlemen are very well acquainted with the Authority in *Fitz-Herbert*'s, Title *Parliament:* There was an Act that was said to be by the King and the Lords; but because the Commons did not agree to it, it is declared and adjudged to be a Nullity; and the Court would take no Notice of it. And how can any Man call that a Declaration in Parliament which is only a Vote of the House of Commons, or of the Lords? No sure; that is one of the Heads I go upon: It's not a Declaration in Parliament, unless it be by an Act of Parliament.

Indeed, my Lord, there is another Sort of a Declaration in Parliament before the Lords, as they are a Court of Judicature, and that is a fair Declaration too; for if any thing comes Judicially before the Lords, either by Writ of Error, or by natural Appeal from any of the other Courts, or by Adjournment, and there be any Judgment given, That is a Declaration in Parliament, and may be fairly so called. So likewise there is another Judicial Declaration, which is, when any thing comes before the Lords Judicially, upon an Impeachment of the Commons, and they give Judgment, that is, a Declaration in Parliament: But to say, that there is any other Declaration in Parliament, is to say more than these Gentlemen can make out. If they will shew me any such, I will submit to them, and not speak a Word against my Lords the Bishops: But if these learned Gentlemen cannot shew me any such, then they have not said that was true in this Petition, that it was so and so declared in Parliament.

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For let us conſider what there is in this Caſe upon this Evidence; for that in 1662 is only a Vote and an Opinion of the Houſe of Commons: And I always underſtood, and have been told ſo by ſome of the Gentlemen of the other Side, that ſuch a Vote ſignifies nothing: But beſides, it ſeems to be a miſtaken Addreſs; for they ſay in it, that the Declaration in 1662. which they addreſs againſt, was the firſt Declaration of that Sort, to ſuſpend Laws without Act of Parliament; and yet in the ſame Breath they do take Notice of the King's Declaration from *Breda*. But here is a mighty Argument uſed from the King's Speech, That becauſe he wiſhed he had ſuch a Power, this muſt be declared in Parliament that he had no ſuch Power. Is the Speech of the Prince a Declaration in Parliament? All the Speeches that were made upon the opening of the Parliament, will you ſay they are Declarations in Parliament? Then the Chancellor, or the Keeper's Speech, or the Lord Privy Seal's, muſt be a Declaration in Parliament. Whoever ſpeaks the Senſe of the King, if he does not ſpeak that which is Law and Right, is queſtionable for it: And ſeveral have been impeached for ſo doing; for they look not upon it as the King's Speech, except it be according to Law: Nothing can turn upon the Prince but what is Legal: If it be otherwiſe, it turns upon him that ſpeaks it. I never did hear that a Speech made by the Chancellor (and I will appeal to all the Lords that hear me in it) was a Declaration in Parliament.

Then, my Lord, we come to the Buſineſs in 1672, which with that in 1662, and that in *Breda*, ſhews that this of the King's is not ſuch a Novelty, but has been done often before. In 1672, the King was in Diſtreſs for Money, being intangled in a *Dutch* War, and wanted Supply: He capitulates with his Commons, you have heard it read; and, upon the Commons Addreſs, he aſſerts it to be his Right, and makes his Complaint to the Lords how the Commons had uſed him; for, when he gives them a fair Anſwer, they reply, and there are Conferences with the Lords about it; but at length it all ends in a Speech by the King, who comes and tells them of his preſent Neceſſities, and ſo he was minded to remit a little at the Inſtigation of the Commons; and he has a good Lump of Money for it. Would this amount to a Declaration in Parliament? Can my Lords the Biſhops fancy or imagine, that this is to be impoſed upon the King, or upon the Court, for a Declaration in Parliament?

Then, laſt of all, for that in 1685, in this King's Time, What is it? The Commons make an Addreſs to the King, and complain to his Majeſty of ſome of his Officers in his Army, that might pretend to have a Diſpenſation, ſomething of that Nature, contrary to the Teſt Act: And what is done upon it? They make their Application to the King, andthe King anſwers them; and that is all. But ſince it is ſpoken of in the Court, I would take Notice, That it is very well known by the Caſe of *Godwin* and *Hales*, the Judgment of this Court was againſt the Opinion of that Addreſs.

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But what Sort of Evidence is all this? Would you allow all the Addreſſes of the Houſe of Commons to be Evidence? Give me Leave to ſay it, my Lord, If you ſuffer theſe Votes, theſe Copies of imperfect Bills, theſe Addreſſes and Applications of one or both Houſes to the King, to be Evidence and Declarations in Parliament, then what will become of the Bill of Excluſion? Shall any body mention that Bill of Excluſion to be a Declaration in Parliament? If ſo, then there is Declaration againſt Declaration; the Declarations of the Commons againſt the Declaration of the Lords. I know not what Judgment my Lords the Biſhops may be of now, concerning thoſe Things of Votes and Addreſſes being Declarations in Parliament, but I am ſure they have ſpoken againſt it heretofore; nay, I am ſure ſome of them have preached againſt it.

And if my Lords the Biſhops have ſaid, Theſe are Declarations in Parliament, and they are not Declarations in Parliament; and if they accuſe the King of having done an illegal Thing, becauſe he has done that which has been declared in Parliament to be illegal, when it was never ſo declared, then the Conſequence is very plain, that they are miſtaken ſometimes; and I ſuppoſe by this Time they believe it.

I dare ſay, it will not be denied me, That the King may, by his Prerogative Royal, iſſue forth his Proclamation: It is as eſſential a Prerogative, as it is to give his Aſſent to an Act of Parliament to make it a Law. And it is another Principle, which I think cannot be denied, That the King may make Conſtitutions and Orders in Matters Eccleſiaſtical; and that theſe he may make out of Parliament, and without the Parliament. If the King may do ſo, and theſe are his Prerogatives, then ſuppoſe the King does iſſue forth his Royal Proclamation (and ſuch in effect is this Declaration under the Great Seal) in a Matter Eccleſiaſtical, by Virtue of his Prerogative Royal, and this Declaration is read in the Council and publiſhed to the World; and then the Biſhops come and tell the King, Sir, You have iſſued out an illegal Declaration, being contrary to what has been declared in Parliament, when there is no Declaration in Parliament: Is not this a diminiſhing the King's Power and Prerogative, in iſſuing forth his Declaration, and making Conſtitutions in Matters Eccleſiaſtical? Is not this a queſtioning of his Prerogative? Do not my Lords the Biſhops, in this Caſe, raiſe a Queſtion between the King and the People? Do not they (as much as in them lies) ſtir up the People to Sedition? For who ſhall be Judge between the King and the Biſhops? Says the King, I have ſuch a Power and Prerogative to iſſue forth my Royal Proclamation, and to make Orders and Conſtitutions in Matters Eccleſiaſtical, and that without the Parliament, and out of Parliament. Say my Lords the Biſhops, You have done ſo, but you have no Warrant for it. Says the King,

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Every Prince hath done it; and I have done no more than what is my Prerogative to do: But this, ſay the Biſhops, is againſt Law. How ſhall this be tried? Should not the Biſhops have had the Patience to have waited till a Parliament came? When the King himſelf tells them, He would have a Parliament in *November* at the furtheſt.

L. C. J. Pray, Mr. *Sollicitor*, come cloſe to the Buſineſs, for it is very late.

Mr. *Sol. Gen.* My Lord, I beg your Patience: You have had a great deal of Patience with them: Pray ſpare me a little. I am ſaying, When the King himſelf tells them that He would have a Parliament in *November* at furtheſt, yet they have no Patience to ſtay till *November*, but make this Application to him: Is not this raiſing a Queſtion upon the King's Prerogative in iſſuing forth Declarations? and upon the King's Power and Right in Matters Eccleſiaſtical? And when I have ſaid this, that my Lords the Biſhops have ſo done; If they have raiſed a Queſtion upon the Right of the King, and the Power of the King in Matters Eccleſiaſtical, then they have ſtirred up Sedition. That they have ſo done, is pretty plain; and for the Conſequence of it, I ſhall appeal to the Caſe in the 2 *Cro.* 2. *Jac.* I. That it is a plain direct Authority for me.

Mr. *Juſt. Powel.* Nay, Mr. *Sollicitor*, we all very well know, to deny the King's Authority in Temporals and Spirituals, as by Act of Parliament, is High-Treaſon.

Mr. *Soll. Gen.* I carry it not ſo far, Sir: We have a gracious Prince; and my Lords the Biſhops find it ſo by this Proſecution. But what ſays that Caſe? It is printed in three Books, in *Noy* 100, in *Moor* 375, and in Mr. *Juſt. Cro.* 371, ſays that Caſe, The King may make Orders and Conſtitutions in Matters Eccleſiaſtical.

Mr. *Juſtice Powel.* But how will you apply that Caſe to this in Hand, Mr. *Sollicitor?*

Mr. *Sol. Gen.* I will apply it by and by, Sir. I would firſt ſhew what it is: There is a Convention of the greateſt Men in the Kingdom ——

Mr. *Juſtice Powel.* Indeed, Mr. *Sollicitor*, you ſhoot at Rovers.

Mr. *Sol. Gen.* There is the Lord Privy Seal, the Archbiſhop of *Canterbury*, and a great many others: It is the greateſt Aſſembly we meet with in our Books; and all of them are of this Opinion, That the King may make Orders and Conſtitutions in Matters Eccleſiaſtical.

My Lord, there is another Authority, and that is, from the Statute 1 *Eliz.* which erected the High Commiſſion Court; and that Statute was not Introductory of a new Law, but Declaratory of the old Law. The King, by his Proclamation, declares his Senſe to do ſuch and ſuch a Thing; the Court, and all Perſons there, give their Judgment and Opinion upon that Statute, That they looked upon it as the groſſeſt Thing, and the fouleſt Affront to the Prince, for any Man to bring into Queſtion that Power of the King in Matters Eccleſiaſtical; 'tis ſaid to be a very high Crime. Why then, my Lord, what is done in this Caſe?

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Mr. *Juſtice Powel.* Mr. *Sollicitor*, Pray, when you are applying, apply that other Part of the Caſe too, which ſays, it was a heinous Offence, to raiſe a Rumour that the King did intend to grant a general Toleration: And is there any Law ſince that has changed it, Mr. *Sollicitor?*

Mr. *Sol. Gen.* In the main, Judgment goes another way: As for that Part, it was perſonal to the Prince that then was, of whom they had ſcandalouſly reported, that he intended to do ſuch a Thing. They looked upon it as a Scandal to King *James*; that it was a ſowing Sedition, and ſtirring up People againſt the Government; and that will come up to our Caſe: For as ſome Men do it on the right Side, others do it on the left: And whoever he be that endeavours to bring a Diſlike of the King in the People, that is moving Sedition againſt the Prince; but that is perſonal to the Prince himſelf, and does not go to his Succeſſors.

Now, my Lord, I come to that which is very plain, from the Caſe of *De Libellis Famoſis*: If any Perſon, in any Paper, have ſlandered the Government, You are not to examine who is in the Right, and who is in the Wrong; whether what they ſaid to be done by the Government be Legal or no; but whether the Party have done ſuch an Act. If the King have a Power (for ſtill I keep to that) to iſſue forth Proclamations to his Subjects, and to make Orders and Conſtitutions in Matters Eccleſiaſtical; if he does iſſue forth his Proclamation, and make an Order upon the Matters within his Power and Prerogative; and if any one would come and bring that Power in Queſtion, I ſay that is Sedition; and you are not to examine the Legality, or Illegality of the Order or Proclamation: And that I think is very plain upon that Caſe, in the 5th Report; for it ſays, If a Perſon does any thing that is Libellous, you ſhall not examine the Fact, but the Conſequence; whether it tended to ſtir up Sedition againſt the Publick, or to ſtir up Strife between Man and Man. In the Caſe of private Perſons, as if a Man ſhould ſay of a Judge, He has taken a Bribe, and I will prove it: This is not to be ſent in a Letter; but they muſt take a regular Way to proſecute it according to Law.

If it be ſo in the Caſe of an inferior Magiſtrate, what muſt it be in the Caſe of the King? To come to the King's Face, and tell him (as they do here) that he has acted illegally, doth certainly, ſufficiently prove the Matter to be Libellous. What do they ſay to the King? They ſay and admit, that they have an Averſeneſs for the Declaration; and they tell him from whence that Averſeneſs doth proceed: And yet they inſinuate, that they had an Inclination to gratify the King, and embrace the Diſſenters, that were as averſe to them as could be, with due Tenderneſs, when it ſhould be ſettled by Parliament and Convocation. Pray, what hath their Convocation to do in this Matter?

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Lord Chief Juſtice. Mr. *Sollicitor General*, I will not interrupt you; but, pray, come to the Buſineſs before us: Shew us that this is in Diminution of the King's Prerogative; or that the King ever had ſuch a Prerogative.

Mr. *Soll Gen.* I will, my Lord: I am obſerving what it is they ſay in this Petition—— They tell the King, It is inconſiſtent with their Honour, Prudence, and Conſcience, to do what he would have them to do; and if theſe Things are not reflective upon the King and Government, I know not what is: This is not in a way of Judicature: Poſſibly it might have been allowable to petition the King to put it into a Courſe of Juſtice, whereby it may be tried; but alas! there is no ſuch thing in this Matter. It is not their Deſire to put it into any Method of Trial; and ſo it comes in the Caſe *De Libellis Famoſis*; for by this Way, they make themſelves Judges, which no Man by Law is permitted to do. My Lords the Biſhops have gone out of the Way; and all that they have offered does not come home to juſtify them; and therefore I take it, under Favour, that we have made it a good Caſe for the King: We have proved what they have done; and whether this be warrantable or not is the Queſtion, Gentlemen, that you are to try. The whole Caſe appears upon Record; the Declaration and Petition are ſet forth, and the Order of the King and Council. When the Verdict is brought in, they may move any thing what they pleaſe in Arreſt of Judgment: They have had a great deal of Latitude, and taken a great deal of Liberty: But truly, I apprehend, not ſo very pertinently. But I hope we have made a good Caſe of it for the King, and that You, Gentlemen, will give us a Verdict.

Mr. *Juſtice Holloway.* Mr. *Sollicitor*, there is one thing I would feign be ſatisfied in: You ſay the Biſhops have no Power to petition the King.

Mr. *Soll. Gen.* Not out of Parliament, Sir.

Mr. *Juſt. Holloway.* Pray give me Leave, Sir. Then the King having made ſuch a Declaration of a general Toleration and Liberty of Conſcience; and afterwards he comes and requires the Biſhops to diſperſe this Declaration: This they ſay, out of a Tenderneſs of Conſcience, they cannot do, becauſe they apprehend it contrary to Law, and contrary to their Function. What can they do, if they may not Petition?

Mr *Soll. Gen.* I'll tell you what they ſhould have done, Sir. If they were commanded to do any thing againſt their Conſciences, they ſhould have acquieſced till the meeting of the Parliament.

[*At which ſome People in the Court hiſſed.*]

Mr. *Att. Gen.* This is very fine, indeed: I hope the Court and the Jury will take Notice of this Carriage.

Mr. *Soll. Gen.* My Lord, it is one thing for a Man to ſubmit to his Prince, if the King lay a Command upon him that he cannot obey, and another thing to affront him. If the King will impoſe upon a Man what he cannot do, he muſt acquieſce: But ſhall he come and fly in the Face of his Prince? Shall he ſay it is illegal? and that the Prince acts againſt Prudence, Honour, or Conſcience; and throw Dirt in the King's Face? Sure that is not to be permitted; that is Libelling with a Witneſs. 1688. 4 Jac. II.

L. C. J. Truly, Mr. *Sollicitor*, I am of Opinion, that the Biſhops might petition the King; but this is not the right Way of bringing it: I am not of that Mind, that they cannot petition the King out of Parliament; but if they may petition, yet they ought to have done it after another Manner; for if they may in this reflective way petition the King, I am ſure it will make the Government very precarious.

Mr. *Juſt. Powel.* Mr. *Sollicitor*, it would have been too late to ſtay for a Parliament; for it was to have been diſtributed by ſuch a Time.

Mr. *Soll. Gen.* They might have lain under it, and ſubmitted.

Mr. *Juſt. Powel.* No, they would have run into Contempt of the King's Command, without petitioning the King not to inſiſt upon it: And if they had petitioned, and not have ſhewn the Reaſon why they could not obey, it would have been looked upon as a piece of Sullenneſs; and that they would have been blamed for, as much on the other Side.

L. C. J. I do aſſure you, if it had not been a Caſe of great Concern, I would not have heard you ſo long: It is a Caſe of a very great Concern to the King and the Government on the one Side, and to my Lords the Biſhops on the other; and I have taken all the Care I can to obſerve what has been ſaid on both Sides. 'Tis not to be expected that I ſhould repeat all the Speeches, or the particular Facts; but I will put the Jury in mind of the moſt material Things, as well as my Memory will give me Leave: But I have been interrupted by ſo many long and learned Speeches, and by the Length of the Evidence which has been brought in, in a very broken, unmethodical Way, that I ſhall not be able to do ſo well as I would. *The Chief Juſtice directs the Jury.*

Gentlemen, thus ſtands the Caſe: It is an Information againſt my Lords the Biſhops, his Grace my Lord of *Canterbury*, and the other ſix Noble Lords; and it is for preferring, compoſing, making, and publiſhing, and cauſing to bepubliſhed a Seditious Libel: The Way that the Information goes is ſpecial, and it ſets forth, That the King was graciouſly pleaſed, by his Royal Power and Prerogative, to ſet forth a Declaration of Indulgence for Liberty of Conſcience, in the third Year of his Reign; and afterwards, upon the 27th of *April*, in the fourth Year, he comes and makes another Declaration; and afterwards, in *May*, orders in Council, That this Declaration ſhould be publiſhed by my Lords the Biſhops in their ſeveral Dioceſes; and after this was done, my Lords the Biſhops come and preſent a Petition to the King, in which were contained the Words which you have ſeen.

Now, Gentlemen, the Proofs that have been upon this, you will ſee what they are; the two Declarations are proved by the Clerks of the Council, and they are brought here under the Great Seal: A Queſtion did ariſe,

Whether

1688. 4 Jac. II. Whether the Prints were the ſame with the Original Declarations? and that is proved by *Hills*, or his Man, that they were examined, and are the ſame: Then the Order of Council was produced by Sir *John Nicholas*, and has likewiſe been read to you: Then they come to prove the Fact againſt the Biſhops, and firſt they fall to proving their Hands; they begun indeed a great way off, and did not come ſo cloſe to it as they afterwards did; for ſome of their Hands they could hardly prove, but my Lord Archbiſhop's Hand was only proved and ſome others; but there might have been ſome Queſtion about that Proof, but afterwards it came to be proved, That my Lords the Biſhops owned their Hands; which, if they had produced at firſt, would have made the Cauſe ſomething ſhorter then it was.

The next Queſtion that did ariſe, was about the Publiſhing of it, Whether my Lords the Biſhops had publiſhed it? and it was inſiſted upon, That nobody could prove the Delivery of it to the King: It was proved the King gave it to the Council, and my Lords the Biſhops were called in; there they acknowledged their Hands, but nobody could prove how it came to King's Hands: Upon which we were all of Opinion, that it was not ſuch a Publiſhing as was within the Information; and I was going to have directed you, to find my Lords the Biſhops Not Guilty; but it happened, that being interrupted by an honeſt, worthy, learned Gentleman, the King's Counſel took the Advantage, and informing the Court that they had further Evidence for the King, we ſtaid till my Lord Preſident came, who told us how the Biſhops came to him to his Office at *Whitehall*, and after they had told him their Deſign, That they had a Mind to petition the King, they asked him the Method they were to take for it, and deſired him to help them to the Speech of the King: And he tells them he will acquaint the King with their Deſire, which he does; and the King giving Leave, he comes down, and tells the Biſhops, that they might go and ſpeak to the King when they would; and (ſays he) I have given Direction that the Door ſhall be opened for you as ſoon as you come: With that the two Biſhops went away, and ſaid, They would go and fetch their other Brethren; and ſo they did bring the other four, but my Lord Archbiſhop was not there; and immediately when they came back, they went up into the Chamber, and there a Petition was delivered to the King. He cannot ſpeak to that particular Petition, becauſe he did not read it; and that is all he knew of the Matter, only it was all done the ſame Day, and that was before my Lords the Biſhops appeared in Council. Gentlemen, after this was proved, then the Defendants came to their Part, and theſe Gentlemen that were of Counſel for my Lords let themſelves into their Defence by notable learned Speeches, by telling you, That my Lords the Biſhops are Guardians to the Church, and great Peers of the Realm, and were bound in Conſcience to take Care of the Church: They have read you a Clauſe of a Statute made in Queen *Elizabeth*'s Time, by which they ſay, My Lords the Biſhops were under a Curſe, if they did not take care of that Law. Then they ſhew you ſome Records; one in *Richard* the Second's Time, which they could make little of, by reaſon their Witneſſes could not read it; but it was, in ſhort, a Liberty given to the King to diſpenſe with the Statute of Proviſors. Then they ſhew you ſome Journals of Parliament, firſt in the Year 1662, where the King had granted an Indulgence; and the Houſe of Commons declared it was not fit to be done, unleſs it were by Act of Parliament: And they read the King's Speech, wherein he ſays, He wiſhed he had ſuch a Power; and ſo likewiſe in 1672, which is all nothing but Addreſſes and Votes, or Orders of the Houſe, or Diſcourſes, either the King's Speech, or the Subjects Addreſſes; but theſe are not Declarations in Parliament, that is inſiſted upon by the Counſel for the King, That what is a Declaration in Parliament, is a Law, and that muſt be by the King, Lords, and Commons; the other is but common Diſcourſe, but a Vote of the Houſe, or a Signification of their Opinion, and cannot be ſaid to be a Declaration in Parliament. Then they come to that in 1685, where the Commons take Notice of ſomething about the Soldiers in the Army, that had not taken the Teſt, and make an Addreſs to the King about it; but in all theſe Things (as far as I can obſerve) nothing can be gathered out of them one way or other; it is all nothing but Diſcourſes. Sometimes this Diſpenſing Power has been allowed, as in *Richard* the Second's Time; and ſometimes it has been denied, and the King did once wave it; Mr. Sollicitor tells you the Reaſon, There was a Lump of Money in the Caſe: But I wonder indeed to hear it come from him. 1688. 4 Jac. II.

Mr. Sol. Gen. My Lord, I never gave my Vote for Money, I aſſure you.

L. C. J. But thoſe Conceſſions which the King ſometimes makes for the Good of the People, and ſometimes for the Profit of the Prince himſelf, (but I would not be thought to diſtinguiſh between the Profit of the Prince and the Good of the People, for they are both one; and what is the Profit of the Prince, is always for the Good of the People); but I ſay, thoſe Conceſſions muſt not be made Law, for that is reſerved in the King's Breaſt to do what he pleaſes in it at any Time. The Truth of it is, the Diſpenſing Power is out of the Caſe, it is only a Word uſed in the Petition; but truly I will not take upon me to give my Opinion in the Queſtion, to determine that now, for it is not before me; the only Queſtion before me is, and ſo it is before you, Gentlemen, it being a Queſtion of Fact, Whether here be a certain Proof of a Publication? and then the next Queſtion is a Queſtion of Law indeed, Whether, if there be a Publication proved, it be a Libel?

Gentlemen, upon the Point of the Publication I have ſummed up all the Evidence to you; and if you believe, that the Petition which theſe Lords preſented to the King, was this Petition; truly, I think, that is a Publication ſufficient; if you do not believe it was this Petition

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Petition, then my Lords the Biſhops are not guilty of what is laid to their Charge in this Information, and conſequently there needs no Enquiry, whether they are guilty of a Libel: But if you do believe that this was the Petition they preſented to the King, then we muſt come to enquire, Whether this be a Libel.

Now, Gentlemen, any Thing that ſhall diſturb the Government, or make Miſchief, and a Stir among the People, is certainly within the Caſe of *Libellis Famoſis*; and I muſt in ſhort give you my Opinion, I do take it to be a Libel. Now, this being a Point of Law, if my Brothers have any Thing to ſay to it, I ſuppoſe they will deliver their Opinions.

Judge Holloway's *Opinion.*

Then Mr. Juſtice *Holloway* delivered his Opinion, and ſaid: As it was the Right of every Subject to petition, it could not be a Fault, unleſs it were done with an ill Intent: Indeed if the Jury were ſatisfied it was done with an ill Intention, as to raiſe Sedition or the like, they ought to find them Guilty: But if they did deliver the Petition to ſave themſelves harmleſs, and to free themſelves from blame, by ſhewing the Reaſon of their Diſobedience to the King's Command, which they apprehended to be a Grievance to them, and which they could not in Conſcience give Obedience to, he could not think it was a Libel.

Judge Powel's *Opinion.*

Mr. Juſtice *Powel* alſo obſerved, That to make it a Libel, it muſt be falſe and malicious, and tend to Sedition; and he ſaw nothing offered by the King's Counſel to ſhew either the Falſhood or the Malice of it: Nor did he remember any Caſe in Law, and he had taken ſome Pains upon this Occaſion to look into it, that there was any ſuch Diſpenſing Power in the King, and then it could be no Libel: That this was a Diſpenſation with a Witneſs, which amounted to an Abrogation and utter Repeal of all Laws: And he could ſee no difference in Law between the King's Power to diſpenſe with Laws Eccleſiaſtical, and his Power to diſpenſe with any other Laws whatſoever: That if this were once allowed, they ſhould have no need of Parliaments; all the Legiſlature would be in the King, which was a Thing worth conſidering, and he left the Iſſue to God and their Conſciences.

Judge Allybone's *Opinion.*

Mr. Juſtice *Allybone* on the other hand ſaid, that he laid it down as a Rule, That no Man could take upon him to write againſt the actual Exerciſe of the Government, unleſs he had Leave from the Government; if he did, it was a Libel. That no private Man might take upon him to write againſt the Government at all: When the Government came to ſhake his particular Intereſt, he might redreſs himſelf by Law; but if he intruded into other Men's Buſineſs, that did not concern his particular Intereſt, he was a Libeller.

He agreed, every Man might petition the King or Government in a Matter that related to his own private Intereſt: But to meddle with a Matter that related to the Government, he did not think the Biſhops had any more Power to do that than others.

When the Houſe of Lords and Commons were ſitting, they had a proper way of applying to the King: But if every private Man was to interpoſe his Advice, there would be no End of adviſing the Government. And in the Reign of King *James* I. there was a ſolemn Reſolution, That it was a High Miſdemeanor, and next to Treaſon, to petition the King to put the Penal Laws in Execution.

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Mr. *Pollexfen*. The Puritans threatened there, unleſs their Requeſt was granted, ſeveral Thouſands of the King's Subjects would be diſcontented.

Mr. Juſtice *Powel*. That was the Reaſon of that Judgment.

Mr. Juſtice *Allybone* ſaid, He laid no great Streſs on that Objection, That the Matter of that Petition was not falſe; and for Sedition, that was what every Libel carried in it ſelf: As every Treſpaſs implied *Vi & Armis*, ſo every Libel againſt the Government carried in it Sedition, and all the other Epithets that were in the Information. This was his Opinion as to the Law in general, and he ſhould not debate the Prerogative of the King, or the Privilege of the Subject; but as the Fact was, he thought theſe venerable Biſhops did meddle with that which did not belong to them: They took upon them in a Petitionary Way to contradict the actual Exerciſe of the Government, which he thought no particular Perſons might do.

The Jury had Leave to ſend for Wine, and deſiring they might have the Papers out with them, which had been given in Evidence, the Chief Juſtice ſaid, They might have a Copy of the Information, the Libel, and the Declaration under Seal, but not the Votes of the Houſe of Commons, or the Journals; for they could have no Paper that was not under Seal.

The Jury then withdrawing, remained together all Night, without Fire or Candle: And the Court ſitting again next Morning (being *Saturday* the 30th of *June*) the Biſhops came into Court, and the Jury brought in their *The Biſhops acquitted.* Verdict, that the Defendants were NOT GUILTY.

At which the People ſhouting, Mr. *Sollicitor* moved they might be committed; and a Gentleman of *Grays-Inn* was apprehended, to whom the Chief Juſtice ſaid, I am as glad, Sir, as you can be, that my Lords the Biſhops are acquitted; but your Manner of rejoycing in Court is indecent: However he was ſoon after diſcharged.

Then the Court aroſe, and my Lords the Biſhops were permitted to return Home, the Attorney General informing the Court he had nothing more againſt them.

The Victory King *James*'s Forces obtained over the Duke of *Monmouth* at *Sedgemore*, in the Year 1685, was the Ruin of that Prince. The King looked upon himſelf to be ſo well eſtabliſhed by that ſucceſsful Battel, that he was no longer under a Neceſſity of concealing his Paſſion for Popery; or indeed of keeping his Word, which he had ſo ſolemnly given at his Acceſſion, to protect and maintain the Church of *England*, and the Civil Conſtitution.

He told the Parliament, at their Meeting the following Winter, that he both had, and would employ Popiſh Officers: And when that dutiful Houſe of Commons addreſſed him, and offered

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fered to indemnify the Popiſh Officers for what paſſed; but deſired he would not continue any Recuſants in Office; he imperiouſly anſwered, *He did not expect ſuch an Addreſs from the Houſe of Commons*, and prorogued them a few Days afterwards, though they were then upon a Bill for raiſing his Majeſty 700,000 Pounds: Nor did he ever ſuffer them to meet afterwards; but increaſing his ſtanding Forces, diſplacing ſeveral Proteſtant Officers, and employing *Iriſh* Popiſh Officers to command them in their Stead, plainly diſcovered his Intentions of introducing his Religion by Force, without any Regard to the Laws and Statutes of the Realm: This was further manifeſted by his Majeſty's aſſuming a Diſpenſing Power, which in Effect repealed and abrogated all our Laws at once. And when Sir *Thomas Jones* Lord Chief Juſtice of the *Common Pleas*, the Lord Chief Baron *Mountague*, Sir *Job Charlton* one of the Judges of the *Common Pleas*, and Sir *Edward Nevil*, one of the Barons of the *Exchequer*, declared, (their Opinions being demanded) That the King could not diſpenſe with the Laws, either in Favour of the Papiſts or Diſſenters, they were diſplaced, and more complying Lawyers advanced to thoſe Poſts: One of them, *Chriſtopher Milton*, who was made a Baron of the *Exchequer*, being a profeſſed *Roman Catholick*, as was alſo *Richard Allybone*, who was not long after preferred to be one of the Judges of the *King's-Bench*; and ſeveral Popiſh Lords were called to the Council-Table, particularly the Lords *Powis*, *Arundel*, *Bellaſis*, and *Dover*.

And we find it was ſoon after reſolved, in the Caſe of *Godwin* and *Hales* above-mentioned, *That the King might diſpenſe with the penal Laws in Caſes of Neceſſity; and that the King was Judge of that Neceſſity.*

Whereupon the Papiſts were allowed the free and open Exerciſe of their Religion; Schools and Seminaries of Jeſuits, and other Orders, were erected; four Popiſh Biſhops were conſecrated in the Royal Chapel, and ſent to exerciſe Epiſcopal Juriſdiction in ſeveral Parts of *England*: Their Paſtoral Letters, directed to the *Engliſh* Catholicks, were printed by the King's Printer, and diſperſed all over *England*; Monks and Friers of all Orders appeared in their proper Habits; and, leſt the Clergy of the Church of *England* ſhould preach againſt Popery, his Majeſty's Letters were directed to all Proteſtant Biſhops, requiring them to prohibit their inferior Clergy to meddle with any controverted Points of Religion: And, by what followed ſoon after, it was manifeſt, the principal Motive for this Injunction was, That they might not preach againſt Popery. However, the Divines of the Church of *England* never exerted their Talents more vigorouſly or ſucceſsfully, in preaching and writing againſt all the Abſurdities of Popery, than at this Time; while the Diſſenting Teachers, of every Denomination, remained ſilent, or rather flattered and encouraged this unfortunate Prince in his Projects of diſpenſing with the Laws, and breaking down thoſe Boundaries, which had hitherto ſo happily defended and protected the Proteſtant Religion, and the Liberties and Properties of the People.

The Church of *England*, therefore, now became the principal Object of the King's Aver-

ſion, and the Butt againſt which the Popiſh Miniſters levelled their whole Artillery; and the Court not being able to change and new model the Bench of Biſhops, as they had done the Lay Judges, a Kind of High Commiſſion Court was erected, entitled, *The Commiſſion for Cauſes Eccleſiaſtical*, on which an unlimited and abſolute Power was conferred over all Cauſes and Perſons Eccleſiaſtical; and, for Form-ſake, Dr. *Sancroft*, Archbiſhop of *Canterbury*, was made the firſt Commiſſioner; but he refuſed to act: And ſome other Biſhops were made Members of this Court, particularly the Biſhops of *Rocheſter* and *Durham*; but theſe at length withdrew, as did alſo ſome of the Lay Commiſſioners. The Lord Chancellor *Jeffries*, and the Earl of *Sunderland*, Preſident of the Council, were the principal Men the King depended on, to bring the Church of *England* under the Subjection of the See of *Rome*; or, rather to eſtabliſh Popery in the Room of the Church of *England*: Not that theſe Noblemen were really Papiſts; they ſeemed indifferent to all Religions, but could profeſs any to advance their Fortunes, and make their Court to the Powers in Being.

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This Commiſſion was generally held to be illegal; for the Statute of 17 *Car.* I. which aboliſhed the High Commiſſion Court, had enacted, That no Court ſhould be erected with the like Power or Juriſdiction for the future, and the Statute of 13 *Car.* II. which confirmed the ordinary Power of Archbiſhops and Biſhops, rectified that Clauſe in the 17th of *Car.* I. for aboliſhing the High Commiſſion Court, and all Courts of the like Nature: However, the King having obtained the Opinions of ſome of the Judges, that he had Power to erect ſuch a Court, the Biſhops of *Rocheſter* and *Durham*, the Lord *Mulgrave*, and ſome others, ſubmitted to act by virtue of this Commiſſion, for ſome Time; more out of Fear to offend the King, than upon Choice.

Not long before the opening of this Commiſſion, Dr. *Sharp*, Rector of St. *Giles's in the Fields*, (afterwards Archbiſhop of *York*) had preached a Sermon againſt Popery; at which the King was highly offended, and wrote to Dr. *Compton*, Biſhop of *London*, to ſuſpend him; which the Biſhop neglecting, it occaſioned the Proſecution of that Right Reverend Prelate above-mentioned, that ended in his own Suſpenſion by the ſaid Eccleſiaſtical Commiſſioners, whoſe Juriſdiction that Prelate bravely conteſted, as contrary to the ſaid Statutes of 17 *Car.* I. and 13 *Car.* II.

The Biſhops of *Durham*, *Rocheſter*, and *Peterborough*, were appointed by the Eccleſiaſtical Commiſſioners, to exerciſe Epiſcopal Authority in the Dioceſe of *London*, during the Biſhop's Suſpenſion; which was not taken off till the Rumour of the Prince of *Orange*'s intended Invaſion.

The next that fell under the Weight of the King's Diſpleaſure, was, the Univerſity of *Cambridge*: His Majeſty had found Means to get one *Baſſet*, a *Roman-Catholick*, choſen Maſter of *Sidney-College*; and, in the Year 1687, ſent his Letter Mandatory to that Univerſity, to admit *Alban Francis*, a Benedictine Monk, to the Degree of Maſter of Arts, without adminiſtring to him the uſual Oaths: And when the Univerſity of *Cambridge* petitioned in the

1688. 4 Jac. II. humbleſt Manner, to be excuſed from doing that illegal Act, which was ſo contrary to their Statutes and their Oaths; we find the King made uſe of the ſame illegal Eccleſiaſtical Commiſſion to puniſh them for it, and diſplace the Vice-Chancellor; and the Univerſity too much countenanced that Authority, by electing another Vice-Chancellor, before Dr. *Peachell* was legally diſplaced: However, they deſerve great Applauſe, in perſiſting to refuſe Father *Francis* his Degree, when they ſaw the King in the Height of his Power, and ſupported by a ſtanding Army: May the Univerſity ever be governed by Men of Equal Courage and Zeal for their Religion!

The next Piece of Oppreſſion the Eccleſiaſtical Commiſſioners were employed in, was, the expelling the Fellows of *Magdalen-College* in *Oxford*, for not electing that Scandal to the Univerſity, *Anthony Farmer*, for their Preſident; a Man every Way unqualified for that Poſt: The King indeed afterwards, aſhamed to inſiſt on their chuſing a Perſon of ſo profligate a Character, commanded them to elect the Biſhop of *Oxford* their Preſident; but they had before elected Dr. *Hough*, and truly anſwered, *The Place was full*; whereupon we find the Eccleſiaſtical Commiſſioners broke open the Doors of the Preſident's Lodgings, and expelled him and moſt of the Fellows from their Fellowſhips, which were their Freeholds: A Stretch of Juriſdiction beyond what the antient High Commiſſion Court had pretended to, before it was ſuppreſſed. And, if the King had continued thus to impoſe Heads of Houſes and Fellows upon the Univerſity, and not been oppoſed in it, there is no Doubt, but we ſhould have ſeen the Colleges ſoon repleniſhed with Jeſuits, and other Popiſh Orders; and the Univerſities themſelves made inſtrumental to the Deſign of ſubverting the Eſtabliſhed Religion, and introducing Popery. The Preſident and Fellows of *Magdalen-College* can never be ſufficiently applauded, therefore, for making ſo brave a Stand, when the King had aſſumed, and in a Manner poſſeſſed himſelf of a deſpotick Power, having no Parliament to be a Check upon him; few Judges that durſt diſpute his Commands, how illegal ſoever; and a Standing Army ſufficient to have terrified the Boldeſt into a Compliance with his Dictates.

But, before the King proceeded to Extremity, it is ſaid, his Majeſty uſed Abundance of Artifice to wheedle or fright this College into his Meaſures; and, amongſt other Stratagems, employed that ſubtil Quaker *Penn* to write to the College, and tell them, that the King's Temper was ſuch, that he would never be baffled in any thing he heartily eſpouſed: And to ſuggeſt that there were ſo many Statutes to be obſerved, That it was impoſſible but ſome of them muſt be broken; and a Failure in any one Point would forfeit their Charter, and lay them open to the Royal Diſpleaſure: And that their Deſtruction would make Way for the intended Reformation, that was aimed at, firſt in the Univerſities, and then in the Church: From whence he infers, that for their own Sakes, and for the Sake of the Publick, it would be their Wiſdom to comply with his Majeſty.

To this Letter, it is ſaid, the College returned an Anſwer of the following Tenor: That they were not conſcious they had given his Majeſty any juſt Offence; and the Miſdemeanors of ſome particular Perſons could not deſtroy a College; but if their College ſhould be diſſolved, the Revenues would return to the Heirs of the Founders, and not devolve on the Crown: That if their College was to be made the firſt Example of that Kind, they ſhould juſtify themſelves better, by an Obſervation of their Statutes and of their Oaths, at leaſt to God and their Conſciences, than by a voluntary and deliberate Breach of them; concluding with ſome Inſtances of their Loyalty to the Crown, even in this Reign; particularly during *Monmouth*'s Rebellion, when they raiſed a Company at their own Charge, and fought the Enemy under thoſe very Fellows that were now threatned with Expulſion. 1688. 4 Jac. II.

That mercenary Prelate Dr. *Parker*, Biſhop of *Oxford*, who was forced upon the College as their Preſident, did not only palliate and defend theſe illegal and arbitrary Proceedings of the King and the Eccleſiaſtical Commiſſioners in Converſation, but publiſhed a Book for that End, intitled, *Reaſons for Abrogating the Teſt* (which was licenſed by the Earl of *Sunderland*, then Secretary of State, Lord Preſident, and Prime Miniſter) in which he ſhamefully betrayed the Intereſts of his own Order, and of the Church of *England* in general: Whereupon another Writer obſerved, That if there were two or three Falſe Brethren (among twenty-ſix Biſhops) who had been preferred to do the Dirty Work of the Court, they might comfort themſelves, that (among a Dozen of as good Men) there was one as bad as this Traitor *Parker* could be, who betrayed his Mother, as the other did his Maſter.

The next violent Attack King *James* made upon the Church, was, in proſecuting and impriſoning the ſeven Biſhops, for not promoting the diſpenſing Power, and commanding their inferior Clergy to read his Declaration for Liberty of Conſcience in their Churches, and for Petitioning that he would not inſiſt upon it. Theſe Right Reverend Prelates were no ſooner acquitted of the Crime of Libelling, with which they were charged, for preferring the ſaid Petition to the King, but the People appeared tranſported; ſuch Shouts and Rejoicings were never known, as upon this Occaſion: The People of *London*, and the reſt of *England*, as they received Advice of the Biſhops being acquitted, were extremely loud in their Acclamations: The very Army at *Hounſlow-Heath* made the Air ring with their Shouts; at which his Majeſty, who was that Day in the Camp, was perfectly confounded; and having ordered Maſs to be ſaid about the ſame Time on Board the Fleet, a Mutiny was apprehended among the Sea-men, who were reſtrained with ſome Difficulty from throwing the Popiſh Prieſts over-Board.

The King, to ſhew his Reſentment againſt the two Judges, Sir *Richard Holloway* and Sir *John Powel*, who had delivered their Opinions in Favour of the Biſhops, diſplaced them; and ſtill perſiſted in his Reſolution of compelling the Clergy to read his Declaration for Liberty of Conſcience; commanding the Eccleſiaſtical Commiſſioners, to iſſue their Precepts to all Chancellors,

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cellors, Archdeacons, Commiſſaries, and Officials, to enquire in what Churches and Chapels the Declaration was not read, and to tranſmit an Account of the Defaulters to the Commiſſioners; but ſcarce any Body appeared at the Day appointed; and the Biſhop of *Rocheſter*, one of the Commiſſioners, refuſed to ſit any longer amongſt them; declaring, he would rather ſuffer with his Brethren, the Biſhops, than concur in proſecuting thoſe who refuſed to read the Declaration.

The King, finding that little Obedience was given to the Eccleſiaſtical Commiſſion, and that ſeveral of the Commiſſioners refuſed to act, made his Court to the Soldiery, to aſſiſt him in compelling his Subjects to ſubmit to a Diſpenſing Power; propoſing it to the Officers and Soldiers to ſign an Inſtrument, engaging themſelves to contribute, to the utmoſt of their Power, to procure the Penal Laws and Teſt to be repealed: And a Writing of this Tenor was ordered to be offered to every Regiment, ſeverally to be ſigned.

The firſt Experiment was made of the Earl of *Litchfield*'s Regiment; which being drawn up under Arms, the Major made a ſhort Speech to the Soldiers upon the Occaſion, and commanded all thoſe who did not think fit to ſubſcribe to it, to lay down their Arms: When, to the great Surprize of his Majeſty, who was preſent, the whole Regiment grounded their Arms, except two Captains, and ſome private Soldiers: Whereupon the King, after ſome Pauſe, ordered them to handle their Arms again; telling them, he ſhould not for the future do them the Honour to aſk their Advice; and thereupon dropped his Deſign, without making any further Trial of the Diſpoſition of his Forces, but proceeded with more haſte in his Project of new-modelling his Army, by diſcharging the *Engliſh* Proteſtants, and introducing *Iriſh* Catholicks; which provoked his Army ſtill more: And before he could make any great Progreſs in this Matter, Advice was brought of the Prince of *Orange*'s intended Invaſion.

Thus had this unhappy Prince worked himſelf out of the Affections of the whole Nation, by a Series of Mal Adminiſtration, and a Succeſſion of political Blunders; ſuch as were ſurely never committed, till this weak Reign, at leaſt in ſo ſhort a Time. The Univerſities, the Biſhops and Clergy; the Parliament, Nobility, and Commons; the Army and the Navy, all of them, appearing eminently loyal and affectionate to his Perſon at his Acceſſion, were, within leſs than the Space of four Years, ſo highly exaſperated by his arbitrary Adminiſtration, and alarmed at his Attempts to ſubvert the Conſtitution, that, when an Invaſion threatned him, he ſaw the Nation ripe for a general Revolt, and ſcarce knew a Man he could rely upon.

In which Diſtreſs he applied himſelf to thoſe very Biſhops, and their Brethren, he had ſo unjuſtly and ungratefully proſecuted; offering to undo all he had been doing, to introduce Popery and an arbitrary Dominion, ever ſince *Monmouth*'s Defeat: And theſe truly Chriſtian Fathers, far from any Thoughts of Revenge, gave him the beſt Advice they could, to re-eſtabliſh him in the good Opinion of his Subjects, and to reſtore and ſecure the Conſtitution of the Government at the ſame Time.

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1. They adviſed him, in the firſt Place, to put the Government of the ſeveral Counties into the Hands of ſuch Noblemen and Gentlemen, as were qualified by Law for thoſe Poſts.

2. To aboliſh the Eccleſiaſtical Commiſſion.

3. To grant no Diſpenſations to any particular Perſons, to hold Places or Preferments, that were not legally qualified for them; and particularly, that he would reſtore the Fellows of *Magdalen-College* in *Oxford*.

4. To revoke all Licences and Faculties given to Papiſts to teach publick Schools.

5. That he would relinquiſh the diſpenſing Power.

6. That he would prohibit the four foreign Biſhops, who ſtiled themſelves *Vicars Apoſtolical*, to invade the Eccleſiaſtical Juriſdiction.

7. To fill up the vacant Biſhopricks, in *England* and *Ireland*, with Men duly qualified for them; particularly that of *York*.

8. To ſuperſede all Proſecutions on *Quo Warranto's* againſt Corporations, and reſtore them their antient Charters.

9. That his Majeſty would call a Parliament, wherein the Church of *England* might be ſecured according to the Acts of Uniformity; a Proviſion made for a due Liberty of Conſcience, and the Liberties and Properties of the Subjects ſecured. And,

10. That his Majeſty would permit his Biſhops to offer ſuch Arguments, as they truſted, by God's Grace, would induce his Majeſty to return to the Communion of the Church of *England*, in which Moſt Holy Catholick Church he had been baptized, in which he was educated, and to which it was their daily Prayer he might be re-united.

With moſt of theſe Propoſitions his Majeſty immediately complied. The Lord Chancellor *Jeffries*, by the King's Order, carried the City of *London* their antient Charters: The Lord-Lieutenants of the ſeveral Counties were ordered to redreſs all Abuſes and Innovations, that had been made in the reſt of the Corporations of the Kingdom: The Biſhop of *Wincheſter*, Viſitor of *Magdalen-College*, was ordered to reſtore the excluded Fellows: A Proclamation was publiſhed for reſtoring the antient Charters to the reſpective Corporations: The Popiſh Lord-Lieutenants, Deputy-Lieutenants, Juſtices of Peace, Mayors, and other diſqualified Officers and Magiſtrates, were diſplaced; and thoſe of the Church of *England* put in their Room; particularly the *Anabaptiſt* Lord-Mayor of *London*, Sir *John Eyles*, was diſplaced, and the Chair ſupplied by Sir *John Chapman*, a Member of the Church of *England*: For the Diſſenters, of all Denominations, had made great Advantages of the King's Declaration for Liberty of Conſcience, as well as the Papiſts.

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But all theſe Conceſſions and Regulations came too late; the Nation was ſufficiently convinced they were all forced from the King, and whenever he had an Opportunity, he would renew his Attempts upon the Conſtitution. It was the general Opinion, therefore, that he ought to be ſo reſtrained and limited in the Exerciſe of the Government, that it ſhould be no more in his Power to ſhake the Foundations on which it was eſtabliſhed: Though, I am ſatisfied, neither the Biſhops, nor a Majority of the Nation, had then

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then any Proſpect of that Revolution which ſucceeded ſo ſoon after, or of depoſing the King.

Some of them propoſed the ſame or the like Expedients, for ſecuring the Conſtitution, at the Meeting of the Parliament, as had been offered when the Bill of Excluſion was upon the Anvil; particularly, that all the great Officers, Miniſters, Judges, and Magiſtrates ſhould be nominated by the Parliament for the future.

Others had actually invited over the Prince and Princeſs of *Orange*, propoſing, that the Government ſhould be adminiſtered by that Princeſs, the next Proteſtant Heir to the Crown, during the Life of her Father, and that he ſhould retain little more than the Title and Revenue of a King: And this, poſſibly, was as much as the Prince of *Orange* himſelf expected at that Time.

But there was ſtill a third Claſs, conſiſting of Diſſenters and Republicans, that were for altering the Conſtitution entirely, to that of a Commonwealth, like that of *Holland*; and if they had not Strength to carry that Point, they propoſed to depoſe King *James*, and ſet the Prince of *Orange*, alone, upon the Throne, under ſuch Limitations and Reſtrictions, as he ſhould have little more than the Name of King. But the Expectations of none of theſe were exactly anſwered; for, after a terrible Concuſſion, the Government ſettled almoſt on the ſame Baſis it had ſtood for many Years before. I ſhall conclude theſe Remarks with this further Obſervation; That all Parties, except the Papiſts, at the Revolution, agreed, the King ought to be reſtrained in the Exerciſe of his Power, though they did not agree in the Manner of reſtraining him.

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The Trial of ROWLAND WALTERS, DEARING BRADSHAW, and AMBROSE CAVE, Gents. for *Murder*, at the *Old-Baily*, *London*, on the 1ſt of *June*, 1688. 4 *Jac.* II.

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The Caſe.

THIS is no State Matter, only an ordinary Trial for Murder, and that very imperfect; however, it appears that ſome Gentlemen got drunk at the *Swan*-Tavern on *Fiſh-ſtreet-Hill*, and quarrelling at the Tavern Door, as they were going away, Sir *Charles Pym* and Mr. *Walters* drew their Swords in the Street; Sir *Charles Pym* wounded Mr. *Walters* in the Thigh, and Mr. *Walters* run Sir *Charles* through the Body, who died upon the Spot; and the Court obſerving there was no premeditated Malice, the Gentlemen having never ſeen one another before, directed the Jury to find Mr. *Walters* guilty of Manſlaughter only; and the other two, being in the Houſe when Sir *Charles* was killed, were acquitted.

1688. 4 Jac. II. Stansfield's *Trial.*

The Trial of PHILIP STANSFIELD, Gent. for *High-Treaſon* and *Parricide*, before the Earl of *Linlithgow*, Lord Juſtice General, and other Lords Commiſſioners, at *Edinburgh*, on the 6th of *February*, 1688. 4 *Jac.* II.

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The Indictment.

THE Indictment charges, that, Whereas, by the Laws of *Scotland*, the ſpeaking of malicious and ſeditious Words, to the Diſdain of his Majeſty's Perſon, and Contempt of his Royal Government; ſuch as drinking or wiſhing Confuſion to his Majeſty, is High-Treaſon; and the Curſing, Beating, Invading or Aſſaſſinating a Parent, is puniſhable with Death; the ſaid *Philip Stansfield*, nevertheleſs, ſhaking off the Fear of God, *&c.* did, in the Months of *June*, *July*, *Auguſt*, or *September* laſt, in the Kitchin of *New-Milns*, as a moſt villainous Traitor, begin a Health to the Confuſion of his Majeſty, his lawful Sovereign, and cauſed others to drink the ſame. The Indictment further charges,

That, notwithſtanding his Father had given him a liberal Education, he had taken ill Courſes; and been thrown into Priſon, in *Southwark*, and at *Antwerp*, *Orleans*, and other Places, from which his Father had releaſed him; and yet he fell to his debauched and villainous Courſes again. Whereupon his Father ſignifying his Intentions to diſinherit him, and ſettle his Eſtate on *John Stansfield*, his ſecond Son, the ſaid *Philip* did declare he would cut his Father's Throat, and particularly in the Months of *January*, *February*, or *March*, in the Year 1687. And in the Years 1683, 1684, and 1685, at *Bruſſels*, *Breda*, and other Places in *Holland* and *Flanders*, and in the Priſons of *London* and *Southwark*, he did moſt wickedly and unnaturally rail upon and curſe the ſaid Sir *James Stansfield*, his Parent, praying, the Devil might take him, the Devil rive him; declaring, if he had a Sword, he would run it through him; and, if ever he came to *Scotland*, he would be revenged on him; and that his Mother recovering out of a Swoon, and ſaying, ſhe ſhould die ſhortly, he anſwered, By my Soul, my Father ſhall be dead before you.

That

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That in the Months of *January*, *February*, *March*, or in ſome other Months in the Year 1680, 81, 82, 83, and 84, or one or other of them, he did attempt to aſſaſſinate his ſaid Father, by purſuing him on the Highway, and firing Piſtols on him.

That in the Month of *November* laſt, the ſaid Sir *James Stansfield* coming from *Edinburgh* to his Houſe at *New-Milns*, and going into his Chamber to reſt, about Ten o'Clock at Night, and being alone in the Room, under the Credit, Truſt, and Aſſurance of the ſaid *Philip* his Son, and the Servants in the Family, the ſaid *Philip* did conſult with one *George Tomſon*, and divers other Perſons, how to murder him; and accordingly they did ſtrangle and murder him in his Bed-chamber; and, in the Dead of the Night, carried him from the ſaid Room, and threw him into a Water near the Houſe: That the next Morning, when the Body was found, the ſaid *Philip* cauſed him to be buried in haſte, and refuſed to ſtay till his Friends and Phyſicians viewed it: That the Body being taken up again by Authority, and inſpected by Surgeons, it appeared to have been ſtrangled, and not drowned: And that his neareſt Relations being required to lift the Corps into the Coffin, after it had been inſpected, upon the ſaid *Philip Stansfield*'s touching of it, it bled afreſh upon the ſaid *Philip*; and thereupon he let the Body fall, and fled from it, in the greateſt Conſternation, crying, *Lord have Mercy upon me!* For which Crimes he ought to be puniſhed, as the Laws of *Scotland* require, *&c.*

The Evi-dence for the King.

The Evidence for the Crown being called, *John Robertſon*, Servant to the deceaſed Sir *James Stansfield*, depoſed, That he ſaw the Priſoner, a little before Harveſt laſt, in the Kitchin at *New-Milns*, *(his Father Sir* James's *Seat)* drink Confuſion to the Pope, Antichriſt, the King and the Chancellor; and that he commanded him, (the Witneſs) to drink it on his Knees: That he anſwering, it was Treaſon, the Priſoner replied, Ye Dog, what are you concerned? you do not underſtand to whom you ſpeak.

He alſo teſtified, that he heard the Priſoner wiſh the Devil might take his Father (Sir *James*); and when Sir *James* was going abroad, prayed the Devil would not let him, or any of his Company, come back; and at other Times had heard him ſay of his ſaid Father, *The Devil damn him, the Devil rive him*, &c. adding, that his Father girned upon him like a Sheep's Head in a Pair of Tongs. *Spofforth*, another of Sir *James*'s Servants, depoſed, that he heard the Priſoner drink Confuſion to the Pope, the King, *&c.* *Agnes Bruce* alſo teſtified, ſhe heard the Priſoner, in the Kitchin at *New-Milns*, drink Confuſion to the Pope and the King, and made the laſt Witneſs drink it upon his Knees: And this being talked of in the Family, a Week afterwards, he ſaid, God damn him, if he knew who divulged it, he would be their Death.

This Witneſs alſo teſtified, that ſhe had often heard the Priſoner vow and ſwear, he would kill any Perſon that offended him; and that he converſed much with *Janet Johnſton*, Wife of —— *Johnſton*, with whom he had a criminal Amour; and with *George Tomſon*, and his Wife, *(all of them charged with the ſame Murder)*: That ſhe had often heard the Priſoner curſe his Father, and expreſs the utmoſt Abhorrence of him: That the Night before Sir *James*'s Death, ſhe thought he was not ſo merry as uſual: That when he came home on the *Saturday* Night, (when he was ſuppoſed to be murdered) he went to his Lady's Chamber, but did not ſtay a Quarter of an Hour there; his Lady quarrelling with him for going to another Houſe before he came home.

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That this Witneſs, going the next Morning to light Sir *James*'s Fire, found the Bed in better Order than uſual, and Sir *James* gone; and deſiring the Body might be brought up to his Chamber, when it was found, the Priſoner, his Son, anſwered, it ſhould not enter there; for he had died more like a Beaſt than a Man, and cauſed it to be laid in a Cellar, where there was very little Light: That he took the Gold and Silver out of his Father's Pockets, and out of his Cabinet, and the very Buckles out of his Shoes, and put them in his own, within an Hour after his Father was found in the Water: That a little before this Accident, his Mother being ill, and ſaying, ſhe ſhould die, he anſwered, his Father ſhould be dead firſt.

John Shard, another of Sir *James*'s Servants, depoſed, that a little after the Priſoner's Marriage, he heard him complain, his Father gave him too ſhort an Allowance for a married Man; and ſaid, if his Father gave his Eſtate to his Brother *John*, he would cut his Throat, (he thought he meant his Father's Throat); and that the Night before he was found dead, he heard Sir *James* ſay in his Chamber, he had no Comfort in his Wife and Family.

Roderick Mackenzie, Advocate, depoſed, that about a Week before Sir *James*'s Death, obſerving him to be under ſome Concern, he aſked him, what troubled him; and Sir *James* anſwered, he had no Satisfaction at home; that his Son was the greateſt Debauchee upon Earth; and what troubled him moſt was, he had twice attempted his Perſon.

Archibald Dunbar, Merchant, depoſed, that Sir *James* told him, his Son ſhot two Piſtols at him, as he was going to *Lothian-Burn*, and that, if he had not been better mounted than his Son, he had killed him; and one ſaying, Sure there could not be Ball in the Piſtols, Sir *James* anſwered, he had too many Proofs of his Son's unnatural Behaviour: That Sir *James* durſt not go to Bed that Night, hearing a Shot or two made at the Door, and that this Witneſs ſat up with him all Night, and afterwards conducted him ſafely to *Edinburgh*.

Mr. *William Clarke*, Advocate, depoſed, that Sir *James* ordering him to draw a Settlement, to diſpoſe of his Eſtate to his younger Son *John*; and he (the Witneſs) ſaying his Son *Philip* might be reclaimed, Sir *James* anſwered, he had no Expectation of it; for when he was at the Lead Hills, there was a Piſtol ſhot at him, which, he was ſure, came from his Son *Philip*.

John Bell, a Miniſter, depoſed, that the Day before Sir *James* died, he accompanied him from *Edinburgh* to his Houſe at *New-Milns*; that both on the Way and at Supper, his Diſcourſe was rational and pertinent; that after Supper, Sir *James* went with him (the Witneſs) to his Chamber, and ſtaid with him till Ten o'Clock, and his Judgment ſeemed very ſound in what he ſaid.

That the Deponent waking in the Night, heard a great Din, a confuſed Noiſe of ſeveral

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Voices, and ſometimes heard Perſons walking, which affrighted him, and occaſioned his bolting the Chamber-Door faſter: That he ſtill heard Voices, but not ſo plain, till they came about to the Chamber-Window, and then he heard Voices as high as before; whereupon he roſe again, and endeavoured to look out at the Window, but could not open it; and that the Voices went on, towards the Garden and the Water, till he heard no more of them.

That about an Hour after Day, the Priſoner came to his (the Witneſs's) Chamber, and aſked if Sir *James* had been there that Morning; ſaid he had been ſeeking him on the Bank of the Water, and immediately went down Stairs again: That he followed, to ſee what he meant, and one came running, and ſaid, they had found Sir *James* lying in the Water; which ſo aſtoniſhed him, (the Witneſs) that he returned trembling to his Chamber, and ſoon after took Horſe, but returned to *New-Milns* again in the Evening; and adviſed the Priſoner to have the Corps viewed by his Friends, and the Phyſicians; but he buried Sir *James* that Night, without acquainting the Witneſs, or the honeſt Men of the Neighbourhood, with it.

The Evidence of the Surgeons.

James Murehead, Surgeon, depoſed, that upon the Priſoner's aſſiſting to lift the Body, after it had been ſewed up, and clean Linnen put on, it darted out Blood through the Linnen, from the Left-Side of the Neck, which the Priſoner touched; but that when he (the Witneſs), and the other Surgeon, put on the Linnen, and ſtirred and moved the Head and Neck before, he ſaw no Blood at all. The ſaid *Murehead*, and the other Surgeon, *James Crawfurd*, depoſed further, that being ordered by Sir *John Dalrymple*, his Majeſty's Advocate, to view the Corps, they obſerved the Face to be a little ſwelled, *&c.* and upon their Report the Surgeons of *Edinburgh* gave their Opinions.

That whereas there was found a Swelling and preternatural Redneſs in the Face; a large conſpicuous Tumour, about three Inches broad, of a dark-red or black Colour, from one Side of the *Larinx*, round backwards to the other Side thereof; a large Swelling betwixt the Chin and the *Cartilago Scutiformis*; the Jugular Veins on both Sides very large and diſtended; and when Inciſion was made downwards, betwixt the *Os Hyoid* and *Larinx*, was obſerved a Laxneſs and Diſtance between the *Os Hyoid* and the *Cartilago Scutiformis*: Inciſion being made along the Tumour, it was found full of bruiſed Blood; the Jugulars likewiſe, when opened, yielding a conſiderable Quantity of Blood, eſpecially on the Left Side, no Smell or Corruption appearing in any Part of the Body: It was very probable theſe Parts had ſuffered ſome External Violence, which hath made them appear ſo far different from their natural Figure and Colour, and could not be cauſed by drowning ſimply: That the Breaſt and Belly being opened, and the Lungs diſtended, the *Bronchi* full of Air, without any Water, nor any Water found in the Stomach or Inteſtines; a Body, when drowned, being generally found to have much Water in it, with other Circumſtances of the Report conſidered, *gave juſt Ground to think he was not drowned.*

The College of Phyſicians at *Edinburgh*, having, at the Deſire of his Majeſty's Advocate, conſidered the ſaid Report of the Surgeons, delivered their Opinions, *That there was ſufficient Grounds to believe the ſaid Sir* James Stansfield *was ſtrangled, and not drowned.*

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Humphry Spurway being ſworn, depoſed, that waiting on Sir *James*, about ſix Weeks before his Death, and obſerving he was not ſo pleaſant as uſual, he enquired the Reaſon; Sir *James* ſighed, and wringing his Hands, while the Tears trickled down his Cheeks, he ſaid he had great Cauſe for it: He had borne his Burthen without complaining to others, but he had a very wicked Family; and it was very ſad, that a Man ſhould be deſtroyed by his own Bowels; Let him be never ſo ſparing at home and abroad, yet his Family at home conſumed him; and mentioned ſeveral large Sums they had expended beyond what he allowed them, which was very ſufficient: But what grieved him moſt was, that his youngeſt Son, whom he had ſome Hopes of, and whom he had ſettled his Eſtate upon, was debauched by his eldeſt Son, and came home ſeveral Times of late, as drunk as the other: That on the *Saturday* Night Sir *James* died, he (the Witneſs) was with him, and Mr. *Bell* the Miniſter, at the Houſe of one *Marr*, at *New-Milns*, and he ſuſpected Sir *James* had ſome Fears upon him, that he did not go firſt to his own Houſe, when he came from *Edinburgh*: That Sir *James* and the Miniſter afterwards went home; and the next Morning he (the Witneſs) hearing Sir *James* was miſſing, and meeting the Priſoner, who demanded what could be the Occaſion of this Man's Diſcontent, that he ſhould thus leave his Lodgings, he (the Witneſs) replied, do you wonder at his Diſcontent, that never gave him Content? Whereupon the Priſoner turned his Back upon him: That he, the Witneſs, then ſent out Sir *James*'s Servants, and his own, to look for him; and at length they found him in the River, a little Weſt of the Town; the Corps floating on the Water, about eight Feet from the River's Brink, lying on its Face, with only a Coat and Waiſtcoat looſe about it; the Bank of the River being beaten to maſh with Feet, and the Ground open and mellow, though it was a froſty Morning.

That early on *Monday* Morning, about Three o'Clock, he ſaw great Lights at the Gates of the Deceaſed; and, upon Enquiry, found they were carrying the Corps to be buried at *Morum*, pretending it was by the Lord Advocate's Order: However, on *Tueſday* Night, Mr. *Campbel*, and two other Gentlemen, and two Surgeons, called him (the Witneſs) out of his Bed, having an Order from the Lord Advocate to take up the Body; that he went with them, and they carried the Corps into the Church, and found it in the Condition the Surgeons depoſed, (as above) and particularly, that the Corps bled on the Priſoner's touching of it.

The Priſoner's Defence by Counſel.

James Mitchel, Nephew of the Deceaſed, depoſed, that about twenty Days before Sir *James*'s Death, he heard the Priſoner ſay, That if his Father diſpoſed of his Eſtate from him, he would kill him, though he died in the *Graſs-Market* for it.

James Dick depoſed, that he ſaw the Body taken out of the Water, and obſerved no Water came from it.

The King's Advocate deſired two Children might

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might be examined, *viz.* *James Tomſon*, the Son of *George Tomſon*, being about thirteen Years of Age; and *Anne Johnſton*, the Daughter of *Janet Johnſton*, about ten Years of Age; but the Court refuſed it: However, at the Inſtance of the Jury, they were permitted to declare what they knew, without Oath.

The Evidence of two Children.

The Subſtance of what the Boy ſaid, was, that his Father and Mother aroſe that Night Sir *James* was murdered, and went out; and returning about two Hours after, he heard his Father ſay, the Deed was done, and that the Priſoner guarded the Door with a drawn Sword, and a bended Piſtol; that he never thought a Man would have died ſo ſoon; and that they carried him out to the Water-Side, and tied a Stone about his Neck; but they afterwards took away the Stone, and threw him into the Water; and that his Father ſaid, he was afraid the Murder would come out; whereupon his Mother anſwered, Hout Fool! there is no fear of that; it will be thought he drowned himſelf.

The Girl depoſed, that the Night Sir *James* was killed, the Priſoner was at her Mother's Houſe (with whom the Priſoner had a criminal Converſation); that he ſent for *George Tomſon* and his Wife, (ſuppoſed to be concerned in the Murder); and that, after they went out, her Mother followed, and did not return till Two in the Morning; and her Father ſaid, Bitch, Whore! Where have you been ſo long? To which her Mother anſwered, Where-ever I have been, the Deed is done; and then went to Bed.

The Priſoner's Defence by Counſel.

The Priſoner's Advocates, or Counſel, ſaid in his Defence, That his drinking Confuſion to the King, was an improbable Calumny, he having, on all Occaſions, given Teſtimonies of his Loyalty, particularly at *Monmouth*'s Rebellion; when he entered himſelf a Volunteer in the Earl of *Dunbarton*'s Regiment, where he remained till the Rebels were defeated: That he could not conceive any Diſpleaſure againſt his Father, for ſettling his Eſtate on his ſecond Son, becauſe he did not know of it till after his Death.

As to the pretended Curſes and Imprecations, ſaid to be uttered againſt his Father, if he had been guilty of them, they were pardoned by the Act of Indemnity, in 1685: And as to his railing or curſing his Father, ſince, theſe if any, muſt be underſtood to be forgiven, becauſe his Father was reconciled to him, employed him ſince to receive his Rents, and ſtiled himſelf his loving Father in his Letters.

As to the Statute which made Murder under Truſt to be Treaſon; the Father could not be ſaid to be under the Truſt of his Son, as a Traveller was under the Protection of his Hoſt at an Inn.

That the Circumſtances, from whence it was inferred he was guilty of his Father's Death, were very remote and uncertain; and as to his firing Piſtols in 1683 and 1684, it was not likely, becauſe there was an entire Friendſhip between his Father and him at that Time: However, thoſe Facts were pardoned, being before the Act of Indemnity; and for the bleeding of the Corps, it was a ſuperſtitious Obſervation, founded neither upon Law nor Reaſon: The bleeding was probably occaſioned by the moving of the Body, and the Inciſions of the Surgeons; and that other People touching the Body at the ſame Time, it could not be aſcribed to the Priſoner.

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That in Capital Crimes, where the Charge was founded, as this was, upon Preſumptions, the Perſon ought not to be found guilty on remote and uncertain Conjectures; and beſides, thoſe Preſumptions were over-balanced by Preſumptions on the other Side: It was rather to be preſumed, Sir *James* threw himſelf into the Water, being ſubject to Melancholy, and had before attempted to throw himſelf out of a Window: And, if he was murdered, it could not be preſumed, the Priſoner ſhould break through all the Ties of Nature to do it, when there was an entire Friendſhip between them. Had he been conſcious of any Concern in it, he ſhould have fled, whereas he ſurrendered himſelf as ſoon as he heard he was ſuſpected; which alone was ſufficient to take off the Preſumptions urged againſt him.

The Argument of the King's Advocate contra.

His Majeſty's Advocate anſwered, The drinking or wiſhing Confuſion to his Majeſty, (which was not denied) was Treaſon: And that the Words were ſpoken deliberately or maliciouſly, appeared from their being repeated, and others forced to drink the ſame Health; and he had a due Senſe of the Importance of the Words, by conjureing the Company to Secrecy, and threatning to brain them that ſhould diſcover it.

That the Crime of curſing Parents was not included in the General Act of Indemnity: And as to the Crime being forgiven by his Father, becauſe he ſeemed reconciled, they inſiſted, where the Publick was concerned, an expreſs Releaſe could not have diſpenſed with the Puniſhment.

And although it was ſaid, a Son's threatening to cut his Father's Throat was but a remote Circumſtance, and, it would not be concluded from thence, he actually murdered him; yet, it was ſuch a Circumſtance, that unleſs the Priſoner could ſhew another Perſon killed him, he muſt be reputed the Murderer.

As to the bleeding of the Corps, though ſeveral Perſons touched it, none of their Hands were ſtained with Blood but the Priſoner's: And the Body having lain two Days in the Grave, in a cold Seaſon, the Blood muſt naturally have been congealed; and he muſt attribute it therefore to the Providence of God, that it fell a bleeding afreſh when the Priſoner touched it; and, that the horrible Impreſſions it made on him, was another Argument of his Guilt.

And, though it was urged, that a Capital Puniſhment cannot be inferred on bare Conjectures, but there ought to be clear and poſitive Teſtimonies; he anſwered, A Complication and Conjunction of ſo many Circumſtances, though none of them, *per ſe*, was ſufficient; yet all of them together induced a greater Certainty than two poſitive Witneſſes.

And whereas it was ſaid, It could not be preſumed, he was guilty of ſo unnatural a Crime; they anſwered, The Fact being ſo ſtrongly proved, this did but conclude the greater Guilt: That though Sir *James* had been melancholy and diſturbed in the Year 1679, he was known

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known to be recovered, and ever ſince of a ſedate and compoſed Temper of Mind, and ſo capable of Buſineſs, as to be intruſted by the wiſeſt Men in the Kingdom: But, beſides, as it appeared he was ſtrangled, it could not be preſumed he walked out and drowned himſelf afterwards. As to the Priſoner's ſurrendring himſelf, it was agreeable to the reſt of his Impudence; and he might imagine, by that Action, to make the World believe he was innocent.

The Reply of the Priſoner's Counſel.

The Priſoner's Counſel replied, As to the Treaſonable Expreſſions, that it appeared the Priſoner was ſurpriſed into them, by his conjureing Perſons to Secrecy; and ſuch haſty Expreſſions were never laid hold on to infer a Capital Puniſhment, where the Party accuſed was not otherwiſe ſuſpected of Diſloyalty: They inſiſted ſtill upon the Act of Indemnity, by which all Murders and Robberies were expreſly pardoned; for, that a Pardon ought to be taken in the moſt ample and beneficial Senſe for the Subject; and the Priſoner having no viſible Fortune all that Time, did not come within the Exception in that Act.

They ſtill inſiſted alſo, that all Pretence of private Injury was taken away, by the offended Party's diſſembling it, and appearing reconciled; and the Act being intended in Favour of Parents, was never executed but at their Inſtance: As to the habitual Curſing and Swearing, it was pardoned by the Act of Indemnity; and beſides, the particular Inſtances ought to have been charged in the Indictment, or the Priſoner could not be puniſhed for them.

As to the Teſtimony of the Miniſter, he appeared to be in ſuch Terror and Confuſion by his own Evidence, as rendred him incapable of obſerving or judging what happened: And as to the Body's floating, it might be occaſioned by a great Coat the Priſoner had on: As to there being no Water in the Body, when the Surgeons opened it, the Water might have run out before: And, although a Man who was unwillingly drowned, by endeavouring to breathe as long as he could, might ſuck in a great deal of Water; yet when a Man drowned himſelf, he might be ſuppoſed to hold his Breath for the quicker Diſpatch; and his holding his Breath might occaſion the Body to float, and prevent the Water coming in: That the great Collar thrown about the Neck of the Deceaſed, and by which he was pulled out, might occaſion the congealed Blood there; and the Ice remaining unbroken near the Bank where the Body lay (though very thin), made it apparent, the Deceaſed jumped in: And, as to the Opinions of the Phyſicians and Surgeons, they were founded on the Report of one or two Surgeons, on whoſe Skill or Ignorance that Matter depended: But whatever the Preſumptions were, that the Deceaſed was murdered, they could not affect the Priſoner, unleſs there was Evidence of his being concerned in it: That as to the bleeding of the Corps, he inſiſted on the Anſwers already given; but that the Priſoner ſhould appear ſurpriſed at the Sight of his Father's Blood, was to be aſcribed to natural Affection and filial Piety, rather than be made a Preſumption of his Guilt. 1688. 4 Jac. II.

Before the Jury withdrew, the Court gave them the following Directions, as to the Points of Law, (*viz.*)

Points of Law adjudged by the Court.

1. They declared, That drinking Confuſion to the King, was Treaſon.

2. That curſing his Father was puniſhable with Death: And,

3. That the Act of Indemnity would not avail the Priſoner, it not being deſigned to extend to thoſe of his Quality.

4. That as to his Father's Murder, Preſumptive Proof was ſufficient Legal Proof; but whether the Preſumptions were ſufficient, was left to the Jury, who thereupon withdrew.

The Priſoner convicted,

The Jury being returned, found the Priſoner guilty of all the Facts laid in the Indictment, (*viz.*) Of Treaſon, of curſing his Father, and of being concerned in his Murder.

and executed.

Whereupon Sentence of High-Treaſon was pronounced on him; and he was afterwards executed as a Traitor.

Remarks on Stanfield's Trial.

Thus we ſee the Lawyers of *Scotland* charge ſeveral Crimes of different Natures in one Indictment, as Treaſon, Murder, and the Curſing of a Father; which is never done in *England*: It is alſo obſervable, that the Curſing a Parent is Capital in *Scotland*; whereas in *England* there are too many young Fellows, who look upon an undutiful Behaviour to a Parent, and the reproaching, contemning, and even curſing and wiſhing the Death of a Father, to be Inſtances of Gallantry and polite Education: Even among Gentlemen, we hear it often ſaid, *What am I more obliged to my Father than to another Man? If he has no Eſtate to give me, I owe him no Duty:* While the Heathen Nations, who have no other Light to guide them, but that of Nature, puniſh this Crime with greater Severity than in *Scotland*. The *Chineſe*, we find, are not content with puniſhing ſuch unnatural Children in their own Perſons; but the very Town, where ſuch Inſolence is ſuffered with Impunity, is deſtroyed; the very Foundations ploughed up, and the Ground never permitted to be built or inhabited again.

Pro-

1689. W. & M. Lord Caſtlemaine's Caſe.

Proceedings of the Houſe of Commons, againſt the Earl of CASTLEMAINE, on the 26th of *October*, 1689. 1 *W.* & *M.*

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THE Earl of *Caſtlemaine*, on King *James*'s Abdication, taking a Journey from *London*, towards his Seat in *Montgomeryſhire*, was apprehended by the Mob at *Oſweſtree*, a ſmall Corporation on the Borders of that County, and carried before the Mayor of that Place, who ſet a Guard upon his Lordſhip at his Inn, and detained him Priſoner for a Month, refuſing to admit him to Bail: He was afterwards brought to *London* by a Party of Horſe, and committed to the *Tower*, (by what Authority does not appear): However, the Houſe of Commons being informed his Lordſhip was a Priſoner there, ordered the Governor of the *Tower* to bring him before them; and, upon his appearing, the Speaker told his Lordſhip, They underſtood he went Ambaſſador to *Rome*; and, that he alſo took his Place at the Board, without taking the Oaths; both which were againſt Law; and demanded what he had to ſay for himſelf.

To which his Lordſhip anſwered, That he was ſo far from deſiring to be ſent on that Embaſſy, that he uſed his utmoſt Endeavours to avoid it: That he was commanded by the King to undertake that Employment, and could not refuſe it; and, as he knew no Law which forbad his Obedience, ſo neither did he know how ſuch a Law could be made; for the Pope being a Temporal Prince, and his Territories bordering on the *Mediterranean* and *Adriatick* Seas, if the Subjects of this Crown were drove into his Ports, or ſurprized in their Travels by a *Roman* Party, it would be ſtrange, if the Government ſhould want Power to ſend an Agent to reclaim them: That wherever the Commerce or Intercourſe of Nations had been prohibited, yet the Commander in Chief, much more the Sovereign, had ſtill the Liberty of ſending a Trumpet, or beating a Parley, and of ſending and receiving Letters in any Exigency of Affairs: And as to Religion, he had no Commiſſion concerning it, or ever tranſacted any thing with his Holineſs about it.

That while he was at *Rome*, his Houſe was a Place of Refuge for all his diſtreſſed Fellow-Subjects: He ſaw Juſtice done to the *Engliſh* Merchants, whenever they were abuſed or moleſted in their Traffick: His Care extended to all our Factories in *Italy*; not only the Conſuls, but every private Man had eaſy Acceſs to him, and he was indefatigable in ſerving them; inſomuch that the *Turky* Merchants had returned him their Thanks.

That he had ſpent great Sums of his own Money in his Embaſſy, for the Honour and Advantage of the Nation: And had he been ſent to the *Mahometans* at *Conſtantinople*, or the Pagans of *China*, the Figure he made would not have been cenſured, as an Honour done to their reſpective Religions, but for the Glory of his own Nation: And he could not but hope, they would have a favourable Opinion of an Ambaſſador, though at *Rome*, who, to the utmoſt of his Power, had maintained the Glory and Grandeur of the *Engliſh* Nation: That if he had done amiſs in obeying the King's Commands, then no Conſul who purſued a Pirate or Banditti to *Rome*, nor any private Factor, who followed a Debtor thither, could be innocent; but might be charged as Contemners or Breakers of the Law.

That as to his ſitting in Council without taking the Oaths, the Judges had delivered their Opinions, that the King could diſpenſe with them; and therefore, he did not think his omitting to take them any Crime: If it was a Fault, the Judges were more to blame than he, who led him into that Error.

Then the Houſe demanding to ſee his Lordſhips Inſtructions; he anſwered, That at his ſetting out for *Wales*, he burnt his Papers, eſpecially thoſe that related to *Rome*, which he knew, in theſe Times of Trouble and Diſtraction, would render him liable to the Cenſure of every malicious Man: But there was nothing in them but Things of Courſe, and Copies of thoſe Powers might be found in the Lord *Sunderland*'s Office; and he had not any private Inſtructions.

Then his Lordſhip withdrawing, the Commons ordered, That the Earl of *Caſtlemaine* ſhould ſtand committed to the *Tower*, by a Warrant from that Houſe, for High-Treaſon, in endeavouring to reconcile this Kingdom to the See of *Rome*, and for other High Crimes and Miſdemeanors.

The Commons commit his Lordſhip for High-Treaſon.

His Lordſhip remained a Priſoner in the *Tower*, till the fifth of *February* following, when he brought his *Habeas Corpus*, and was admitted to Bail by the Court of *King's-Bench*, Mr. Attorney having nothing to object againſt him; and I do not meet with any further Proſecution of this Lord afterwards.

His Lordſhip complained, That he was illegally impriſoned and detained; which he would have Reaſon for, if it had been in ſettled Times; but Allowance muſt be made for ſuch great Turns of State. It was certain, there was leſs Miſchief done, and fewer illegal Acts committed, than could have been expected on the Abdication of King *James*. But how the Houſe of Commons came to order his Lordſhip to be detained in Priſon for High-Treaſon, by their own Warrant, when the Courts of *Weſtminſter-Hall* were open, and Magiſtrates appointed by King *William*, who might have committed the Priſoner in a legal and regular Way, is not eaſy to conceive; for the Houſe of Commons ſeldom do commit for High-Treaſon, but leave it to the Magiſtrate, whoſe proper Buſineſs it is; eſpecially if the Party be none of their own Members, as the Lord *Caſtlemaine* was not.

Remarks.

1689. 1 W. & M. *Price's Case.*

The Trial of JOHN PRICE, Esq; and one hundred other Protestants, for *High-Treason*, at the Assizes at *Wicklow* in *Ireland*, on the fifth of *March*, 1689. 1 *W.* & *M.*

THIS is indeed no Trial, but barely an Arraignment: For the Prisoners making their Challenges, there were not Freeholders enough remaining in the Pannel to try them; and before another Assizes, the War commenced between King *James* and King *William*, and the Courts of Justice were shut up; and the War concluding in Favour of the latter, they were dismissed of Course.

The Case was no more than this: Mr. *Price* and his Neighbours had shut themselves up in his House, or Castle of *Ballinderry*, to prevent their being plundered by the *Irish* Papists; and refusing to surrender to some Popish Officers, this was termed a Rebellion; and they were all indicted for High Treason, though they did surrender afterwards to Colonel *Sheldon*, who was sent by the Government to summon them.

1690. 2 W. & M. *Lord Preston's Trial.*

The Trial of Sir RICHARD GRAHME, Bart. (Viscount *Preston*) for *High-Treason*, at the *Old-Baily*, *London*, on the 16th of *January*, 1690. 2 *W.* & *M.*

The Indictment.

THE Prisoner was indicted and arraigned (together with *John Ashton*, and *Edmund Elliot*, Gentlemen) for High-Treason, in compassing the Death of their present Majesties King *William* and Queen *Mary*; and, for that End, on the 29th Day of *December*, in the second Year of their said Majesties Reign, at the Parish of St. *Clement-Danes*, in the County of *Middlesex*, traitorously consulting and agreeing to raise great Numbers of armed Men, to make War and Rebellion against the said King and Queen; and preparing and composing divers treasonable Letters, Notes, Memorandums, and Instructions, in Writing, to inform *Lewis* the *French* King, and his Subjects, their Majesties Enemies, of the Number, Force, and Condition of their Majesties Ships of War; and how the Castles and Fortresses of *Portsmouth*, *South-Sea*, and *Gosport*, were fortified, and might be taken; as also how they might invade the Kingdom, and depose their Majesties; and when and where the Enemy's Fleet might attack their Majesties, insult the City of *London*, and procure War and Rebellion in the Kingdom: That they did also keep and conceal two several Bills of Exchange, for the Use of the Enemy; and, for the Sum of 100 Pounds, did hire a Ship to transport themselves, and the said Bills of Exchange, Notes, Memorandums, and Instructions, beyond Sea, to their Majesties Enemies: That they prepared a Boat to carry them to the said Ship; and being on Board, did sail towards *France* with the said Papers: And the Indictment further charges them with adhering to the said Enemies of the King and Queen, and preparing the said Papers, *&c.* in Execution and Performance of the said Adhesion, against the Duty of their Allegiance, *&c.*

Lord Preston insists on his Peerage.

The Lord *Preston* upon his Arraignment, said, He found he was indicted by the Name of Sir *Richard Grahme*; but he thought he was intitled to another Way of Trial, as being a Peer of *England* before the Vote of Abdication; at a Time when all Writs and Processes run in the late King's Name, and all Officers acted by Virtue of his Commissions.

The Lord Chief Justice *Holt* answered, If his Lordship pleaded that he was made a Peer by a Patent under the great Seal, he must produce it under the Great Seal.

Lord *Preston* replied, He hoped the Court would enable him to do it, by sending an Order to the Clerk of the House of Lords to bring the Patent, for it was in his Hands.

The Chief Justice said, That was not in their Power; and, if he insisted on his Peerage, he must be ready to make it out immediately, they were not to enable him to plead to the Jurisdiction of the Court.

Lord *Preston* then desired his Counsel might be heard to that Matter.

Mr. Solicitor shews his Patent and has it read.

Here Mr. Solicitor (*Somers*) informed the Court, that on the eleventh of *November*, 1689, the Lord *Preston* did claim his Peerage in the House of Lords, and produced his Patent from the late King *James*: Whereupon the House of Peers committed him to the Custody of the Black-Rod: And the next Day, upon a solemn Debate, concerning the Validity of the Patent, their Lordships having consulted the Judges, did adjudge and declare, That the Patent was null and void; and, upon the 27th of the same Month of *November*, upon my Lord *Preston*'s Submission and Petition, and disclaiming his Right of Peerage, his Lordship was discharged; and this Matter having thus received a solemn Determination in a proper Court, he did not think it would have been urged again in this Place: But that there was nothing offered by my Lord, that the Court could take any legal Notice of: If my Lord would plead to the Jurisdiction of the Court, he ought to bring his Plea in Form, and be ready with his Proofs to make it good.

Then

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Then the Chief Juſtice, and the reſt of the Judges, declared, His Lordſhip had offered nothing they could take Notice of, unleſs he had his Patent to produce; and they could not give him Time to plead to the Juriſdiction of the Court.

The Priſoners deſire a Copy of the Indictment.

His Lordſhip, and the other Priſoners, then deſired the Indictment might be read in *Latin*; which was granted: They alſo deſired a Copy of the Indictment; inſiſting, that by the 46th of *Edw.* III. every Priſoner might have a Copy of the Records; and that it was given as a Reaſon for the Reverſal of Mr. *Corniſh*'s Attainder, that it was not a legal Trial, becauſe he had not a Copy of his Indictment.

The Chief Juſtice anſwered, That was a private Act; he never ſaw it, nor could he take Notice of it: It had not been the Courſe to allow a Priſoner a Copy of his Indictment; it was denied to Colonel *Sidney*, Sir *Harry Vane*, and my Lord *Ruſſel*.

Then the Lord *Preſton* cited the Statute of 46 *Edw.* III. which ſays, That all Perſons were to have Copies of Records, and deſired Counſel to ſpeak to it.

The Chief Juſtice anſwered, That was only meant of Records, that were to be given in Evidence, and the Indictment was no Evidence; nor did they think fit to allow him Counſel in a Caſe that was ſo plain.

and Time to prepare for their Trial.

Then the Priſoners inſiſted on having more Time allowed them, to prepare for their Trial, having had but ſix or ſeven Days Notice. The Chief Juſtice anſwered, Seven Days was very fair Notice: The Priſoners anſwered, that three of the ſeven Days they had not the Liberty of ſeeing their Friends or Counſel.

The Court told them, They debated the Time of their Trial too early; they muſt firſt plead to the Indictment.

Then the Priſoners ſeverally pleaded, *Not Guilty*.

The Priſoners again deſiring that the Trial might be put off, that they might make Enquiries into the Jurors returned upon the Pannel: Mr. Solicitor anſwered, There could be no Reaſon for putting off the Trial longer than till Tomorrow; that was Time enough for making ſuch an Enquiry as was fit and juſtifiable: But if by Time to look into the Jury, was meant Time for tampering with them, that, he was ſure, the Court would not permit.

The Lord *Preſton* replied, It was a very hard Preſumption, that their aſking Time to enquire into the Pannel, was with a Deſign to tamper with the Jury. If he was to be tried to Morrow, he was as willing to be tried to Day; for he was as ready now, as he ſhould be then.

Mr. *Aſhton* added, That all ſuch haſty Proceedings were thought very hard in the late Times; and particularly, the denying Mr. *Corniſh* Time: And it was one of the Reaſons given in this King's Declaration for his coming into *England*, the Hardſhips that the Law laid upon Men in their Trials, which he came to prevent.

The Lord Chief Juſtice *Pollexfen* anſwered, When Men were plotting againſt the Government, they ought not to have Time given them to carry on their Plots: They might deſire the Trial to be put off, in Hopes the King of *France* might come and determine the Matter in the mean Time; nor would the Court give them longer Time than till the next Day.

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The Priſoners being brought to the Bar again, on *Saturday* the 17th of *January*, 1690-1, and the Pannel called over, they declared, they would make their Challenges ſeverally. Whereupon they were tried apart; and Mr. *Aſhton* and Mr. *Elliot* being ſent back to *Newgate*, (though they deſired to be preſent at the Lord *Preſton*'s Trial), his Lordſhip was ordered to look to his Challenges.

Lord Preſton tried ſeparately.

Challenges by the King's Counſel.

Several being challenged by the Priſoner, and others for the King, the Lord *Preſton* inſiſted, the King's Counſel ought to ſhew Cauſe; but was told by the Court, they need not to ſhew Cauſe, till the Pannel was gone through.

A Jury being ſworn, Mr. *Knapp* opened the Indictment; and Mr. Solicitor, Sir *John Somers*, ſhewed the Nature and Courſe of the Evidence.

Mr. Solicitor opens the Evidence.

Mr. Solicitor-General. My Lords, and Gentlemen of the Jury, the Indictment hath been opened to you at large, and I do not doubt, but you have obſerved it: It conſiſts of two Parts, which are formed upon two ſeveral Branches of the Statute of the 25th of *Edw.* III. The one is for Compaſſing and Imagining the Depoſing and Deſtruction ath of the King and Queen; the other, for Aiding and Aſſiſting the King and Queen's Enemies.

Treaſon, Gentlemen, conſiſts in the Imagination of the Heart; but becauſe that Imagination of the Heart can be diſcovered no other way but by ſome open Act; therefore the Law doth require that ſome Overt-Act, manifeſting that Intention and Imagination, be aſſigned and proved: I doubt not, but you have obſerved that there are ſeveral Overt-Acts, of both theſe kinds of Treaſon, aſſigned in this Indictment.

Gentlemen, The general Deſign of the Conſpiracy (as will appear by the Evidence) was this: The King and Queen were to be depoſed; and this was to be effected by a *French* Army, and a *French* Fleet. It will be eaſily granted, that nothing more dreadful can enter into the Imagination of an *Engliſh* Man, than the Deſtruction of our Fleet, and the Conqueſt of the Kingdom by the Arms of *France*.

But yet it will be Part of the Evidence, that we ſhall offer to you, that the Priſoners, and others of the Conſpirators, ſeem to be of another Mind; for, amongſt the Papers which were taken with the Priſoners, you will ſee one, which is ſtiled, *The Reſult of a Conference*; wherein they pretend to ſhew, the Poſſibility of reſtoring King *James*, by the Power of the *French* King; and yet to preſerve the Proteſtant Religion, and the Laws and Liberties of the Kingdom. They themſelves went not further than to think it poſſible; and, I believe, it will be hard to perſuade any other *Engliſh* Man, that it is poſſible; unleſs one Inſtance could be given, that the *French* King ever employed his Arms for ſetting up any Body, but himſelf, his own Religion, and his own Government. I never heard, that he did pretend to form any Part of his Glories upon the Virtue of Moderation, or Self-denial. And there can hardly be imagined a greater Inſtance of Self-denial, than for the *French* King, after he had deſtroyed the *Dutch* and *Engliſh* Fleets, and ſubdued our Forces at Land, not to make uſe of his Succeſs, ſo as to add

1690. 2W.&M. add these three Kingdoms to his Conquests, and possess himself of the uncontested Dominion of the Sea forever; but only to intitle him, at so great Hazard and Expence, to become a Mediator between King *James* and the People of *England*, and, by his Mediation, to establish the Protestant Religion, and the Liberties of the People: And yet, as absurd as this seems, you will find this to be the Result of one of their Conferences. I did never think it was the Part of any, who were of Counsel for the King, in Cases of this Nature, to endeavour to aggravate the Crime of the Prisoners, by going about to put false Colours upon Evidence, or to give it more than its due Weight; and therefore, I shall be sure to forbear any Thing of that Nature: But I think it my Duty to give some short Account of the Nature and Course of the Evidence to be produced to you; which consisting of several Sorts, it will be in some sort necessary to open it, that you may the more clearly apprehend it, and with more Ease make your Observations upon it. Gentlemen, we shall produce in Evidence, as well living Witnesses, as Papers and Writings; which, by a strange kind of Providence, were taken upon my Lord *Preston*, and the other two Persons named in the Indictment, when they were apprehended; and therein this Design, that I have opened to you, will be made evident beyond all Contradiction.

As to the living Witnesses, the Course of the Evidence will be this: One *Nicholas Pratt* is the Owner of a Smack, called the *Thomas* and *Elizabeth*; he does usually entrust his Wife, *Jane Pratt*, with the hiring out this Smack; *William Paceley* is Master of the Vessel, and has of late been made a Part-owner, to protect him from being pressed; for it is a Privilege that the Owners of Vessels claim, not to be pressed.

Some Time since, (the Witnesses will tell you the precise Time), this *Jane Pratt* was sent for to one Mr. *Burdett*'s House, in the City, where she met with Mr. *Ashton*; who desired to know, whether she could undertake to convey him, and some others, with Safety into *France*: She said, she did not doubt but she could do so; and thereupon Mr. *Ashton* told her, that he and his Friends were Merchants and Traders, and that they should make great Advantage, to the Value of one thousand Pounds at least, if they could be there quickly. Their Discourse went no farther at that Time; but Mrs. *Pratt* was appointed, by Mr. *Ashton*, to bring the Master of the Vessel along with her, for he had a Mind to discourse himself with the Master, and they were to meet at the *Wonder*-Tavern in *Ludgate-Street*; and, because there should be no Mistake about the Meeting, Mr. *Ashton* gave the Woman a Note of Direction in Writing, ready to be produced.

Accordingly, by the 29th of *December*, Mrs. *Pratt* and the Master came to the *Wonder*-Tavern, where Mr. *Ashton* met with them; and there they treated of the Price to be given for the Hiring of this Vessel to carry them to *France*; and I think one hundred and fifty Guineas was the Sum then insisted upon; but no Bargain was made at this Time: But there was a new Appointment to meet the next Day, which was the 30th of *December*, at Mr. *Burdett*'s House.

The next Day, when she and the Master came thither, they found there together *Ashton* and *Ellyot*, the two other Persons named in the Indictment, and there this Matter was treated of with great Secrecy, in Mrs. *Burdett*'s Bed-chamber. 1690. 2W.&M.

And they came to an Agreement, that one hundred Pounds should be the Sum to be paid to Mrs. *Pratt*, for conveying into *France Ashton* and *Ellyot*, and two other Persons: So the Contract was originally made for others, besides Mr. *Ashton* and *Ellyot*; and the Money was actually deposited by Mr. *Ashton* and *Ellyot* in Mr. *Burdett*'s Hand, and a Six-pence was broken, one half of which was delivered to Mrs. *Burdett* to keep, the other half Mr. *Ashton* was to take along with him; and, when the Master had safely landed them in *France*, Mr. *Ashton* was to deliver his half of the Six-pence to the Master, which being brought to Mrs. *Burdett*, either by him or Mrs. *Pratt*, upon the joining of the two Pieces together, the Master was entituled to receive the 100 *l.*

The next Appointment was, to meet at one Mr. *Rigby*'s House, in *Covent-Garden*, and that was to be on the 31st of *December*, when the Voyage was to be begun; and the Tide not serving to go through Bridge till late, the Appointment was to meet the later: When they, Mrs. *Pratt* and the Master, came there, they found only Mr. *Ashton* and Mr. *Ellyot*; but before that Time, Care was taken to provide a Sculler at *Surry-Stairs*, to be ready to carry them on Board the Smack; and the Waterman was appointed to stay in a little Ale-house thereabouts, to be ready when he should be called. About Ten o'Clock at Night, four Persons came down together, and went into this Sculler, with the Master of the Smack, and made what Haste they could through Bridge, till they came to *Pickle-herring-Stairs*, over-against the *Tower*, where the Smack lay; and there went aboard the Master and these four Persons, my Lord *Preston*, a Servant of my Lord *Preston*'s, Mr. *Ashton*, and Mr. *Ellyot*.

The Smack set sail, immediately after they were on board, and their Haste made them carry away the Waterman's Coat, which he had lent them whilst they were in the Sculler; and that Accident was the Occasion of discovering who the Waterman was that carried them from *Surry-Stairs*.

After they were on board the Smack, they were possessed with great fear of being surprized; they knew the Nature of the Business they were about, and the Danger they were in, if they should be discovered; and therefore, when they were to pass by the *George* Frigate, a Man of War that lay in the River, they desired the Master to hide them; which he did, by putting them under the Quarter-Hatches, a Place where they could not stand or sit, but must lie along on the Ballast: When they were passed by the *George* Frigate, they quitted that Place; but when they were near the Block-house at *Gravesend*, they grew apprehensive, and they desired to hide a second Time, which was accordingly done.

And they continued to lie in that Place till they were taken; and it was a happy Thing they did so: The Place was such, that they had not

1690. 2W.&M. not any Poſſibility of throwing away the Letters and Papers, though they had made Preparation for it, in Caſe of any Accident, having tied them together, and fixed a Piece of Lead to them; that ſo, if they ſaw themſelves in Danger of being taken, they might eaſily ſink the Pacquet: But being ſo cloſe ſhut up in this Place, that they could not execute their Purpoſe, the Papers were taken, and will be offered to you in Evidence.

Gentlemen, Captain *Billop*, by the Order of a noble Lord, now preſent, was directed to uſe his utmoſt Diligence to ſeize ſome dangerous Perſons, of whoſe Deſign of going beyond Sea, for ſome very ill Ends, an Intimation had been given: He got ready a Pinnace well manned, and went in Purſuit of them down the River; and, both as he went, and returned, he took Care to ſearch ſuſpected Veſſels: When he came to this, he demanded of the Maſter, what Number of Men he had on Board, pretending he came to preſs Men: The Maſter told him, he had but three, and for thoſe he had a Protection: But the Captain ſaid, he muſt be better ſatisfied, and muſt ſearch the Veſſel; and in the Search he found theſe four Perſons, lying concealed in this ſecret Place, under the Quarter-Hatches.

As they were taken out, one after another, one of the Sea-men obſerved Mr. *Aſhton* to take up a Bundle of Papers from off the Ballaſt, and put it in his Boſom; and near the Place where the Papers lay, he took up two Seals, which after proved to be my Lord *Preſton*'s Seals, when he was Secretary: Captain *Billop* being informed of this by that Sea-man, he put his Hand into Mr. *Aſhton*'s Boſom, and took away from him the Bundle of Papers with the Lead fixed to it.

When they were put on Board the Captain's Pinnace, they all preſſed him much, that he would let them go on Shore at *Graveſend*; pretending Want of Refreſhment, they not having eaten, and the Night having been cold: But he did not think that proper nor ſafe; but told them, they ſhould go on Board the *George* Frigate, and refreſh themſelves there.

When they came on Board the *George* Frigate, all the three Gentlemen, and my Lord *Preſton* in particular, were very earneſt with Captain *Billop*, to diſpoſe of the Bundle of Papers, mixing extraordinary Promiſes with great Compliments.

Not prevailing there, when they were returned to the Pinnace, they renewed their Sollicitations; and one of them told him, it would be eaſy to remove all Suſpicion, by fixing the Lead to ſome other Papers of little Signification, which were found in my Lord *Preſton*'s Pocket, which he might produce; and they would without Difficulty paſs for the Papers that were taken.

But the Captain was too juſt, to comply with this Propoſal. When they found he was not to be moved, you will find from the Witneſſes, that their Promiſes were turned into Threats, and they uſed another Sort of Language.

When they were brought to *Whitehall* Stairs, upon their Landing, they gave Money to the Maſter and the Sea-men, deſiring them to ſay, they were hired to go for *Flanders*, and not for *France*. 1690. 2W. & M.

Gentlemen, theſe Things which I have opened, carry a ſtrong Preſumption of Guilt; for *Engliſhmen*, eſpecially one of that Quality of my Lord *Preſton*, to go into the Country of an Enemy, without any Manner of Paſport; and, in ſuch a Manner, as they could not expect but to be ſeized for Spies, unleſs they were aſſured, that their Character was ſo well known there, that they ſhould be looked upon not as Perſons coming to get Intelligence, but to give it; unleſs they were well aſſured of a good Reception, when they came there.

But there is no Occaſion to leave any thing to Conjecture in this Caſe; what is contained in theſe Papers, makes the Deſign of the Voyage beyond Diſpute. I think, Gentlemen, after you have heard the Evidence, you will be very well ſatisfied, that my Lord *Preſton*, and the other two, who ſtand indicted, were equally concerned in the Papers: They were all alike earneſt to preſerve them from being ſeen; they all ſolicited for the diſpoſing of them, and promiſed Rewards, that they might prevail.

Gentlemen, theſe Papers are of various Natures. One, I mentioned before, is intitled, *The Reſult of a Conference between ſeveral Lords and Gentlemen, both Tories and Whigs; in which it was undertaken to prove the Poſſibility and Methods of reſtoring King* James *by a* French *Power, without indangering the Proteſtant Religion, and the Civil Adminiſtration, according to the Laws of this Kingdom.*

Another contains Heads for a Declaration to be prepared, in order to be publiſhed, when the *French* have had Succeſs at Sea, and are landing; and that is filled with ſuch Pretences, as they thought moſt ſpecious, and moſt likely to amuſe and delude the People.

There is another Sort of theſe Papers, which conſiſts of Letters: Theſe Letters are directed in falſe Names, and are not ſubſcribed; and, it is not to be imagined it ſhould be otherwiſe: Yet, Gentlemen, (though that is not the preſent Buſineſs) the Hands of the Writers of theſe Letters are very well known, and the Subject Matter of them will eaſily reveal to you, for whom they were intended: For though theſe Letters are moſt of them written under divers Cants; ſome under the Colour of Trade; ſome of them under the Colour of a Law-Suit, for the redeeming of a Mortgage, others under the Notion of a Match, and a Settlement to be made upon that Match; yet the real Buſineſs is ſo plain, that you need but hear them read, to ſee through the Diſguiſe.

Though they begin generally in the Stile of Merchants, writing to one another, or the like; yet towards the End of the Letters, you will obſerve Expreſſions of Duty and Reverence (Terms which do not uſually paſs in Correſpondence between Perſons of that Sort) ſufficient to ſhew, that ſomewhat elſe was intended to be covered, in what went before.

Gentlemen, it will appear to you, that ſome of the Writers of theſe Letters were of the Number of thoſe who were ſecured the laſt Summer, when the *French* Fleet was upon our Coaſts: And, you will obſerve, they complain, that by Reaſon of that Reſtraint, the Deſign

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was very much hindred, though they have endeavoured to redeem that Loſs of Time, ſince their Diſcharge, and have carried on the Buſineſs with more Vigour than ever.

In ſhort, the Deſign of theſe Letters, is to importune the ſetting out of the *French* Fleet with all poſſible Expedition: They ſay, they muſt not ſuffer ſuch a fit Seaſon to be ſpent unprofitably: That the beſt Time is between this and the Firſt of *March*, to come to a good Market; and, if they come not before the Tenth of *March*, all will be loſt. In another of their Letters, they ſay, if the Suit be well ſollicited and managed, it may come to a final Hearing before the End of *Eaſter* Term.

They complain, That there are ſeveral indiſcreet Letters came from *St. Germains*, that turn to the Prejudice of the Deſign: Thoſe Letters are not enough diſguiſed, to deceive the People here, but ſpeak too plainly what is to be expected from themſelves, and from the *French*. You will take Notice, that the Letters which all you will hear, are all Bills with high Characters of the Bearer; for which Reaſon they write in ſuch general Terms, becauſe the Bearer was intruſted with the whole. Some of the Letters ſay no Particulars are, or need be expreſſed, becauſe he will inform them of every thing: Others, That they could not write ſo much as he could ſay; and, that nothing was wanting, but to allow him a full and fit Seaſon to give an Account of all the Buſineſs; and that they entirely depend upon his Account of them, and their Condition.

And, Gentlemen, in one of the Letters, the Bearer is ſtiled a Lord; and to whom can that be applied, unleſs to the Priſoner at the Bar.

In another Letter, when they ſpeak of ſending the Copper and the Linnen (the Goods pretended for carrying on the Trade), it is added, and what the Meaning of that is, they muſt refer to the Bearer, who was able to give them a particular Account.

I have mentioned ſo much of the Papers, only that you might have a general Notion of them; that ſo, when you have heard them read, you may more readily make your Obſervations: I aſſure you, I have been as careful as I could not to exceed the Truth, in opening any Part of the Evidence: But it is your Part to ſee, whether what I have opened be made out in Proof.

There is another Paper, that gives an Account of their Majeſties Fleet to be ſent out this Summer; and there is an Obſervation at the End of it, that it was hoped it may be out in *March*: But you will find by other Papers (and particularly by one of my Lord's own Handwriting) that he was of another Mind, that the Fleet will not be out before *June*.

Gentlemen, the laſt Sort of Papers which I will mention to you, are ſome Memorandums and Notes, written by my Lord *Preſton*, wherein he gives an Account of ſeveral Things of great Moment; which, as his Memory ſerved him, are put together without Connection or Method, being only to remind him of them, when he ſhould have Occaſion to mention them.

He therein gives an Account of the Number and Strength of the *Engliſh* Fleet, how they are manned, and who are the principal Officers and Commanders, and in what Time they will be out.

He likewiſe gives an Account of the Number and State of the *Dutch* Fleet, and how that is to be divided and diſpoſed of. 1690. 2W.&M.

And with Relation to the *French* Fleet, there is a particular Memorandum, That they muſt be out at furtheſt in *April*: That they muſt be out ſo as to ſeparate the *Dutch* Fleet and ours; that they muſt be ſure to look in at *Spithead* as they come by, and ſecure what Ships ſhould be in that Harbour from joining the reſt.

There is alſo a Hint given of thoſe, that were moſt likely to come in to them; and there is Advice in what Place their Fleet ſhould fight ours: They muſt not come ſo high as *Beachy*, where they fought the laſt Year, but rather chuſe to fight in the Chops of the Channel.

There is an Account of *Portſmouth*, how fortified and garriſoned; that it had but 500 Men; that *Goſport* had nothing but Palliſadoes about it, and *South-Sea* Caſtle very weak.

There are Memorandums of other Heads, proper for a Declaration.

There are the Names of ſeveral Perſons, ſome of them with particular Characters, and ſome without; and, amongſt the reſt, there is this Character given of the Clergy of the City of *London*, that they are the worſt of all others.

Gentlemen, we ſhall proceed to the Evidence, and firſt call the living Witneſſes, and then read the Papers; and when you have heard what the one can ſay, and what the other contain, we muſt leave it to your Conſideration, and ſubmit all to the Direction of the Court.

The King's Witneſſes were then called and firſt Mrs. *Pratt* was ſworn, who depoſed, That Mr. *Elliot* hired a Smack of her to go to *France*, for 100 Pounds, at Mr. *Burdettt*'s Houſe in *Queen's-Street*; and that her Men fetched a Hamper and a Trunk from Mr. *Burdet*'s, and carried them to the Veſſel: And, that Mr. *Elliot* wrote a Note for her, to call for the Company at Mr. *Rigby*'s, the *Seven-Stars* in *Covent-Garden*, about ten the next Night, which ſhe did, and found Mr. *Aſhton* there, who went out and fetched Mr. *Elliot*, and two other Gentlemen ſhe never ſaw before: That Mrs. *Aſhton* afterwards came in, and ſaid, She was afraid they ſhould have no very good Luck, for the Cock crowed: And ſome of the Company told her People, if they went ſafe that Time, they would help them to the earning of 1000 Pounds before *Lady-Day*. *The Witneſſes for the Crown.*

That the Gentlemen went from *Rigby*'s about eleven o'Clock at Night; ſhe did not go with them, but ſtaid there with Mrs. *Aſhton*, who gave her the Leg of a Gooſe.

Paſely, the Maſter of the Smack, was ſworn, and depoſed, That he and his People fetched a Trunk and a Hamper from Mr. *Burdett*'s, and carried them on Board the Smack (which lay at *Billingſgate*) as Mrs. *Pratt* had teſtified; and that they ſaw the Money told out at Mr. *Burdett*'s, being ninety-three Guineas and a Sixpence; which was to be paid his Owner, by Mrs. *Burdett*, on his Return from *France*: That Mr. *Aſhton* broke the Sixpence, and gave his Owner one half, and took the other himſelf; and when he (the Maſter) brought back the other half of the Sixpence, which Mr. *Aſhton* had, the Money was to be paid.

That they called upon the Company as they were

1690. 2W.&M. were directed, at the *Seven-Stars*, in the little Piazza in *Covent-Garden*, about Ten the next Night, and from thence to *Surry-Stairs*, where they called at an Alehouſe for their Waterman; and he (this Witneſs) was ordered to go firſt into the Boat; where being ſeated, there came in four Men, namely, Mr. *Aſhton*, Mr. *Elliot*, my Lord, and his Man: That they went through Bridge, and went on Board the Veſſel which was riding on *Southwark* Side, over-againſt the *Tower*: That ſailing down the River, the Gentlemen were hid under the Quarter-Hatches, as they went by the *George* Man of War, and hid themſelves again, when they came over-againſt the *Block-Houſe* at *Graveſend*; and Captain *Billop* coming on Board there, took them all Priſoners: That the Captain commanded the Gentlemen to go into his Boat, and the Witneſs and his Sailors with them, and carried them all to *Whitehall*.

When they came to *Whitehall-Stairs*, one of the Gentlemen ſaid to him (the Witneſs), Maſter, when you come upon your Examination, ſay you were bound to *Flanders*, and not to *France*; gave him half a Crown, and ſaid, he would take Care of him: *Aſhton* gave one of his Men half a Crown alſo; and my Lord's Man gave the other Sea-man half a Crown——And, that the Waterman who carried them on Board, left two Coats behind him in the Veſſel.

Charles Betſworth, the Waterman, depoſed, That a Gentleman called him, and asked him to carry him down the River, as far as the *Tower*, when the Tide turned; and that he agreed to carry him for half a Crown, and to wait for him at an Alehouſe near *Surry-Stairs*: That about Eleven, the Gentleman came with ſome others; and he took them into his Boat, and carried them on Board a Veſſel, which lay over-againſt the *Tower*; and returning through Bridge, he miſſed his Cloaths; and thereupon rowed towards the Smack again, to enquire for them; but ſhe was gone, and he did not hear of his Cloaths again till laſt *Friday* Sen'night, when they were ſent to him.

Fiſher, one of the Sailors belonging to the Smack, depoſed, That he carried the Trunk above-mentioned, on Board the Smack; and between Eleven and Twelve the ſame Evening, my Lord, Mr. *Aſhton*, Mr. *Elliot*, and my Lord's Man, came on Board, and ſailing down the River, they hid themſelves twice under the Hatches, and were taken by Captain *Billop*, over-againſt *Graveſend*, as the Maſter of the Smack had teſtified.

Amonds, another of the Sea-men, confirmed *Fiſher*'s Teſtimony, and added, That when Captain *Billop* took them, he ſearched my Lord's Pockets, and took out ſome Papers, which he put into his own: That he gave his Lordſhip his Watch again, and ſaid, he would meddle with nothing but Papers: Then he ſearched Mr. *Elliot*, and Mr. *Aſhton*; and one of the Watermen telling Captain *Billop*, he ſaw *Aſhton* put ſomething into his Boſom, the Captain pulled out a Roll of Papers, with a Piece of Lead tied to it: And that when they came to *Whitehall*, my Lord's Man gave this Witneſs half a Crown, and bid him ſay they were bound for *Flanders*, and not for *France*.

Captain *Billop* depoſed, That on the laſt of *December*, about two o'Clock, the Lord Preſident, the Marquiſs of *Carmarthen*, told him; there were ſome Perſons going to *France* about Buſineſs of dangerous Conſequence, and deſired him (the Witneſs) to get them apprehended: That my Lord *Danby* furniſhed him with a Boat and Arms; with which he ran down the River as far as *Graveſend* that Night; and ſeeing this Veſſel come by, which his Men informed him was the Veſſel he looked for, and called the *Thomas and Elizabeth*; he went on Board, and found the Lord *Preſton*, Mr. *Elliot*, and Mr. *Aſhton*, under the Hatches in the Cabbin: That he ſearched his Lordſhip, took all the Papers he found on him, and put them into his own Pocket: Then he ſearched Mr. *Elliot*, but found nothing on him; but one of his Men telling him, Mr. *Aſhton* had put ſomething into his Boſom, he (the Witneſs) clapped his Hand into *Aſhton*'s Boſom, and pulled out a Packet, with a Lead fixed to it. 1690. 2W.&M.

That he brought theſe Gentlemen, with the People that belonged to the Smack, up the *Thames* with him in his Boat; and Mr. *Aſhton* and Mr. *Elliot* telling my Lord that he (the Witneſs) was their Acquaintance, my Lord ſaid, he was glad he was fallen into the Hands of a civil Gentleman, and, if ever it lay in his Power to do him Service, he would; and uſed a great many kind Expreſſions, to induce him to diſpoſe of the Packet: Mr. *Aſhton* and *Elliot* alſo courted him to throw the Packet over-Board, invited him to go with them, and asked him, What Good it would do him, to injure ſo many honeſt Gentlemen? They ſaid, he had it now in his Power to make himſelf as great and as rich as he pleaſed: That the Tide would not always run that Way; and when nothing would prevail, they ſaid, *Every Dog had his Day*.

That he brought the Gentlemen and the Papers to my Lord *Nottingham*'s (the Secretary's) Office, and ſaw the Papers opened; and when my Lord *Nottingham* had read them, he tied them up, and ſent them by him (the Witneſs) to the Lord Preſident.

The Lord *Preſton* demanding, If thoſe were the ſame Papers that were taken on Board the Smack? *Billop* anſwered, He marked ſome of them, which he could ſwear to, and no more.

Johnſon, one of *Billop*'s Boat's Crew, confirmed the Captain's Evidence, and added, That he ſaw *Aſhton* take the Packet off the Ballaſt, or Gravel, and put it into his Boſom; and there were a Couple of Seals lying by it, which he (the Witneſs) took up: And that they went on Board the *George* Frigate, and my Lord's Man told this Witneſs, he would give him ſomething to drink, if he would deliver him the Seals; but he (the Witneſs) delivered them to Captain *Billop*. (And the Captain depoſed, that the Seals produced in Court were the ſame he received of *Johnſon*).

That, as they were coming up the River, *Elliot* wiſhed a Thunder-bolt might ſink the Boat; and, when they went through Bridge, he wiſhed that *London-Bridge* might fall on their Heads.

The Lord *Nottingham* depoſed, That all the Papers he received of Captain *Billop*, he ſealed up, with his Seal, and delivered to the Captain again, when he had read them.

The Marquis of *Carmarthen*, Lord Preſident, depoſed, That Captain *Billop* brought him a Bundle

1690. 2W.&M. Bundle of Papers, ſealed with Lord *Notting-ham*'s Seal: That he ſhewed them to the King next Morning, and then delivered them, by his Majeſty's Command, to the Lord *Sidney*.

The Lord *Sidney* depoſed, That he marked every Paper, and then delivered them to Mr. *Bridgman*, who copied them, and delivered them to him again.

Bridgman depoſed, That my Lord *Sidney* delivered him the Papers, ſigned with his Lordſhip's Hand; and, when he had copied them, he delivered all of them to his Lordſhip again.

Here the Lord *Preſton* objected, That my Lord *Nottingham* acknowledged he opened no Papers, before he (the Priſoner) was called in and examined, and that then Captain *Billop* withdrew: He could not ſee, therefore, how the Captain could ſay, theſe were the ſame Papers he took in the Smack.

Captain *Billop* anſwered, My Lord *Preſton* obſerved very right, That after he had delivered the Packet to my Lord *Nottingham*, he *(Billop)* withdrew: But when he came in again, the Packet was in the ſame Condition he left it on the Table? he *believed* the Lord *Nottingham* had not opened it.

The Lord *Preſton* demanding, If this was ſufficient Evidence? the Chief Juſtice anſwered, It was Evidence enough to have the Papers read; but the Queſtion was, what Credit the Jury would give to the Evidence.

Then the Lord Preſident was deſired to look upon the Papers; and having caſt his Eye on them, he ſaid, This is one of the Papers I had from Captain *Billop*, and ſhewed the King; and this is another of them.

One of which Papers was afterwards read, entitled, *The Reſult of a Conference between ſome Lords and Gentlemen, both Tories and Whigs; in which it was undertaken to prove, the Poſſibility and Method of reſtoring King* James, *by a* French *Power, without endangering the Proteſtant Religion and Civil Adminiſtration, according to the Laws of this Kingdom.* The Subſtance whereof was,

1. That it was the Intereſt of *France* rather to endeavour to oblige, than conquer us.

2. That *France* muſt take off the frightful Character we have of him, and ſhew he had no Deſign of returning our offended King a Conquerer upon us; upon which he will find many Lords and Gentlemen in his Intereſt.

3. That the muſt over-rule the Bigotry of St. *Germains*, where one ſilly Thing or other was done every Day, which obſtructed their Return; and, particularly, that none be ſuffered to ſend Letters from thence, but King *James*; for they were generally filled with Arguments againſt a Reſtoration: That King *James* muſt think of nothing ſhort of a Proteſtant Adminiſtration, and muſt give us a Model of this, by preferring Proteſtants at *St. Germains*.

4. That he ſhould encourage Lords and Gentlemen to come to him, of whom he might frame a Council; which would facilitate his Return and give Satisfaction here.

5. That the *French* King ſhould grant Liberty of Conſcience to the *Hugonots*, that we might believe his Conduct towards them flowed from the Hazard he thought himſelf in from their rebellious Principles, rather than an Inclination to Perſecution. 1690. 2W.&M.

Laſtly, All other Meaſures depended on the Acceptance this Propoſal found; and an Anſwer was impatiently expected: This was ſaid to be prepared by the unanimous Conſent of Whigs and Tories, who were upon the Point of uniting in his Majeſty's Intereſt.

The Lord *Preſton*, on the reading this Paper, ſaid, He could ſafely ſwear, he never ſaw it: Then another Paper was read, of the like Tenor; and a third Paper was ſhewn to the Lord Preſident and the Lord *Sidney*, who teſtified it was in the abovefaid Packet.

This contained the Heads of a Declaration: King *James* was adviſed to promiſe in it, that the Laws ſhould be the Rule of his Actions, and that he would endeavour to ſettle Liberty of Conſcience by Law; and, whatever had formerly occaſioned Jealouſies, particularly the Diſpenſing Power, ſhould be determined in a Parliament to be ſpeedily called.

That it ſhould be repreſented, he had ſhewn his Averſion to an Army of Strangers, by refuſing Aid from *France* on the Prince of *Orange*'s Invaſion; and declare, he would bring no more over with him, than for the Defence of himſelf and his loyal Subjects; and even theſe ſhould be diſmiſſed, when the Nation was rid of thoſe Foreigners, which had invaded it, and trampled on the Laws and Liberties of the People.

Then ſome Letters were read, that were written in canting Terms, ſubſcribed by no body; and ſome of them directed to no body: In one of them, the Writer ſays, His young Maſter had all their beſt Wiſhes, and daily got more Friends: In another, directed to Mr. *Jackſon*, the Writer ſays, He will never quit his Intereſt, whatever the reſt of the Freeholders do: That his Adverſary had diſobliged all the old Tenants, and a little Matter would redeem the Eſtate, if he would appear in *Weſtminſter-Hall* himſelf; and begs he would haſten to them, for that the Cauſe might be brought to a final Hearing before *Eaſter*, if it were well ſolicited.

In another Letter, the Writer ſays, That in Trade, as well as in Government, Schemes muſt be laid; and adviſes his Correſpondent to lay his Deſigns probably, and purſue them diligently, and with Vigour; and though the Times were hazardous, yet by venturing boldly, when venturing was adviſeable, it often returned great Profit.

The Writer, in another Letter, informs his Correſpondent, That this was the Time to make large Advantages by Trading, the Sea being freer than for two Months paſſed, or than they could hope it would be two Months hence: That the Bearer was well inſtructed in the Markets, and what Goods they wanted, and when and where they ſhould be ſent; earneſtly deſiring this happy Opportunity might not be loſt: That if the ſeveral Parcels promiſed did not arrive before the 10th of *March*, (eſpecially the Copper and the Linnen, of which the Bearer would be more particular) he was ſatisfied the Summer's Profit would be loſt.

In another Paper, the Writer ſays, For his own Part, he would ſtay as long as he could be ſafe, though with never ſo much Trouble; but it would be

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be a Comfort to know, when they were driven from hence, where they could be ſafe: The Report of People's Uſage was terrible; they ſuffered by the Indiſcretion of the Family at *St. Germains*, and the ridiculous Letters from them, which daily fell into the Hands of the Government; and that their Maſter and Miſtreſs were as little obliged to them as they were; tells him, the Bearer had furniſhed 200 *l.* for his Uſe, which he deſired might be paid.

A Cypher, with an Alphabet of Names, was alſo found to be in the Packet; in which *A.* ſtood for the King, *B.* for the Queen, *C.* the Prince of *Wales*, *D.* the Prince of *Orange*, &c. A Liſt of the *Engliſh* Fleet alſo was proved to be in the Packet; with two Bills of Exchange, in *French*, amounting to 500 *l.* and drawn on two Bankers in *Paris:* Some Memorandums of the Condition of the Fleet; when the *Dutch* were likely to join them, and how the *French* might fight the *Engliſh* Fleet before they were joined, were produced.

Some Memorandums alſo of the Strength of *Portſmouth*; intimating, that it was garriſoned by five hundred Men, commanded by *Gibſon*, a *Scotch* Pedlar. A Liſt alſo of the Admirals that commanded each Squadron, and ſome Heads for a Declaration, were inſerted: The King was adviſed to land in *Scotland* in *February*, and endeavour to unite the Epiſcopal and Preſbyterian Parties: That his Army ſhould conſiſt of *Scots*, not *French*, and that he ſhould procure five thouſand *Swediſh* Foot: It would be to his Reputation to have a Proteſtant Ally: It was adviſed to block up *Newcaſtle* with *Scotiſh* Ships, and diſtreſs *London:* It was ſaid that *Ormonde* and *Brandon* were diſobliged about the Guards; mentions the proteſting Lords againſt the Uſurper; and ſays, three in five were againſt the Vacancy of the Throne: That the *London* Clergy were the worſt; *for we have their Wiſhes, and they their Oaths.*

Then Mr. *Townſend* depoſed, That he belonged to the Office of the Great Wardrobe, where he had Occaſion to ſee his Lordſhip's Hand ſometimes, and believed theſe Memorandums to be his Hand.

Mr. *Bland* depoſed, He had ſeen Lord *Preſton*'s Hand, and he believed theſe Papers were his Lordſhip's Hand-writing.

Mr. *Warr* depoſed, He believed one of the Papers of Memorandums to be his Hand; and, as to the Seals that had been produced, he teſtified, that one was his Lordſhip's Seal, when Secretary of State, and the other his private Seal.

Then the Lord Chief Juſtice directing the Lord *Preſton* to enter upon his Defence; his Lordſhip obſerved, in the firſt Place, That the Treaſons he was charged with were none of them done in the County of *Middleſex*, and yet they were laid in the Indictment to be done in this County.--Then he deſired to know, whether the Memorandums were ſufficiently proved to be his; that is, Whether Similitude of Hands was Proof againſt him in ſuch a Caſe?

The Chief Juſtice demanding, If his Lordſhip would diſprove any of the Facts that had been teſtified againſt him? The Lord *Preſton* anſwered, he muſt deny the whole Fact, but had no Witneſſes, or Evidence to offer; and obſerved further, that none of the Witneſſes declared he knew any thing of going into *France*, or had any Concern in hiring the Ship; though he ſuppoſed if they had, that was not Treaſon; nor did they ſay, the Papers were found upon him.

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The Chief Juſtice anſwered, If it was proved his Lordſhip had an Intention to carry thoſe Papers into *France*, and took Boat with them in the County of *Middleſex*, and went on Ship-board in order to it; the taking Boat at *Surry-Stairs* in *Middleſex*, and in Proſecution of that Intention, was an Overt-Act in the County of *Middleſex.*

The Lord *Preſton* anſwered, They had not proved that Deſign. The Chief Juſtice replied, He was was of Opinion, if his Lordſhip had ſuch a Deſign to go with thoſe Papers into *France*, and thoſe Papers were framed by him, or he was privy to the Contents of them; then it was plainly proved, that he went into a Boat in the County of *Middleſex*, in order to carry on this Deſign; and that made the Indictment good: Whether he did take Water with an Intention to carry theſe Papers to *France*, that the Jury were to Judge of.

The Lord *Preſton* ſaid, There ought to be two credible Witneſſes to prove every Fact; and he hoped the Gentlemen of the Jury would conſider, there was nothing but Suppoſition as to him; and he hoped he and his Family ſhould not be ruined on a Suppoſition.

Then the reſt of the Judges on the Bench delivered their Opinions, That if the Jury believed my Lord *Preſton* took Boat with an Intention to carry thoſe Papers (which were treaſonable) to *France*, then there was ſufficient Evidence of an Overt-Act in the County of *Middleſex.*

The Lord *Preſton*, however, ſtill inſiſted, That it was not proved theſe Papers were taken upon him; or that he did take Water at *Surry-Stairs* with an Intent to go into *France:* And thus having concluded his Defence, the Lord Chief Juſtice *Holt* proceeded to ſum up the Evidence, and direct the Jury.

The Chief Juſtice's Directions to the Jury.

Lord Chief Juſtice Holt. Gentlemen of the Jury, My Lord *Preſton* ſtands indicted of High-Treaſon, in Imagining and Compaſſing the Depoſition, Death, and Deſtruction of the King and Queen; and for that Purpoſe did write, or cauſe to be writ, ſeveral treaſonable Papers and Letters; deſigned to go into *France*, and there to correſpond with the *French* King and his Subjects, who are Enemies to the King and Queen, and to carry with him thoſe treaſonable Papers and Letters, containing a Project, and a formed Deſign, how this Kingdom ſhould be invaded by Foreigners.

There is another Treaſon in the Indictment mentioned, and that is for adhering to, and abetting, the King's Enemies; there being open War declared between the King and Queen and the *French* King.

You have heard, Gentlemen, a very long Evidence: Witneſſes have been produced *viva voce*, and ſeveral Papers have been read to you. Some of the Papers that have been produced, though they may ſeem myſterious and canting, yet they are not ſo very obſcure and unintelligible, but, if you conſider them well, the Meaning of them will appear: Others of them are more expreſs,

1690. 2W.&M. and do plainly demonſtrate a Deſign, that this King and Queen ſhould be depoſed, and that there ſhould be another Prince ſet upon the Throne, and reſtored to the Government of this Kingdom.

Gentlemen, there are two other Perſons mentioned in the Indictment with my Lord; and though my Lord is only now upon his Trial, yet the Evidence that doth affect them, doth alſo concern my Lord.

You have heard how there was an Intention of ſome Perſons to go to *France*; and how Mr. *Aſhton*, one of the two others that ſtand indicted with my Lord, did treat with one Mrs. *Pratt*, one of the Witneſſes, to hire a Veſſel for that Purpoſe; and it was by the Means of one Mr. *Burdett*, that lives in the City: They had a Meeting at *Burdett*'s Houſe, where they treated about the Price that ſhould be given for the Hire of this Ship to go to *France*, but at that Time they did not agree. It was concluded, that the Woman, and *Aſhton*, and *Burdett* ſhould meet at the *Wonder*-Tavern; but Mr. *Burdett* not being there, nothing was concluded upon then. After that, the Woman, Mr. *Burdett*, and *Aſhton*, and *Elliot*, met at Mrs. *Burdett*'s: The Woman inſiſted at firſt upon 150 *l.* After they had been treating for ſome Time, the Bargain was made to go to *France* for 100 *l.*

Then the next Thing conſidered, was, how this Money ſhould be paid; by Agreement ninety three Guineas, and Six-pence, which made up the 100 *l.* was depoſited in Mrs. *Burdett*'s Hand; a Six-pence broken, one Part Mrs. *Burdett* had, and the other Part of the Six-pence Mr. *Aſhton* had; and when either Mrs. *Pratt*, or the Maſter of the Veſſel, did bring back that Part of the Six-pence that *Aſhton* had, to Mrs. *Burdett*, the Money was to be paid.

After this Agreement, they were appointed to go to the *Seven-Stars* in *Covent-Garden*, to the Houſe of one Mr. *Rigby*; and there the Woman, Mrs. *Pratt*, and the Maſter of the Veſſel, *Aſhton*, and *Elliot* met; and they were that Night to go away, and to take Water at ſome Place near, to go on Ship-board; and having ſtaid there till it was about Ten o'Clock at Night, then they went away into the *Strand*, and ſo into *Surry-Street*, and took Water at *Surry-Stairs*.

But before they came from Mr. *Rigby*'s, ſome Perſons went to *Surry-Stairs*, and met with that Fellow that was here produced, who was a Sculler, and did hire him to go through the Bridge, when the Tide ſerved, and to carry ſome Gentlemen on Ship-board; they agreed with him for half a Crown, and he was to ſtay in a Houſe near the Stairs until they came.

And, at the Time appointed, Mr. *Aſhton* and Mr. *Elliot*, and the Maſter of the Veſſel, came to that Place, and my Lord *Preſton* and his Man with them, to take Water: My Lord *Preſton* was not at *Burdett*'s Houſe, at the hiring of the Ship, nor at Mr. *Rigby*'s; but it is proved, by the Maſter of the Veſſel, that he took Water with the reſt of them at *Surry-Stairs*; that he went with them on Ship-board, and was to go along with them.

Being on Board the Ship, they did appear to have ſome Apprehenſions of Danger; and, paſſing by a Man of War, my Lord *Preſton*, his Man, and the other two, went under the Quarter-Hatches, where they lay down, to prevent themſelves from being taken or diſcovered; and they hid another Time, when they came near *Graveſend*; and coming up, they, ſeeing a Boat coming towards them, hid themſelves again: Captain *Billop*, who it ſeems was ſent to apprehend them, pretended he was to preſs Seamen; and when he came on Board the Smack, he ſaid, he would preſs the Mariners, who anſwered, they had a Protection; but he being upon the Search, pulled up the Boards of the Quarter-Hatches, and there was my Lord *Preſton*, and the other Perſons, lying down: It was not a Place that was very proper for Gentlemen, or indeed for any Paſſengers, to repoſe themſelves in; it was an uneaſy Place, no body could ſtand or ſit upright in it; nay, there was no convenient Place for lying down, but they muſt lean upon their Elbows, which Poſture thoſe Gentlemen were in; ſo that their Purpoſe was plainly to conceal themſelves, and their concealing themſelves muſt be becauſe of ſome Deſign they were about, which they would not have diſcovered. 1690. 2W.&M.

They being taken out from under the Hatches, one of the Witneſſes tells you, he ſaw a Packet lying there, and *Aſhton*, pretending to fetch his Hat, went down, took it up, and put the Packet into his Boſom; and the Witneſſes informing Captain *Billop* thereof, he cauſed *Aſhton*'s Coat to be ſearched, and from thence took the Packet, and a Piece of Lead tied to it, which was produced here in Court.

When they were bringing away in Cuſtody, they ſeemed all of them to be very much concerned about this Packet; ſome of them, that is, *Aſhton* and *Elliot*, would have had it thrown, with the Lead, over-board: My Lord *Preſton* did not ſay ſo much, but complimented Captain *Billop* in this Manner; He was glad he was fallen into the Hands of a civil Gentleman, a Perſon of Worth, and he ſhould always acknowledge his Kindneſs, and would do him all the Service he could, if he would diſpoſe of the Packet.

My Lord *Preſton* was ſearched at that Time, and Letters of no great Moment taken about him. *Aſhton* and *Elliot* would have had Captain *Billop* to take thoſe Letters which were taken in my Lord *Preſton*'s Pocket, and tie the Lead to them, and have thrown the Packet over-board, and to report to the King and Council, that thoſe Letters were the Packet that was taken with the Lead, and ſo have perſuaded him to be falſe to the Truſt that was repoſed in him.

And *Aſhton* and *Elliot* uſed many Expreſſions to induce him to that Compliance: They told him the Government was unſtable, and every Dog had his Day, and the Tide would turn; and that he would deſerve very well, if he would change Sides, and go with them where they were going; and that he had Opportunity to get any Preferment he would have.

Lord Preſton. My Lord, I hope your Lordſhip obſerves, that I ſaid none of all this.

L. C. J. Holt. No, my Lord, I do not ſay you did: My Lord *Preſton* did not ſay any thing of all this, but only about diſpoſing of the Packet; that his Lordſhip ſpoke of to Captain *Billop*; and complimented him, and promiſed him Kindneſs, if he would diſpoſe of the Packet.

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But, Gentlemen, as there was a Packet taken, ſo there were two Seals taken at the ſame Time, and in the ſame Place, which have been produced and ſhewn to you; they lay both of them upon the Ballaſt, under the Quarter-Hatches, near the Packet: The one of them is the Seal of my Lord *Preſton*'s own Coat of Arms, the other Seal belongs to the Secretary's Office, which Office my Lord once held in the late Reign.

Lord Preſton. I beg your Lordſhip would be pleaſed to obſerve, that the Papers were not taken upon me; and it can be no Treaſon to have Seals, I ſuppoſe.

L. C. J. Holt. Good my Lord, I will not do your Lordſhip any Wrong: I do not ſay that the Papers were taken about you, no, nor the Seals; but only, that they lay upon the Ballaſt, from whence the Packet was taken; and, I ſay further, that theſe Seals are not denied by your Lordſhip to be your Seals; the one is your own Seal of your Coat of Arms, which was taken at that Time, and ſo I do not your Lordſhip any Wrong, and, by the Grace of God, will not.

Lord Preſton. It is no Crime, I hope, to have Seals.

L. C. J. Holt. I do ſay, my Lord, the Papers were taken about *Aſhton*, and not about your Lordſhip; but they lay upon the Ballaſt, where the Seals were, and where your Lordſhip lay: But how far my Lord *Preſton* is concerned in this Matter, is to be conſidered by you of the Jury by-and-by.

Now, Gentlemen, you have heard how earneſt Mr. *Aſhton* and Mr. *Elliot* were; one of them, to wit, *Elliot*, wiſhed a Thunder-bolt might ſtrike the Boat under Water, as they were coming back; and when they came through Bridge, he wiſhed that *London-Bridge* had fallen upon them, and knocked them on the Head.

Lord Preſton. But I hope that is not to lie upon me neither; for I ſaid no ſuch Thing.

L. C. J. Holt. No: But *Aſhton* and *Elliot* did ſay theſe Things; and how the Caſe ſtands as to that, in Relation to your Lordſhip, is to be conſidered: It is proved they afterwards gave Money to the Seamen, half a Crown a-piece to two of them, to ſay they were going to *Flanders*, and not to *France*.

Now, Gentlemen, that my Lord was on Board this Veſſel, that my Lord was under the Hatches, and that the Papers were taken in this Manner, is beyond all Contradiction; ſo likewiſe, that the Ship was hired for *France*, that my Lord took Water at *Surry-Stairs*, and was taken in this Veſſel, in that Manner you have heard.

The next Thing, Gentlemen, is about the Papers: I muſt tell you, though there are ſeveral of them that do ſeem myſterious, yet there are Papers that do ſhew a very great Deſign of depoſing the King and Queen, and a Purpoſe of altering the preſent Government.

But, Gentlemen, I will mention to you thoſe Papers that are very plain, and leave you to conſider what Conſtruction to put upon thoſe that are obſcure: There is one Paper that ſeems to be Inſtructions and Heads for a Declaration, that is to ſay, That the King of *France* muſt not come with a Deſign to make an entire Conqueſt.

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Lord Preſton. My Lord, with Submiſſion to your Lordſhip, I hope you will pleaſe to remember, and obſerve to the Jury, that Paper is not proved to be mine.

L. C. J. Holt. No, my Lord: I will do your Lordſhip no Wrong; but I cannot ſpeak all my Words at once.

Lord Preſton. I am ſure you will not, my Lord; but I beg leave to put your Lordſhip in Mind.

L. C. J. Holt. Well then, Gentlemen, the Paper begins, That the King's Declaration is to be formed in general Terms; that he will govern by the Laws, that they ſhall be the Rule of his Actions; that he will endeavour to ſettle Liberty of Conſcience by a Law; and that whatſoever was done by him, that gave any Occaſion of Jealouſy, ſhall be ſettled by Parliament: That he hath given ſufficient Proof and Evidence of his not being willing to bring an Army of Strangers into the Kingdom, by refuſing the Succours the King of *France* offered him, and that were even ready to be embarked, upon the firſt Notice of the Prince of *Orange*'s Coming; that he brings ſuch an Army only as is neceſſary for his own Defence, and ſecuring ſuch of his loyal Subjects as ſhould come to him; and that he will diſmiſs them as ſoon as he ſhall have rid the Nation of thoſe Foreigners that had invaded us, and trampled upon the Laws.

So that, Gentlemen, here is a Paper in this Packet that has plainly laid open and proved the Deſign; and ſhews the Meaning of it was to ſeduce their Majeſties Subjects from their Allegiance: It was to be in ſuch general Terms, making general Promiſes; hoping thereby, that People would be the more eaſily impoſed upon, to renounce their Allegiance to their preſent Majeſties. But, Gentlemen, the Declaration imports farther, that the Realm was to be invaded by Foreigners; and to palliate it, it is pretended, that Foreigners were only brought in to rid the Nation of Foreigners; and you know who are meant by that: So that this Project was only to colour a Foreign Invaſion; and this Declaration was to direct them how, and upon what Pretences, they ſhould invade this Kingdom.

Gentlemen, there is no Manner of Doubt but this is a treaſonable Declaration; and if any Perſon had this in his Poſſeſſion, and was going into *France* to carry it, with an Intention there to make uſe of it, that is Treaſon, though it be couched under ſpecious Pretences, of reſtoring People to their Liberty: It was plainly a Deſign to invade *England* by a *French* Army.

L. Preſton. My Lord, that Paper was not found about me.

L. C. J. Holt. No, no, my Lord, it was not; but, good my Lord, give me your Favour: I will certainly obſerve every thing that is fitting, but I tell you I cannot do it all at once.

Then, Gentlemen, there is another Paper found in the Paquet, that is ſaid to be, The Reſult of a Conference, that was held between divers Lords and Gentlemen, as well Tories as Whigs, as they call them, to prove it poſſible to reſtore the late King by *French* Arms; and how this may be effected, were Propoſals made: Yet ſtill it was pretended to preſerve the Proteſtant

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tant Religion, and the Civil Adminiſtration, according to Law.

And, that it might be brought to paſs, the Credulous were to be impoſed upon, and made to believe that the *French* King would not conquer *England* for himſelf; no, but he would conquer it for the late King; he would be at that vaſt Charge, that great Expence of Men and Arms, to reſtore King *James*, and make no Profit of it himſelf.

And it was propoſed how to ſeduce the People of *England* into a Belief of the *French* King's Kindneſs: He was to indulge the Proteſtants in *France*, and let them have the Exerciſe of their own Religion there; and this to ſatisfy the *Engliſh* Proteſtants, That his Proſecution of the *Hugonots* in *France*, was not out of Averſion to the Proteſtant Religion, but only becauſe of their Antimonarchical and Reſiſting Principles: So that they were propoſing among themſelves what they were to do, to make the People believe the *French* King had no dangerous Deſign againſt our Religion and Liberties; and if they could meet with Perſons to believe this, that was a probable Way thought upon in this Conference, to get a great many Adherents to the *French* King; thereby this Invaſion to be facilitated, and the whole Project rendered more ſucceſsful.

There is another Thing, Gentlemen, in this Paper, and that is this: They complained of the Miſmanagement of their Affairs at *St. Germains*; that though they did earneſtly deſire the Reſtitution of the late King, yet there was always ſome fooliſh Thing or other that came from *St. Germains*, that obſtructed their Deſign.

What that fooliſh Thing is, I cannot ſay, it does not appear; but whether it were not too great a Diſcovery of their Zeal for Popery, and the Advancement of the Popiſh Religion, is worth your Conſideration.

And ſomething is to be done for Satisfaction of the People as to that; and it is adviſed, that there ſhould be ſeven or nine, or ſuch a Number of *Engliſhmen*, that ſhould go over, and be received into Favour at *St. Germains*, and they ſhould be of the Council there, and theſe were to be Proteſtants; and that was to be a Colour and Pretence, that the late King was reconciled to the Proteſtant Intereſt, becauſe he choſe Proteſtant Councellors, and had received them at *St. Germains*, and was adviſed by them.

This, ſays the Paper, will make the World believe he is ours, and that we have gained him; which was to delude a great many of the People of *England*, that they ſhould not be affrighted, in caſe there ſhould be ſuch an Invaſion of *England*, but invited rather, and encouraged, to join with the *French* when they came.

But, Gentlemen, the three laſt Papers that have been produced to you, are Papers that do ſomewhat more nearly concern my Lord *Preſton*.

The firſt Paper contains ſeveral Memorandums: It begins with Lady *D.* 2000 *l.* who that Lady *D.* is, I muſt leave it for you to imagine; though perhaps it may not be hard to gueſs.

It takes notice, that the *Engliſh* and *Dutch* were like to join; and theſe Memorandums do alſo ſhew a Deſign and Purpoſe of ſomething to be done for the Prevention of that Conjunction: They ſeem alſo to be Inſtructions to be made uſe of upon going into *France* to negotiate or tranſact ſome Matters of dangerous Conſequence. 1690. 2W.&M.

L. Preſton. My Lord, I hope your Lordſhip will obſerve, that theſe Memorandums are broken kind of Notes, incongruous and incoherent.

L. C. J. Holt. Ay, my Lord, they are ſo, they are but broken Things; but I ſay ſtill, they are Memorandums, that were to be uſed for ſome Purpoſe: Now I leave it to the Jury to conſider of the Matter of them: What can be plainer than what is there expreſſed? The *French* are to come in Time, before the *Dutch* and the *Engliſh* join; they are to watch their Opportunity, and come betimes; and they are to fight at the Chops of the Channel, and not come as far as *Beachy*.

L. Preſton. This is all but preſumptive Evidence, my Lord.

L. C. J. Holt. I appeal to your Lordſhip, if it was not in the Paper; and I appeal to the Memory of the Jury, whether I miſrepeat it or not.

The Paper mentions *Jennings*, *Strickland*, and *Trevannion*, that they were to come from *St. Malo's* in one Night; the King (meaning the late King) was not to be on Board; and there were Ships to lie at *Newcaſtle*, to plague *London:* It is eaſy to underſtand what they meant. Among theſe Memorandums it is made a Remark, that the *London* Clergy are the worſt. It gives an Account how *Portſmouth* was fortified, and *Goſport*, and what Number of Men were in them; and of the State and Condition of our Navy, what Rates our Ships were, and how many, and who were to be the Commanders.

L. Preſton. I beg your Lordſhip to obſerve this is not Treaſon.

L C. J. Holt. I ſhall tell you that, my Lord, by and by; I am now ſtating the Evidence.

Gentlemen, my Lord *Preſton* inſiſts upon it, that theſe Papers were not found about him: It is true, they were not; but it does not therefore follow, that they were none of his Papers; but you have three Witneſſes, Mr. *Townſend*, Mr. *Bland*, and Mr. *Warr*, produced to prove theſe Papers to be my Lord's Hand: Mr. *Townſend* ſays he was acquainted pretty well with my Lord *Preſton*'s Hand; he was one of his Clerks in the Office of the Wardrobe; He ſays, he has ſeen my Lord write ſeveral Times, and does believe the Writing to be his Hand; and to the ſame Purpoſe ſays *Bland*; and Mr. *Warr* ſwears to one of the Papers, that he believes it to be my Lord *Preſton*'s Hand.

L. Preſton. I hope your Lordſhip will pleaſe to obſerve to the Jury, that this is only a Proof of Similitude of Hands; no body ſaw me write them.

L. C. J. Holt. They only ſay, they do believe it to be your Hand; no body ſays they ſaw you write them: If I omit any thing, pray tell me when I have done.

Gentlemen, there are other Papers which have been produced and read, that are writ in canting Terms; which yet plainly ſhew the general Deſign: They tell the Party, that Counſel are of Opinion, he has a very good Title: They hope he will appear himſelf; and, if the Cauſe be well ſolicited, it may come to a Hearing before the End of *Eaſter*-Term.

There

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There is another Matter mentioned in another Letter, which is under the Diſguiſe of Trade: That the Goods muſt come before the firſt of *March*. And another of them ſays, That unleſs the Copper and the Linnen come before the 10th of *March*, they ſhall loſe this Summer's Profit.

Gentlemen, What can be the Meaning of all this.

L. Preſton. I know not indeed, my Lord.

L. C. J. Holt. In another of the Papers, it is ſaid, 'Tis thought our Fleet will be ready by *March* or *April*; but they believe not till *June*.

Truly, Gentlemen, I have not been able to take Particulars of every Letter, but I muſt leave it to your Obſervation; only there is one of them that makes mention of acquainting my Lord with the Condition of the Writer; and Direction is therein given to ſpeak to the Bearer; and what other Lord was there, but he, in the Company?

L. Preſton. I deſire to obſerve, my Lord, that I was not the Bearer.

L. C. J. Holt. Truly, my Lord, I cannot tell who was meant; I muſt leave it to the Jury to judge of that; but there was no other Lord in that Company.

L. Preſton. I give your Lordſhip Thanks for obſerving, that it was not proved that they were taken upon me before; but I beg Pardon for interrupting your Lordſhip.

L. C. J. Holt. Interrupt me as much as you pleaſe, if I do not obſerve right: I will aſſure you I will do you no Wrong willingly.

Now, Gentlemen, the Queſtion is, in the firſt Place, whether this be Treaſon? and I told you before, without Queſtion if any Perſons do go into *France* to negotiate ſuch a Deſign as this, or do purpoſe to go into *France*, and do any Act in order thereunto, that is High-Treaſon; and theſe Letters do import High-Treaſon as great as can be committed, a Treaſon againſt the King and Queen; a Deſign to invade the Realm, to ſubvert the Government, to reſtore another Prince to the Throne, by the Aſſiſtance of Foreign Force.

There was a Deſign to delude and impoſe upon a great many People; and thoſe that would not be deluded into a Belief by theſe fair Pretenſions of Friendſhip, they were to be ſubdued by an Army of Foreigners.

Then, Gentlemen, the next Queſtion will be, how my Lord *Preſton* is affected by this Evidence; and whether you have ſufficient Proof, from what has been offered, to ſatisfy you he is guilty of this Treaſon or no?

Firſt, my Lord tells you, there has not been a clear Proof that theſe were the Papers that were taken: For (ſaith he) they have been conveyed from Hand to Hand; and therefore poſſibly there might be ſome Alteration made in them. You, Gentlemen, are to conſider, notwithſtanding this Objection, whether the Identity of the Papers be not proved.

Captain *Billop* tells you, he took them, and in what Manner; and afterwards carried them to my Lord *Nottingham*, who laid them by for a little Time upon his Table; and Captain *Billop* withdrew, (that is Part of my Lord's Objection) while my Lord *Nottingham* examined my Lord *Preſton*: After that my Lord *Nottingham* called in *Billop* again, and *Billop* ſwears the Packet was not opened, but remained intire, in ſuch Manner as they were delivered to my Lord *Nottingham*; and ſo ſays my Lord *Nottingham*. Then Captain *Billop* ſaw my Lord *Nottingham* open it at that Time; and he ſaw all theſe Papers every one put up again by my Lord *Nottingham*, ſo that he could not be deceived; and my Lord *Nottingham* delivered them to him, and he carried them to my Lord Preſident, all ſealed up with my Lord *Nottingham*'s Seal; and my Lord Preſident tells you, he opened them, and brought them to the King, and had them back from the King; but they were never out of his Sight while the King read ſome of them; but he took them all, and brought them to the Cabinet Council, where my Lord *Sidney* received all theſe Papers that have been read, and marked them: You have my Lord *Sidney*'s Oath, that theſe are the Papers he had from my Lord Preſident; you have my Lord Preſident's Oath, that he had them from *Billop*, ſealed with my Lord *Nottingham*'s Seal; you have my Lord *Nottingham*'s Oath, that he had them from *Billop*; and *Billop* ſwears they were taken in the Smack.

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So that it is plain, if you believe this Evidence, that they are the ſame Papers: Beſides, as to ſeveral of them, *Billop* marked them, and ſwears directly to them: If you believe theſe Witneſſes, as you have no Reaſon, I think, to the contrary, it is plainly proved, theſe are the very Papers which were taken from the Boſom of *Aſhton*, and taken up by him from under the Quarter-Hatches in the Smack.

L. Preſton. I beg your Lordſhip's Pardon for one Thing.

L. C. J. Holt. My Lord, what ſay you, pray? Say what you will.

L. Preſton. With humble Submiſſion, there is one Thing that I think the Jury ought to take Notice of, That when the Papers were ſent from Mr. *Bridgman* to my Lord *Sidney*, they were ſent by a Meſſenger.

L. C. J. Holt. My Lord, you are miſtaken as to that Objection; for my Lord *Sidney* did not ſend them to Mr. *Bridgman* by a Meſſenger, but he delivered them with his own Hand; and after he had ſet his own Mark upon them: And Mr. *Bridgman* ſays, they were never out of his Sight; he copied them all, but two or three, the other Mr. *Pulteney* copied in his Preſence; and ſo he ſwears, he re-delivered them to my Lord *Sidney*.

L. Preſton. With humble Submiſſion, my Lord, if I remember right, they were in a third Hand.

L. C. J. Holt. Never, never.

L. Preſton. Did not my Lord *Sidney* ſay ſo, or Mr. *Bridgman?*

L. C. J. Holt. No; neither my Lord *Sidney*, nor Mr. *Bridgman* ſaid ſo: I ſuppoſe the Jury are apprehenſive of the Matter; I would not miſlead them, I'll aſſure you, nor do your Lordſhip any Manner of Injury in the World.

L. Preſton. No, my Lord, I ſee it well enough that your Lordſhip would not; I am for my Life, and beg your Lordſhip's Pardon for interrupting of you.

L. C. J. Holt. Gentlemen, the next Thing

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First, Gentlemen, I would have you to consider, that there was the hiring of a Vessel for *France*: It is true, my Lord *Preston* was not present at the Bargain; but you observe that my Lord *Preston*, his Servant, *Ashton*, and *Elliot*, took Water at *Surry-Stairs*, on Purpose to go on Board that Smack.

Now, Gentlemen, whether or no you can intend any other ways, than that my Lord *Preston* was privy in hiring this Vessel, though he was not present at the hiring of it; for how should my Lord *Preston* be ready to take Water with them at *Surry-Stairs?* Can you imagine my Lord came there by Chance, and took a sudden Resolution? If you can imagine, that he came only to go on Ship-board, without knowing the previous Design, truly you imagine a very great Thing for my Lord's Advantage.

It is plain, he went voluntarily, without Compulsion; truly, I think the Evidence is very strong, to induce you to believe he was privy to this Design, and that he did know of hiring the Vessel.

L. Preston. I hope your Lordship will observe, at the same Time, that I was never seen before we took Boat.

L. C. J. Holt. My Lord, I have observed it, and I lay that Weight upon the Evidence that I think it will naturally bear, and no more; and leave it to the Jury to consider, whether your Lordship was privy to the Design or no, when they weigh the Circumstances of the Evidence together.

L. Preston. I hope I shall not be condemned upon Presumption and Argument.

L. C. J. Holt. What Weight the Evidence has, they will consider: And then, Gentlemen, there is another Thing that I would observe; Why should my Lord *Preston*, a Nobleman, a Person of his Honour and Quality, put himself in such a Place as he was found in, and that twice? It must sure be out of an Apprehension of some Danger. As for the Sea-men, they were secure enough; they were not frightened, because they thought they were protected, and my Lord *Preston* knew he was not liable to be pressed; the Master of the Vessel tells you they were fearful, and therefore hid themselves in a Place they could not stand in, nor sit in; there was the Gravel and Ballast; it was uneasy to them, and dangerous to their Health to be there.

Gentlemen, why do Men avoid the Light, and put themselves under Covert, unless they have some evil Design? Persons that are innocent, seek not Obscurity.

The Seals were found there, and my Lord does not deny they were his Seals.

L. Preston. I do not deny that: I hope it is no Crime to have such Seals.

L. C. J. Holt. Ay, but says my Lord, that does not affect— because the Papers were not found about me, but were found about *Ashton*. Gentlemen, if you can imagine my Lord *Preston* had a different Design from the rest of the Company that were with him, then you may acquit my Lord, and find him Not Guilty: But it is left to you to consider, whether he had not the same Design with them. Besides, there is Mention made in one of the Letters of *my Lord*, and there was no other Lord but he; and here are Papers proved to be my Lord's own Hand, containing several of the Matters of which he stands indicted; and he would have had the Captain to have disposed of the Papers. 1690. 2W.&M.

Now, Gentlemen, what Account does my Lord give you, where he was going? It seems they did pretend at the Time they were taken, and they would have had the Master of the Vessel said, that their Design was for *Flanders*; but the Witnesses tell you positively, that the Vessel was hired for *France*.

Truly, Gentlemen, I must leave the Matter to your Consideration, whether my Lord be guilty of this Design, or not guilty.

There is another Thing that my Lord has urged (for I would not willingly omit any thing material, on the one Side or the other); he says, his Indictment is laid in the County of *Middlesex*, but the Papers were not taken there; the Ship they went on Board lay at Anchor in *Surry*; and when they were taken, it was in the County of *Kent*, and so there is no Proof of Treason in *Middlesex*.

Ay, but, Gentlemen, give me Leave to tell you, if you are satisfied upon this Evidence, that my Lord was privy to this Design, contained in these Papers, and was going with them into *France*, there to excite an Invasion of this Kingdom, to depose the King and Queen, and make use of the Papers to that End, then every Step he took, in order to it, is High-Treason, where-ever he went; his taking Water at *Surry-Stairs*, in the County of *Middlesex*, will be as much High-Treason as the going on Ship-board in *Surry*, or being found on Ship-board in *Kent*, where the Papers were taken.

Gentlemen, I have failed of recollecting several of the Particulars of this Evidence, because they are many; and you will not depend upon my Recollection of Things so very incoherent as some Parts of the Evidence in the Papers are, but upon your own Notes and Observations.

If you do think, having heard the Evidence, that my Lord was not concerned in this Matter, that my Lord had no Design to go into *France* with these Papers, but that he was an utter Stranger to all these Things, then you are to acquit my Lord: But if you believe my Lord was privy to, and knew of the hiring of this Vessel; and that he went to carry on the Design contained in these Papers, and that he wrote some of these Letters; and with the others he was acquainted, then you are to find him Guilty.

The Lord Chief Justice *Pollexfen* observed to the Jury, that my Lord *Preston* had produced no Evidence of his Affection to the present Government, which would have been of some Weight in this Case: Adding, That if they suffered those who were conspiring against the Government, to do it with Impunity, they would do well to consider what the Consequence would be.

The Lord *Preston* thereupon desired he might have the Liberty of speaking again, before the Jury went out: The Chief Justice answered, That was contrary to the Course of all Proceedings, to say any thing to the Jury after the Evidence was summed up; but for once they would permit it.

Then

1690. 2 W. & M. *Lord Preſton permitted to ſpeak after the Directions to the Jury.*

Then the Lord *Preſton* ſaid, He deſired the Jury might be informed he was a Proteſtant, baptized in the Religion of the Church of *England*, in which he always lived, and hoped to die in it; and obſerved, that Things had been urged againſt him with Severity; that they made that a Proof which amounted but to a Preſumption; as in the Caſe of the Letters that were written in a Cant, and his Intention of going to *France*; and thoſe Words in the Letter, *My Lord, the Bearer*, were applied to him; but that Letter was directed to no body, and as full of Cant Terms as any of the reſt; and why ſhould he be ſuppoſed to be the Bearer more than any of the reſt, eſpecially as they were found upon one of them? The Reaſon of his going beyond Sea was not to be wondered at; for though he had lived quietly after the Loſs of his Places, upon the Revolution, and ſuffered great Inconveniencies in his Eſtate, and was retired to his own Houſe, he was impriſoned twice in the *Tower*, and proclaimed a Traitor in every Market-Town, without any Indictment found againſt him: This made him uneaſy here, and occaſioned his Reſolution of going to *Flanders*, or to any Place where he could be quiet.

The Chief Juſtice anſwered, If his Lordſhip thought himſelf hardly uſed, he muſt remember it was in a Time of Danger when he was taken up before, and when he had ſhewn his Diſaffection to the preſent Government; and the Government was not to be blamed for ſecuring itſelf againſt him: And, if he had a Mind to go abroad, was *France* the only Country he could chuſe; a Country at open War with us?

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The Lord *Preſton* repeated it again, That he hoped the Gentlemen of the Jury would conſider all that was alledged againſt him was but Preſumption.

The Chief Juſtice replied, If he reflected on the Court, the Court would reflect upon him: He thought the Evidence had been ſtated very impartially; and the Evidence that had been given muſt have its due Weight and Conſideration: If any one could deſign innocently to go to *France*, at that Time of Day, with ſuch Papers, and in ſuch a Manner, he left to the Conſideration of the Jury.

The Jury then withdrew, and, returning within half an Hour, brought in the Priſoner GUILTY.

The Sentence, and Remarks on this Trial, will be found at the End of the next Trial of Mr. Aſhton.

1690. W. & M.

The Trial of JOHN ASHTON, Gent. for *High-Treaſon*, at the *Old-Baily, London*, on *Monday*, the 19th of *January*, 1690. 2 *W.* & *M.*

1690. 2 W. & M.

The Indictment.

THE Priſoner was indicted and arraigned, together which Sir *Richard Grahme*, Lord Viſcount *Preſton*, and *Edmund Elliot*, Gent. for Compaſſing the Death of the King and Queen, conſpiring to raiſe a Rebellion, to procure an Invaſion of the Kingdom, and adhering to their Majeſties Enemies. *See the Indictment, in the Trial of the Lord* Preſton *immediately preceding.*

Obtained one Warrant for Pen, and Ink for him.

Mr. *Aſhton* deſiring he might have Pen, Ink, and Paper, and a Solicitor to ſtand by him, and refreſh his Memory, the Chief Juſtice allowed him Pen, Ink, and Paper; but ſaid, the other was an Innovation, the Court could not allow it.

The Jurors being called, the Priſoner ſaid, He ſhould make no Challenges, but put himſelf upon the firſt Twelve in the Pannel; and accordingly the firſt Twelve were ſworn.

The Witneſſes for the Crown.

Then the Indictment and Evidence were opened, and the Witneſſes called; and firſt Mrs. *Pratt* was ſworn, who depoſed, That Mr. *Aſhton* hired a Smack of her, to go to *France*, and carry over two or three Gentlemen, who were Merchants, as was pretended, and going to fetch over Silk: That he agreed with her, at Mr. *Burdett*'s Houſe, for an 100 *l.* and the Money was paid on *Tueſday* Night, in Mrs. *Burdett*'s Bed-chamber, being ninety-three Guineas and Six-pence, and Mr. *Aſhton* broke the Six-pence in two Pieces, and gave one half, with the ninety-three Guineas, to Mrs. *Burdett*, and kept the other himſelf; and when the Maſter of the Veſſel brought the other half of the Six-pence to Mrs. *Burdett*, ſhe (*Pratt* the Witneſs) was to receive the 100 *l.*

That Mr. *Aſhton* gave her a Note to meet them the next Night at Mr. *Rigby*'s, the *Seven Stars* in *Covent-Garden*, and ſhe went thither about Ten o'Clock; and Mr. *Aſhton*, *Elliot*, and two other Gentlemen came in, and having ſtaid a little while, went away; but Mrs. *Aſhton* ſtaid at the *Seven Stars*, and entertained her (the Witneſs) after they were gone: Said, ſhe hoped the Witneſs would not diſcover her Husband, and that God would deliver her out of the Lion's Mouth; and, upon the Cock's Crowing, Mrs. *Aſhton* ſaid, ſhe doubted they ſhould have no good Luck.

Mr. *Aſhton* demanding of Mrs. *Pratt*, If he ever ſpoke to her about going to *France?* ſhe anſwered, Yes; and ſaid, if ſhe helped them well away, they would help her to the earning 1000 *l.* before *Lady-Day*; and he aſked her, if there was a Hole in the Veſſel to hide what he might have Occaſion to conceal.

Paſeley, the Maſter of the Smack, depoſed, That he was with Mr. *Aſhton*, in Mrs. *Burdett*'s Bed-chamber, when the 100 *l.* was paid; and that a Six-pence was broken, as Mrs. *Pratt* teſtified; one Part of which Mrs. *Burdett* kept, and the other Mr. *Aſhton*; and when he (the Witneſs) brought back Mr. *Aſhton*'s half, the Owner was to have the reſt of the Money.

That he carried a Trunk and Hamper on Board, from Mrs. *Burdett*'s Houſe, in *Queen-Street*, and afterwards met the Company at the *Seven*

1690. 2W.&M. *Seven Stars* in *Covent-Garden*, took Boat with them at *Surry-Stairs*, and went on Board the Ship, over-againſt the *Tower*; from whence they ſailed down the River, and were all taken over-againſt *Graveſend*, (as he had depoſed at the Lord *Preſton*'s Trial) upon the Ballaſt, under the Hatches, where they had concealed themſelves.

Paſeley depoſed further, That they aſked him, if he could carry them ſafe to *France*; and when they were brought back, one of them gave him half a Crown, and bid him ſay, they were bound for *Flanders*. That *Aſhton* and *Elliot* both aſked, If there was a Place in the Ship to hide them in, and deſired, if they ſaw a Man of War's Boat coming on Board, they would tell them, that they might lie hid.

A Juryman demanding what was the uſual Rate for going to *Flanders*, with a Smack and three Men, *Paſeley* anſwered, twenty or thirty Pounds.

Betſworth, the Waterman, depoſed, He carried Mr. *Aſhton*, and the reſt of the Company, from *Surry-Stairs*, on Board the Smack, as he had teſtified in Lord *Preſton*'s Trial.

Fiſher, one of the Ship's Crew, teſtified, That Mr. *Aſhton*, and the reſt of the Company, came on Board between Eleven and Twelve at Night; that they ſailed as far as *Graveſend*, and were taken by Captain *Billop*, and carried to *Whitehall*; and *Aſhton*, whiſpering him, bid him ſay, they were going to *Flanders*, and gave him half a Crown.

James Amonds, another of the Smack's Crew, depoſed, that they ſailed down the River, with Mr. *Aſhton*, and the reſt of his Company; and that Mr. *Aſhton* ſaid, If they took Care of them now, they (the Priſoner and his Company) would take Care of them hereafter, and help them to many a Pound: That after they were paſſed *Graveſend*, *Fiſher* was ſent down for the Victuals, and brought up ſome Roaſt-Beef, and other Things; and juſt as the Beef was going into the Cabbin, he (the Witneſs) gave them Notice a Barge was coming on Board to preſs, and they took the Victuals down, under the Quarter-Hatches, and there the Gentlemen lay, with the Victuals a-top of them, and Captain *Billop*, coming on Board, found them in this Condition; and when they were come up, the Captain put his Hand into Mr. *Aſhton*'s Boſom, and pulled out a Packet of Papers, with a Lead tied to them; after which they were commanded into the Captain's Boat, and all carried to *Whitehall*; and my Lord *Preſton*'s Man gave the Witneſs half a Crown, and ſaid, this will ſerve you to Night, and you ſhall be taken further Care of to morrow; only ſay you were bound to *Flanders*, and not to *France*.

Then Captain *Billop* teſtified, That on the laſt of *December* the Lord Preſident (the Marquis of *Carmarthen*) ſent for him, and told him there were ſeveral Perſons going to *France*, with Papers of dangerous Conſequence, and ordered him to uſe his Endeavours for ſeizing them; and thereupon he (the Witneſs) armed a Boat at the *Tower*, and, about Eleven at Night, rowed down the River to *Graveſend*, where he refreſhed his Men, and then went down further, into the *Hope*; and judging that no Veſſel which came from *London* that Tide, could be a-head of him, he returned, and preſſed ſeveral Men in the Ships upon the River, and, among the reſt, ſome *Barking* Men; and ſeveral Smacks coming down the River, they ſhewed him the *Thomas and Elizabeth*, the Veſſel he looked for; whereupon he went on Board, on Pretence of preſſing Men; and the Maſter ſhewing him his Protection, he (*Billop*) told him, he muſt ſearch further, and found the Lord *Preſton* and the reſt under the Hatches: That he took ſome Letters from my Lord, and a Packet, with a Lead to it, out of Mr. *Aſhton*'s Boſom, who deſired he would throw the Packet over-board, and ſaid, What Good would it do him to injure ſo many Gentlemen? That Mr. *Aſhton* alſo ſaid, *What if he* (the Witneſs) *ſhould turn about, and go with them?* That they preſſed him ſeveral Times to throw the Packet over-board, as they came up the River; and when he refuſed, *Elliot* ſaid angrily, *Every Dog has his Day:* That he brought them to Lord *Nottingham*'s Office, and laid the Packet on the Table in the Office, and then withdrew, while the Lord *Preſton* was called in to be examined; and going in again, when the Lord *Preſton* came out, he ſaw the Packet remained, where he left it, unopened; and my Lord *Nottingham* demanding, who he took the Packet from, Mr. *Aſhton* owned the Witneſs took it from him.

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Johnſon depoſed, He went down the *Thames*, in the armed Boat, with Captain *Billop*, and that they took Mr. *Aſhton*, and the reſt of the Company, on Board the Smack, as the Captain teſtified: That he (the Witneſs) ſaw Mr. *Aſhton* take ſomething off the Ballaſt, and put it into his Boſom; and informing Captain *Billop* of it, the Captain put his Hand into Mr. *Aſhton*'s Boſom, and pulled out a Parcel of Papers, with a Lead tied to it; and he (the Witneſs) afterwards found two Seals on the Ballaſt.

Mr. *Aſhton* demanding, If he had not been up, and ſearched, before the Bundle of Papers was found upon him, *Johnſon* anſwered, He thought he was up before, and that he (the Witneſs) afterwards ſaw him take them off the Ballaſt, and put them into his Boſom; and that the Bundle of Papers lay near the Place where the Seals lay.

Then the Lord *Nottingham*, the Lord Preſident, and Lord *Sidney* were ſworn, and teſtified, That the Papers produced in Evidence were the ſame that were in the Packet Captain *Billop* brought them; *as they had teſtified at Lord* Preſton*'s Trial. Then the ſame Papers were read, which were given in Evidence at the preceding Trial, to which I refer the Reader.*

The Chief Juſtice afterwards directing Mr. *Aſhton* to proceed in his Defence, he ſaid:

My Lord, my own Defence will be very weak, for I am very illiterate and unſkilled in the Laws; but where I do fail of taking Advantage, to obſerve what may be for my Advantage, I hope your Lordſhips will be ſo kind to me, as well as juſt (I may call it) to yourſelves, being upon your Oaths, as to take Notice of it.

My Lord, upon the whole, I have this to obſerve, firſt, as to my Buſineſs of going into *France*, I muſt ingenuouſly own it; though I proteſt to you, I never owned it, or named it, to the Woman, though ſhe hath ſworn it, but yet I do now. My Deſign was to go to *France*, and I had very great and good Reaſon for it, I think; I had endeavoured, all Ways I could in the

1690. W. & M. the Word to procure a Paſs to go to *France*; 'tis very well known I did Buſineſs under Lieutenant-General *Worden*, that died half a Year ago; his Accounts are now depending, and ſuch Accounts as may be prejudicial in ſome Points to his Family, to whom I have always owned, and muſt, a great Obligation, and would be very glad, upon all Occaſions, to ſerve it, and all the Branches of it: This was not the whole nor only Deſign I had in going thither, but I had likewiſe ſome Buſineſs of my own: I have a conſiderable Sum of Money owing me; if it be neceſſary to prove it, I can prove it by a Bond, from a Perſon that is there; a great Sum it is, a very conſiderable one to me at leaſt. And, my Lord, I did think if I did not go myſelf, it was impoſſible for me to do any thing in that Affair; and that was the true and only Reaſon of my Deſign in going to *France*, having been out of Hopes of getting any other Convenience otherways: This was not a Deſign juſt now formed, as if I were juſt now upon ſome Plot concerning the Publick, but it has been my Deſign ever ſince Lieutenant-General *Worden* died, and he upon his Death-Bed ingaged me to do it; and I once went down, hoping to have gone from *Dover*, and there I was apprehended and taken: And, my Lord, I have uſed all manner of Endeavours to go other ways, but they have always failed me, and this Way I hoped would have taken. My Lord, I do own I did hire the Boat, and I did pay the Money; but, with Submiſſion, I think that is not any Manner of Treaſonable Act, my Lord. Perhaps it is an ill Act, but it does not amount in the leaſt to Treaſon, going to the King's Enemies; ſuppoſe I went upon that Account, that is no manner of Treaſon in the World: Carrying Papers to the King's Enemies, except it be proved that I was privy to them, and knew the Contents of them, if Lawyers inform me right, is not Treaſon. Then what remains? 'Tis true, I muſt own, the Papers were found upon me; and I believe there is no body that has heard the Evidence that has been given, but muſt readily conclude, that I found them in the Place where the Seaman ſays I took them up; and beſides, my Lord, there is not any manner of Proof, ſo much as aimed at by the King's Counſel in all their Evidence, that I was privy to any one of theſe Papers; ſo that, my Lord, I think there is very little proved upon me at all. I had the Misfortune to be taken in this Company, and where theſe Papers were taken, it is true; but they have not attempted to prove that I was privy to, or knew any thing of them at all, nor that I was more concerned than that they were taken in my Stomach; this is all I have to obſerve upon the Whole. As to the Buſineſs of the Indictment, there are great and grievous Aggravations in it, and ſuch as I am not able to comprehend the Meaning of; the Words confound me, and therefore, I humbly deſire your Lordſhip to tell me, upon what Statute I am indicted.

L. C. J. Holt. I will tell you, Mr. *Aſhton:* You are indicted upon the 25th of *Edw.* III. for Conſpiring, Compaſſing, and Imagining the Death of the King and Queen, and for that Purpoſe going to *France*, and endeavouring to incite the *French* King to invade the Kingdom, and telling him how he ſhould do it; and letting him know in what State and Condition the Kingdom was, and how fit to be invaded. 1690. 2 W. & M.

Mr. *Aſhton.* Pray, my Lord, is that all proved upon me?

L. C. J. Holt. That is the Queſtion the Jury is to judge of, upon the Evidence that has been given.

Mr. *Aſhton.* As to that of Compaſſing the Death of the King and Queen, I am ignorant of Dealings in Law; but I conceive there are ſeveral Species of Treaſon mentioned in that Act of the 25th of *Edw.* III. and as to the Imagining the Death of the King, that is only to be proved by ſome Overt-Act: Now, I think, nothing at all has been proved of any open Act, conducing to prove the Imagining or Compaſſing the Death of the King or Queen; no Manner of Conſultation or Treaſonable Act at all; and therefore, my Lord, I do not ſee that there is any great Matter that is proved upon me; and I hope you are of that Opinion too.

L. C. J. Holt. Mr. *Aſhton*, that you may not go away with a Miſtake, any Perſons that deſigned the Depoſition of the King and Queen, and the Invaſion of the Kingdom, which is proved by an Overt-Act, this is ſufficient to prove that they compaſſed and imagined the Death of the King and Queen.

Mr. Aſhton. I preſume it may be ſo; I believe that may be the Conſtruction of the Law.

L. C. J. Holt. And I make no Queſtion, but thoſe that you have conſulted with have told you as much.

Mr. Aſhton. Truly, as to Counſel, my Trial has been as hard as ever Man met withal.

L. C. J. Holt. Why do you ſay ſo, Mr. *Aſhton?* the Court has not been hard upon you.

Mr. Aſhton. My Lord, I do not complain of the Court; but as to the Matter of Time: I had Notice by that Gentleman, Mr. *Bale*, to prepare for my Trial, and that was on *Friday*, and not before.

L. C. J. Pollexfen. *Friday* was Seven-night, you mean, I ſuppoſe.

Mr. Aſhton. Yes, I do mean *Friday* was Seven-night: I was then a cloſe Priſoner, I had not the Opportunity or Liberty of ſeeing any Chriſtian Soul: I ſpake to him then, and told him, Mr. *Bale*, this is very ſhort Notice; pray be ſo kind as to move my Lord that I may have Counſel: Truly, he was civil enough, and ſaid, he would do all he could. Says he, Will you give me the Names of your Counſel? So I gave him the Names of four, and of a Solicitor, but I never heard more of him in the Matter. I did, with all my Induſtry and Skill, give my Friends Notice; but I was under great Difficulty; for I had not the Liberty of Pen, Ink, or Paper, nor a Man to ſend upon a Meſſage: On *Saturday* I gave my Friends Notice of it; on *Sunday* (which was no very good Day for Buſineſs) they applied themſelves to my Lord *Sidney*, whoſe Favour and Kindneſs I ſhall always own as long as I live: He gave me all the Diſpatch poſſible, and got me an Order to ſee my Wife that Day, though it was *Sunday*: The next Day I made Application to have my Counſel come to me; that was *Monday*. He, with the ſame Readineſs, procured that; but it was *Tueſday* in the Afternoon before I could ſee any living Soul but my

1690. 2W.&M. Wife; and ſome of the Counſel that I deſired, would not readily come to me, and it was *Wedneſday* before I did ſee any of them; and ſo I had but *Wedneſday* and *Thurſday* to conſult with them in. On *Friday* I was brought here, and I endeavoured to procure a Copy of the Pannel, that I might inform myſelf of the Characters of the Men that were to be my Jury; and, my Lord, I would deſire you to give me leave to clear one Point, which, through Inadvertency, ſlipt from me, about the Time that I deſired to ſend to enquire about the Jury. I did not mean, as was apprehended, to ſend to them to take them off, but I only meant to enquire after their Characters: This was done upon *Friday*; I had not a Copy of the Pannel till laſt *Friday*, when we were arraigned in Court; it was two o'Clock before the Pannel was given us; it was between Three and Four when we came to *Newgate*; we were to come upon our Trial the next Morning by Eight o'Clock: So that, before the Copies could be tranſcribed for us, there were left but ſix Hours for us to enquire into the Morals of ſo many Men; of whom ſome live eight, ſome ten, ſome fifteen Miles out of Town: For my Part, I was not able to enquire after any one; that your Lordſhip may think, by my taking the firſt Twelve that appeared, and believing myſelf innocent of this Matter, I reſolved to put myſelf upon my Trial by any twelve indifferent *Engliſh* Men. I only beg, if I have omitted any thing in Reference to myſelf, or misbehaved myſelf with Reſpect to the Bench, that you would pleaſe to ſet me right, and conſider that I ſtand here for my Life; and to grant me your Pardon for any thing wherein I have offended your Lordſhips, to whom, and to the Jury, I refer my Cauſe; only I beg leave to call two or three Witneſſes, I know it has been before allowed in ſuch Caſes, to give ſome ſhort Account of my Life and Converſation; becauſe it hath been reflected upon me that I was a Papiſt, becauſe I deſigned to go into *France:* But, I believe, there is not any Man whoſe Devotion to the Proteſtant Religion, eſtabliſhed by Law, is greater than mine hath been, or to whom that Religion is dearer than to myſelf.

Then Mr. *Aſhton* called ſome People to his Character; and firſt Dr. *Fitz-Williams* appeared, and teſtified, that Mr. *Aſhton* conſtantly attended Divine Service at Church, and received the Sacrament about half a Year before; but being aſked, Whether this was before the Prayers were altered? he could ſay nothing to that.

Dr. *Lake* teſtified, That Mr. *Aſhton* was a Man of exemplary Piety, and had ſhewn an extraordinary Zeal againſt Popery.

Other Witneſſes alſo gave him a good Character.

The Chief Juſtice demanding, Why he uſed ſuch Importunity to have the Papers thrown over-board, and why he deſired Captain *Billop* to go with them? Mr. *Aſhton* thanked his Lordſhip for reminding him of theſe Things, and ſaid, Whatever his Fate was, he muſt own he had had a fair Trial for his Life.

That he did indeed deſire Captain *Billop* to throw the Packet over-board, for the Sake of his Friend, the Lord *Preſton*, who was uneaſy, he obſerved, at their being taken; but he did not remember he deſired Captain *Billop* to go with them. 1690. 2W.&M.

L. C. J. Pollexfen. As to what you have offered to prove you a Proteſtant, no body queſtions it; all that are concerned in this Matter are ſuch; for the whole Deſign ſhews, they were all ſo careful of the Proteſtant Religion, that they deſigned to reſtore and eſtabliſh it by the *French* King's Power. Conſider, Mr. *Aſhton*, the Difficulties you have to get over: Firſt, you ſay you went over upon your own Account; then that you hired the Veſſel for you and *Elliot*: Why would you have *Elliot* go with you into *France?*

Aſhton. He deſired to go; I did not aſk him.

L. C. J. Why would you have Lord *Preſton* go with you?

Aſhton. I thought to have got my Paſſage free, with a Perſon of his Lordſhip's Quality.

L. C. J. Then you hired the Veſſel for my Lord *Preſton.*

Aſhton. No, my Lord.

L. C. J. Was it my Lord's Money, or your own, that you paid?

Aſhton. I paid the Money; but how I ſhould be repaid I could not tell.

L. C. J. Would you pay 100*l.* for a Boat to go to *France* for your own Convenience, and yet hope to get your Paſſage free by taking in my Lord *Preſton?*

Aſhton. I cannot tell how it would have been; but, at the worſt, we could but have paid our Shares.

L. C. J. But you can tell, if you will, how it was agreed amongſt you.

Aſhton. As I hope to be ſaved, I cannot tell.

L. C. J. But why did you deſire the Seamen to ſay you were going to *Flanders*, and not to *France?*

Aſhton. Your Lordſhip knows it is a Fault to go to *France*, though it do not amount to High-Treaſon.

L. C. J. Why did you aſk the Maſter of the Veſſel for a convenient Place to hide in?

Aſhton. Becauſe I know many had been ſtopped going to *Flanders*, though they had Paſſes.

Then the Lord Chief Juſtice *Holt* gave the following Directions to the Jury:

The Chief Juſtice's Direction to the Jury.

L. C. J. Holt. Gentlemen of the Jury, you underſtand that Mr. *Aſhton* is now tried for High-Treaſon; it is mentioned in the Indictment to be for conſpiring the Death, and depoſing the King and Queen; and, for that Purpoſe, he did endeavour to go into *France*, and to carry divers Propoſals in Writing, and ſeveral Memorials, to ſhew how this Kingdom might be invaded by the *French.*

To prove this, the Evidence produced and given by the King's Counſel has been long, and conſiſts of two Parts; 1*ſt*, Witneſſes *Viva Voce*; they have told you how Mr. *Aſhton* deſigned a Voyage to *France*; and, That he hired a Ship for that Purpoſe, and ſeveral Papers were taken out of his Boſom.

In the firſt Place, the Witneſſes tell you, That about the latter End of *December* laſt, Mr. *Aſhton* and Mr. *Elliot* came to *Burdett's* Houſe,

1690. 2W.&M. House, where they met with Mrs. *Pratt*, and *Burdett* having before that spoken to her about a Smack that she called the *Thomas and Elizabeth*.

Then there was a Meeting appointed between her and Mr. *Ashton*, at the *Wonder-Tavern*, where they did treat and debate about the Hire of it; afterwards they came back to *Burdett*'s again, and there the Agreement was made between the Woman and Mr. *Ashton*, the Prisoner at the Bar, to have one hundred Pounds. Ninety-three Guineas and Six-pence were fetched down by Mr. *Ashton*, and told out, and deposited in the Hands of Mrs. *Burdett:* Then there was a Six-pence broken, and one Part Mrs. *Burdett* had, and the other Part Mr. *Ashton* had; and when either the Master, or Mrs. *Pratt*, should bring the Part of the Six-pence that Mr. *Ashton* kept to Mrs. *Burdett*, the hundred Pounds were to be paid.

And this Agreement being made, it is positively sworn, that they did ask, Whether there was a hiding Place in that Vessel? An Answer was made, there was one; and thereupon a Note was given, that the Master and Mrs. *Pratt* should go to the *Seven-Stars* in *Covent-Garden*.

Upon *Wednesday* Night they went there, according to the Direction, where they met *Ashton* and *Elliot:* But before that there was a Boat hired at *Surry-Stairs*, to carry them down to the Ship through Bridge, over-against the *Tower*; but the Tide not serving till about ten o'Clock at Night, they had agreed with a Waterman for half a Crown to carry them, and he was to stay till the Tide served. And when they went out of *Rigby*'s they parted; *Elliot* and the Master went together; Mr. *Ashton* did not go with them, but came near about the same Time to *Surry-Stairs*, where they took Water.

Being aboard, it was observed, that all these Gentlemen were very timorous, and seemed to be much frighted at the Sight of any Vessel, from which there was any Apprehension of their being taken Notice of, and therefore they went down under the Quarter-Hatches, which is a Place very inconvenient for such Persons, where none could stand or sit upright, but they were forced to lie upon the Boards or upon the Ballast.

It seems some Intimation was given, that some Gentlemen had an Intention to go into *France*, to prosecute some Treasonable Design; and Captain *Billop* being imployed to pursue them, which he did in a Pinnace, when he came near the Vessel where they were, he called to the Vessel, and under Pretence of pressing Sea-men, he went on Board: The Master of the Vessel said, he had a Protection from the Admiralty, so that there was no Cause for them to fear pressing; nor indeed was there any for Gentlemen to fear it, they being not liable to be pressed.

When the Captain came near the Ship, and declared his Intent of coming on Board, these Gentlemen were gone under the Quarter-Hatches again; Captain *Billop* coming on Board, and speaking about pressing of the Men; and saying there was a Couple that would make good Seamen for the King, the Master shewed his Protection; and then the Captain said, he would search further in the Ship, and so he did; and then he pulls up the Boards, and there he finds all these Gentlemen, who were called up one after another, and searched by the Captain. 1690. 2W.&M.

Gentlemen, there is one of the Witnesses tells you, that when they were come up, he saw a Packet that lay in this very Place under the Quarter-Hatches, unto which was tied a Piece of Lead, which Mr. *Ashton* takes up, and puts in his Bosom; with which the Captain being acquainted, Enquiry is made by him, What Mr. *Ashton* had there? Mr. *Ashton* said it was his Handkerchief, and nothing but that which he pulled out: But Captain *Billop* put his Hand into his Bosom between his Coat and his Body, and takes out the Packet, and carried these Gentlemen on Board the *George* Frigate, where they stayed till the Tide served to bring them to *Whitehall*.

But before they came on Board the Frigate, Mr. *Ashton* was very importunate with him to throw his Packet into the Water: When they were on Board the *George* Frigate, and in the Cabbin alone, they continued their Importunity.

Now, say they, we have you here, and you are alone, pray will you throw this Packet over-Board? And particularly Mr. *Ashton* said, It would do the Captain no Good to injure so many Gentlemen; and Mr. *Elliot* would have persuaded the Captain to take the Lead that was tied to the Packet, and tie it to some Letters that were taken out of my Lord *Preston*'s Pocket, and throw the Packet over-Board; and then have informed the King and Council, that those Letters composed the Packet taken out of Mr. *Ashton*'s Bosom: But the Captain very honestly rejected all their Motions of that kind.

Truly, Gentlemen, my Memory will not serve me, to repeat all the Particulars; but I question not your Notes will bring them to your Minds. Mr. *Elliot*, it seems, was so mightily concerned at their being taken with these Papers, that when they shot *London-Bridge*, he wished the Bridge might have fallen upon them and knocked them on the Head; and when they were got through, he wished a Thunder-Bolt would fall down into the Boat and sink them: That indeed was Mr. *Elliot*, and not Mr. *Ashton*; but Mr. *Ashton* was as much concerned about disposing of the Packet as Mr. *Elliot*.

At *Whitehall* this Packet is opened; and you have several Papers produced in Evidence, and read to you: You have heard what Evidence has been given, that these are the very Papers that were in the Packet thus taken.

First of all, Captain *Billop* tells you, he carried them to my Lord *Nottingham*; and that they lay there in his Office: He withdrew, indeed, while my Lord *Nottingham* examined my Lord *Preston*; but the Packet was not opened in the Interim, but there was only a Paper stuck on the Out-side, that my Lord had taken off before the Packet returned into the Room, and there the Captain remained intire: He says, my Lord *Nottingham* opened the Packet, and put up all the Papers that were in the Packet in his Presence into a Cover again, and sealed them up with his Seal. My Lord *Nottingham* says positively, He did put up all the Papers that were

1690. 2 W. & M. were in the Packet again; all, and no more, except the Cover, and that he ſealed up, and delivered it to Captain *Billop*.

Captain *Billop* ſays, He took theſe very Papers from my Lord *Nottingham*; and, as he received them, carried them without opening to my Lord Preſident.

My Lord Preſident ſays, He locked them up, unopened, in a cloſe Cabinet in his Cloſet, a Room where no body comes; there they were that Night, and the next Day he carried them intire to the King; and ſome of them were read by the King, in the Preſence of my Lord Preſident, and they were all taken away by his Lordſhip, no more nor no leſs; and my Lord Preſident brought them all to the Cabinet Council, where they were read, and were delivered to my Lord *Sidney*. My Lord *Sidney* ſwears, theſe Papers now produced are the ſame Papers he had from my Lord Preſident; and my Lord Preſident ſwears that they are the ſame he received by *Billop* from my Lord *Nottingham*, and my Lord *Sidney* marked them.

So that there can remain no Doubt of theſe being the ſame Papers that were contained in the Packet, that was taken out of the Boſom of Mr. *Aſhton*.

Then, as to the Matter of the Papers, I think it is plain, beyond all Contradiction, that the Import of them is Treaſonable: They ſhew a Deſign of invading the Kingdom by a Foreign Force, of depoſing the King and Queen from the Government, and of ſetting the late King upon the Throne.

It is agreed, as it is mentioned at a Conference between ſeveral Noblemen and Gentlemen, that were of the Whig and Tory Party, as they call them, that the late King was to be reſtored, though by a *French* Power.

It was impoſſible for them to effect it, by going plainly to Work, and ſaying in plain Words, the *French* ſhould invade us: It was to be done in this Manner.

The *French* King muſt pretend by all Means to be our Friend, and a Mediator betwixt the late King and the People of *England*; and this was out of a Deſign, plainly, to get a Party of the Kingdom to join with them, the moſt credulous and inconſiderate Sort of People; who, when they ſhould be ſeduced into a Belief of the *French* King's great Kindneſs, it was not doubted, but there would be a Conjunction between them and the *French* Forces, to reſtore the late King.

And to procure ſuch a Perſuaſion in the People, the *French* King was to ſhew himſelf kind to the *Engliſh* Proteſtants, to appear and act another Part than he had formerly done; he was to permit them the Exerciſe of the Proteſtant Religion; thereby to perſwade many, that his Proſecution of his own Subjects the *Hugonots*, was not out of any Averſion to the Proteſtant Religion, but only to their Antimonarchical and Reſiſting Principles.

Then an Inconvenience is to be removed; for they complain that they are too full of Bigotry at *St. Germains*, and too bare-faced: For they make an open Profeſſion of Popery, and ſpeak truly what they do intend; but, ſay they, if they will have the Deſign take Effect, they muſt be more cloſe and ſecret; for the Folly and Bigotry of *St. Germains* was a very great Obſtruction: Therefore they propoſed that 1690. 2 W. & M. ſome Perſons might be ſubſtituted as Agents to correſpond here, that underſtood the Temper of the Nation, and what would moſt eaſily prevail with the People: And a Model was to be framed at *St. Germains*; the Proteſtants are to be ſeemingly careſſed, ſeven or nine to be of the late King's Council, that ſo we might believe that he was ours in Intereſt again, and that we have a Relation to him.

And, if Things were carried with ſuch Cunning and Subtility, they hoped to delude a great many People over into the Intereſt of the late King; but, if they went bare-faced, it would cauſe ſuch great Jealouſies, that they muſt totally deſpair of Succeſs.

Yet they did not hope, by theſe Artifices, to obtain ſo many Friends here, as might have been ſufficient to accompliſh their Deſign; and therefore they muſt have Recourſe to a Foreign Force, particularly a *French* Force: For ſays one of the Papers, *Uſe Foreigners to expel Foreigners*; that is, uſe *French* to expel *Dutch* Foreigners, who are our Allies, and are falſly accuſed by them to have trampled upon the Rights and Liberties of the Nation.

There is one Argument uſed to encourage People to aſſiſt the *French* in the Invaſion of their own Country, which I cannot omit; namely, That as ſoon as the *French*, with a conſiderable Expence of Men and Money, had reſtored the Proteſtant Religion, the late King to the Crown, and the People to their Liberties, that he would withdraw all his Forces, and reap no Profit or Advantage by his Succeſs. I muſt confeſs, this carries ſo little of Perſuaſion in it, that it is ridiculous to think thereby to impoſe upon any Number of Men: But notwithſtanding the Weakneſs of their Arguments, it is apparent, they were in good Earneſt; the Papers give an Account to the *French*, in what State and Condition our Forts were, *Portſmouth* not manned with above 500, and *Goſport* how weakly fortified.

It was a happy Juncture between this and the firſt of *March*, when Advice is given to make uſe of the Opportunity: For Men cannot give, but Men may uſe Opportunities; and ſomething was to be done forthwith, and the Goods muſt be got in Readineſs, particularly Linnen and the Copper are mentioned, which are myſterious and dark Expreſſions; and you may put a Conſtruction upon them as well as I: For they are written in a Style of Trade, as if there were a Correſpondence between two Tradeſmen; and the Linnen and Copper are ordered to be brought before the tenth of *March*.

But however obſcure ſome of theſe Expreſſions are, there are others that are more plain: That the *French* Fleet muſt be out in *April* at fartheſt; and are to come before the Conjunction between the *Engliſh* and the *Dutch*; and *Jennings*, *Strickland*, or *Trevannion*, are to come from *St. Malo's* in one Night, and to fight the *Engliſh* Fleet in the Chops of the Channel; and not come to ſo high as *Beachy*, where they came the laſt Year.

And there is an Account given, in what Condition and State our Navy was, how many Ships, what Rates, how manned, and who the Officers; and then as the *French* were to be in Readi-

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Readineſs to come in *April*, ſo they ſay our Fleet was not to be out till *June*.

Gentlemen, there are a great many other Particulars; but theſe are enough, nay half of them were enough, to make any Man guilty of Treaſon, that was concerned in them, or that had a Hand in carrying or making uſe of them.

Beſides, there are other Letters, which can import nothing, but the Writer was of the late King's Intereſt; one directed to Mr. *Redding*, the other to Mrs. *Redding*; and theſe were to go to *France*, to let them know how zealous he was in his Duty, and how the Intereſt of the young Maſter increaſed. The Letters have theſe Expreſſions: That *though the Family were decreaſed, yet our Intereſt is increaſed, which is yours; and I ſpeak in the Plural Number, becauſe I ſpeak the Sentiments of my dear Brother, and the reſt of our Relations; and deſire them to believe they were zealous and cordial in their Duty to Mr.* Redding. Now what Interpretation you will make of this, I'll leave to you.

Then there is another Letter directed to Mrs. *Charlton*, and another to Mr. *Jackſon*, and divers other Things that have been read; and, amongſt the reſt, have been read the Heads of a Declaration at large, ſhewing what ſhould be done, and what Methods ſhould be taken, in order to the reſtoring the late King, and depoſing this.

And there is alſo Mention made in a Paper, how divers Perſons, who were to be pardoned, as particularly, all Juſtices of the Peace, actually in Commiſſion, are not to be excepted; Outlaws are to be pardoned; Chimney-Money to be taken away; and all that come in within twenty-one Days are to be forgiven.

So that it is plain, theſe Letters import a Deſign to depoſe the King and Queen, and the Kingdom to be invaded by Foreigners; only a little to colour the Matter, nor to loſe the Pretence of a Proteſtant Intereſt altogether, there was to be five or ſix thouſand *Swedes* to be made uſe of in the Invaſion.

Gentlemen, if there was a Deſign of an Invaſion, be it by Papiſts or by Proteſtants; if any Act was done tending thereunto, it is High-Treaſon, within the Statute of 25 *Edw.* III. For purpoſing and intending to depoſe the King and Queen, manifeſted by any Overt-Act, hath always been held to be High-Treaſon.

This, Gentlemen, is the Sum and Subſtance of the Evidence that has been given againſt the Priſoner at the Bar.

Mr. *Aſhton* ſays for himſelf, It is true, ſaith he, my Deſign was to go to *France*: I was ſo unfortunate as to have the Papers taken about me: I did take them up; but, ſays he, it is not at all proved, that any one of the Papers that are now produced, are my Hand; which is true: There is no ſuch Proof.

The next Thing is, that Mr. *Aſhton* being asked, What Occaſion he had to go to *France?* he ſays, He had formerly a Relation to Colonel *Worden*, and did tranſact, and had the Management of his Affairs, which were very great. Colonel *Worden* died half a Year ago; and he injoined him, upon his Death-Bed, to go into *France*, about ſettling ſome Accounts of his; and he was deſired by the Family of Colonel *Worden* ſo to do.

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This Mr. *Aſhton* alledges; but he has not proved it. 'Tis very ſtrange, that if Mr. *Aſhton* was to go to *France* to negotiate that Affair for Colonel *Worden*'s Family, none of that Family ſhould be produced to prove, that Colonel *Worden* gave him ſuch Directions; or that the Family deſired him to go into *France* upon that Account.

Then Mr. *Aſhton* hath endeavoured to give another Reaſon for his Voyage into *France*: He affirms, he had ſome Affairs of his own, with Relation to the late Queen; he was concerned for her, and ſhe did owe Monies here, and he paid ſeveral Debts to Tradeſmen, particularly 400 *l.* ſhe owed to the Coach-Harneſs Maker; and he having paid it, went over to reimburſe himſelf: The Tradeſman was produced; and he ſays, Mr. *Aſhton* did pay the Money a Year ago; but whether Mr. *Aſhton* had Effects from the late Queen, or paid it out of his own Pocket, does not appear; Mr. *Aſhton* ſays, he paid it out of his own Pocket, which is very extraordinary, that he ſhould be ſo kind to pay what he was not obliged to pay, and have no Security to reimburſe himſelf.

So that, Gentlemen, you had beſt conſider, whether there be any thing at all ſaid or proved, that can juſtify Mr. *Aſhton*'s going to *France*; or whether there be any good Reaſon offered for it.

Then *Aſhton* has called Witneſſes to prove, that he was always a Proteſtant, though he did live in a Popiſh Family, where they did encourage Papiſts, and diſcountenance Proteſtants; for which he had the ill Will of thoſe he did depend upon.

Gentlemen, all that is agreed; and it is not a Queſtion in this Caſe, Whether Mr. *Aſhton* be a Proteſtant or a Papiſt? But the Queſtion is, Whether he be guilty of High-Treaſon? from which the being a Proteſtant does not ſecure a Man.

But, Gentlemen, if Mr. *Aſhton* had no Knowledge, upon what Deſign the other Perſons were to go into *France*, though he had actually gone into *France*, it had been a Crime in this Juncture of Affairs, yet not High-Treaſon; but to go into *France*, and carry a Treaſonable Scheme of a Deſign, and Project of an Invaſion, that is Treaſon.

Now the Queſtion is, Whether Mr. *Aſhton* went with ſuch a Purpoſe, or not? You are to conſider: I would not lead you into any Strain of the Evidence, but only ſtate it how it ſtands. It is plain, he was concerned all along in hiring the Smack; and, as the King's Counſel obſerved to you, the Price was ſomething extraordinary, they were to pay 100 *l.* for the Voyage; to which was added ſome Encouragement for the Woman, that if ſhe performed this Voyage well, ſhe might get 1000 *l.* before *Lady-Day*; and the Money was paid by Mr. *Aſhton*, and he was taken aboard the Veſſel.

Mr. *Aſhton* was much concerned to ſecure the Papers, by taking them out of the Place where they lay upon the Ballaſt, under the Quarter-Hatches; and after they were taken out of his Boſom, he was very importunate, and ſo often, with Captain *Billop*, to throw them over-

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board: And why ſhould he be ſo earneſt, and concerned, unleſs he very well knew, and was acquainted with the Contents of thoſe Papers?

And he gave one of the Seamen half a Crown, to ſay they were bound for *Flanders*: Unleſs it was a Matter of great Importance he went about, and that was not fit to be known, why ſhould he deny it, or labour to have it concealed? An hundred Pounds to be paid for this Voyage, was upon a Joint Account, as well for my Lord *Preſton*, as for Mr. *Aſhton* and *Elliot*; Mr. *Aſhton* did pay the Money, and he does not make it appear whoſe it was.

Gentlemen, it reſts upon you to conſider the Evidence you have heard, whether it is ſufficient to induce you to believe, Mr. *Aſhton* was going into *France* with theſe Papers, to carry on the Deſign of depoſing the King and Queen, and invading the Kingdom. If you are not ſatisfied in your Conſciences, that he is Guilty, then find him Not Guilty: On the other Side, if you are ſatisfied that he is Guilty, I do not queſtion, but you will find him ſo.

L. C. J. Pollexfen. Look you, Gentlemen of the Jury, my Lord has rightly repeated and ſtated the Evidence to you; I ſhall only ſay but a very few Words to it.

In the Trial of my Lord *Preſton*, then the Labour was, that my Lord was not the Man that was concerned, as the Bearer of this Packet of Letters, or Writings, wherein the Treaſon is contained; but then it was Mr. *Aſhton*; the Packets were found about him: But now it is not Mr. *Aſhton*, but my Lord *Preſton*; and this is now the Queſtion before you, that he ſtands upon.

But, if ſo be, they were all concerned in the Carriage and Tranſporting of this Buſineſs, then they are all alike guilty of Treaſon, and therefore they cannot ſhuffle it from one to another.

Now there appears ſome Reaſon, why they would not all agree to be tried together; for now it is but turning it from my Lord *Preſton* upon *Aſhton*, and Mr. *Aſhton* upon my Lord *Preſton*, and *Elliot* upon either of them; and ſo, by this Means, all might eſcape, if this were ſufficient to ſerve their Turn.

But the Queſtion before you, is, Whether all theſe Perſons are not all equally concerned? and it is the Evidence muſt be your Guide and ours: For it is not Mr. *Aſhton*'s Affirmation, that he had Buſineſs to go into *France*, and he happened unluckily to fall into theſe Men's Company, that will be a ſufficient Excuſe, unleſs he prove it.

It had been an eaſy Matter for him to have proved, if he had been going into *France* upon Buſineſs for Colonel *Worden*; but at length that is turned off, and then the Pretence for going, is, to recover ſome Money he had owing to him there, and that he had payed for another Perſon: Had he Papers of Inſtructions of this kind? Had he any one Witneſs of this Thing?

The Merchandize that he carried out with him, is of another Import: Where were the Notes or Bonds that he was to recover? Where is the Account that he had to make up with any body beyond Sea? There is no Manner of Evidence of any ſuch Thing.

Next, Gentlemen, do but conſider, if the Man were ſo innocent, as he would inſinuate, as if he had not gone with the reſt upon this Errand; How came the Man to have ſo heavy a Concern upon him? Why ſhould he go to take up theſe Papers if they were not his Brats? Why ſhould he clap them into his Boſom, if he knew nothing what was in them? Why was his Concern ſo great, to have them thrown overboard?

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Gentlemen, if you expect the Hearts of Men ſhould be proved, otherwiſe than as Men gueſs one another's Meanings by their Actions, it is impoſſible to convict any Man of a Crime: For if his own Affirmation ſhall be a Defence, he will never want a Defence to keep himſelf from being convicted: But that is not what the Law gives Credit to; it muſt be Proof and Evidence that you are to judge upon. But of all he pretends to, he proves nothing.

How came he acquainted with my Lord *Preſton?* Sure he was a Man ſufficiently known in the World? Why ſhould he go with him and Mr. *Elliot?* Are they not all known? Are they not Perſons of the ſame Diſpoſition, and much in the ſame Imployment?

He had been taken a little before, he ſays himſelf, and was hindred from going; and he had ſtrange ill Luck, if there was nothing elſe in the Buſineſs than what he pretends.

Gentlemen, in ſhort, if you do find by the Evidence, that he was going upon a good and honeſt Deſign, and that he knew nothing of the Danger that was in theſe Papers; and that theſe Perſons were in, by Reaſon of theſe Papers, and yet would go about to have theſe Papers concealed, and endeavour to have them thrown away, without knowing what was in them: Theſe are Evidences that will be good for you to go by, if you have any ſuch; but to take his Affirmation, becauſe he ſays it, when he proves nothing, that is no Evidence to go by.

I leave it to you, as my Lord has done. If you are ſatisfied upon the Evidence, that he is guilty; I doubt not, you know, and will do your Duty, and will find him ſo; and if you have no ſuch Evidence, then you ought to find him not guilty.

Mr. Aſhton. My Lord, I ſhall reckon it a particular Favour, if you will pardon me one Word, after your Lordſhip has given the Charge.

L. C. J. Holt. Well, what ſay you?

Mr. Aſhton. I think, with Submiſſion, that there is no Proof I knew, or was privy to, the Contents of any of theſe Papers.

L. C. J. Pollexfen. Pray, Mr. *Aſhton*, ſhew any Man any Reaſon, if you can, why did you go down and catch up theſe Papers, if you did not know what was in them? They might be for your Advantage to be ſhewn, for any thing you pretend to know.

Mr. Aſhton. I did it for my Lord *Preſton*'s Sake, whoſe Hand was proved, and he ſtands convicted as the Bearer of thoſe Papers.

Mr. J. Eyre. But you forget one Thing that was plainly proved, Mr. *Aſhton*; That when you importuned Captain *Billop* to throw away the Papers, you uſed this as an Argument, It would do him no Good to injure three honeſt Gentlemen.

Mr. Aſhton. I did not ſay ſo, my Lord, that I know of, though indeed he has ſworn it.

L. C. J.

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L. C. J. Holt. Look you, Mr. *Aſhton*, you have been heard as long as you did deſire to ſpeak, and were aſked over and over again, Whether you had any more? You are not now ſaying any new Matter; if you could urge any thing that had been omitted, which made for your Advantage, I believe the Court would indulge you, though it be againſt the Courſe.

Aſhton. My Lord, I ſay there is nothing under my Hand; there is no Privity proved: Does Suppoſition condemn a Man? And is there any thing but Suppoſition againſt me? There is not my Hand proved in any of the Papers: I beſeech your Lordſhip and the Jury to obſerve that.

L. C. J. Holt. Your being in the Company, and being ſo concerned, and importunately endeavouring to have them thrown over-board; the hiring the Veſſel to go with theſe Treaſonable Papers to an Enemy's Country, and the Papers found about you, is Fact proved, and is left to the Gentlemen of the Jury to conſider of.

Aſhton convicted.

The Jury being withdrawn, returned about half an Hour afterwards, and brought in Mr. *Aſhton* GUILTY.

Then the Court adjourned for an Hour, and being ſet again, my Lord *Preſton* and Mr. *Aſhton* were called to Judgment; and it being demanded, What they could ſay, why Sentence ſhould not be pronounced on them? the Lord *Preſton* ſaid, He appealed to the Court, if the Treaſon had been ſufficiently proved; for in the Caſe of Colonel *Sidney*, it was held that Compariſon of Hands was no Evidence, and that there ought to be one or two Witneſſes to teſtify the Hand-writing; that having been diſordered by the Crowd, and the Length of his Trial, he had not urged this when he ought, and knew it was now too late; he had nothing more to ſay, but ſubmitted to the Judgment of the Law.

Mr. *Aſhton* objected, That the Word *Cymba* was written with an *S* in the Indictment, which was a falſe Spelling, and, he was informed, would vitiate the whole Indictment; but, upon Peruſal of it, this appeared to be a Miſtake; whereupon the uſual Sentence in High-Treaſon was pronounced on both of them; but my Lord *Preſton* was afterwards reprieved, and Mr. *Elliot* was never brought upon his Trial: Only Mr. *Aſhton* was executed, on the 28th Day of *January*, 1690-1.

Lord Preſton and Aſhton condemned.

Aſhton only executed.

Remarks on the Trials of Lord Preſton and Aſhton.

Theſe are the firſt State Trials we meet with after the Revolution; the Government was then but in its Infancy, ſcarce acknowledged by many; which made it ſeem neceſſary to the Adminiſtration to aſſert their Authority, and ſhew thoſe who were aiming at a Reſtoration, that it was no leſs penal to conſpire againſt the Crown in this Reign, than it had been in any other that preceded it.

The Lord *Preſton* objected, That he ought not to be tried in any inferior Court, becauſe King *James* had made him a Peer, before the Vote of Abdication, when all Writs and Proceſs run in that King's Name, and the Magiſtrates acted by Commiſſions from him; but it appeared, that the Houſe of Lords had rejected his Patent, and taken his Lordſhip into Cuſtody for making the like Claim in that Houſe; and that my Lord *Preſton*, to obtain his Liberty, had himſelf diſclaimed his Right of Peerage: I preſume, therefore, that the Houſe of Lords looked upon King *James*'s Reign to be expired on his retiring to *France*, which was ſome Time before the Vote of Abdication.

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The Priſoners in this Reign, as in the laſt, we find, moved for a Copy of the Indictment, a Copy of the Pannel, and for Counſel to plead for them; the denying of which were thought great Hardſhips in the late Reigns: But, yet we ſee ſome of the ſame Men, who pretended their Friends had hard Meaſure, that they were not indulged in theſe Particulars formerly, now maintaining that the Priſoners had no Right to ſuch Privileges.

We find alſo Similitude of Hands held to be an Evidence of High-Treaſon at this Trial, which had been ſo much clamoured againſt at *Sidney*'s Trial: And indeed thoſe that are under the Hatches never fail to exclaim at the Rigour of the Law, and the Hardſhips put upon them; while thoſe in Authority think it abſolutely neceſſary to inſiſt on the Legality of ſuch Proceedings, and of ſuch Evidence, for the Preſervation of the Government. I make no manner of doubt, from the Inſtructions and Memorandums found under the Lord *Preſton*'s Hand, that he was going over to give Intelligence to the Enemy, of the State of the Nation, and of our Forces by Sea and Land, in order to bring about another Revolution; but whether *Aſhton* was equally guilty, is a Queſtion.

Every Caſe almoſt may be reduced to a very narrow Compaſs; and, notwithſtanding the extraordinary Length of theſe Trials, my Lord Chief Juſtice *Holt* obſerved rightly, that there was but one Point to be conſidered, namely, If the Priſoners were acquainted with the Contents of thoſe Papers, and were carrying them over with an Intent to promote a foreign Invaſion and Rebellion? And, as to my Lord *Preſton*, I believe every one who reads theſe Trials muſt be of Opinion, that he knew the Contents of the Papers, and was carrying them over with ſuch Views.

But as to Mr. *Aſhton*, he ſeems to have inſiſted, with a great deal of Reaſon, that there was no Proof of his being acquainted with the Contents of theſe Papers: It is very poſſible my Lord *Preſton* might not have acquainted him with them; or if he did, ſince his Lordſhip was actually convicted of being the Bearer of them, and the Contriver of them, how could *Aſhton* be preſumed guilty of either? Let us put the Caſe, that three People hire a Boat to go to an Enemy's Country, on different Views; one of them to give an Account of our Strength, and to invite an Invaſion, and the other two only to get out of the Way, becauſe they found themſelves obnoxious to the Government; ſhall the two laſt be adjudged guilty of High-Treaſon, becauſe they knew the Third was going upon a Treaſonable Deſign? This I very much queſtion: But admitting there was no poſitive Proof that they were privy to the Deſign, then ſurely no Man will affirm they were guilty of High-Treaſon, eſpecially when the Law requires two poſitive Witneſſes in theſe Caſes.

I cannot find there was any thing but preſumptive Evidence againſt *Aſhton*; and he rightly obſerves, that he was one of the firſt Men that ever was convicted of High-Treaſon upon Preſumptions: It was true he hired a Veſſel for the Uſe of all Three, and gave an extraordinary

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Price for it; this ſhews he wanted to get over to *France*, out of the Way of Proſecution; but this is ſurely very ſlender Proof of his being privy to the Contents of the Lord *Preſton*'s Papers, any more than the taking up the Packet his Lordſhip had dropped, and putting it into his Boſom: He might reaſonably preſume there were Letters in that Packet that were not fit for the Government to ſee, and yet he might not know there was High-Treaſon in them; or, if he did ſuſpect as much, he was not the Bearer of them, but the Lord *Preſton*; and if he was not the Bearer, the Chief Juſtice ſeems to admit, he could not be guilty, though he was of the Company: However, the Jury took upon them to *preſume* he was engaged in the ſame Deſign with the Lord *Preſton*, and upon that *Preſumption* to convict him. 1690. 2W.&M.

As to *Elliot*, it was not thought fit to try him as the Bearer of theſe Papers, when two Perſons had been already convicted of being the Bearers, and my Lord *Preſton*, though moſt notoriouſly guilty, was pardoned, poſſibly on Account of the Diſcoveries he made: It was of more Importance to the Government, at that Juncture, to know who were their Friends, and who their Foes, than to take the Forfeiture of that Lord's Life: He ſeems to have capitulated not to be made an Evidence, and that may be the Reaſon we meet with no more Trials for this Conſpiracy.

1692. 4W.&M. Harriſon's *Trial.*

The Trial of HENRY HARRISON, Gent. for *Murder*, at the *Old-Baily*, *London*, on the 6th of *April*, 1692. 4 *W.* & *M.* 1692. 4W.&M.

THE Caſe was this: *Harriſon*, and another Man, on the Fourth of *January* preceding, about Ten at Night, took a Hackney-Coach, and drove to Dr. *Clenche*'s Houſe, in *Brownlow-Street*; and pretending there was a ſick Perſon wanted the Doctor, he was perſuaded by them to come into the Coach, and they drove to *Leadenhall-Street*; where *Harriſon* ſent the Coachman of an Errand, and in the mean Time *Harriſon* and the other Man ran away, and when the Coachman returned, he found Dr. *Clench* ſtrangled in the Coach, with a Handkerchief, in which was a Coal that lay againſt his Windpipe.

Harriſon was induced to do this, as it is ſuppoſed, on the Account of one Mrs. *Vanwicke*, with whom he was very intimate, and who having borrowed Money of the Doctor, he had called it in; and, upon her not paying it, the Doctor had delivered Ejectments, in order to get Poſſeſſion of the Eſtate ſhe had mortgaged for it. *Harriſon* was convicted of the Murder, and afterwards executed; but this being no State Trial, I ſhall take no further Notice of it.

John Cole was tried at the *Old-Baily*, for the ſame Murder, on the 2d of *September* following; but there being only hear-ſay Evidence produced againſt him, he was acquitted. *Cole tried for the ſame Murder.*

1692. 4W.&M. *Lord* Mohun's *Trial.*

The Trial of CHARLES, Lord *Mohun*, for *Murder*, before the whole Houſe of Lords, in *Weſtminſter-Hall*, on the 31ſt of *January*, $169\frac{2}{3}$. 4 *W.* & *M.* 1692. 4W.&M.

THIS alſo is a Trial for Murder; but as it was before the Houſe of Lords, and ſo many Points of Law debated and reſolved, by moſt of the Judges of England, *on this Occaſion, it ſeems to require our Attention as much as a State Trial, and therefore I ſhall be more particular in this than in the former.*

The Indictment.

The Indictment was found by the Grand Jury of the County of *Middleſex*, and ſet forth; That *Richard Hill*, late of the Pariſh of *St. Clement Danes*, in the County of *Middleſex*, Gent. and *Charles* Lord *Mohun*, late of the Pariſh and County aforeſaid, did, feloniouſly, wilfully, and of their Malice afore-thought, aſſault *William Mountford*, Gent. in the ſaid Pariſh and County; and that the ſaid *Richard Hill*, with a drawn Sword or Rapier, did ſtrike and thruſt the ſaid *William Mountford* near the Right Pap, giving him thereby one mortal Wound, of the Breadth of one Inch, and of the Depth of twenty Inches; of which the ſaid *William Mountford* languiſhed till the Tenth of the ſame Month, and then died; and that the ſaid *Charles* Lord *Mohun*, at the Time of the Murder aforeſaid, wilfully, and of his Malice afore-thought, was preſent, aiding, abetting, comforting, and aſſiſting the ſaid *Richard Hill*: And ſo the ſaid *Charles* Lord *Mohun*, and the ſaid *Richard Hill*, did feloniouſly, wilfully, and of their Malice afore-thought, kill and murder the ſaid *William Mountford*, againſt the Peace of the King and Queen, *&c.*

Marquis of Carmarthen Lord High Steward.

The Lords coming down from their Houſe, to the Court erected in *Weſtminſter-Hall*, on *Tueſday* the 31ſt of *January*, their Majeſties Commiſſion, conſtituting *Thomas* Marquis of *Carmarthen*, Preſident of the Council, Lord High Steward, was read; his Grace, and the reſt of the Peers, ſtanding up uncovered, while it was reading.

Then

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Then the Writ of *Certiorari*, directed to the Commiſſioners of *Oyer* and *Terminer* for the County of *Middleſex*, to remove the Indictment into the Houſe of Lords, with the Return and the Record of the Indictment, were read: After which his Grace removed from the Wool-pack to the Chair, which was placed upon an Aſcent before the uppermoſt Step of the Throne, and ſeated himſelf in the Chair; and Proclamation was made for the Governor of the *Tower* to return his Precept, and bring the Lord *Mohun*, his Priſoner, to the Bar. Whereupon the Deputy-Governor brought Lord *Mohun* to the Bar, the Gentleman-Jaylor carrying the Axe before him, and ſtanding with it afterwards at the Right Hand of the Priſoner, with the Edge from the Priſoner.

The Priſoner, on approaching the Bar, made three low Bows; one to his Grace the Lord High Steward, a ſecond to the Peers on the Right Hand, and a third to the Peers on the Left; which his Grace and all the Peers returned.

Then his Grace, obſerving that his Voice would not be heard at ſuch a Diſtance from the Bar, (by the Conſent of the Lords) went down to the Wool-pack again, and made the following Speech.

Lord High Steward's Speech.

Lord High Steward. My Lord *Mohun*, I am to let your Lordſhip know, you are not to hold up your Hand upon your Arraignment; and I am to let you that are Counſel at the Bar likewiſe know, that both you and the Witneſſes are to direct yourſelves to the Court in the Stile of *my Lords*, ſpeaking to the Court.

Then there was a little Pauſe; after which his Grace addreſſed himſelf to the Priſoner thus:

Lord High Steward. My Lord, you are brought here before this Supreme Court in order to your Trial.

The Charge againſt you is, for the Murther of one of the King's Subjects, which is a Crime the King will at no Time paſs over, in the meaneſt Man's Caſe, without making a ſtrict Enquiry into the Offence, and cauſing due Puniſhment to be inflicted on the Offender.

This, my Lord, is charged upon you; not by any ſlight Information, but by the Grand Inqueſt of this County, made up of Gentlemen of good Worth and Conſideration. It is true, that this Inqueſt does not amount to much more than a bare Accuſation; and therefore it ought not to be made any uſe of, ſo as to prejudice your Lordſhip's Trial: But it is that which is the Ground of preſenting this Black Crime before my Lords your Peers, who cannot receive it without ſome Trouble, to find any one of their Body ſuſpected to be guilty of an Action ſo diſhonourable as this is repreſented to their Lordſhips.

My Lord, you are but a very young Man, and therefore it is to be hoped you cannot ſo early have had your Hands in Blood: And the ſame Reaſon, becauſe you are ſo young, may, perhaps, make you conceive that you are under ſome greater Diſadvantage in making your Defence, than you would be if your Experience had been longer. 1692. 4W.&M.

But, to remove any Miſapprehenſion you can have of that kind, it is very proper to put your Lordſhip in mind that you have the good Fortune now to be tried for this Fact in full Parliament, where no Evidence will be received but ſuch as muſt be manifeſt and plain, beyond all Contradiction; ſo that you have nothing to fear here, but your own Guilt.

In the next place, my Lord, you need not be diſcouraged for the Want of Counſel; for the Honour of this Court is ſuch, as will take Care to inform you of any Advantage that the Law can give you. And you may be farther aſſured, that no Art or Skill in arguing can take any Place here, either againſt your Innocency, or to divert my Lords from doing you exact Juſtice. Nay, I dare preſume to ſay, on the Part of my Lords, that if there be Room for any Abatement of Severity, you may reaſonably expect to find it from their Lordſhips.

Theſe Conſiderations, my Lord, cannot but give you great Conſolation under your unhappy Circumſtances, it being moſt certain that nothing but your own Crimes can hurt you.

But at the ſame time I muſt tell you, that your Lordſhip is not to flatter yourſelf with an Expectation or Hope that any Favour will be ſhewed you beyond what Honour and Juſtice can allow: And I hope you have well conſidered, that it is no leſs than your Life, your Honour, and your Eſtate, that you are now to defend; inſomuch that I cannot doubt but your Lordſhip has recollected and prepared yourſelf for the Defence of what ſo very much concerns you. I will not therefore detain you any longer than to give you ſome Directions in the Order and Method of your Trial; and thoſe are, That your Lordſhip do give Attention carefully to the reading of your Indictment: That you give no Interruption to the Counſel or Witneſſes, when they ſpeak againſt you; and when the proper Time ſhall come for your Witneſſes to be examined, and that you are to be heard in your own Defence, I will give you due Notice of it.

Your Lordſhip may alſo be certain, that when it ſhall come to your Turn to ſpeak, you ſhall be heard with all the Patience and Favour that the Matter will bear; and at laſt, when all hath been heard that can be ſaid on both Sides, your Lordſhip need not doubt but that my Lords will give ſuch a Judgment as will be ſuitable to the Honour, Juſtice, and Equity of this great Court.

Clerk, read the Indictment to my Lord.

Then the Indictment was read in *Engliſh*; to which his Lordſhip pleaded, Not Guilty; and the Judges were permitted to be covered. After which Proclamation being made for the King's Witneſſes to appear, Mr. Serjeant *Thompſon* opened the Indictment, and Mr. Attorney General opened the Evidence.

Mr. *Attorney General.* My Lords, the Indictment has been opened, and by that your Lordſhips ſee, the Noble Lord at the Bar ſtands

Mr. Attorney Gen. (Sir John Somers.)

1692. 4W. & M. ſtands charged with the High Crime of Murder.

My Lords, his Peerage gives him a Right to be tried in this Great and Noble Court; and as my Lord has juſt Reaſon to put a high Value upon this Privilege, ſo on the other hand, their Majeſties, who are making Inquiſition for the Blood of one of their Subjects, have a full Aſſurance that no Compaſſion for my Lord's Youth, no Conſideration of his Quality, or Regard for one of your own Order, will make your Lordſhips unmindful of the heinous Nature of the Crime, or cauſe any Variation in the Steadineſs of your Juſtice.

It is true, my Lords, the Difference between the Trial of a Peer, and a Commoner, is very great; but there is no Difference in the Crime, whether committed by one or the other: It is the ſame Law by which they muſt be tried and judged; and that Fact which would be Murder in the meaneſt Subject, is no leſs than Murder if committed by the greateſt Peer.

My Lords, it is not inſiſted upon, that the Noble Lord at the Bar gave the Mortal Stroke with his own Hand; nor is it ſo alledged in the Indictment: The Indictment findeth the Wound to have been given by the Hand of *Richard Hill*: But if my Lord the Priſoner was of his Party, if he concurred with him in the Thing, if he was preſent and abetting to the Fact, though he did not ſtrike a Stroke, though he was no more than a Looker-on when the Thing was done, the Law ſaith, He is a Principal in the Murder.

Whether my Lord's Caſe will fall within this Rule, is the Point for your Lordſhips to determine, when the Witneſſes are heard.

My Lords, it is my Part to give an Account of the Nature of the Evidence, to the End that your Lordſhips may more eaſily go along with the Witneſſes as they are examined, and more readily make your Obſervations upon what they ſay.

This I ſhall do as ſhortly and as exactly as I can, without pretending to aggravate any thing, which I could never think did become any one in my Station; and I am ſure would be to very little Purpoſe before ſuch a Judicature as this: For, after all, your Lordſhips will found your Judgments upon the Fact; not as it is repreſented by us, but as it appears upon the Oaths of the Witneſſes.

The Time when the Fact for which my Lord is to be tried was committed, was the 9th Day of *December* laſt.

The Occaſion of it was thus:

Captain *Hill*, the Perſon mentioned in the Indictment, had for ſome time before made Addreſſes of Courtſhip in the Way of Marriage to one Mrs. *Bracegirdle*, an Actreſs in the Play-houſe; but theſe Propoſals were totally rejected. This put Mr. *Hill* in a very great Rage, and he declared, that Mr. *Mountford* (the Perſon ſlain) was the only Man that ſtood in his Way, and with many Execrations expreſſed his Reſolution to be revenged upon him: This he did at ſeveral Times, and before ſeveral Perſons.

The ſame Day the Fact was committed, in the Morning, my Lord who is now at the Bar, and Captain *Hill*, went together to hire a Coach to go to *Totteridge*, and directed the Coachman to have ſix Horſes ready; but to be waiting for them in *Drury-lane*, near the Play-houſe, with only two Horſes in his Coach, about Nine o'Clock the ſame Night. My Lord and Capt. *Hill* dined together that Day at a Tavern in *Covent-Garden*; and there much of their Diſcourſe was about Mrs. *Bracegirdle*; and both of them did freely declare their Opinion, that Mr. *Mountford* lay with her. But the Principal of their Diſcourſe was in Relation to a Deſign which they had formed for the ſeizing upon Mrs. *Bracegirdle*, and forcing her into a Coach, and carrying her away into the Country.

This was to be executed that Night; and accordingly they were then providing Arms for that Purpoſe. Mr. *Hill* did acquaint my Lord, that the Soldiers would be ready by the Time; and my Lord took Notice that the carrying her off would ſtand Mr. *Hill* in 50*l.* at leaſt. Thereupon (as your Lordſhips will hear from the Evidence) Mr. *Hill* uſed this Expreſſion, If the Villain reſiſt, I will ſtab him; and then my Lord was pleaſed to ſay, *That he would ſtand by his Friend.*

After they had continued there ſome Time, being about to part, Mr. *Hill* told my Lord, that unleſs he was at the Play-houſe by Six o' Clock, the Thing could not be effected, and he ſhould be undone: But my Lord promiſed to be there at the Time.

Accordingly, they both met at the Play-houſe, and after they had been behind the Scenes, and informed themſelves that Mrs. *Bracegirdle* would not be there that Night, they left the Play-houſe. But it ſeems they had got Intelligence that ſhe was to ſup that Night at one Mr. *Page*'s Houſe in *Drury-Lane*, and therefore they planted themſelves with their Soldiers near that Place, over-againſt my Lord *Craven*'s Houſe.

Lord High Steward. They; who do you mean?

Mr. *Attorney General.* My Lord, the Priſoner at the Bar and Mr. *Hill*. After they had continued there for a conſiderable Time, (I think till towards Nine o'Clock) they began to have a Jealouſy that they might be under ſome Miſinformation; and therefore ordered the Coachman to drive them into *Howard-Street*, the Place where Mrs. *Bracegirdle* lodged; and obſerving ſome People walking near the Lodging, they ſaid they doubted they were diſcovered, and had been betrayed.

But they ſoon came back again to *Drury-Lane*, and fixed themſelves in their former Station. About ten o'Clock Mrs. *Bracegirdle*, accompanied with Mr. *Page*, (at whoſe Houſe ſhe had been) and with her Mother, and (I think) her Brother, going home; when they came to the Place where the Coach ſtood, with the Door open, and my Lord at the Bar placed in the Coach, and ſeveral Caſes of Piſtols by him, the Soldiers, together with Capt. *Hill*, came up to Mrs. *Bracegirdle*, ſeized upon

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upon her, and would have forced her into the Coach: Mr. *Hill* endeavoured with Violence to force away Mr. *Page*, who was then leading her, and ſtruck him; but Mrs. *Bracegirdle*'s Mother holding her about the Middle, they could not readily get her into the Coach; and during this Struggle, there was an Opportunity given to Mr *Page* to call for Help; and ſeveral Perſons coming preſently from the Houſes near, and the People in the Street beginning to riſe upon them, they found it impracticable to effect their Deſign at that Time.

Thereupon the Soldiers were diſmiſſed; but my Lord and Mr. *Hill* would not be denied the Liberty to wait upon Mrs. *Bracegirdle* to her Lodging; and accordingly, together with Mr. *Page*, and her Mother, and other Perſons, they went together to Mrs. *Bracegirdle*'s Lodging, at one Mrs. *Browne's* Houſe in *Howard-Street*. Mr. *Mountford*'s Houſe was in *Norfolk-Street*, below *Howard-Street*. *Howard-Street* is a Croſs Street which leads from *Arundel-Street*, and through *Norfolk-Street* to *Surry-Street*; and ſo it was not poſſible for *Mountford* to come to his own Houſe, but whoever ſhould fix themſelves in *Howard-Street* muſt have the Opportunity of ſeeing him.

As they were going along, *Hill* ſwore he would be revenged; but named nobody.

After that Mrs. *Bracegirdle* and the Company were come to her Lodging, ſhe and her Mother, and *Page*, went into the Houſe: My Lord *Mohun* and Mr. *Hill* ſtaid in *Howard-Street*, and there continued for near two Hours together, and for the moſt Part of that Time with their Swords drawn.

Mr. *Mountford*, as it happened, did not come Home till late that Night; ſo that their Stay being long, my Lord and Mr. *Hill* thought fit to ſend for Wine, and had one or two Bottles, which they drank in the Street, near Mr. *Bracegirdle*'s Lodgings.

During this Time, they were heard to ſay (that is, one of them was; but which of them, by reaſon of the Darkneſs, we cannot tell) that if he could not be revenged that Night, he would the next Morning; upon which a Boy, who was there with them (but who the Boy was we cannot diſcover) ſaid, Good my Lord, do not do it; alter your Reſolution. I did obſerve before, that Mrs. *Bracegirdle* ſupped that Night at Mr. *Page's* Houſe, and Mrs. *Page* having heard of the great Outrage and Tumult in the Street, and that her Husband was gone Home with Mrs. *Bracegirdle*, and being under a great Concern for his Safety, thought fit to follow him thither. As ſhe entered into the Houſe, ſhe ſaw my Lord *Mohun* and Capt. *Hill* near the Door; and preſently after, before ſhe could have a full Relation of what had happened in *Drury-Lane*, Mrs. *Browne*, the Owner of the Houſe where Mrs. *Bracegirdle* lodged, came into the Room, and told them that my Lord *Mohun* and *Hill* where waiting for Mr. *Mountford*, and that ſhe was apprehenſive it was with no good Intention. Thereupon Mrs. *Page* thought it requiſite to go to Mrs. *Mountford*'s Houſe, to give her Notice of it, and to deſire her to find out where her Husband was, and to caution him not to come home unleſs he brought a good Guard with him.

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As ſhe went out, ſhe ſaw them both with their Swords drawn, and ſhe acquainted Mrs. *Mountford* with it, who ſent to ſeveral Places in Search of her Husband; but ſhe was ſo unfortunate that the Meſſengers could not find him.

Whilſt this was doing, the Watch came into *Howard-Street*, being alarmed at the Report that two Gentlemen were drinking in the Street, and walking there with their naked Swords. The Watch demanded of my Lord *Mohun*, Why he had his Sword drawn? My Lord was pleaſed to return them this Anſwer, That he was a Peer of the Realm, and bid them touch him if they durſt. They then asked *Hill*, Why his Sword was out? and my Lord made the Excuſe for him, That *Hill* had loſt his Scabbard.

The Watch obſerving the Drawer who attended upon them, and knowing that he lived at a Tavern in *Surry-Street*, went to inform themſelves who theſe Perſons ſhould be, that were walking in ſuch a Manner at that Time of Night: But they were hardly gone into the Houſe before they heard the Cry of Murder.

The Witneſſes will inform your Lordſhips, that as Mr. *Mountford*, about twelve o'Clock, was coming home, my Lord *Mohun* met him, and ſaluted him. Mr. *Mountford* ſaid, My Lord *Mohun*, What does your Lordſhip do here at this Time of Night? and my Lord made Anſwer, He ſuppoſed Mr. *Mountford* had been ſent for. No, no, ſays *Mountford*, I came by Chance. My Lord ſaid to him again, I ſuppoſe you have heard about the Lady. Mr. *Mountford* anſwered, I hope my Wife hath given your Lordſhip no Offence. No, ſays my Lord *Mohun*, it is Mrs. *Bracegirdle* I mean. To this, the Reply of Mr. *Mountford*'s was, Mrs. *Bracegirdle* is no Concern of mine; but I hope your Lordſhip does not countenance any ill Action of Mr. *Hill*'s.

Upon this, *Hill* came up to them, and ſaid to my Lord, it was not a Time to diſcourſe of theſe Matters; and as my Lord continued to talk with *Mountford*, *Hill* ſtruck *Mountford* firſt, and in a manner at the ſame Inſtant, made a Paſs at him, and run him clean through the Body; and this before Mr. *Mountford*'s Sword was drawn. Immediately upon this, there was a Cry of Murder, and the Watch came with what Haſte they could and took my Lord *Mohun*; but *Hill* was fled: When my Lord was taken, his Sword was not drawn.

As ſoon as my Lord *Mohun* was taken, the firſt Queſtion he asked was, If *Hill* was apprehended? and when he was told he was not, he ſaid he was glad of it, and he did not care if he were hanged for him: Adding at the ſame Time, That he was ſorry that Mr. *Hill* had ſo little Money about him, and wiſhed him all that he had in his own Pocket: And he did then alſo own to the Watch, that he had changed Coats with Mr. *Hill*, and had *Hill*'s Coat on him at that Time.

My Lords, this is the Subſtance of the Evidence, and in this Order, with your Lordſhips Leave, we ſhall offer the Proofs to your Lordſhips.

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ſhips. I do not doubt, but your Lordſhips will attend to the Evidence with all Care, and will determine upon it according to Juſtice and Honour. I will detain your Lordſhips no longer; but proceed to call the Witneſſes to prove what I have opened.

Then the King's Witneſſes were ſworn, and firſt Mr. *George Powel*, who teſtified that about five or ſix Days before Mr. *Mountford*'s Death, he was drinking with *Hill*, who began Mrs. *Bracegirdle*'s Health, and ſaid there was no Bar between him and her, but *Mountford*, and he was reſolved to be revenged on him, one Way or other. That three Nights afterwards, he was at Supper with Lord *Mohun* and Captain *Hill*, and the ſame Diſcourſe ariſing, *Hill* whiſpered the Witneſs, and ſaid he was reſolved to have the Blood of *Mountford*; and the ſame Night Mr. *Mountford* was wounded, he (the Witneſs) ſat up with him, and asking him how the Matter happened, he anſwered Captain *Hill* killed him baſely, for whilſt Lord *Mohun* talked with him, *Hill* run him through, and that his Sword was not drawn till after he received the Wound.

Mrs. *Knight* teſtified, that *Hill* ſaid Mrs. *Bracegirdle* hated him, but loved ſomebody elſe; and ſhe demanding if he meant *Mountford*, *Hill* ſwore he ſhould find a Way to be even with him ſpeedily.

Mrs. *Sandys* teſtified, that ſhe dined with Lord *Mohun* and *Hill* that Day Mr. *Mountford* was killed, at the *Three-Tun*-Tavern, in *Chandos-Street*, and Lord *Mohun* asked her (the Witneſs) if ſhe thought *Mountford* had lain with Mrs. *Bracegirdle*? and ſaid preſently after, This Deſign would coſt *Hill* fifty Guineas; and *Hill* replied, If the Villain offered to reſiſt, he would ſtab him, and my Lord *Mohun* thereupon ſaid, He would ſtand by his Friend. That *Hill* afterwards deſired Mr. *Brough* to borrow a Caſe of Piſtols for him, and ſaid he had a Coach and Six in *Wyche-Street*, to ſeize Mrs. *Bracegirdle*, and carry her into the Country, deſiring my Lord *Mohun* to meet him at Six at the Play-houſe, or he ſhould be ruined; and my Lord gave him his Honour to meet him, and ſaid, *He would ſtand by his Friend.*

Mrs. *Rogers* teſtified, ſhe ſaw Lord *Mohun* and *Hill* at the Play-houſe that Night *Mountford* was killed, and they had changed Coats.

Dixon the Coachman teſtified, that Lord *Mohun* and Capt. *Hill* bargained with him for a Coach and Six, to carry them to *Totteridge*, bid him come to the Play-houſe with a Pair only, and let the other four Horſes ſtand at St. *Giles's-Pound*: That he came to *Drury-Lane* as he was ordered, and drove his Lordſhip and Mr. *Hill* from thence to *Norfolk-Street*, where he ſet them down and waited for them. When they returned, he drove them to *Craven-Houſe* in *Drury-Lane*, and it being then about Ten he went Home, and left his Poſtilion to take care of the Coach: That while he was in *Norfolk-Street*, he heard *Hill* ſay, They were betrayed, adding, *Dam me, my Lord, let us go and thraſh him.*

Mrs. Anne Bracegirdle *being ſworn, gave the following Evidence:* Having ſupped at Mr. *Page*'s in *Prince's-Street*; about ten Mr. *Page* went Home with me, and my Mother, and my Brother, and coming down *Drury-Lane*, there ſtood a Coach by my Lord *Craven*'s; the Boot of the Coach was down, and my Lord *Mohun* was in it; and two Soldiers came and pulled me from Mr. *Page*, and four or five more came up, and they almoſt knocked down my Mother; but ſhe recovered herſelf and hung about my Neck, ſo that they could not get me into the Coach; and Mr. *Page* went to call Company to reſcue me. Then *Hill* came with his naked Sword and ſtruck at Mr. *Page* and my Mother; but Company coming in prevented the Deſign. Then *Hill* ſaid, he would ſee me home, and led me by one Hand (his Sword being drawn) and my Mother by the other; and my Lord *Mohun* came out of the Coach and followed us, as did all the Soldiers; but they were diſmiſſed. And as we went along Mr. *Hill* ſaid, he would be revenged: And when we came Home, Mr. *Hill* pulled Mr. *Page* by the Sleeve, and ſaid he would ſpeak with him: But Mr. *Page* was pulled into the Houſe, and Mr. *Hill* walked up and down the Street with his Sword drawn. ——My Lord *Mohun* and Mr. *Hill* were together, and when Mrs. *Brown* asked them, what they ſtayed there for; *Hill* anſwered, to be revenged of Mr. *Mountford*. Whereupon we ſent to Mrs. *Mountford* to prevent Danger. And as I was liſtening at the Door, the Watch came by, and ſaid to my Lord *Mohun* and Mr. *Hill*, Gentlemen why do you walk with your Swords drawn? Says my Lord *Mohun*, I am a Peer of *England*, touch me if you dare. Then the Watch went away, and about a Quarter of an Hour after, there was a Cry of Murder.

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Mr. *Gawen Page* was ſworn.

He depoſed, That on *Friday* the 9th of *December*, about Ten at Night, as he was leading Mrs. *Bracegirdle* home, there ſtood a Coach againſt my Lord *Craven's* Door in *Drury-Lane*; and two Soldiers forced Mrs. *Bracegirdle* from him, and would have put her into the Coach: And that Capt. *Hill* was there with his Sword drawn, and gave the Deponent ſeveral Blows, and cryed, You Villain, ſtand! and my Lord *Mohun* was in the Coach; but Help coming in, they were prevented carrying off Mrs. *Bracegirdle*. Then the Deponent conveyed Mrs. *Bracegirdle* home, and Mr. *Hill* went with them (but bid the Soldiers be gone) and my Lord *Mohun* followed at a Diſtance. That when they came to Mrs. *Bracegirdle's* Lodgings, *Hill* pulled the Deponent by the Sleeve, and ſaid he would ſpeak with him: And the Deponent anſwering, That Tomorrow would be better, *Hill* replyed, Tomorrow then; but, God damn me, you will not go home to Night. Then the Deponent went into the Houſe, and about an Hour and a half after he heard an Out-cry of Murder; and going into the Street, he ſaw my Lord *Mohun* ſurrendering himſelf to the Conſtable; and my Lord's Sword was then in the Scabbard. That the Deponent then went to Mr. *Mountford's* Houſe, and found him lying in his Blood upon the Floor: And *Mountford* told the Deponent, That he was barbarouſly run through, before he could draw his Sword.

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Mrs. *Mary Page* being ſworn, gave the following Evidence. My Lord, my Husband went home with Mrs. *Bracegirdle*, and hearing he had like to have been murdered, I went down towards Mrs. *Bracegirdle*'s Lodgings, and found my Lord *Mohun* and Mr. *Hill* walking about the Street, (Mr. *Hill*'s Sword only was drawn then); ſo I came into the Houſe, and Mrs. *Browne* went out to them, and asked why they ſtaid there? They anſwered, they ſtaid for *Mountford*: Whereupon Mrs. *Bracegirdle* deſired me to go over to Mrs. *Mountford*'s Houſe, and ſpeak to her to ſend her Husband Word, that he ſhould keep where he was, or come Home with a good Guard: And as I was going over, I ſaw that my Lord *Mohun* had his Sword drawn, (they were then walking before Mrs. *Bracegirdle*'s Lodgings in *Howard-ſtreet*, and might ſee any one that went to Mr. *Mountford*'s Houſe, and up *Surry-ſtreet*); and whilſt I was deſiring Mrs. *Mountford* to ſend away to her Husband, I heard Murder cried; and opening Mr. *Mountford*'s Door, he came in, and threw his Arms about my Neck to ſupport himſelf; and he ſaid, *Hill* had murdered him. I helped him as far the Parlour-Door, and there down he fell. Then I went up the Street and called out Murder; and my Lord *Mohun* came to me, and bid me take Notice, he had no Hand in it; for, he ſaid his Sword was not drawn: I replied, he was with *Hill*, with his naked Sword, juſt before.

Mrs. *Browne* was ſworn, (at whoſe Houſe Mrs. *Bracegirdle* lodged.)

She depoſed, That when Mrs. *Bracegirdle* came Home, ſhe cry'd, and related how my Lord *Mohun* and Mr. *Hill*, with ſome Soldiers would have forced her into a Coach; and added, that my Lord *Mohun* and *Hill* were then at the Door: That thereupon the Deponent went out to them, and asked why they uſed Mrs. *Bracegirdle* in that manner? And my Lord *Mohun* anſwered, he protected her; and if it had not been for him, the Rabble would have torn her in Pieces: That he had no Deſign upon her, for his Part, but only to ſerve his Friend; and that Mr. *Hill*'s Deſign was to take her out of Town, and keep her a Week, and ſee if he could perſwade her to marry him: That *Hill* ſaid, he ſhould light of this *Mountford*; and the Deponent demanding What hurt *Mountford* had done him? *Hill* replied, I have been abuſed, and will be revenged; and the Deponent went, and told Mrs. *Mountford* of it. That half an Hour after, or more, the Deponent ſaw Mr. *Mountford* coming down the Street; and ſhe went to him, but he would not ſtay to let her ſpeak to him: And preſently after *Mountford* met my Lord *Mohun*, and there paſſed ſeveral Compliments between them; and my Lord told Mr. *Mountford* he had a great Reſpect for him, and deſired they might have no Difference; but added, Here is a Thing fallen out between Mrs. *Bracegirdle* and Mr. *Hill*. — *Mountford* replied, has my Wife diſobliged your Lordſhip? If ſhe has, ſhe ſhall ask your Pardon; but Mrs. *Bracegirdle* is no Concern of mine; I know nothing of this Matter; I come here by Accident, but I hope your Lordſhip will not vindicate Mr. *Hill* in ſuch Actions as theſe are. Upon this, ſhe heard Mr. *Hill* bid Mr. *Mountford* draw, and Mr. *Mountford* ſaid he would, and drew his Sword: But whether Mr. *Mountford* received his Wound before, or after he drew his Sword, ſhe could not tell.

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Richard Row was ſworn.

He depoſed, That being in his Houſe in *Surry-ſtreet*, about a Quarter after Ten at Night he heard a Noiſe, and went out, and ſaw two Gentlemen and two Lads; and one of the Lads had one of the Gentlemen by the Arm, and ſaid, *Pray, my Lord, good my Lord, don't do it;—alter your Reſolution*; and there was Anſwer made, that they would be revenged. That then the Deponent knew none of them; but that they went to the upper End of the Street, and returned again, and he ſaw Capt. *Hill*'s Boy following him: But that Capt. *Hill* was not in the ſame Cloaths he uſed to come to the Deponent's Houſe in. That he could not ſwear that my Lord *Mohun* was one of the Gentlemen, for the Deponent had never ſeen my Lord *Mohun*.

William Merry, a Watchman, teſtified, That as he was going his Rounds between Eleven and Twelve, he ſaw my Lord *Mohun* and Mr. *Hill* in *Surry-ſtreet*, walking on the paved Stones with their Swords drawn, and he (the Witneſs) bidding them put up their Swords, the Lord *Mohun* put up his, and offered it to him, but Mr. *Hill*'s remained drawn, having loſt his Scabbard, as they ſaid: That ſeeing ſome Women at a Door with Candles, and a Neighbour's Man with a Bottle and Glaſs, attending two Gentlemen, he asked what the Meaning of it was, and was anſwered, one of the Gentlemen had a Sweetheart there, and my Lord ſaid, he was drinking a Lady's Health, and as ſoon as his Bottle was out, he would be gone. And that the Witneſs and the Conſtable going into a Houſe to enquire further about the Buſineſs, they heard Murder cried; whereupon they ran back again, and the Conſtable ſeized his Lordſhip.

Two other Watchmen confirmed the Teſtimony of *Merry*, and one of them added, That when they ſeized his Lordſhip, his Sword was in his Scabbard, and he trembled extreamly.

Mrs. *Brewer* depoſed, That ſhe liv'd next Door to Mrs. *Bracegirdle*, and ſaw Mr. *Mountford* come down the Street, and that my Lord *Mohun* went to him, and embraced him; and after mutual Salutations, Mr. *Mountford* asked What made his Lordſhip there at that Time of Night? And my Lord ſaid, I ſuppoſe Mr. *Mountford* you are ſent for: You have heard of the Buſineſs of Mrs. *Bracegirdle*, and *Mountford* replied, No, he came by Chance: Then *Hill* came up and ſaid, Pray, my Lord, hold your Tongue; this is not a convenient Time to talk of that Buſineſs; and would have drawn his Lordſhip away. Mr. *Mountford* ſaid, He was ſorry to ſee my Lord aſſiſt Captain *Hill* in ſo ill an Action, and deſired his Lordſhip to forbear: Whereupon *Hill* ſtruck *Mountford* a Box of the Ear; and

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Mountford ſaid, Damn me, What's that for? And immediately *Hill* made a Paſs at him with his Sword, before *Mountford*'s Sword was drawn; and my Lord and they were all together at that Time, as near as ſhe could diſcern.

Davenport the Conſtable confirmed the Teſtimony of his three Watchmen, and added, that when he had carried his Lordſhip to the Round-houſe, he ſaid, *God damn me, I am glad* Hill *is not taken; but I am ſorry he has no more Money about him: I wiſh he had ſome of mine, and I do not care a Farthing if I am hanged for him.* That his Lordſhip ſaid, he had changed Coats with *Hill* four or five times that Day, and that he had *Hill*'s Coat upon his Back then: That his Lordſhip ſurrendered very civilly, and told this Witneſs where Mr. *Hill* lodged; and he and his Watchmen going to the Lodgings to ſearch for him, *Hill*'s Boy came in, and they found Powder and Ball about him; and the Conſtable produced Mr. *Mountford*'s Sword in Court, which he ſaid he found broken in Pieces. He alſo brought with him the Lord *Mohun*'s and *Hill*'s Swords (*for* Hill *it ſeems had left his Sword in the Street.*)

Mr. *Bancroft* the Surgeon, who dreſſed Mr. *Mountford*'s Wound, teſtified, That when he told Mr. *Mountford* the Wound was mortal, he anſwered, *my Lord* Mohun *offered me no Violence; but while I was talking with him,* Hill *ſtruck me with his Left Hand, and with his Right Hand run me through, before I could put my Hand to my Sword*; and that *Mountford* died of the Wound about One the next Day.

Mr. *Hunt*, another Surgeon that attended Mr. *Mountford*, teſtified, That he declared *Mr.* Hill *was in him, and through him, before his Sword was drawn.*

Lord Mohun's *Witneſſes.*

Then my Lord *Mohun* called his Witneſſes, and firſt Mr. *Brereton*, to ſhew he had no Malice againſt *Mountford*: And Mr. *Brereton* depoſed, That a few Day's before *Mountford*'s Death, he heard Lord *Mohun* ſay Abundance of kind Things of him.

Hill's Boy depoſed, That his Maſter and Lord *Mohun* had a Deſign to ſeize Mrs. *Bracegirdle*, and carry her to *Totteridge*; and that as ſhe came down *Drury-Lane*, they endeavoured to force her into a Coach, but were prevented; as the King's Witneſſes had depoſed: That he was with his Maſter and Lord *Mohun* when Mr. *Mountford* came down *Norfolk-ſtreet* and turned into *Howard-ſtreet*, and that there paſſed ſome Compliments between Lord *Mohun* and Mr. *Mountford*; after which Mr. *Mountford* ſaid, he was ſorry his Lordſhip ſhould vindicate Captain *Hill* in ſuch Rudeneſs: Whereupon the Captain came up, and ſaid, he would vindicate himſelf, and bid *Mountford* draw: Then his Maſter went into the middle of the Street, and *Mountford* drew and met him, and made three or four Paſſes, in which his Sword broke: That my Lord *Mohun* ſtood all the while on the flat Stones and did not meddle, only ſaid, *he would ſtay by his Friend, and Mr.* Hill *was his Friend:* That his Maſter Mr. *Hill* ran away, after Mr. *Mountford* was wounded; but Lord *Mohun* ſtood ſtill, and ſurrendered himſelf to the Watch. 1692. 4 W. & M.

Mrs. *Bracegirdle*'s Maid depoſed, That ſhe ſaw Mr. *Hill* and Mr. *Mountford* fight in the middle of the Street, and make two or three Paſſes at one another; after which *Mountford* ſaid he was killed, and threw down his Sword, and ſhe took it up, and there was a good Piece broken off. That *Hill* ran away, and *Mountford* went to his own Houſe; but Lord *Mohun* ſtaid on the flat Stones where he firſt met *Mountford* and embraced him, and when the Watch came his Lordſhip ſurrendered himſelf to them.

Mrs. *Ann Jones* depoſed, That Lord *Mohun* met *Mountford* and embraced him, and ſeveral Expreſſions of Kindneſs paſſed between them; but *Mountford* ſaying he hoped his Lordſhip would not vindicate Captain *Hill*, The Captain hit *Mountford* a Box of the Ear and bid him draw; and thereupon *Mountford* ſaid, Damme, What's that for? and they both went off the pav'd Stones into the middle of the Street; and at the ſecond Paſs Mr. *Mountford*'s Sword was broke, and he flung it down and ran away ſaying, I am a dead Man. *Hill* ran off another Way; but my Lord ſtood ſtill upon the pav'd Stones: He did not meddle, as ſhe ſaw, while the others were fighting; and afterwards his Lordſhip ſurrendered himſelf to the Watch. Mr. Attorney demanding, If the Scuffle did not begin upon the Pavement, ſhe ſaid, it began there.

Warrington depoſed, That he ſaw *Hill* and *Mountford*, with their Swords, drawn upon the paved Stones, and that they went off the paved Stones not a Swords Length aſunder, and paſſed at each other; but running for a Paring-ſhovel to part them, he ſaw no more of the Encounter: And it being demanded if he ſaw *Mountford*'s Sword drawn, before he was wounded, he anſwered, He could not be poſitive whether it was or no, ſome Women ſtanding between him and them.

Then the Examination of *Hill*'s Boy before the Coroner was read, which differed but little from his Evidence in Court; for he teſtified before the Coroner, That when his Maſter and *Mountford* were paſſing, my Lord *Mohun* ſaid, *He would ſtand by his Friend, and that* Hill *was his Friend.*

Seven Points decided by the Judges.

Upon this Evidence the Lords propoſed ſeven Queſtions to the Judges, which were anſwered by them.

1ſt Queſtion.

I. In caſe a Man ſhall murder another, Whether all thoſe in his Company, at the Time of the Murder, are ſo neceſſarily involved in the ſame Crime, that they may not be ſeparated from the Crime of the ſaid Perſon, ſo as in ſome Caſes to be found guilty only of Manſlaughter?

Anſwer.

Anſwer. The Crime of thoſe who are in the Company at the Time of the Murder committed, may be ſo ſeparated from the Crime of the Perſon that committeth the Murder as in ſome Caſes, they are only to be found guilty of Manſlaughter.

II. *A*, conſcious of an Animoſity between *B* and *C*, *A* accompanieth *B*, where *C* happens

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Anſwer. *A* is not guilty of Murder; for it appears the Meeting was caſual, and there was no Deſign in *A* againſt *C*; and therefore, though *A* did know of the Malice between *B* and *C*, yet it was not unlawful for *A* to keep Company with *B*; but he might go with him any where, if was not upon a Deſign againſt *C*: And therefore, as the Caſe was put, there was not any Offence in *A*.

III. Whether if *A* heard *B* threaten to kill *C*, and ſome Days after *A* ſhall be with *B* upon ſome other Deſign, where *C* ſhall paſs by, or come into the Place where *A* and *B* are, and *C* ſhall be killed by *B*, *A* ſtanding by without contributing to the Fact, his Sword not being drawn, or any Malice ever appearing on *A's* Part againſt *C*; Whether *A* will be guilty of the Murder of *C*?

Anſwer. *A* in this Caſe would not be guilty either of Murder or Manſlaughter.

IV. Whether a Perſon knowing of the Deſign of another to lie in wait to aſſault a third Man, who happens to be killed (when the Perſon who knew of the Deſign is preſent) be guilty of the ſame Crime with the Party who had the Deſign and killed him, though he had no actual Hand in his Death?

Anſwer. This is neither Murder or Manſlaughter; but if he that knew of the Deſign had adviſed it, or agreed to it, or lay in wait for it, or reſolved to meet the third Perſon with him that killed him, It would have been Murder.

V. Whether a Perſon knowing of the Deſign of another to lie in wait to aſſault a third Perſon, and accompanying him in that Deſign, if it ſhall happen that the third Perſon be killed at that Time, in the Preſence of him who knew of that Deſign, and accompanied the other in it, be guilty in Law of the ſame Crime with the Party who had that Deſign and killed him, *though he had no actual Hand in his Death?*

Anſwer. If a Perſon is privy to a felonious Deſign, or to a Deſign of committing any perſonal Violence, and accompanieth the Party in putting that Deſign in Execution, though he may think it will not extend ſo far as Death, but only Beating, and hath no perſonal Hand or doth otherwiſe contribute to it than by his being with the other Perſon when he executeth his Deſign of aſſaulting the Party; If the Party dieth, they are both guilty of Murder: For by his accompanying him in the Deſign, he ſhews his Approbation of it, and gives the Party more Courage to put it in Execution: Which is an aiding, abetting, aſſiſting, and comforting of him, as laid in the Indictment. 1692. 4W. & M.

VI. If a Perſon be preſent, named *William*, when *Thomas* ſaid he would ſtab *John*, upon which *William* ſaid he would ſtand by his Friend; and afterwards *Thomas* doth actually murder *John*, and *William* is preſent at the Murder: Whether the Law will make *William* equally guilty with *Thomas*? Or what Crime is *William* guilty off?

Anſwer. This is rather a Caſe of Fact than Law: For if *William* was deſignedly preſent with the other that committed the Murder, then it would be Murder in *William*: And if there was no Evidence to prove upon what Account he was preſent, it might be preſumed he was preſent in Purſuance of his former Agreement: But if it appeared he did not meet in Purſuance of that Agreement, then it might not be Murder. That this was all Matter of Evidence, and reſted upon the Conſciences of thoſe that were to try the Priſoner.

VII. If *A* accompanieth *B* in an unlawful Action, in which *C* is not concerned, and *C* happeneth to come in the Way of *B*, aft r the firſt Action is wholly over, and happeneth to be killed by *B*, without the Aſſiſtance of *A*, whether *A* is guilty of that Man's Murder?

Anſwer. As this Caſe is ſtated, *A* is not guilty of Murder.

Then the Lords adjourned.

The Lords coming into the Court erected in *Weſtminſter-hall* again on *Saturday* the 4th of *February*, the Lord High Steward demanded of the youngeſt Baron, (Lord *Lemſter*) Whether my Lord *Mohun* was guilty of the Murder of *William Mountford?* and the Lord *Lemſter* ſtanding up uncovered, and laying his Right Hand on his Breaſt, ſaid, *Not Guilty, upon my Honour.*

The ſame Queſtion having been propoſed to the reſt of the Lords in their Order; the Lord High Steward declared, that fourteen of their Lordſhips had found my Lord *Mohun* guilty, and ſixty-nine had found him *Not Guilty.* After which the Priſoner being called to the Bar, the Lord High Steward acquainted him, that their Lordſhips Judgments was, that he was *Not Guilty*; and thereupon he was diſcharged——Then the Lord High Steward ſtanding up, broke his Staff, whereby his Commiſſion was diſſolved, and the Lords returned to their Houſe above. *Lord Mohun acquitted.*

Proceed-

1689. 1W & M.

Proceedings against the Judges, Pemberton *and* Jones.

Proceedings of the COMMONS againſt the Judges for giving Judgment againſt their Serjeant, who pleaded an Order of the Houſe to the Juriſdiction of the Court of *King's-Bench*, in *July* 1689, 1 *W.* & *M.*

1689 1W & M.

Vote of the Commons.

IT was reſolved by the Houſe of Commons, on the 6th of *July*, 1*W. & M.* 1689. That the Judgment of the Court of *King's-Bench*, in *Eaſter* Term, 34 *Car.* II. upon the Plea of *John Topham*, (their Serjeant) at the Suit of *John Jay*, to the Juriſdiction of that Court, and alſo the Judgments given againſt the ſaid *Topham* at the Suit of *Samuel Verdon*, *John Hilliard*, and others, were illegal, and a Violation of the Privileges of Parliament, and pernicious to the Rights of Parliament. And being informed that Sir *Francis Pemberton*, and Sir *Thomas Jones* were Judges of the *King's-Bench* at that Time, ordered them to attend the Houſe, which they did accordingly: And it was demanded of them, upon what Reaſons they gave that Judgment againſt *Topham* at the Suit of *Jay*.

Sir Francis Pemberton's *Apology.*

Sir *Francis Pemberton*, on the 19th of *July*, gave the Houſe the Reaſons that induced him to give that Judgment: He ſaid, this was an Action of Treſpaſs brought by *Jay* againſt *Topham*, for arreſting and detaining him in Priſon ten Days, and keeping him till he paid him Thirty Pounds to let him out of Priſon.

To this *Topham* the Defendant pleaded, That there was an Order of the Houſe of Commons for taking *Jay* into Cuſtody, and bringing him to the Bar of that Houſe; and that he took him and detained him by Virtue of that Order: And this he pleaded to the Juriſdiction of the Court; and that they had nothing to do with it. Upon which there was a Demurer, and upon the Demurer it was adjudged he ſhould anſwer over, that is, he ſhould plead in Bar of the Action—Sir *Francis* ſaid, He acknowledged that this Houſe was a ſuperior Court, of a higher Nature than the *King's-Bench*, and of a greater Authority; and that the *King's-Bench* had nothing to do to inſpect the Actions of this Houſe: But then he conſidered, where a Juſtification was made even by an Act of Parliament, which was an higher Authority than an Order of either Houſe, ſuch Acts gave ſome Power to plead ſummarily, and others to plead Not Guilty, and juſtify by giving the ſpecial Matter in Evidence: Yet he never heard there was any Proviſion made for pleading to the Juriſdiction of any Court: He thought, therefore, that the High Authority of the Houſe of Commons could not exempt the *King's-Bench*, being a Court of Law, from examining whether what was alledged to be done, was done in purſuance of their Authority or not.

He conſidered alſo, If this Plea was overruled, the Defendant was not prejudiced; for the ſame Matter might be pleaded in way of Bar, and would have been admitted a good Bar, if true: They did not diſpute the Legality or Power of their Orders, but whether *Topham* the Defendant had purſued the Order of the Houſe; and that was the Thing properly examinable by them: But it would be a monſtrous Miſchief to the Plaintiffs if ſuch a Plea was allowed to the Juriſdiction; for if Mr. *Topham* had abuſed his Authority, and had been guilty of any Outrage; if when he had an Order to bring a Member to the Bar of the Houſe, he ſhould not bring him thither, but extort Money from him, It was very certain he ought to be puniſhed, and make Satisfaction to the Party injured: But during a Receſs of Parliament he could have no Satisfaction; and if a Parliament was not held in ſix or ſeven Years he would loſe his Action.

But further, If the *King's-Bench* could not examine this Caſe, the Plaintiff (the Party wronged) muſt be without Remedy; for if the Commons could puniſh their Offences, they could not give Damages to the Party injured: Nay, they could not examine the Witneſſes upon Oath in order to aſſeſs Damages.

That when he conſidered this Caſe, he ſaw a great Miſchief on one Side, if the ordinary Courts of Law had no Juriſdiction; but could obſerve none, if they had: There could be no Hurt in examining, if the Orders of the Houſe were fairly executed; and he was confident the Houſe would not encourage an Abuſe of their Orders: And theſe being his Apprehenſions, he thought he was bound to over-rule the Plea to the Juriſdiction of the Court. If he was miſtaken, it was an Error of his Judgment; he had no Deſign to meddle with the Affairs of the Houſe, but to do Juſtice.

Mr. Speaker demanded, If he delivered theſe Reaſons when he gave Judgment? for, if he had, this would have been ſome Light to their Serjeant to have pleaded afterwards.

Sir *Francis* anſwered, He was ſure the Serjeant was told he might have pleaded this Matter in Bar, and this would have been a good Bar of the Action, which he thought Direction enough.

Mr. Speaker demanded, If it was not uſual in Caſes of great Moment, as this was, to argue the Point upon giving Judgment? Sir *Francis* anſwered, It was ſo, if they would argue it; but when the Counſel on both Sides let it go, they examined no further. Then Sir *Francis* withdrew, and Sir *Thomas Jones* being brought in, the Speaker demanded, upon what Reaſons they over-ruled the Plea to the Juriſdiction of the Court?

Sir

1689. 1W & M. Sir Thomas Jones's Defence.

Sir *Thomas* ſeriouſly proteſted before God, and that Honourable Houſe, that he never deſigned to interfere with the Authority and Privileges of the Houſe: He always conceived, that for any thing tranſacted in that Houſe, no other Court had any Juriſdiction to hear and determine it. But he thought there was a Difference to be taken in Matters that were meerly tranſacted by the Houſe, and thoſe complicated of the Authority and Commands of the Houſe; and of the *Execution* of the Authority and Commands of the Houſe abroad; which was the Caſe before the *King's-Bench*.

Mr. *Topham* was complained of, that he not only impriſoned the Plaintiff *Jay*, but kept him in Priſon till he paid 30 *l.* And he humbly conceived this Declaration ought to have been anſwered, and not put off with a Plea to the Juriſdiction of the Court: That this Court was moſt proper to try it, which could try and determine the whole Merits of the Cauſe between them, eſpecially where the Privileges of the Houſe could not be injured. And he thought Mr. *Topham* was adviſed to plead this Matter in Bar, wherein there would have been a due Regard paid to the Authority of the Houſe: If he had but produced a Copy of their Journal, that would have been ſufficient. But Mr. *Topham* did not think fit to make any Anſwer to the Complaint of his taking 30 *l.* for which, if it was an Extortion upon the Subject, he was ſure that the Houſe, which was entruſted with the Subjects Rights, would not have ſuffered the Party wronged to have gone without a Remedy and Satisfaction: And he never obſerved, when he was an unworthy Member of that Houſe, that they ever gave Damages to a Perſon that had been injured by their Officer: And beſides, at this Time the Houſe was riſen, and could do nothing in it.

He obſerved alſo, as Sir *Francis* had done, that the Authority of an Act of Parliament was ſuperior to that of the Houſe of Commons: But if a Man did any thing by Virtue of ſuch an Act, for Inſtance, under the Commiſſioners of Sewers, or in the executing a Rate for the Poor, or levying of a Poll-Tax, and he be charged with exceeding or going beyond his Authority, he muſt either plead in Bar ſpecially, or, in many Caſes (where the Statute allows it) generally, and give the ſpecial Matter in Evidence: But it was never known that ſuch an Officer, though appointed and authorized by Act of Parliament, ever pleaded to the Juriſdiction of the Court, and inſiſted they ſhould not take Cognizance of the Matter, becauſe he acted by Virtue of an Act of Parliament: And conſequently he thought, where there was only a Command of the Houſe to do a Thing, and there was an Abuſe of their Order in exacting the Thirty Pounds complained of, they might take Cognizance of it, though they ſhould have given all imaginable Reverence to their Order, if there had been a Plea in Bar.

1689. 1W. & M.

Upon theſe Reaſons it was he gave his Opinion that the Plea to the Juriſdiction of the Court ſhould be over-ruled; and if it was not agreeable to their Judgment, he humbly begged Pardon.

Sir *Francis* and Sir *Thomas* being withdrawn, the Houſe reſolved that Sir *Francis Pemberton*, giving Judgment to over-rule the Plea to the Juriſdiction of the Court of *King's-Bench*, in the Caſe between *Jay* and *Topham*, had broken the Privileges of the Houſe; and the like Reſolve paſſed in Relation to Sir *Thomas Jones*.

The Judge taken into Cuſtody.

And, by Order of the Houſe, both Sir *Francis Pemberton* and Sir *Thomas Jones* were taken into Cuſtody for the ſaid Breach of Privilege, and remained confined till the Prorogation of the Parliament, which happened ſoon after.

This Caſe is ſo very plain that it needs no Remarks; and if it did, perhaps it may not be prudent to touch upon the Privileges of this awful Senate.

Knowles *and* Lawſon.

The Proceedings in Knowles *and* Lawſon *being concluded in the Year* 1697, *will be treated of altogether in that Year.*

Duke of Norfolk's *Divorce.*

The Proceedings in the Divorce between the Duke and Dutcheſs of Norfolk, *began in the Houſe of Lords on the* 7th *of* January 1671-2, *but not being concluded till the Year* 1699, *I ſhall defer giving an Account of them till that Year, when they will appear altogether.*

1692. 4W & M.

Proceedings againſt the Biſhop of *Rocheſter*, before the LORDS of the Privy Council, in Relation to a Plot to reſtore King JAMES II. 1692. 4*W.* & *M.*

THE Proceedings againſt Dr. *Sprat*, Biſhop of *Rocheſter*, ſtand next in the State Trials: It is a Narrative of the Biſhop's, wherein he relates, that he was apprehended on the 7th of *May*, at his Houſe at *Bromley*, by a Meſſenger, accompanied by Mr. *Dyve*, Clerk of the Council: That they had a Warrant from the Privy Council to apprehend him on Suſpicion of Treaſon, and ſearched his Perſon and his Houſe at *Bromley* very narrowly, and then brought him to his Houſe at *Weſtminſter*; and he was examined before a Committee of Council the next Day: That he was afterwards ſent to his Houſe at *Weſtminſter* again, where he remained till the 18th in the Cuſtody of a Meſſenger, and under a Guard of Soldiers.

That at his Examination before the Council it was demanded, If he compoſed a Declaration againſt the intended Deſcent of King *James*, or drew up Heads for ſuch a Declaration, or was ever deſired to undertake ſuch a

1692. 4W. & M.

Work? Whether he ever held any Correſpondence with *France*, or ſigned an Aſſociation for Reſtoring King *James*? Or if he knew of ſuch an Aſſociation, or any Perſons that had ſigned it?

To all which the Biſhop anſwered in the Negative; and on the 19th of *May*, was ſuffered to return to *Bromley*.

That on the 8th of *June*, the Lord *Nottingham*, Secretary of State, ſent him a Letter to appear before the Council the next Day; and upon his Attendance, he was confronted with one *Blackhead*, who pretended he brought the Biſhop a Letter to *Bromley*, from one *Young*, and received an Anſwer to it, for *Young*, from the Biſhop: And his Lordſhip being asked if he knew *Blackhead*, he did not remember at firſt, but recollected afterwards, that he brought him a Letter from a Clergyman in *Buckinghamſhire*, to enquire whether he ordained a certain Perſon that deſired to be the Curate, becauſe he ſuſpected his Orders were counterfeited; and that he wrote that Clergyman an Anſwer, that he had ſearched his Books, and could aſſure him he never ordained any ſuch Perſon.

Blackhead, on the contrary affirmed, that the Letter he carried to the Biſhop, was from *Young*, and the Biſhop anſwered directly to *Young*: But the Biſhop's Secretary, Mr. *Moore*, being called in, atteſted that he remembered *Blackhead*'s bringing the Letter to *Bromley*: That it was ſigned by one *Hooke*, repreſented by *Blackhead*, to be a *Buckinghamſhire* Clergyman; and the Biſhop wrote an Anſwer, and directed it to the ſame *Hooke*, ſending it by *Blackhead*. But *Blackhead* ſtill perſiſted, he brought the Biſhop a Letter from *Young*, and no other.

The Biſhop was further examined, If he had written a Letter to the Earl of *Marlborough* within 3 Months; or received any Letter or Papers from him? To which the Biſhop anſwered in the Negative.

That on *Monday* the 13th of *June*, the Biſhop attended the Council again, and was confronted with another Man: And it being demanded if he knew him, the Biſhop proteſted he never ſaw him: Then he was informed by the Council that this was *Robert Young*, whom *Blackhead* mentioned: Whereupon the Biſhop ſaid, that ſome Years before, one *Robert Young* wrote to him from *Newgate*, pretending to be a Clergyman; and informing him that he and his Wife were in Priſon, upon a falſe Accuſation, and deſired his Lordſhip would recollect, that he had officiated ſome Weeks for the Chaplain of *Bromley*-College, and preached in the Pariſh Church there: Deſired he would ſend him a Certificate of this, and it would be of Service to him; and withal begged he would ſend him ſomething, out of Charity, to relieve him and his Wife in their great Diſtreſs. But the Biſhop ſent him no Anſwer, becauſe he had not the leaſt Remembrance of him himſelf; and upon Enquiry, found he did not deſerve any. Then the Biſhop produced the very Letter *Blackhead* brought him to *Bromley*, being of the ſame Tenor as the Biſhop related; and *Blackhead* at length confeſſed it to be the ſame Letter: He confeſſed alſo that *Young* directed him to leave a Treaſonable Aſſociation in the Biſhop's Houſe at *Bromley*; and that he left it in a Flower-Pot, in the Parlour Chimney; but the Meſſenger not finding it when the Biſhop was apprehended, he (*Blackhead*) made another Pretence to go to *Bromley*, while the Biſhop was confined, and brought it from thence; for *Young* ſaid that was the Original, and he brought it to the Lords of the Council, and it lying upon the Council Table, at this Time, the Biſhop had a Sight of it, and ſays it was of the following Tenor. 1692. 4W. & M.

"That We whoſe Names were ſubſcribed, *The Subſtance of the Aſſociation.*
"ſhould ſolemnly promiſe, in the Preſence of
"God, to contribute our utmoſt Aſſiſtance
"towards King *James*'s Recovery of his
"Kingdoms. That to this End, we would
"have ready to meet him at his Landing,
"Thirty Thouſand Men, well armed. That
"we would ſeize upon the Perſon of the
"Princeſs of *Orange*, dead or alive; and
"take Care that ſome ſtrong Garriſon ſhould
"be forthwith delivered into his Hands; and
"furniſh him with a conſiderable Sum of Mo-
"ney, for the Support of his Army": *Or to*
"*this Senſe*".
March 20, — 92.

And the forged Subſcriptions were, as he remembered, after this Manner.

Marlborough. *Salisbury.* *W. Cant.*
Baſil Firebrace. *Tho. Roffen.*
Cornbury.
John Wilcoxe.

Upon Sight of this Paper, the Biſhop adds, He was amazed to ſee his Hand ſo well counterfeited, and obſerved that there was another innocent Perſon, whoſe Hand he knew very well, that was ſtill more nicely forg'd, and that was Archbiſhop *Sancroft*'s; and the Earl of *Marlborough*'s Hand alſo was well forged.

Young being called in again, and examined, If the Letter *Blackhead* carried the Biſhop of *Rocheſter*, was of his Hand-Writing, denied it was, though *Blackhead* atteſted to his Face it was; and *Young* had the Impudence to ſay, This was a Conſpiracy between *Blackhead* and the Biſhop, to baffle the Diſcovery of the Plot: And when the Lords of the Council laughed at the ſenſeleſs Suggeſtion, *Young* ſtill perſiſted, that he believed the Biſhop had taken *Blackhead* off. Then the Letter *Young* had ſent the Biſhop, and the Aſſociation, being compared together, appeared to have been written by the ſame Hand. However, *Young* ſtill denied he wrote the Letter; and the Biſhop aſſures his Readers, that, during the whole Examination, though *Young*'s Forgery was ſo evidently proved by the Confeſſion of his Accomplice, and otherwiſe, yet he behaved himſelf with a daring unconcerned Confidence, a bold erect Countenance, though it had naturally very much of the Villain in it. His whole Carriage was ſuch as became the Diſcipline he had undergone for many Years, having been almoſt a conſtant Inhabitant in ſome of the common Jayls in *England* and *Ireland*.

He

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He was executed afterwards at *Tyburn*, on the 19th of *April*, 1700, for Coining, when he delivered a Paper to the Sheriff, wherein he ſays, " I think myſelf eſpecially obliged to " diſcover to the Publick, how far I was con- " cerned in that pretended Plot, ſuppoſed to " be carried on by the Earls of *Marlborough* " and *Salisbury*, the Lord Biſhop of *Rocheſ-* " *ter*, and ſome others; the Truth of which, " I call God to witneſs, is as follows. I was " committed to *Newgate*, till I diſcharged a " certain Fine impoſed on me; during my " Confinement, one *Henry Pearſon*, a Surgeon, " I think, was committed to the ſame Place " for Debt; he percieving me to be very ex- " pert in counterfeiting Hands, told me, that " if I could contrive a ſham Plot, and father " it upon thoſe Noble Peers, I might ſoon " have Money enough to pay my Fine. Be- " ing in very low Circumſtances, I readily " conſented to this Propoſal; but told him, " nothing could be done in that Matter, till " he was releaſed, which in a ſhort Time was " effected. As ſoon as he was at Liberty, he " employed one *Blackhead*, to carry Letters " between us. I happened, by a certain Stra- " tagem, to ſee the Earl of *Marlborough*'s Hand; " this I counterfeited ſo cunningly, that it was " very difficult to diſcern the true from the " falſe: Then I drew up an Aſſociation, and " affixed to it the Hands of the Earls of *Marl-* " *borough* and *Salisbury*, as alſo Sir *Baſil Fire-* " *brace*'s, the Lord Biſhop of *Rocheſter*'s; and " the Lord *Cornbury*'s was wrote by another " Hand, according to my Requeſt. And that " the more Credit might be given to this pre- " tended Plot, I wrote ſeveral Letters in the " Name of the Lord *Marlborough* (for I was " perfectly acquainted with his Way of Wri- " ting) ſuppoſed to be directed to me, which " *Blackhead* uſed to bring me again; and yet " he ſwore before the Lords of the Council, " that the ſaid Earl ſent them to me; whereas, " to his Knowledge, I myſelf forged them, " and ordered them to be ſent after that Man- " ner. This is the Truth of that Buſineſs, " which has made ſo great a Noiſe in the World. " I humbly beg the Pardon of thoſe Noble " Peers, and do declare once more, in the Pre- " ſence of God, that I did not ſet the Lord " Biſhop of *Rocheſter*'s, or the Lord *Cornbu-* " *ry*'s Hand to the ſaid Paper; yet it was done " by my Conſent, by another Perſon".

Inſtead of making any Obſervations of my own on theſe Proceedings, I ſhall preſent the Reader with the Remarks of a certain Writer, in a Letter ſaid to be written to the Lord Chief Juſtice *Holt*, wherein that Gentleman ſays,

Remarks on the Proceed- ings of the Biſhop of Rochef- ter.

" I crave Liberty to remind you what " *Young* the Parſon, in Conjunction with *Black-* " *head*, had contrived, in order to the Mur- " dering ſeveral of the firſt Quality in the " Kingdom, beſides divers Gentlemen of low- " er Degree: For theſe Fellows, judging it too " little and mean for Perſons of their Tran- " ſcendency in Villany, meerly to ſwear that " ſuch and ſuch had conſpired and combined " to reſtore and re-eſtabliſh King *James*, had " the audacious and unprecedented Impudence " to forge an Aſſociation, and to counterfeit " and affix the Hands and Names of Honour- " able Peers, and worthy Perſons unto it; " importing their having mutually and jointly " undertook to diſpoſſeſs King *William*, and " to bring back, and re-advance King *James*. " And though it was morally impoſſible, as " well as altogether incredible, that, had " there been ſuch a Deſign, ſo concerted, " Wretches of the Meanneſs of *Young* and " *Blackhead*, ſhould have been admitted upon " a Secret of ſuch Importance in itſelf, and " whereof the Diſcovery would have render- " ed thoſe concerned, liable to the Loſs of " Life, Honour, and Eſtates: Yet not on- " ly with what Eaſineſs, but Letchery, was the " Belief of it entertained, by divers of our ſu- " preme and reputed wiſe Miniſters! And not- " withſtanding its being, in the whole Matter " of it, more ludicrous than Farce, or *Bartho-* " *lomew-Fair-Shew*, than to be entertained by " Stateſmen; yet with what Seriouſneſs and " Gravity was it brought to the Council- " Board, and received there as a Subject wor- " thy of weighty and ſolemn Debate! *See a Letter to the Right Honourable Sir* John Holt, *Knight, Lord Chief Juſtice of the* King's Bench, *occaſioned by the Noiſe of a Plot. The ſecond Edition.* 1694. *Page the* 10*th.*

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And in the ſame Letter, Page 11 and 12. The Author ſays, " Nor could the " Miniſters be ſo great Strangers to the " infamous Characters of the Witneſſes " (whoſe many and notorious Crimes had " ſufficiently publiſhed them before, through- " out the whole Nation, as Raſcals, who had " forfeited all Right to be believed and credi- " ted) as to hope to have their Integrity and " and Righteouſneſs juſtified, in ſeizing and " proſecuting any upon their Teſtimony: And " yet, had it not been for the miſſing of the " forged Paper, when it was at firſt ſo nar- " rowly ſearched for, at the Biſhop of *Ro-* " *cheſter*'s, where one of the Rogues traito- " rouſly and feloniouſly lodged it; it is ſcarce " to be conceived, how ſome of our Stateſmen " were prepared to have puſhed on that Af- " fair to the Impriſonment of ſeveral. But " that Miſadventure, together with the De- " fences which the aforeſaid eloquent Biſhop, " after his Apprehenſion, made at his being " examined before the Council, rendered them " more ſlow and wary in their Proceedings: " And thereupon, through the gaining the " Reſpite of a little Time, there was an Op- " portunity obtained, not only of diſcover- " ing and laying open the many infamous and " horrid Crimes, whereof the Rogues had at " other Times been guilty, but of fully de- " tecting the Forgery of the Aſſociation, and " where they had ſecretly laid it in the Bi- " ſhop's Houſe, in order to have deſtroyed " him and others, in caſe it had been found " by the Clerk of the Council and the Meſ- " ſengers, when is was ſo induſtriouſly ſought " for. And truly, my Lord, had not *Young* " laboured under a ſtrange Defect of Morals, " he was incomparably qualified in all other " Reſpects, to have been a ſelect, ſingular, " and ſtanding Witneſs for the State: For as " he has a Sufficiency of Wit, and Preſence " of Mind, to be able to give Things the beſt

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" beſt Gloſs, and readieſt Turn of Thought, " ſo he is furniſhed with a larger Stock of " Impudence and Aſſurance than moſt Men " in the World are: Of which your Lord- " ſhip was an aſtoniſhed Witneſs, when you " had him before you at the Bar, to be tried " for the Forgery which I have mentioned, " and to be condemned to the too gentle and " feeble Puniſhment which the Law hath or- " dained for it. For with what Confidence " did he ſtand, not only under the Load of " a thouſand infamous Actions, of which all " the Court knew him to have been guilty; " but under the fulleſt and cleareſt Proof of " the malicious Forgery for which he was then " arraigned. Yea, with what Effrontery, and " Air of Impudence, to the Amazement of " all there, did he continue to aſſert his own " Innocence, and perſevere in his Crimination " of others? But that which filleth Men " moſt with Sorrow, in Reference to that " Tranſaction, and which keeps them under " diſquieting Fears ever ſince, is, that though " *Young* and *Blackhead* were Inſtruments in " it, yet People of another Figure muſt " have been the firſt Contrivers and Authors " of it: And the handing Money to *Black-* " *head*, while kept in Cuſtody by *Allen* the " Meſſenger, and conniving at his Eſcape " from thence, gives us more than a Suſpi- " cion of it, and little leſs than a moral Cer- " tainty: For that Rogue, having been the " Tool employed too with *Young*, by the Su- " perior Managers, and having threatned to " ſqeak, in caſe given up, and abandoned to " a publick Puniſhment, it was ſo ordered, that " he might not only be permitted to get away, " but be ſheltered and maintained in *Ireland*, " whither he withdrew; and from whence the " Government might have eaſily brought him " back, were there not a Myſtery in that " Affair, which it is not for ſome People's " Honour to have unravelled. Nor was the " Meſſenger, out of whoſe Houſe and Cu- " ſtody he made his Eſcape, ever puniſhed " for Careleſsneſs and Neglect; but after a " little Menacing and Reprimand, which was " mere Grimace, he hath been treated all " along ſince with more diſtinguiſhed Favours " than fell to the Share of his Fellow-Offi- " cers. Neither durſt ſuch mean and creep- " ing Wretches as *Young* and *Blackhead* (how " impudent and malicious ſoever they are) " have attacked Perſons of the Earl of *Marl-* " *borough* and the Biſhop of *Rocheſter*'s Rank " and Quality, and who had merited ſo well " of the Government, and were believed " at that Time to ſtand in all Terms of Fair- " neſs with it, had they not been prompted, " guided, and encouraged to it, by Perſons of " Authority, Grandeur, and Eminency. And " had the Villains acted meerly under their " own Conduct, and by the Influence of " Perſonal Malice and Avarice, they would " have ſingled out ſuch to be accuſed as are " held Indiſcreet, Talkative and Raſh, and " with whom it might have been likely for " them to have had ſome Converſation; and " not Perſons of the greateſt Prudence, Cir- " cumſpection, and Reſervedneſs, of any in " the Kingdom, and into whoſe Society " it was morally impoſſible that any ſhould " judge them to have been admitted, nor ſo " much as into their Preſence, unleſs as Beg- " gars and indigent Supplicants. So that this " Conſpiracy, by ſuborning two infamous " Raſcals, and of obtaining thereby Credit to " a Plot, upon the Belief of which, ſeveral " Noble, Reverend, and Worthy Perſons, " were to have been involved under Guilt " of Ruin, may ſerve to inſtruct your Lord- " ſhip not to be haſty and forward in giving " Credit to the preſent importunate and " noiſy Clamours, and to make you extream- " ly wary how you proceed to the Convi- " ction and Condemnation of thoſe that are " accuſed, and threatned to be arraigned.

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1693. 5W. & M. Anderton's *Trial*,

The Trial of WILLIAM ANDERTON, Printer, for *High Treaſon*, at the *Old-Baily*, *London*, on the 1ſt and 3d of *June*, 1693. 5 *W.* & *M.*

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An imperfect Piece. THIS which is called *Anderton*'s Trial is a very imperfect Piece, and clogged with a great deal of Rubbiſh, not fit to be bound up with the State Trials, and was only inſerted by the Bookſellers to enhance the Price of the Work, or for the Advantage of the Perſon they employed in compiling this Volume. They have neither given us the Indictment or the Evidence regularly, or the Obſervations of the Counſel or Judges. We only underſtand that the Indictment charged the Priſoner with High Treaſon, in compaſſing the King and Queen's Deaths, and the Subverſion of the Government. And that the Overt Acts laid of this Treaſon, were his printing ſome Books tending to incite a Rebellion; the one of them intitled, *Remarks upon the preſent Confederacy and the Revolution in* England: And another intitled, *A French Conqueſt neither deſirable or practicable*. But they have given us none of the treaſonable or obnoxious Paſſages; and therefore I ſhall diſmiſs this pretended Trial without taking any further Notice of it, than that the Priſoner was convicted of High Treaſon, and executed on *Friday* the 16th of *June*, 1693.

Proceed-

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Proceedings of the Privy Council againſt Dr. OLDYS, the King's Advocate, and other Doctors of the Commons, for refuſing to proſecute JOHN GOLDING and others, as Traitors and Pirates, who acted under Commiſſions from the *French* King, and King JAMES II. *Sept.* 1693. 5 *W.* & *M.*

1693. 5W.&M.

Proceedings againſt Dr. Oldys.

THE Lords of the Admiralty, in the Month of *November* 1692, commanded Dr. *Oldys* to proſecute the ſaid *John Golding*, and other Priſoners, for High Treaſon and Piracy, in taking ſeveral *Engliſh* Ships, under Colour of a Commiſſion from the *French* King (an Enemy to *England*) and another Commiſſion from King *James* as King of *England*, and carrying the ſaid Ships into *Breſt*, where they were condemned as lawful Prize by *Thomas Shadford*, Judge of the Admiralty there for King *James*.

Dr. *Oldys* hereupon gave his Opinion in Writing, That the Priſoners were not Pirates, and ought not to be proceeded againſt as ſuch. Whereupon Dr. *Oldys*, Sir *Thomas Pinfold*, Dr. *Walker*, Dr. *Littleton*, and Dr. *Tindall*, were ſummoned before a Committee of Council; and on their Appearance it was demanded of Dr. *Oldys*, Why he refuſed to proſecute the Priſoners?

Dr. *Oldys* anſwered, Pirates were the common Enemies of Mankind, pretending to no legal Authority; but theſe Priſoners ſhewed a Commiſſion ſigned *J. R.* dated at the Court of St. *Germain*'s, together with Articles and Inſtructions annexed in the ſame Form that Privateers had, giving Caution and Security to bring their Prizes into the Court of Admiralty for Judgment before *Thomas Shadford*, at *Breſt*, or elſewhere.

Mr. Secretary *Trenchard* anſwered, King *James* had left his Sovereignty, having parted with his Crown, and conſequently with the Power of granting Commiſſions.

Doctor *Oldys* replied, A King might be depoſed, but could not loſe his Right: He had ſtill a Right to make War, and to grant Letters of Mart and Reprizal.

Mr. Secretary *Trenchard* ſaid, That might be Law, where a King was depoſed; but what if he abdicated?

Dr. *Oldys* anſwered, If he really abdicated, as the Emperor *Charles* V, and *Chriſtina* Queen of *Sweden* had done, he was no more than a private Perſon, and could not legally grant Commiſſions: But whether a Privateer acting by a Commiſſion, granted him *de facto* by King *James*, and not knowing he had abdicated, Whether ſuch an Error would not excuſe a *pœna delicti*, was the Queſtion? for that a Reputable Power was equivalent to a Real one in ſuch a Caſe. It was notorious, that K. *James* was once a lawful King, acknowledged by them and all the World; and when his Army deſerted him, he fled to his Ally in *France*, for Aid: Then went to *Ireland*, to recover his Kingdoms, as his Declarations ſet forth. There he granted Commiſſions, and his Soldiers who fought under thoſe Commiſſions, and were taken, were not treated as Thieves and Robbers, but as Priſoners of War, whereby his Claim ſeemed to be allowed by his Enemies. Upon his Return to *France*, thoſe who ſerved under him in *Ireland*, repaired thither to King *James*, believing him ſtill impowered to grant Commiſſions, as well by Sea as Land, and upon Receipt of Commiſſions from him, came out *animo hoſtili*, as Privateers, *non animo furandi*, as Pirates: That a colourable Authority remaining in King *James*, would excuſe thoſe who acted under him, from being Pirates, ſince the Abdication was never publiſhed, nor ſo much as heard of in *France*. And ſince in Piracy, which deſerves *ultimum ſupplicium*, if proved, all favourable Allowances ought to be made, and a general Acknowledgment of a falſe Authority in another Country (where the Commiſſions were taken) would free them from a felonious Intent in taking them, and conſequently from Piracy; King *James* was owned and reputed a King in *France*; and therefore in this Caſe it was undoubted Law, *Communis error facit jus*.

Here Mr. Secretary *Trenchard*, and Lord *Falkland* in a great Heat ſaid, Pray, Doctor, let us deal more cloſely with you, for your Reaſons amount to High Treaſon: Pray, what do you think of the Abdication?

The Doctor anſwered, That was an odious, enſnaring Queſtion; however, perhaps he thought of the Abdication as they did; for ſince it was voted, it bound, at leaſt in *England*: But thoſe Gentlemen were in a foreign Country, and knew nothing of it; and though King *James* was not King here, yet the Colour of Authority remaining, and a common Reputation of him as a King there, excuſed them.

It being demanded of Sir *Tho. Pinfold*, what he had to ſay to it, the Doctor anſwered, He was of the ſame Opinion. Dr. *Newton* and Dr. *Walker* did not declare their Opinions, but deſired Time to conſider of it; and Dr. *Newton* ſaid, It was againſt his Conſcience to have a Hand in Blood.

Dr. *Littleton*, on the contrary, held, That King *James* was now a private Perſon; we had no War with him, or he with us; or if he deſigned it, *Ærarium non habet*, He was not in a Capacity of making War, he could neither ſend or receive Ambaſſadors, and thoſe who adhered to him were not Enemies but Rogues, and conſequently theſe Perſons were

1693. 5 W. & M. not Privateers, but Pirates. Dr. *Tindall* declared himſelf of Dr. *Littleton*'s Opinion.

In the End, Dr. *Oldys* was removed from his Place of King's Advocate, and Dr. *Littleton* ſucceeding him, tried the Priſoners, and condemned them; and, according to the Editor of the Eighth Volume of the State Trials, ſeveral of them were executed. 1693. 5 W. & M.

1695. 8 W. 3. Charnock's *Trial.*

The Trial of ROBERT CHARNOCK and EDWARD KING Gentlemen, and of THOMAS KEYS Trumpeter, for *High Treaſon*, at the *Old-Baily*, *London*, on *March* 11, 1695. 8 *W.* III.

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The Indictment. THE Indictment charges the Priſoners with High Treaſon, in compaſſing the Death of the King, and the Subverſion of the Government; and the Overt Acts laid to prove theſe Treaſons, were their meeting, conſulting, and agreeing, on the 10th of *February*, then laſt paſt, at the Pariſh of St. *Clement Danes*, in the County of *Middleſex*, with divers other falſe Traitors, to aſſaſſinate the King as he rode in his Coach, in the following Manner, *viz.* That forty Horſemen (of which Number they were to be Part) ſhould lie in Ambuſh, and ſet upon the King's Coach, and the Guards that were to attend him in his Return from Hunting; and that they bought Horſes, Arms, *&c.* for executing the ſaid Deſign.

Denied Counſel, &c. At their Arraignment Mr. *Charnock* inſiſted on their having Counſel, and a Copy of their Indictment, according to a late Act; and being told, that Act did not commence till *Lady-Day*, he obſerved, that the Preamble of that Act ſaid, *That this was reaſonable*; and if it was ſo, it was as reaſonable to Day as it would be a Fortnight hence: But this was over-ruled by the Court, and they were allowed neither.

Denied further Time, or a Sollicitor. Then they moved for further Time for their Trial; but this alſo was denied: They were alſo denied a Sollicitor to ſtand by them and aſſiſt them: After which the Attorney General opened the Evidence.

The Attorney Gen. (*Sir* Thomas Trevors) *opens the Evidence.* Mr. *Attorney General.* My Lord, and you Gentlemen of the Jury, theſe Gentlemen at the Bar ſtand indicted for a moſt horrid and barbarous Conſpiracy, to aſſaſſinate and murder His Majeſty's Royal Perſon. Gentlemen, this Aſſaſſination was to be ſeconded with an Invaſion from *France*, where Troops lay ready at *Calais*, as ſoon as the diſmal Stroke was given, to have landed upon our Coaſts; which if it had taken Effect, we had not only ſuffered that moſt unſpeakable Loſs of the King, but it would have made an End of all our Liberties and Laws at once.

Gentlemen, this Offence, in its Nature, is ſo horrid and barbarous, that as it needs no Aggravation, ſo it is incapable of having any, by any Words that can be uſed; for the very naming of an Aſſaſſination of a King, carries ſuch Horror and Deteſtation in it ſelf, to all honeſt People, that it is impoſſible to aggravate it by any Expreſſions that can be uſed about it. But there is this peculiar Conſideration to be had, by all *Engliſhmen* who love their Country, that this deſigned Aſſaſſination upon the Perſon of his preſent Majeſty, was to take away the Life of a King who, every body knows, firſt ventured his own Life to reſtore our Religion, Laws and Liberties, when they were juſt expiring under the Oppreſſion of Popery and Tyranny. And as he ventured his Life firſt to reſtore them, ſo he has ſince, upon all Occaſions, with the utmoſt Hazard, expoſed his Royal Perſon to the moſt imminent Dangers, for the preſerving and maintaining our Religion, Laws and Liberties, againſt the Power and Violence of the Common Enemy. This Conſideration, to all true *Engliſhmen*, muſt have a very great Weight, and create the greateſt Horror and Deteſtation, both of the barbarous Deſign, and of all thoſe who had any Concern or Hand in it, to attempt upon the Life, not only of a King, but of ſuch a King.

Gentlemen, when you hear the Evidence that we ſhall offer to you, to prove this Bloody Conſpiracy againſt theſe Priſoners, I doubt not but that there will be enough, and more than enough, to ſatisfy all true-hearted *Engliſh* Subjects, and all that have a Deſire to preſerve our Conſtitution and Government, in what Danger we and our Poſterity were, of being utterly ruined and involved in a Common Deſtruction. I ſhall not detain you longer with any Diſcourſe about the Heinouſneſs of this Offence, becauſe every Man's own Thoughts cannot but ſuggeſt to him how diſmal the Conſequences muſt have been, if ſo fatal a Stroke had been given.

But, Gentlemen, I muſt crave Leave to take up ſo much of your Time as to open how this Bloody Execrable Conſpiracy was firſt framed, and afterwards carried on, by the Priſoners at the Bar, together with others, till it was very near putting in Execution, had not the infinite Mercy of God prevented it, by a timely Diſcovery.

Gentlemen, this Conſpiracy was firſt framed and conſulted upon the laſt Year; there were ſeveral Conſultations and Meetings, at ſeveral Places about the Town, for this Purpoſe;

1695. 8 W. 3. pose; then, and at those Consultations and Meetings, there were present Capt. *Porter*, the Prisoners, and others, of whom you will have an Account from the Witnesses; and at that Time they had an Expectation of Commissions from the late King, to authorize the Design: That not coming, they yet resolved to put it in Execution before the King went away. But, because the *French* Troops were then not in a Readiness to come over hither, to protect them after the Execution of their bloody Design, it was necessary for them to fly thither for Shelter; and therefore they endeavoured to procure a Vessel to be ready to carry them over to *France*. But they could not get a Vessel Time enough; and then the King's going over into *Flanders* quickly after, prevented the Execution of the Design for that Time; and so Matters rested till the King's Return.

About two or three Months ago, Sir *George Barclay*, who is an Officer in the late King *James*'s Guards in *France*, and some other Officers, with sixteen or eighteen Troopers in those Guards, privately came over from *France* to put this Design in Execution; and he did acquaint Mr. *Porter* and Mr. *Charnock* with the Design, knowing that they had been engaged in the Matter before, and so could not but expect that they would readily assist. This Design was treated and consulted of between them, at several Times, and in several Places; at Capt. *Porter*'s, and Mr. *Charnock*'s Lodgings in *Norfolk-Street*; at the *Globe* Tavern in *Hatton-Garden*, the *Nag*'s-*Head* Tavern at St. *James*'s, and several other Places: Several Consultations and Meetings were had between the Prisoners at the Bar and others, whom you will hear named at these Meetings: Several Ways and Methods were proposed how it should be best effected. It was proposed by some, that it should be done by Ambuscade; that it should be laid near the King's House at *Richmond*; such a Number on Foot were to lie in the Wood there, ready to attack the King as he came by, and the rest of the Conspirators, at the same Time, to fall on the Guards. But this Method was not so well approved of, as that which was afterwards proposed and agreed to; that is, there were to be three Parties of them, and the Place was the Lane lying between *Brentford* and *Turnham-Green*, at the End next *Turnham-Green*, which the King used to pass through upon his Return from *Richmond*. The Order and Method of this Design was this, Sir *George Barclay*, with eight or ten more, was to attack the Coach, and by firing into it, to have killed the King, and all in it; and the rest were to attack the Guards in two Parties, on each Side of the Lane, whereof Mr. *Charnock* and Mr. *Porter* were to command one, and Brigadier *Rookwood* the other. In order to see how feasible this Design might be, the Prisoner *King*, Capt. *Porter*, and *Knightly*, were to go and survey the Place; and the next Day after that Consultation they went to view the Ground, and did very carefully do it, both on this Side the Water, and on the other Side the Water; and they came back, and met the rest of the Company at the *Nag's-Head* Tavern, late at Night, to give an Account what they had done, in order to this Enterprize. It was agreed, the Number should be about Forty: Sir *George Barclay* was to make up about Twenty, Mr. *Charnock* was to furnish Eight, Captain *Porter* Seven; and so in other Proportions, in all to make up the Number of Forty; which they thought were enough to effect and accomplish their Design.

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In order to make this Matter the more sure, they did appoint Two to lodge and wait at *Kensington*, near the Guards; who were to give Notice, when the King went abroad: And they had their several Persons assigned, to whom they should give Notice, who thereupon were to send Orders to the several Parties; one of which was *Chambers*, who was to give Notice to the Prisoner at the Bar Mr. *Charnock*; and there was one *Durance*, who was to give Notice to Sir *George Barclay*; and when such Notice was given, then they were to send Orders to the several Persons who were concerned in this bloody Business, to come at the Time appointed, to be disposed of into their several Posts.

Gentlemen, in order to the furthering this Design, they did likewise send *Durance* to go and view, and give them an Account of the most convenient Inns at *Brentford*, and *Turnham-Green*, and the Places adjacent; which were least liable to Observation, where the Men might be the most conveniently disposed of, to lie ready against the Time when they were to execute this barbarous Assassination: Accordingly he went, and took an Account of the several Inns within that Compass, and they were to be billetted by Two or Three in an Inn, so as not to be observed; Sir *George Barclay* and his Party at *Turnham-Green*, and the rest at *Brentford*.

Gentlemen, after they had thus laid the Design, *Saturday* the 15th of *February* was the first Time pitched upon for the putting it in Execution, if the King went abroad, as he used to do upon *Saturdays*, to *Richmond* to hunt; and if they had Notice from *Durance* and *Chambers* that he was so to do, which Notice they had; and every Thing was prepared in order to have perpetrated this villainous Design: But it happened that the King went not abroad that Day, of which they had Notice about Noon, from *Chambers* to *Charnock*, and *Charnock* sent Word so to *Porter*'s Lodgings; and then the Order for their getting together was countermanded, and the Note by which *Charnock* sent Word, was subscribed with the Name of *Robinson*; which you will hear is a Name he goes by, as well as by that of *Charnock*.

Thus they were disappointed at that Time: But they were not discouraged from pursuing this inhuman Enterprize; but resolved to go on, the next Opportunity that should be given. And to omit several Things that intervened, which the Witnesses will give you an Account of, on the *Friday* following they met again, to have every Thing ready against the next Day, which was *Saturday* the 22d of *February*; when they expected the King would go abroad, as he usually did on that Day of the Week;

The Continuance of the Attorney General's Speech in Charnock's Trial.

1693. 8 W. 3. Week; and that Meeting was at the *Sun* Tavern in the *Strand*, and there were preſent Captain *Porter*, Sir *William Perkins*, Sir *George Barclay*, and Mr. *Charnock*; and at that Time there was a Diſcourſe amongſt them about the Diſappointment, which they had had the Week before, and ſome of them had a Jealouſy, that a Diſcovery had been made of their Deſign: But then, upon further Conſideration, they concluded, If it had been ſo, they ſhould not have met there, but have been taken up: And therefore they concluded, the King's ſtaying at Home that Day was but accidental; and ſo reſolved to put their Conſpiracy in Execution the next Day. While they were there, ſeveral Perſons, for whom Captain *Porter* had undertaken, that is, one *Cranborne*, *Kenrick*, and *Keys* the Priſoner at the Bar, came to *Porter*; theſe were carried into another Room, and commanded all to be ready the next Day, when it was reſolved to put the Aſſaſſination in Execution: And then Captain *Porter* asked *Kenrick* for *Sherborne*, who, it ſeems, had been undertaken for; but it was anſwered, That he asked ſo many Queſtions about the Matter, that he did not think fit to truſt him.

The next Morning they met again, at Captain *Porter*'s Lodgings; and there met (as the Witneſſes will tell you) amongſt others, Mr. *Pendergraſs*, Mr. *Keys*, and Mr. *King*: *King* brought a Meſſage to Captain *Porter* from Sir *George Barclay*, to know the Names of thoſe that were concerned; and upon that Meſſage, Captain *Porter* writ down the Names of his Men, who were for his *Quota*, and ſent the Liſt by *Cranborne* to Mr. *Charnock*, to add his Liſt to it, of the Men he was to have under him: *Cranborne* afterwards came back, and brought the Liſt that Captain *Porter* ſent, with the additional Liſt ſent by Mr. *Charnock*, written with his own Hand, and ſubſcribed *R. C.* and *Cranborne* told them, that *Chambers* had ſent Word, that the King would go out that Morning: At the hearing of which, there was much Joy amongſt them; for they hoped then their wicked Deſign would be put in Execution that Day. There was a Diſcourſe then likewiſe, that *Porter* had a Piece which carried ſix Bullets; and this, it was ordered, ſhould be put into the Hands of *Pendergraſs*, who was to be one of Sir *George Barclay*'s Men, to attack and fire into the King's Coach.

This was upon *Saturday* the 22d of *February*, when they had News that the King was to go abroad, and every Thing was to be put in Execution at his Return from *Richmond*. From Captain *Porter*'s Lodgings they went to the *Blue Poſts* in *Spring-Garden*; but about Twelve o'Clock there came News from *Chambers*, one of the orderly Men at *Keuſington*, that the King did not go abroad that Day: This put them into a very great Confuſion; they then thought ſome Diſcovery muſt needs be made, becauſe of the Diſappointment two *Saturdays* together; and *Keys*, the Priſoner at the Bar, came up and told them, that the Guards were all come back in a Foam, and the King's Coaches were brought back to the *Meuſe*: And this confirmed them in their former Jealouſy, that the Matter was diſcovered; upon which Captain *Porter*, Mr. *Pendergraſs*, and Mr. *Keys*, went together to lie hid ſome Time; but they ſaid, they would ſend *Keys* to Mr. *Charnock*, to let him know where they might be heard of; and if the Matter was not diſcovered, they would ſtill go on, and put it in Execution: But they could not part without drinking ſome traitorous Healths, which the Witneſſes will tell you of, to the Reſtoring of the late King and his Queen, and the Prince of *Wales*; and after all, one of the Company taking an Orange, began a Health to the Squeezing of the Rotten Orange; and in this Manner it was drank by all of them before they parted, though they were under the Apprehenſion at that Time of being diſcovered already. 1693. 8 W. 3.

This is the Beginning and Progreſs of the ſeveral Conſultations that were had, for the carrying on this execrable traitorous Conſpiracy. I have opened it ſhortly to you; but you will hear it much fuller, in it's ſeveral Parts, by the Witneſſes. By what I have opened, you cannot but obſerve, that it was very near coming to be executed, if there had not been a Diſcovery of it Time enough, through the Providence of Almighty God, to prevent it. They had agreed, after the intended Aſſaſſination, to keep together till they came near the Town, and then they were to lie hid till the *French* Troops landed; which they were aſſured of, were ready upon the leaſt Intimation of the Succeſs of this Conſpiracy.

Gentlemen, every Body may gueſs at the diſmal Conſequences that would have followed, had this bloody Deſign taken Effect; and I am ſure, as we and our Poſterity could not have expected any thing leſs then the perpetual Yoke and Burden of Slavery and Popery, if it had pleaſed God to permit this Conſpiracy to take Effect; ſo I hope we ſhall always remember the merciful Hand of Providence, that has detected and diſappointed it.

Gentlemen, I ſhall not detain you any longer; I have opened to you part of that which will more fully be made out by the Witneſſes; only I would obſerve, that the Providence of God has not only made a Diſcovery to prevent the Execution of this abominable Villainy; but has brought this Conſpiracy ſo far to Light, by ſuch unqueſtionable Teſtimony, that no Man can doubt of the Reality of it; which, I hope, will raiſe in every honeſt Man's Mind an Abhorrence and Deteſtation of thoſe Principles upon which ſo villainous and barbarous a Deſign was founded; and I think I may ſay, that after the Evidence you will hear this Day, no one will pretend any Doubt of the Truth thereof; but either ſuch as are ſorry for the Diſcovery, or ſuch as knew too much of the Conſpiracy before. I ſhall trouble you no further, but call our Witneſſes, who will give you a full and clear Account of this Conſpiracy.

The King's Witneſſes being called, Captain *Porter* was ſworn, and teſtified, That Mr. *Charnock* and he lodged in the ſame Houſe, and that Sir *William Perkins*, who lodged there alſo when he came to Town, informed them that ſome Friends were come from *France*, *Porter's Evidence.*

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France, and ſomething was doing that would be for the King's Service: And a little after Mr. *Charnock* acquainted this Witneſs, that Sir *George Barclay*, and thoſe that came from *France*, had brought a Commiſſion to levy War upon the Perſon of King *William*, and asked him (the Witneſs), how many he could bring to join them, if the King landed. That afterwards Sir *George Barclay* and Major *Holmes* came and talked with him and Mr. *Charnock*, at their Lodgings, of the Deſign, and they had ſeveral Meetings after this, particularly at the *Globe* in *Hatton-Garden*, the *Nag's-Head* in St. *James's-Street*, and the *Sun*-Tavern in the *Strand*; and in all theſe Places they conſulted which was the beſt Way to aſſaſſinate the Prince of *Orange* (his Majeſty). Sir *George Barclay* ſaid, he had as much Money as would furniſh out about Forty Horſe; Captain *Charnock* ſaid, he would bring Six or Seven, Sir *William Perkins* ſaid, he would lend Five Horſes; he (the Witneſs) ſaid, he would bring Seven Men and Horſe: That ſome propoſed to ſet upon the King as he came from *Richmond*; others at *Kew*, or in *Richmond*-Park; but Mr. *Knightley*, Mr. *King*, and the Witneſs going to view the Ground, Sir *George Barclay*, on their Report, was of Opinion, that the Lane leading from *Brentford* to *Turnham-Green* was the propereſt Place; in which the reſt concurred: And it was agreed to divide themſelves into three Parties, one to attack the Coach, and the other two the Guards; and they were to put their Deſign in Execution on *Saturday* the 15th of *February* laſt; the King uſually going to *Richmond* on *Saturdays* to hunt: And to prevent Suſpicion, they were to lie diſperſed in ſeveral Inns about *Brentford* the Night before; and when the Matter was over, Sir *George Barclay* directed them to get to *London* and lie concealed, aſſuring them, there would ſoon come over a ſufficient Number to their Aſſiſtance from abroad, and four or five Thouſand *French* would make Diverſion at the ſame Time in *Scotland*.

That they were preparing to put the Deſign in Execution on *Saturday* the 15th of *February*; but Mr. *Charnock* wrote the Witneſs a Note, that the King did not go out that Day.

That on the *Friday* following, the Conſpirators met at the *Sun*-Tavern in the *Strand*, and diſcourſed of their Diſappointment, and ſeveral were afraid the Deſign was diſcovered: However, it was reſolved to endeavour to execute it the next Day, being *Saturday* the 22d of *February*; when Mr. *Charnock* deſired a Liſt of his (the Witneſs's) Men, and ſent him a Liſt of his own: And they were preparing all Things to put the Deſign in Execution; when they received News that the King did not go out that Day neither: Whereupon they agreed to diſperſe themſelves, and on *Thurſday* he (the Witneſs) and Mr. *Pendergraſs* were apprehended.

It being demanded, which of the Priſoners were preſent at their Conſultations? *Porter* anſwered, Mr. *Charnock* and Mr. *King* were at all of them; that *Keyes* was his Servant a Year and half, and preſent at moſt of their Conſultations, and hired Horſes to be employed in the Buſineſs, and agreed to be an Actor in it. Mr. *Porter* teſtified further, That the Winter before this, there were ſeveral Meetings and Conſultations between Captain *Charnock*, Sir *William Perkins*, and himſelf, of the like Nature; and they were of Opinion, that the quieteſt Way of Reſtoring King *James* was, to knock the Prince of *Orange* on the Head; and the Reaſon they did not attempt it then, was, becauſe they wanted a Commiſſion from *France*, which they thought was neceſſary to authorize them to do it.

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Mr. *De la Rue* being ſworn, teſtified, That this Conſpiracy had been carrying on ſeveral Years; and that the laſt Year there were ſeveral Conferences about it, between Sir *William Perkins*, Capt. *Porter*, Capt. *Charnock*, and others: That *Charnock* told him they had ſent to King *James* for a Commiſſion to authorize them to carry the Prince of *Orange* to *France*, if they could take him alive; and if they could not, they agreed to excuſe themſelves, by pretending he was killed by a random Shot: That the Commiſſion being delayed a long Time, they once agreed to do it without a Commiſſion; and a few Days before the King went to *Flanders* laſt Year, he was told, all was ready; only they wanted a Ship to carry off the Prince of *Orange*, which occaſioned the deferring the Deſign till the preſent Winter.

That in *November* or *December* laſt, *King* the Priſoner told this Witneſs, that a Major General would come from *France*, and that there was a Man of Quality in Town would diſburſe two or three Thouſand Pounds, to buy Horſes (as he underſtood), if King *James* would give Orders for it. That *King* alſo told him, on the 9th of *February*, there was the fineſt Place to put their Deſign in Execution that was poſſible, within a Quarter of a Mile of the King's Houſe at *Richmond*: But afterwards it was reſolved to aſſaſſinate his Majeſty in the Lane coming from *Brentford* to *Turnham-Green*; becauſe Sir *George Barclay* was not ſure of Horſe enough to carry him off: That Sir *George* was to command the Eight Perſons who were to aſſault the King, and thoſe that were in the Coach; *Charnock* was to attack the Guards in the Rear, and *Rookwood*, that came with a Party from *France*, and Capt. *Porter* were to attack the Guards on each Flank: That after the firſt Diſappointment (*viz.*) on the 18th of *February*, he met Mr. *Charnock*, who obſerved, that People who were forward and ſanguine, were now grown cold, and believed the King had Notice of their Deſign; however, he might depend upon it, the main Buſineſs (the Invaſion) would go on. That on *Saturday* Morning (the 22d) they were aſſembled at Capt. *Porter's* Lodgings in *Maiden-Lane*, and preparing to make another Attempt: And Captain *Porter* told this Witneſs, that Capt. *Pendergraſs* was to be one of the Eight under Sir *George Barclay*, that were to aſſaſſinate the King; and he was to lend him a Gun that would carry ſix or ſeven Bullets: Whereupon *King* ſaid to Capt. *Pendergraſs*, he hoped he would not be afraid of breaking the Glaſs

1695. 8 W. 3. Windows: That Capt. *Porter* at the ſame Time ſent a Liſt of his Men to Capt. *Charnock*, and the Meſſenger brought back a Liſt of Mr. *Charnock*'s Men, under his Hand, ſubſcribed *R. C.* And while they were continuing their Preparations, Word was brought that the King did not go abroad that Day; and that the Guards who were ſent to *Richmond*, were returned back all in a Foam; and the King's Court was returned from *Kenſington* to the *Meuſe*-Gate: Whereupon they all looked very blank; and *Porter* asked *Pendergraſs* to go out of Town with him, and ſent *Keyes* to give the reſt of the Conſpirators an Account, there was no Occaſion for them; and ſo they diſperſed: But, before the Company parted, there were ſeveral Healths drunk, as To the late King's Reſtoration; A Health to the Prince of *Wales*, the late Queen, and the *French* King; and Capt. *Porter*, taking an Orange in his Hand, and ſqueezing it, began a Health *to the Squeezing of the Rotten Orange*; and ſaid, though they were diſappointed one Day, he hoped to have another; and that *Keys* dined with them, and drank theſe Healths with the reſt of the Company.

Pendergraſs's *Evidence.* Captain *Pendergraſs* was then ſworn, and confirmed the Teſtimony of *Porter* and *De la Rue*; adding, that upon their Diſappointment, he went out of Town to *Epſom* with Capt. *Porter*, and from thence to *Leatherhead*, where *Keys* and they were taken and brought back to *London*.

Bertham's *Evidence.* *Bertham* depoſed, That Mr. *Charnock* propoſed to him to be one of the Party to cut off the King, as the readieſt Way to facilitate an Invaſion that was intended from *France*, to reſtore King *James*.—— That on the 22d of *February*, after their Diſappointment, he met Mr. *Charnock* at *Lincoln's-Inn*-Gate, who told him, Warrants were out againſt them; and they had as good go out to *Kenſington*, and do the Work at once, take off the Spark, and then they ſhould be quiet, and have the King peaceably here.

Boyſe's *Evidence.* Mr. *Boyſe* depoſed, That he came from *France* the beginning of *June* laſt, and that on the 14th of *February*, going to viſit *King* the Priſoner, he told him there was a great Undertaking in hand; and asked him, if he would make one, and he would provide him a Horſe, and give him (the Witneſs) Twenty Shillings to buy Boots; but he never told him the Deſign was to take off the King, only ordered him to be ready, and not to be out of the Way; and ſaid that Sir *George Barclay* was to command the Party; and there were about Forty, or Five and Forty, concerned in the Deſign.

Charnock's *Defence.* Capt. *Charnock*, in his Defence, ſaid, He ſuppoſed the Evidence of what was done laſt Year was nothing to the Purpoſe, there being nothing mentioned, in the Indictment, of the laſt Year.

But the Court obſerved that it was ſaid in the Indictment, *Divers Days and Times, as well before as after*; and therefore the Indictment comprehended what was done laſt Year as well as this: Nor were the Witneſſes, or the King's Counſel, tied up either to the particular Time or Place mentioned in the Indictment, ſo it was within the County, and before the Indictment preferred. All that was to be regarded was, that no Evidence was admitted of any other Species of Treaſon, than was contained in the Indictment. 1695. 8 W. 3.

Then Mr. *Charnock* objected, that *Porter* was not a legal Witneſs, having made himſelf a Criminal, and forfeited his Life by his own Confeſſion; and now hoped, by ſwearing againſt others, and taking away their Lives, to ſave his own, which muſt affect the Credibility of his Teſtimony. If he was allowed to be a legal Witneſs, he could not be a good one. Objections to Porter's Evidence.

The Court anſwered, That not only in Treaſon, but in Robery and Felony, the Parties were ever allowed to be good Witneſſes againſt their Accomplices.

Mr. *Charnock* continued his Defence, and obſerved, as to Capt. *Porter*'s Evidence, that he acknowledged, he (the Priſoner) had never ſeen the Commiſſion from King *James*; and that, though he teſtified they were to command a Party, he did not ſay which Men were to be of it; and it was not to be ſuppoſed, when the Deſign was ſo near being put in Execution, it ſhould not be known who were to engage in it: And though *Porter* ſaid he ſent him a Liſt of Names written with his own Hand, he did not ſay he ſaw him write it; and Similitude of Hands was never thought to be good Proof in Criminal Caſes: Nor was there any Proof of their providing Arms or Horſes, or any other Overt Act of this bloody Aſſaſſination, which he confeſſed he contrived and carried on himſelf. King's *Defence.*

That the Evidence of Mr. *De la Rue* was but Hear-ſay; and even that very improbable; particularly the Scheme of carrying the Prince of *Orange* alive into *France*. How was it poſſible they ſhould carry him off to Sea? They muſt have been Madmen to have entertained ſuch a Chimæra. That Captain *Porter* and *De la Rue* contradicted one another alſo in their Evidence. Captain *Porter* ſaid, they were to attack the Guards together; and the other ſaid, that he (the Priſoner) was to attack the King with Sir *George Barclay*. That *De la Rue* did not ſay he talked to him about killing the King, but in general of the Affair; and, indeed, that it appeared *De la Rue* was ſet to trepan him, which ſhews he bore him Malice; and cited Sir *Robert Atkyns*, who held, That he that acknowledged himſelf to be Partaker of the Crime, muſt be a bad Man, eſpecially if it appeared the Witneſs had trepaned the Priſoner. *Shall ſuch a one* (ſays Sir *Robert*) *be a credible Witneſs, and believed againſt the Priſoner? God forbid!*

That the Evidence of *Pendergraſs* againſt him conſiſted of Hear-ſay alſo. And as to *Bertham*'s Evidence, it was very improbable that this Matter, which was ſo great a Secret, he ſhould communicate to a private Trooper: Nor could any body tell what to make of thoſe Words, *Take off the Spark*. He did not ſay he talked to him of killing the King, but only that he might ride out and take the Air; and there he ſhould meet with his Acquaintance.

He

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He hoped, therefore, the Court would be of Opinion, that the Evidence produced againſt him was frivolous and weak; and that, if it were all true, it was only Diſcourſe. They were forced to ſupply in Words what was wanting in Fact. He did inſiſt upon it, there was not plain and manifeſt Proof, but only Preſumptions, and deſired the Judges would tell the Jury plainly, what was legal Evidence, and what was not; and then what was ſufficient Proof of any one Overt Act or Species of Treaſon: That they would not leave it to the Apprehenſion of the Jury, but inform them truly, what was legal Evidence, and what of that Sort had been given at this Trial. He added, That this was a ſtrange Sort of Conſpiracy: Forty Men only to commit this Fact on the King in his Coach, and to attack the Guards. Could it be ſuppoſed that any Man, in his Senſes, would attempt ſuch a Thing, without any Regard to his own Security? The Guards were at leaſt treble the Number, and much better appointed and provided: And that Forty ſhould attack treble their Number, in divided Bodies, were to mix Fancy and Madneſs with Reſolution; eſpecially when they had no Caſtle or Fortreſs to fly to, and none to ſupport and aſſiſt them: They ought to be confined to *Bedlam* rather than *Newgate*, if they were capable of ſuch Raſhneſs and Folly.

King's Defence.

Then Mr. *King* entered upon his Defence, and demanded of Capt. *Porter*, If there was any thing mentioned of killing the King, when they rode out to view the Ground? To which *Porter* anſwered, That the Day before they went to view the Ground, they dined together at the *Nag's-Head*, and *King* asked if he (the Witneſs) was to meet *Knightley*, and view the Ground, in order to ſettling the Deſign which was then talked of and conſulted about: And Capt. *King* deſired to go with them; and they lay at *Knightsbridge*: And while they were viewing the Ground, they diſcourſed of the Situation of the Place; and *King* did not approve of the Place on this Side the Water, but liked the Ambuſcade better, which was to have been on the other Side the Water.

King replied, he did, indeed, go abroad with Capt. *Porter* and Mr. *Knightly*, but it was merely to take the Air; and obſerved, as to Mr. *De la Rue*'s Teſtimony, that he did not ſay he ever told him of a Deſign to deſtroy the King: And Mr. *Pendergraſs* ſaid, they diſcourſed of the Matter, but did not explain what that Matter was; nor did *Boyſe* charge him with a Deſign of killing the King: And as to what was Treaſon, and what was Evidence of it, he left it to the Court to inform the Jury.

Keyes's Defence.

Keyes the Trumpeter being ordered to enter upon his Defence, ſaid, he was Servant to Mr. *Porter*, who was now become a Witneſs againſt him; and that he did nothing but by his Orders and Perſuaſion.

The Chief Juſtice told him, the Commands of his Maſter could not excuſe his having committed High Treaſon: It was proved he had bought Horſes, and was acquainted with the Deſign, and engaged in it.

Keyes replied, he knew nothing of it; his Maſter was pleaſed to jeſt with him ſome Times, and he might ſay Things he did not regard. 1695. 8 W. 3.

The Chief Juſtice's Directions to the Jury.

Then the Chief Juſtice directed the Jury, and ſaid, It was very true, as Mr. *Charnock* had obſerved, that bare Words were not Treaſon in ſome Caſes: Looſe Words, ſpoken without any relation to any Act or Deſign, were not Treaſon, or an Overt Act of it; bnt Arguments and Words of Perſuaſion, to engage another in ſuch a Deſign or Reſolution, and directing or propoſing Means to effect it, were Overt Acts of High-Treaſon: It was the Imagination, the compaſſing, and deſigning the Death of the King that was the Treaſon; there was no Way of diſcovering thoſe Compaſſings and Imaginations, but by ſome External Act that manifeſted ſuch Intention or Purpoſe; and any Thing that was a Manifeſtation of ſuch a Deſign was an Overt Act: And here had been proved ſeveral Meetings and Conſultations, and Propoſals at thoſe Meetings, about the Ways and Methods for bringing about the Deſign of Aſſaſſination. And it was never yet doubted, but to meet and conſult to kill the King, was an Overt Act of High-Treaſon; and Mr. *Charnock*'s endeavouring to engage *Bertham* in the Enterprize was another Overt Act.

As to that Objection to the Credibility of the Witneſſes, That they had acknowledged themſelves involved in the ſame Crimes, they were however legal Witneſſes; but their Credit in this, as in all other Caſes, was left to the Jury: That ſuch Evidence had been always allowed; and unleſs the Accomplices were admitted to be Witneſſes, Governments could never be ſecure againſt ſuch villainous Enterprizes.

All three convicted,

The Jury, withdrawing for half an Hour to conſider of the Evidence, brought in all the three Priſoners GUILTY; and then the Court adjourned.

In the Afternoon the Priſoners were brought into Court again, and it being demanded of them ſeverally, What they could ſay, why Judgment ſhould not be pronounced againſt them? Mr. *Charnock* again teſtified, They ought to have had Counſel and a Copy of the Indictment, *&c.* according to the late Act: He alſo made ſome trivial Objections to the *Latin* of the Indictment, which being overruled, the uſual Sentence in Caſes of High-Treaſon was pronounced, and they were all executed at *Tyburn*, on *Wedneſday* the 18th of *March* 1695-6. when they left the following Papers with the Sheriffs.

condemned,

and Executed.

Mr. *Charnock*'s Paper.

The Papers left with the Sheriffs.

THAT I might avoid Diſtractions, and be compoſed as much as is poſſible at the Time of my Execution, I thought it much more proper to communicate this to the Sheriffs, than to give my ſelf the Uneaſineſs of ſpeaking, leaving it to them to publiſh (if they ſhould think convenient) for the Satisfaction of the World; and in what I have to ſay, I have taken as much Care as I could to be

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be ſhort, that I might not loſe Time in my greateſt Concern.

As concerning an Invaſion intended by King *James* upon *England*, there was certain Intelligence of it from abroad, I preſume every Body was ſatisfied; and to the facilitating of which, I own that my ſelf and ſome others did agree upon the Undertaking to attack the Prince of *Orange* and his Guards, for which I am now to ſuffer: But I think my ſelf obliged, by all the Ties imaginable, both of Conſcience and Honour, to declare, that as for any Order or Commiſſion of King *James*'s, for aſſaſſinating the Prince of *Orange*, I never ſaw nor knew of any; but have had frequent Aſſurances of his having rejected ſuch Propoſals when they have been offered.

I confeſs, I did hear that there was a Commiſſion arrived for levying War; and which was natural to believe, if the King was in ſuch a Readineſs to come over as was reported; but if there was any ſuch Authority as that, I declare I never ſaw it.

As to what regards the Body of the *Roman Catholicks*, I muſt do them this Juſtice, and which I dare be poſitive in, that they had no manner of Knowledge of this Deſign: Nor do I believe it was communicated to any other Party of ſuch as are reputed the King's Friends; but carried on merely by a ſmall Number, without the Advice, Conſent, or Privity of any Parties whatſoever.

I ask Forgiveneſs of all the World for what Offences or Injuries I have done to them; and I am (I bleſs Almighty God) in perfect Charity with all Mankind.

Robert Charnock.

Mr. *King*'s Paper.

I AM now within a few Moments of Eternity, brought to this Place by the juſt Hand of God, in Puniſhment of all my Crimes; but particularly of that of which I have been lately arraigned, and for which I ſtand here condemned; but I hope that Goodneſs of God, which has given me a Senſe of my Wickedneſs, will accept my Repentance, and ſhew Mercy on me; which I hope to obtain through the Paſſion and Merits of my Redeemer, upon whom I entirely caſt my ſelf. 1695. 8 W. 3.

And that I may find his Mercy, I think my ſelf obliged to do Juſtice to my Neighbour, that ſo none may ſuffer wrongfully on my Account: And therefore, as I am ſoon to anſwer the Truth of what I ſay before the Tribunal of God,

Firſt, I declare, That I never ſaw any Order or Commiſſion for King *James*'s promoting the Aſſaſſination for which I am condemned, neither do I know of any ſuch Order or Commiſſion.

Secondly, That this Deſign was not undertaken with any general Knowledge or Approbation of any Body of Men, either Catholick or Proteſtant.

Laſtly, That I did not engage in it on Preſumption of any King-killing Principles that could juſtify ſuch an Undertaking; but was drawn into it by my own Raſhneſs and Paſſion; for which, and all other Sins, I heartily beſeech God to forgive me.

And I hope that ſuch who think the Misfortune of their Impriſonment or Trouble is derived from my having been engaged in this Enterprize; or ſuch to whom it has any ways given Scandal, that they will admit me to their Pardon, as I freely and heartily forgive all Mankind. In this Diſpoſition of a ſincere Repentance, and true Charity, I commend my Soul into the Hands of God, and hope to find Mercy from him: And for this I beg all your Prayers.

Edward King.

Mr. *Keyes*'s Paper.

I AM going to appear before the living God: I truſt in his Mercy that he will forgive all my Sins committed to this laſt Moment of my Life. God is juſt in all his Judgments, and I accept of this Death as the Puniſhment of my Iniquities. I forgive all my Enemies, and hope through a hearty Repentance, and the Merits of my Saviour, to obtain Mercy.

HaveMe rcy on me, O Father of Mercy, and through thy only Son forgive me all my Sins! *Thomas Keyes.*

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Sir John Freind's *Trial.*

The Trial of Sir JOHN FREIND, Knight, for *High-Treaſon*, at the *Old-Baily*, *London*, on the 23d of *March* 1695-6. 8 *W.* 3.

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The Indictment.

THE Indictment charges the ſaid Sir *John Freind* with High-Treaſon, in compaſſing and imagining the Death of the King, and adhering to his Enemies: And that the ſaid Sir *John Freind*, in Proſecution of his ſaid Treaſons, did, on the firſt Day of *July* in the Seventh Year of his preſent Majeſty, and divers other Days and Times, during the preſent War with *France*, conſult with *Robert Charnock*, and divers other Traitors, how to procure Forces from the *French* King to invade the Kingdom, and to levy Forces within the Kingdom to join the Invaders: And that he did ſend the ſaid *Robert Charnock* to *France*, to propoſe to the late King *James* the obtaining the ſaid Forces of the *French* King: And that the ſaid Sir *John Freind* did traitorouſly accept a Commiſſion from the ſaid King *James*, to be a Colonel of Horſe of the Forces intended to be raiſed within

1695. 8 W. 3. within this Kingdom: And that the ſaid Sir *John* actually raiſed, liſted, and kept in Pay, divers Officers and Soldiers, in order to join the *French* King's Forces on the intended Invaſion; and bought up, and provided Horſes and Arms for them; againſt the Duty of his Allegiance, *&c.*

The King's Evidence being called, and Captain *George Porter* ſworn, Sir *John Freind* demanded, if he was a Proteſtant or a Papiſt? But the Court told him, the Witneſs was not bound to anſwer that Queſtion; becauſe it might ſubject him to a Penalty.

Porter's Evidence.

Then Captain *Porter* depoſed, That about the latter End of *May*, or the Beginning of *June*, then laſt paſſed, the Conſpirators had two Meetings; the firſt at the *King's-Head* in *Leaden-Hall-Street*, and the other at Mrs. *Mountjoy's* in St. *James's-Street*: At the firſt Meeting were preſent my Lord *Montgomery*, my Lord *Aylesbury*, Sir *John Freind*, Sir *William Perkins*, Sir *John Fenwick*, Mr. *Cook*, Captain *Charnock*, and himſelf; and Mr. *Goodman* came in after Dinner: At theſe Meetings they conſulted and agreed to ſend *Charnock* to *France* to King *James*, to deſire him to borrow of the *French* King Ten Thouſand Men, to make a Deſcent in *England*; and that *Charnock* ſaid, he did not care to go on a fooliſh Errand; and therefore deſired to know, what King *James* might expect from them. Whereupon they ſaid, he might aſſure the King whenever they had Notice of his Landing, they would join him with a Body of Two Thouſand Horſe, and every one of them obliged himſelf to bring his *Quota*.

That he ſaw *Charnock* after he came back from *France*, and he told him (this Witneſs), That King *James* thanked them for their Kindneſs; but the *French* King could not ſpare ſo many Men that Year: That he (the Witneſs) was at another Meeting at the *Nag's-Head* in St. *James's-Street*, with Sir *George Barclay*, Sir *John Freind*, Sir *William Perkins*, Mr. *Ferguſon*, and Captain *Charnock*; and *Harriſon* a *Popiſh* Prieſt came in after Dinner, and ſome of them whiſpered together; whereupon Sir *John Freind* ſaid, Is there any Thing behind the Curtain? If there be, I am not fairly dealt withal; I will proceed no further.

Blair's Evidence.

Captain *Brice Blair* depoſed, That about two Years before, Sir *John Freind* ſhewed him a Commiſſion from the late King *James*, conſtituting him a Colonel of Horſe; and that Sir *John* promiſed him (the Witneſs), that he ſhould be his Lieutenant Colonel; and he ſaw ſeveral Letters in Sir *John's* Hands, that came from my Lord *Melford*, and Secretary *Caroll*, who were with King *James*; and that Sir *John* appointed ſeveral other Officers of his Regiment: That he (the Witneſs) liſted ſeveral Men thereupon, and received ſeveral Sums of Money of Sir *John Freind*, or of Mr. *Piggott* by his Order, to ſpend on them; the laſt five Pounds was paid by *Piggott*, in the Preſence of Sir *John Freind*, at *Jonathan's* Coffee-Houſe; for *Piggott* had received Money of King *James* to repay Sir *John Freind* what he had advanced, for facilitating Colonel *Parker's* Eſcape out of the Tower; and Sir *John Freind* told this Witneſs he had advanced an Hundred Pounds for that Service. 1695. 8 W. 3.

That he (the Witneſs) telling Sir *John* of the Conſpiracy againſt the Prince of *Orange's* Life, he anſwered, he had heard of it; and was afraid it would ruin the King's Affairs: That at another Time Sir *John* ſaid, he would do any Thing till the *Thoulon* Fleet had joined the *Breſt* Fleet; and that he adviſed the Witneſs to ſculk about Town, and ſaid he would keep himſelf private, leſt they ſhould be taken up at that Time.

Then *Blair* produced a Letter, wherein Sir *John* deſired him to meet him at *Jonathan's* Coffee-Houſe; and depoſed, that when he met Sir *John*, in Purſuance of that Letter, he received an Order for the 20*l.* mentioned in it.

The Court demanding, what he received the Money for? *Blair* anſwered, It was to drink with the Men that were to ſerve in his Regiment, to cheriſh them, and keep them together.

Here Sir *John Freind* ſaid, That *Blair* was recommended to him for a very honeſt Man, and came to him ſeveral Times, telling him his Neceſſities were very great; ſaid he was ready to ſtarve, and had a great Charge, and begged for God's Sake he would beſtow ſomething on him, to relieve his Neceſſities: And Sir *John* acknowledged he had given him Money ſeveral Times; but nexer for any other Uſe but as Charity, and deſired he would declare the Truth, if he had not ſeveral Times written theſe Words to him, *I am ready to ſtarve, and beg you will relieve my Neceſſities.*

Blair ſaid, he did acknowledge Sir *John* had given him Charity; but he had ſpent ſo much Money in his Buſineſs, as reduced him to the Want of it; it had coſt him many a Pound more than he had of him: Adding, that he had brought in ſeveral Officers to Sir *John*, particularly Captain *Fiſher*, Captain *Symons*, Captain *Ridley*, and Mr. *Richardſon*, and he promiſed *Fiſher* in his Hearing, he ſhould be his eldeſt Captain, upon Condition he would bring in a Troop.

Sir John Freind's Defence.

Then Sir *John Freind* entered upon his Defence, and ſaid, he owned he was at the Meeting at the *King's-Head* in *Leaden-Hall-ſtreet*; but there was nothing ſpoken of the Government, or of raiſing Men; that the Witneſſes were Papiſts, and not legal Witneſſes againſt Proteſtants; and called Mr. *Courtney* as a Witneſs for him, who teſtified, That he was a Priſoner in the *Gate-houſe* with Captain *Blair*, who declared before him, and ſeveral more, that he knew nothing of a Plot; and that reading the *Flying-Poſt* to him, wherein it was ſaid, He was to be Lieutenant Colonel to Sir *John Freind*, and had received a great deal of Subſiſtence Money for the Regiment; *Blair* ſaid, he knew nothing of any Regiment or Commiſſion: And that at another Time he appeared in an Agony, and under great Remorſe of Conſcience; becauſe he was to be an Evidence againſt Sir *John Freind*; and his Wife ſaid, he would not do it, but to ſave his own Life. Other Witneſſes teſtified, that

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that both *Porter* and *Blair* were reputed *Roman* Catholicks: And Witneſſes appeared to teſtify, That Sir *John Freind* was a Proteſtant, and had a fair Character; and particularly Mr. *Lupton*, Curate of *Hackney*, who ſaid, he officiated as Chaplain in Sir *John*'s Houſe; and that after the Revolution he uſed to pray for King *William*; and he had often heard him ſay, Though he could not comply with the preſent Government, he would live peaceably under it, and never be concerned in a Plot againſt it. Mr. *Hoadly* (Father of the preſent Biſhop of *Wincheſter*) alſo depoſed, That Sir *John* was a good Proteſtant, and uſed to expreſs himſelf with great Deteſtation againſt King-killing, and Aſſaſſinating Crowned Heads.

Sir *John* then inſiſted, That a Conſultation to levy War was not Treaſon; and that the being at a Treaſonable Conſult was but Miſpriſion of Treaſon; and thereupon the Statute of 25 *Edw.* 3. was read; but theſe Points were over-ruled againſt him; and the Lord C. Juſtice *Holt*, in ſumming up the Evidence, obſerved, That this Statute contained divers Species, as, 1. The Compaſſing the Death of the King; and, 2. Levying War: But a bare Conſpiracy, or Deſign to levy War, was not within this Law againſt Treaſon: But *if the Deſign or Conſpiracy be either to kill the King, or to depoſe or impriſon him, or to put any Force or Reſtraint upon him; and the Way propoſed to effect any of theſe is by levying War; there the Conſultation and Conſpiracy to levy War is High Treaſon, though no War be actually levied:* For ſuch Conſultations and Conſpiracies are Overt Acts, proving the deſigning or compaſſing the Death of the King, which was the firſt Treaſon ſpecified in the Statute of 25 *Edw.* 3. That where a Man deſigned the Death, Depoſition or Deſtruction, of the King, and, purſuant to that Deſign, agreed and conſulted to levy War; that this ſhould not be High Treaſon unleſs a War was actually levied: *This was a very ſtrange Doctrine:* A War may be levied, indeed, without any Deſign upon the King's Perſon; which, if actually levied, however, is High Treaſon; but *a bare Deſign* to levy *ſuch a* War was not Treaſon: As for Example, the Riſing in Arms to pull down all Encloſures, to expel Strangers, or to pull down Bawdy-houſes, without Authority, was levying War and Treaſon: But the bare purpoſing and deſigning to Riſe in Arms for ſuch Purpoſes, was not Treaſon. If Perſons aſſembled themſelves alſo, and acted with Force in Oppoſition to ſome particular Law which they thought inconvenient, and hoped thereby to get it repealed, this was levying War and Treaſon: But the purpoſing and deſigning it was not ſo. *When Men endeavoured, in great Numbers, with Force, to procure ſome Reformation in the Church or State, without purſuing the Methods of Law, That was a levying War, and Treaſon within the Statute; but the Purpoſing and Deſigning it was not ſo.* But if there was a Purpoſe to deſtroy the King, to depoſe him from his Throne, to reſtrain him (in the Exerciſe of his Power), or to put any Force upon him, and it was propoſed or deſigned to effect any of theſe by War; ſuch a Conſpiracy or Conſultation to levy War, for bringing any ſuch Deſigns to paſs, was an Overt Act of High Treaſon.

The Chief Juſtice ſums up the Evidence.

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Then the Jury withdrew, and returning half an Hour afterwards, brought in the Priſoner GUILTY.

Sir John Freind convicted.

See the Sentence and Execution after the next Trial.

The Trial of Sir WILLIAM PERKINS, Knt. for *High Treaſon*, at the *Old-Baily*, *London*, on the 24th of *March* 1695. 8 *W.* III.

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Sir William Perkins's *Trial.*

SIR *William*, at his Arraignment, complained that a Cheſt of Plate, that was ſent him by his Wife, was ſeized by the Sheriff: To which Mr. Sheriff *Buckingham* anſwered, it was lodged at Mr. Secretary *Trumball*'s Office; and when they took it from thence they gave a Receipt to return it thither: But the Chief Juſtice ſaid, He muſt have the Plate for his Subſiſtence in Priſon; and ſome Care ſhould be taken about it.

The Priſoner's Plate ſeized.

The Indictment charges the ſaid Sir *William Perkins* with compaſſing the Death of the King, and adhering to the King's Enemies; and that in Proſecution of his ſaid Treaſons, he did, on the 1ſt Day of *July*, in the 7th Year of the King, in the Pariſh of St. *Paul Covent-Garden*, in the County of *Middleſex*, together with *Robert Charnock*, and other falſe Traitors, meet and conſult how to procure Forces from the *French* King, and to raiſe a Rebellion in his Kingdom, and join the ſaid Forces at their Landing: And that they did conſult and agree to ſend the ſaid *Robert Charnock* into *France*, to the late King *James*, to deſire him to procure Forces of the ſaid *French* King, for the ſaid intended Invaſion: And that the ſaid Sir *William Perkins*, to facilitate the ſaid Invaſion, did afterwards, on the 10th of *February*, in the Year aforeſaid, and in the Pariſh and County aforeſaid, conſult and agree with the ſaid *Robert Charnock*, and other Traitors, to aſſaſſinate his preſent Majeſty; and that Forty Horſemen, with Arms, *&c.* ſhould form an Ambuſcade for that Purpoſe. And that the ſaid Sir *William* did undertake, for his Part, to provide five of the Horſes to be employed in that Enterprize; and did buy Horſes and Arms,

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Arms, and liſt Men, in order to raiſe a Rebellion, and join the ſaid *French* King's Forces, as ſoon as the ſaid Aſſaſſination and Murder of the King ſhould be committed; againſt the Duty of his Allegiance, *&c.*

Deſires the Benefit of the late Act, and his Trial might be put off.

Sir *William* having pleaded Not Guilty, deſired be might have Counſel, according to the late Act; for that Act ſaid, *This was juſt and reaſonable:* And what would be juſt and reaſonable To-morrow, was ſo To-day; and if convenient Notice had been given him of his Trial, he ſhould have had the Benefit of the Act: That no one could ever want the Advantage of that Statute for the future, or ſuffer by ſuch Want, but himſelf; which was a particular Hardſhip on him: And deſired that the Trial might be put off but one Day, becauſe ſome of his Witneſſes were abſent, whoſe Names he would give in.

Reſt denied.

But the Chief Juſtice would give no further Time, and ordered the Jury to be ſworn, of whom the Priſoner challenged two, becauſe they were the King's Servants; but was told by the Chief Juſtice, This was no good Cauſe of Challenge. He afterwards challenged 30 more of the Pannel peremptorily.

Porter's Evidence.

Then the King's Witneſſes were called; and firſt Captain *Porter* was ſworn, who teſtified, That Sir *William Perkins* dined with *Charnock*, and the reſt of the Conſpirators, mentioned in the former Trial, at the *King's-Head* in *Leadenhall-ſtreet*; and afterwards met them at Mrs. *Mountjoy*'s in St. *James*'s-*ſtreet*; and that it was reſolved at both Places to ſend Mr. *Charnock* to *France*, to concert Meaſures with King *James*, and the *French* King, for ſending over Ten Thouſand Men, and to aſſure them, the Conſpirators would join them with Two Thouſand Horſe on their landing.

That he met Mr *Charnock* after his Return, who told him, the *French* King could not ſpare ſo many Men at that Time; and that he had acquainted the Lord *Aylesbury*, and Sir *William Perkins*, with the Anſwer he brought.

Capt *Porter* teſtified further, That he was at ſeveral Conſultations with Sir *George Barclay*, Mr. *Charnock*, Sir *William Perkins*, and other Conſpirators, at the *Globe* in *Hatton-Garden*, at the *Nag's-Head* in *Covent-Garden*, and at the *Sun* in the *Strand*, where it was debated, how they ſhould aſſaſſinate the King, as he came from *Richmond* after Hunting. That Sir *George Barclay* ſaid, He had received 800 *l.* from King *James*'s Secretary, to buy Horſes for the Enterprize; and they agreed that Forty Horſe ſhould be the Number, of which Sir *George Barclay* was to furniſh Twenty, with Men, Arms, and all Accoutrements. That he (the Witneſs) promiſed to bring ſeven or eight Horſes: Sir *William Perkins* engaged to bring five, whereof three were to be mounted with his own Men, and the other two by Men the Witneſs was to bring: That he (*Porter*) asked Sir *William Perkins* if he had ſeen the Commiſſion, and he ſaid he had; and that, becauſe King *James* would not truſt any of his Miniſters, it was written with his own Hand; and the Purport of it was, For levying War on the Perſon of the Prince of *Orange* (the King.)

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That the Evening after they had viewed the Ground, the Conſpirators met at the *Nag's-Head*, among whom were Sir *George Barclay*, Mr. *Charnock*, and Sir *William Perkins*; and, upon the Report of the Witneſs, and the reſt that viewed it, it was reſolved, the Aſſaſſination ſhould be on this Side the Water, in the Lane between *Brentford* and *Turnham-Green*; and *Saturday* the 15th of *February* was fixed for the Execution of it: But the King not going abroad that Day, *Saturday* the 22d was reſolved on; and two Men were poſted at *Kenſington* to give Notice of the King's going out. That on the *Friday* before the 22d, Sir *George Barclay*, Capt. *Charnock*, Sir *William Perkins*, and this Witneſs (*Porter*) met at the *Sun* Tavern in the *Strand*; and Sir *George Barclay* ſaid, He was afraid the Thing was diſcovered; but the Witneſs anſwered, If it had, they ſhould not have been in that Houſe at that Time: And Sir *George* replied, *Let us go on and try another Day:* And Sir *William Perkins* being asked if his Horſes were come to Town, he ſaid, they were to come that Night: And the Witneſs ſaying, Two of his were not fit for Service, Sir *William* anſwered, He would ſend to Mr. *Lewis*, the Earl of *Feverſham*'s Gentleman, for two more; and accordingly ſent him two the next Morning, and let him know, Mr. *Lewis* could furniſh two or three more. That the Witneſs did not ſee Sir *William Perkins* on *Saturday* the 22d, but he (the Witneſs) met ſome of the Conſpirators, who were to aſſiſt in the Enterprize; and Notice was brought them firſt, that the Guards were gone abroad, and the King would go out; at which they were all glad; but afterwards News was brought them that the King did not go out; whereupon, they concluded the Thing was diſcovered; and he (*Porter*) went out of Town.

Here one of the Jurymen asked *Porter*, If there was any Diſcourſe of the Aſſaſſination in the Preſence of Sir *William Perkins*, and what he ſaid to it?

Porter anſwered, He could not tell exactly what he ſaid; but only that Sir *William* agreed to it, and was to furniſh five Horſes for it; and ſaid it was neceſſary to be done, for it would facilitate the bringing the King in; though he could not engage himſelf perſonally in it, becauſe he had a Regiment to look after.

Sweet's Evidence.

Then *Abraham Sweet* was ſworn, and teſtified, That about *Chriſtmas* laſt Sir *William Perkins* told him, he expected King *James*'s landing: He had the King's Word for it: His own Troops was compoſed of Old Soldiers; and that there were ſome Gentlemen who were Captains, and old Officers, that would ſerve as Voluntiers under him; and that theſe Words were ſpoken at Sir *William*'s Houſe in *Hertfordſhire.*

That Sir *William* alſo made a Journey into *Leiceſterſhire*, and at his Return, told this Witneſs that he had met his Friends, and the Weſt was as well inclined to the King's Intereſt as the North: That about the 11th of *February*

Sir

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Sir *William* ſent for him (this Witneſs) to come to Town, and he came to Sir *William*'s Lodgings in *Norfolk-Street*: When he told him the Buſineſs he deſigned for him, he did not think he ſhould do, becauſe of his Family; but ordered him (the Witneſs) to ſend him up three of his ſtrongeſt Horſes out of the Country. That the Witneſs being ordered to come to Town again, Sir *William* then asked him, If he had made Proviſion for his Family? and when he anſwered No, Sir *William* asked him, Why he came up then? and he dined that Day with Sir *William*, Mr. *Charnock*, and one *Chambers*, who came that Morning from *Kenſington*, who ſaid *William* kept as cloſe as as a Fox.

Eubank's Evidence.

Eubank, Sir *William*'s Groom, teſtified, That in *January* laſt, he went with his Maſter to *Leiceſter*, and that Captain *Scudamore* went with them, and one *Yarborough*, and a Gentleman in Black, who ſaid they came out of *Yorkſhire*, met them at *Leiceſter*.

That on *Friday* the 14th of *February* laſt, he brought up three Horſes to the *George* in *Holbourn*, and acquainting his Maſter Sir *William* with it, he ſaid he thought he ſhould go Home that Night, but did not go down till the *Monday* following, when Mr. *Holmes* went him: That the *Friday* following they came to Town again, with four Horſes furniſhed with Piſtols; and the next Morning the Witneſs was ſent to *Kenſington* to one Mr. *Brown*, who belonged to the Kitchen, to tell him he came from a Gentleman who lay at a Confectioner's againſt *Gray's-Inn* in *Holbourn*, and his Anſwer was, he had no Buſineſs to ſend; but wrote in the Witneſſes Almanack, he would come to Town about Ten o'Clock, which the Witneſs ſhewed to the Gentleman at the Confectioner's, a luſty, black Man, who ſpoke broad *Scotch* (Sir *George Barclay*), who bid the Witneſs tell his Maſter, he would be at his Chamber ready for him; and that his Maſter thereupon bid the Witneſs make ready the Horſes, for he deſigned to go Home by and by; but he did not come to the Inn till three or four in the Afternoon; when Mr. *Lewis*, and the Lord *Feverſham*'s Gentleman came with him, and asked how many Saddles had been ſent in there, ſaying there ſhould have been Twenty-four in all, but there was but Twenty-two, and two of the Saddles were ſent to two Gentlemen whoſe Horſes ſtood at the *George*-Inn.

That the Witneſs was then ſent down into the Country, and on *Monday* received a Letter from his Maſter, to go to his Servant *Richard Evans*, at Sir *William*'s Houſe in *Warwickſhire*, with a Letter, which he did; and when *Evans* had read the Letter, they went to fetch ſix Boxes Home, that were at a Tradeſman's Houſe about two Miles off, and returning to his Maſter's Houſe with the Boxes in a Waggon, at ten or eleven o'Clock at Night, they buried the Boxes in the Garden; but he did not know what was in them, only *Evans* ſaid, they were precious Goods.

Hipwell's Evidence.

Thomas Hipwell teſtified, That on *Aſh-Wedneſday* laſt, about ſeven in the Evening, *Richard Evans*, and Sir *William Perkins*'s Tenant, came with a Waggon to his Maſter's, Mr. *Haywood*'s, and carried away ſix or eight Boxes. 1695. 8 W. 3

Haywood's Evidence.

Haywood depoſed, That Mr. *Charnock* married his Siſter, and that Sir *William*'s Man brought him a Letter, about *Michaelmas* laſt, from Mr. *Charnock*, to deſire he might lodge the Boxes abovementioned at his Houſe, and that he took them in upon his Brother *Charnock*'s Account: And they were fetched away upon *Aſh-Wedneſday* laſt, as the former Witneſs depoſed.

Whetſtone's Evidence.

Whetſtone, Sir *William*'s Tenant teſtified, That he caaried the ſaid Boxes in his Waggon from Mr. *Haywood*'s, to Sir *William*'s Houſe, on *Aſh-Wedneſday*, in the Night-time, the Servant deſiring it might be done in the Night, and they were put into the Ground by the Side of the Garden-Wall, where he afterwards ſaw them dug up, and there were Arms in them.

Watts's Evidence.

Thomas Watts the Conſtable, depoſed, That he found ſeveral Boxes of Arms hidden underground in Sir *William Perkins*'s Garden (*viz.*) four dozen of broad two-edged Swords without Hilts, and a Box of Hilts, which he ſuppoſed were prepared for them, Thirty-two Carbines, and Twenty-five brace of Piſtols.

Freeman's Evidence.

Freeman, the Hoſtler of the *George*, teſtified, That Sir *William* had often three or four Horſes ſtood at that Inn, and in the Week before the Plot was diſcovered, there came in five on the *Friday* Night; four with Holſters and and Piſtols, and a led Mare; and there were two pair of Jack-boots wrapped up in a Horſe-cloth; and they went away again about *Saturday* Noon.

That there were three other good Horſes ſtood at the *George*-Inn a Week; and Sir *William*'s Groom ſaid he had orders to ſee them fed, but he did not know whoſe they were: That the Horſes were generally about fourteen Hands high, there were no large ſized Horſes amongſt them, and thoſe of Sir *William*'s he had had a great while.

Turton's Evidence.

Turton, the Landlord of the *George*-Inn, depoſed, That the laſt Time Sir *William Perkins* came to his Inn, was the *Friday* before the Plot broke out, when he came with four or five Horſes, and ordered his Groom to get them ready againſt *Saturday* Morning; and on *Saturday* two Gentlemen rode out with two of them, and returning about three Hours afterwards, the Horſes were all of a Sweat, they had rid hard, and in the Afternoon all the Horſes went out of Town. That two or three of the Horſes which came up on *Friday* had Holſters, and there were four or five pair of Horſe Piſtols.

Sir *William* demanding if he did not always ride with Piſtols, *Turton* anſwered, he ſeldom came without two or three Pair, when he had Servants; and that he had known Sir *William* come up with more Horſes at other Times: He had uſed his Houſe four or five Years.

Sir Wm. Perkins's Defence.

Sir *William Perkins*, in his Defence, ſaid, That there was but one Witneſs to any one Overt Act, and the Law required two; and as to his Arms, the Witneſſes did not ſay for what Purpoſe they were provided; and, indeed, he found them in his Houſe when he came

The Chief Juſtice's Directions to the Jury.

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came to his Eſtate, as he could have proved, if he had been allowed Time to ſend for his Witneſſes. He ordered them to be buried, becauſe it was a troubleſome Time, and they might have given ſome Cauſe of Suſpicion, as he was known to be affected to King *James*: However, the having Arms was no Treaſon. As to the Horſes, he had not bought one theſe two Years, and travelled no otherwiſe than he uſed to do; beſides, they were very little Horſes, (Pads) not fit for the Service they were preſumed to be for. He hoped his Life ſhould not be taken away without Proof, and the Law ſtrained to deſtroy him. Levying War was one Species of Treaſon, and aſſaſſination, or Conſpiracy againſt the King's Life, was another. That his Lordſhip had known him many Years, and that his Education was not to War, but the Gown: He had always lived peaceably, and now, in his old Age, was grown lame in his Hands and Feet, by the Gout: It could not therefore be ſuppoſed he ſhould be engaged in ſuch a Buſineſs as this.

That it did not appear he had a Troop; if he had, where were they? There was not one Perſon proved to be liſted, or named: And if he had fooliſhly bragged he had a Troop, when in Reality he had none, this was not Treaſon: He hoped he ſhould not be interpreted out of his Life: And inſiſted again, That the Riſing in Arms and Aſſaſſination were different Treaſons: Depoſing the King was one Thing, and the conſpiring his Death, another. They had ſeen a King depoſed, and yet he was alive; and there ought to be two Witneſſes to each Species of Treaſon. And laſtly, he obſerved, that Capt. *Porter* became a Witneſs againſt him to ſave his own Life, and therefore ought not to be credited; and he was the only poſitive Witneſs to either of the Treaſons; all the reſt was but Preſumption.

The Chief Juſtice's Directions to the Jury.

The Chief Juſtice, in ſumming up the Evidence, obſerved, That the Deſign of Sir *William Perkins* was the Reſtoring of King *James*; and, in order to that, the dethroning of King *William*: That one Way of their effecting this Deſign was, by aſſaſſinating King *William*; the other, by Invaſion and Rebellion: That the conſpiring to invade the Realm, or depoſe the King, were Overt-Acts of High Treaſon, and of the ſame Species of Treaſon as the deſigning to aſſaſſinate him; it was a compaſſing and imagining his Death: And of this there were other Witneſſes, beſides *Porter*; that he told *Sweet*, his Troop conſiſted of old Soldiers; that he bought thirty Saddles, went into *Leiceſterſhire*, and, at his Return, related, that the Weſt was as well inclined as the North: That he had provided great Quantities of Arms, and buried them juſt as the Plot broke out: The Horſes and Saddles alſo came to Town juſt at that Time: All which were Overt-Acts of his compaſſing the King's Death.

As to the Priſoner's Objection, *That* Sweet *proved only Words, and Words were not Treaſon*; Theſe were Words that related to Things; and Mens Diſcourſes and Words explained their Actions. An Action, indifferent in it ſelf, might be ſo explained by Words as to be unlawful: It was lawful for a Man to buy a Piſtol; but if it could be plainly proved, from his own Words or Speeches, that the Deſign of buying it was to uſe it againſt the Perſon or Life of the King, that would make it an Overt-Act, or a Manifeſtation of a Treaſonable Deſign. And therefore, when Sir *William Perkins* ſaid, that the late King would come; that he had a Troop that conſiſted of old Soldiers; and theſe Arms were provided in this Manner, there was ample Proof for what Purpoſe he had provided them: It was not at all probable he found them in his Houſe; and his going into the Weſt, and declaring at his Return that the Weſt were as well inclined to the King's Intereſt as the North (if by the King, he meant King *James*) was another Evidence of his Guilt.

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Sir Wiliam Perkins *convicted,*

The Jury, after half an Hour's Receſs, found Sir *William Perkins* GUILTY: And Sir *John Freind* being brought into Court, Sentence was paſſed upon them both as Traitors: And they were executed at *Tyburn* on *Friday* the 3d of *April*, 1696, when they delivered the following Papers to the Sheriffs.

condemned, and executed.

Sir John Freind's *Paper.*

Sir John Freind's *Paper, left with the Sheriffs.*

KNOWING that I muſt immediately give an Account to GOD of all my Actions, and that I ought to be eſpecially careful of what I ſay in theſe laſt Moments, I do ſolemnly profeſs, that what I here deliver is from my very Soul, with all the Heartineſs and Sincerity of a dying Chriſtian.

The Cauſe I am brought hither to ſuffer for, I do firmly believe to be the Cauſe of God and true Religion, and, to the beſt and utmoſt of my Knowledge and Information, agreeable to the Laws of the Land, which, I have evermore heard, do require a firm Duty and Allegiance to our Sovereign; and that as no foreign, ſo neither any domeſtick Power can alienate our Allegiance: For it is altogether new and unintelligible to me, that the King's Subjects can depoſe and dethrone him on any Account, or conſtitute any that have not an immediate Right in his Place. We ought, I think, not to do this; and ſurely, when it is done to aſſiſt him in the Recovery of his Right, is juſtifiable, and our Duty. And, however things may ſeem at preſent, I do believe, I am ſure I heartily pray, that he ſhall be one Day reſtored to his Rightful Throne and Dominions.

As for any ſudden Deſcent of his Majeſty upon theſe his Dominions, in order to the Recovery of them, I declare I had no certain Knowledge of it; nor can I tell what Grounds there was to believe it; ſo little Reaſon had I to be in a preſent Preparation for it. I ſuppoſe it is not expected I ſhould here endeavour to clear my ſelf of the Aſſaſſination, which was not the thing alledged againſt me; however, it was mentioned, through what Means I know not: As it was inſinuated to my Diſadvantage, I forgive ſuch as were therein inſtrumental; and I do alſo, from the very Bottom of my Soul, freely forgive, and beg of God to do ſo too, ſuch as were any

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ways acceſſary towards the taking away my Life, which I really look upon to be their Misfortune more than mine.

I profeſs myſelf, and I thank God I am ſo, a Member of the Church of *England*; though, God knows a moſt unworthy and unprofitable Part of it; of that Church which ſuffers ſo much at preſent for a ſtrict Adherence to Loyalty, the Laws and Chriſtian Principles: *For this I ſuffer, and for this I die.*

Though I have a perfect Charity for People of all Profeſſions, and do heartily wiſh well, and would endeavour to do ſo, to all my Fellow-Subjects, of what Perſuaſion ſoever. And indeed I have met with a great deal of Uprightneſs and Sincerity among ſome People of very different Opinions in Religious Matters.

And I hope and deſire it may not be taken as an uncharitable Cenſure, or undue Reflection, that I objected to the Legality of Popiſh Evidence, being adviſed ſo to do for my better Security, upon the Foundation of a Statute-Law.

Having owned my ſelf a Member of the Church of *England*, I muſt take this Opportunity, and I do it for God's Glory, to apply my ſelf to you that are Royaliſts of that Church, and of the ſame Faith and Principles with my ſelf: And I beg of you, for God's Sake, and the Love of your Souls, to be very conſtant and ſerious in all religious Offices, and holy Duties of Divine Worſhip and Service, which I have too much neglected, as I own to my great Sorrow: Let no Excuſe, no Dangers, prevent or hinder you in theſe moſt neceſſary and ſerious Matters; and be, I beſeech you, very careful and circumſpect in all your Actions, Behaviour, and Converſation, as I earneſtly exhorted all that came to me.

I have, I thank God, a great deal of Satisfaction in my preſent Sufferings, and have found it ſo ever ſince I have been under them; and bleſſed be God, it doth continually increaſe upon me: And I do now lay down my Life with all Chearfulneſs and Reſignation, in ſure and certain Hope of a Reſurrection to eternal Life, through our Lord Jeſus Chriſt; through whoſe Merits I hope for the Pardon of my Sins, and the Salvation of my Soul.

And ſo, O Lord! into thy Hands I commend my Spirit; for thou haſt redeemed me, O Lord! thou God of Truth.

John Freind.

Sir *William Perkins*'s Paper.

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Sir William Perkins's Paper.

IT hath not been my Cuſtom to uſe many Words, and I ſhall not be long upon this Occaſion, having Buſineſs of much greater Conſequence to employ my Thoughts upon. I thank God, I am now in a full Diſpoſition to Charity; and therefore ſhall make no Complaints, either of the Hardſhips of my Trial, or any other Rigours put upon me: However one Circumſtance I think my ſelf obliged to mention. It was ſworn againſt me by Mr. *Porter*, That I had owned to him, that I had ſeen and read a Commiſſion from the King to levy War upon the Perſon of the Prince of *Orange*. Now I muſt declare, that the Tenour of the King's Commiſſion, which I ſaw, was general, and directed to all his loving Subjects, to raiſe and levy War againſt the Prince of *Orange* and his Adherents; and to ſeize all Forts, Caſtles, *&c.* which I ſuppoſe may be a cuſtomary Form of giving Authority to make War; but, I muſt confeſs, I am not much acquainted with Matters of that Nature: But as for any Commiſſion particularly levelled againſt the Perſon of the Prince of *Orange*, I neither ſaw nor heard of any ſuch.

It is true, I was privy to the Deſign upon the Prince; but was not to act in it; and am fully ſatisfied that very few, or, none knew of it but thoſe who undertook to do it.

I freely acknowledge, and think it for my Honour to ſay, that I was entirely in the Intereſt of the King, being always firmly perſuaded of the Juſtice of his Cauſe; and I looked upon it as my Duty, both as a Subject and an *Engliſhman*, to aſſiſt him in the Recovery of his Throne, which I believe him to be deprived of, contrary to all Right and Juſtice; taking the Laws and Conſtitutions of my Country for my Guide.

As for Religion, I die in the Communion of the Church of *England*, in which I was educated.

And as I freely forgive all the World, ſo, whoever I may any ways have injured, I heartily ask them Pardon.

William Perkins.

The Remarks on the Trials for the Aſſaſſination-Plot, will be found at the End of Mr. Cook's *Trial.*

The

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Rookwood's Trial.

The Trial of AMBROSE ROOKWOOD, Gent. for *High-Treaſon*, at a Seſſions of *Oyer* and *Terminer*, held in the Court of *King*'s-*Bench*, on the 21ſt of *April*, 1696. 8 *W.* 3.

The Indictment.

THE Indictment charges the Priſoner with High-Treaſon, in compaſſing and conſpiring the Death of the King, and the Subverſion of the Government, and to ſubject the People of this Kingdom to the Dominion and Slavery of the *French* King; and to that End, that he, together with *Robert Lowick*, *Charles Cranborne*, *Chriſtopher Knightley*, and other falſe Traitors, did on the 10th Day of *February*, in the Seventh Year of the King, in the Pariſh of St. *Paul's Covent-Garden*, in the County of *Middleſex*, traitorouſly conſult and agree to aſſaſſinate his Majeſty; and that forty Horſemen, of which the Priſoner was to be one, ſhould lie in Ambuſh, and ſet upon the King's Coach at his Return from Hunting; one Party being to attack the Guards, while another murdered his Majeſty: That the Priſoner and his Accomplices did buy and provide Horſes and Arms to effect the ſame; and that the ſaid *Charles Cranborne* did carry Meſſages between the Conſpirators, and a Liſt of the Names of the Perſons who were deſigned to perpetrate the ſaid Aſſaſſination; againſt the Duty of his Allegiance, *&c.*

The Priſoner being arraigned, and pleading Not Guilty, was ordered to be brought into Court again that Day ſeven-night, and he appeared at the Bar with the Counſel that had been aſſigned him, in Purſuance of the late Act, *viz.* Sir *Bartholomew Shower* and Mr. *Phipps*, on the 28th of *April*.

Objections of the Priſoner's Counſel.

The Priſoner's Counſel objected, That there being a Clauſe in the late Act, *That the Priſoner ſhall have a Copy of the Pannel of the Jurors who were to try him, duely returned by the Sheriffs, two Days before the Trial*; the Return muſt be antecedent to his having a Copy: That they had indeed a Copy of the Array of the Pannel delivered them; but that was not a Copy of the Pannel *returned*; for it was no Return, until it came into Court.

But the Court ruled, that the giving a Copy of the Pannel, before the Return, ſufficiently ſatisfied the Words as well as the Intention of the Act; and that no other Conſtruction could be made without great Abſurdities.

Another Objection made by the Priſoner's Counſel was, That they had not a true Copy of the *whole* Indictment delivered them, as the late Act required; for that it did not appear before whom it was taken, the Time when, or the Place where.

The Attorney General anſwered, This Objection came too late; they had admitted it to be a true Copy, by pleading to it: And of that Opinion were the Court.

The Pannel being called over, the Priſoner challenged 34 peremptorily: After which a Jury was ſworn, and charged with the Priſoner.

Then his Counſel moved, that they might offer their Exceptions to the Indictment before Evidence given, according to the Words of the late Act of Parliament.

The Court anſwered They were too late; they ought to have moved this upon the Arraignment, before Plea pleaded, or at leaſt before the Jury were ſworn and charged with the Priſoner; for *after they were once charged, in Caſe of Treaſon, they muſt give a Verdict, and either acquit or convict him.*

That the Deſign of the Parliament, was to reſtrain the Priſoner from moving in Arreſt of Judgment, for Miſ-ſpelling, falſe *Latin*, or little Matters of Form, if he did not move it in a proper Time; having ſuch a Liberty allowed him, as to have a Copy of the Indictment ſo many Days before he was compelled to plead: That although the Words of the Act were *before Evidence given*, it was nevertheleſs intended that they ſhould move at ſuch a Time before Evidence given, as the Law allowed; and that the Act did not eſtabliſh any new Method of Trial.

However, it was propoſed by the Court to the King's Counſel, That, ſince it was a new Act of Parliament, and the Priſoner might be led into this Miſtake by the Penning of the Act, they ſhould not take Advantage of his having lapſed; but indulge him ſo far, as to let him offer his Exceptions now.

To this Mr. Attorney conſented, provided they would confine themſelves to ſuch Heads as were mentioned in that Clauſe of the Act, which only related to Matters of Form; and not offer any Thing to the ſubſtantial Part of the Indictment; which they had ſtill a Liberty of doing in Arreſt of Judgment.

But the Counſel for the Priſoner refuſed to offer any Thing, unleſs they might urge all their Exceptions together.

Objections to Porter's Evidence.

Mr. *Porter* being called to give Evidence, the Priſoner's Counſel oppoſed the ſwearing him, becauſe he ſtood convicted of Felony, and was not capable of being a Witneſs, and the Record of his Conviction was read, and the Priſoner's Counſel inſiſted, that though he had the King's Pardon, that would not reſtore him to his Credit, ſo as to make him capable of being a Witneſs.

A Pardon reſtores a Convict of Felony, before Attainder.

But the Court held, that the King's Pardon was as effectual as a Parliament Pardon, and either of them, before Attainder (as their Caſe was prevented all Corruption of Blood: So that though a Man forfeited his Goods by Conviction

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viction, yet after a Pardon, he is capable of having new Goods, and ſhall hold them without any Forfeiture for ever: For the Pardon reſtores him to his former Capacity, and prevents any further Forfeiture. Indeed, if he had been attainted (condemned or out-lawed) whereby his Blood would have been corrupted, no Pardon, whether it were by the King, or by the Parliament, could purge his Blood, without a Reverſal of the Attainder, by Writ of Error, or Act of Parliament, or expreſs Words in the Act, reſtoring him to Blood: The Conviction, indeed, might be objected to his Credit, but could not be urged againſt his being a Witneſs.

Porter's Teſtimony.

Then Captain *Porter* was ſworn, and teſtified, That there was a meeting of the Conſpirators at the *Globe*-Tavern in *Hatton-Garden*, among whom was the Priſoner at the Bar, Captain *Rookwood*, and there they conſulted of the beſt means to aſſaſſinate the King as he came from *Richmond*: And ſome being of Opinion, that it was beſt to be attempted on the other Side the Water, and others, that it ſhould be done on this Side, Perſons were appointed to view both Places; and upon their Report, it was agreed to do it in the Lane that leads from *Turnham-Green* to *Brentford*; and *Saturday*, the 15th of *February*, was appointed to be the Day, that Mr. *Rookwood*, the Priſoner, was to command a Party of Men that came from *France*, who were to attack the Guards on one Side, and the Witneſs and Mr. *Charnock*, with their Diviſion, were to fall upon the Guards on the other Side, while Sir *George Barclay*, with four Men out of each Party, were to attack the King in his Coach, and kill him, and all that were in it: That there were at this laſt Meeting, Sir *George Barclay*, Captain *Charnock*, Sir *William Perkins*, Major *Holmes*, the Priſoner, Captain *King*, and this Witneſs; and they met at the *Globe*-Tavern, in *Hatton-Garden*.

That on the 15th, Sir *George Barclay* and the Priſoner were at this Witneſs's Lodging, and *Durance*, one of their orderly Men, who lay at *Kenſington* to get Intelligence, brought Word that the King was preparing to go abroad, and a great many Noblemen and Gentlemen with him: However, it was agreed by them to execute the Deſign, if the King went abroad that Day (the Priſoner being preſent): But the Witneſs could not ſay he ſaw him afterwards.

It being demanded, What the Priſoner ſaid, to expreſs his Conſent to this Attempt? *Porter* anſwered, he heard Mr. *Rookwood* ſay, It was a very deſperate Thing, and he was not very willing to engage in it; but, when Sir *George Barclay* ſaid, he ſhould command the Party, he replyed in *French*, *There's an End of it.*

Then it was demanded, If Mr. *Rookwood* made any Propoſal at that ſecond Meeting? *Porter* anſwered, he could not atteſt he heard Mr. *Rookwood* ſay any Thing in particular; but they all agreed to do the Thing that Day.

Harris's Evidence.

Then Mr. *Harris* was called, and the Priſoner's Counſel objected againſt the ſwearing him: That he was entitled to a Thouſand Pounds Reward by the Proclamation, on convicting the Priſoner: But this appearing a Miſtake, he was ſworn, and teſtified, That he was at St. *Germains* the 14th of *January* laſt N. S. That King *James* then ſent for him, and told him, he was ſenſible he had ſerved him well, and now he had an Opportunity of doing ſomething for him. That he would ſend him into *England*, where he ſhould be ſubſiſted; and he ſhould follow the Orders of Sir *George Barclay*; and that the King ordered him twenty *Louisd'ors* to bear his and his Comrade *Hare*'s Charges; and if they were Wind-bound at *Calais*, the Preſident of *Calais* was to ſubſiſt them there, which he did eight or nine Days. That they afterwards came to *London*, and the King having told them they might find Sir *George Barclay* on *Mondays* and *Thurſdays* in the Evening in *Covent-Garden-Square*, and might knew him by a White Handkercheif hanging out of his Pocket, they went thither; but could not meet Sir *George* there: But two or three Days after they came to Town, Sir *George* had Notice of his Arrival, and ſent for him, and enquired after the King and Royal Family; and ordered him five Shillings a Day Subſiſtence while he had no Horſe, and ſix Shillings a Day afterwards: And that the firſt *Saturday* the Aſſaſſination was deſigned, he gave him a Guinea.

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That as to Mr. *Rookwood*, the firſt *Saturday* the Aſſaſſination was to be, he ſaw him at Mr. *Burck*'s Lodgings, in a great Hurry, and ſome Conſternation. That he asked him what they were going about, and Mr. *Rookwood* told him, If he would go down to Captain *Counter*, he ſhould know: And that Captain *Counter* ſaid, they muſt immediately get ready to go to *Turnham-Green*. That they went to the *Woolpack* there, and Sir *George Barclay* came in, and declared they were all Men of Honour; and that the Buſineſs they were going about was, to attack the Prince of *Orange*: But *Durance* came in after that, and ſaid the Prince of *Orange* did not go out that Day. That he was much ſtartled when they talked of attacking the Prince of *Orange*; and that he came next Morning to Mr. *Rookwood*, and asked him, If they were to be the Murderers of the Prince of *Orange*? and Mr. *Rookwood* ſaid, I am afraid we are drawn into ſome ſuch Buſineſs; but if I had known it before I came over, I ſhould have begged the King's Pardon at St. *Germains*, and not have come over hither That afterwards, Mr. *Rookwood*, Mr. *Lowick*, and he, had a Meeting in *Red-Lyon-Fields*, where they diſcourſed about the Matter. That Mr. *Rookwood* ſaid, It was a barbarous Thing; but he was ſent over to obey Sir *George Barclay*'s Orders, which he had ſeveral Times declared he was reſolved to do.

Rookwood's Defence by his Counſel.

That on *Saturday* Morning afterwards, he came to Mr. *Rookwood*'s Lodging, and from thence went to Sir *George Barclay*'s; and there Mr. *Rookwood* gave him a Note or Liſt of ſeveral Names, particularly Mr. *Hungate*, Mr. *Hanford*, Mr. *Hare*, and his own Name at the Top; but that they were the Sham Names they all went by. That he was called *Jenkins* himſelf, and that King *James* directed him to go by that Name. That when Mr. *Rookwood* gave him the Liſt, he told him he was going to *Turnham-Green*, and he muſt go along with him; and ſaid, ſmiling, That he ſhould be his

The Chief Juſtice's Direction to the Jury.

1696. 8 W. 3. his Aid de Camp, and get the reſt of the Gentlemen ready: And that accordingly he went to look for ſeveral of the Perſons; and came back again, and found the Priſoner lying on his Bed, Sir *George Barclay* having told him, the Prince of *Orange* did not go out that Day. That *Rookwood*, *Bernarde*, *Lowick*, and himſelf had met ſeveral Times in *Red-Lyon-Fields*, and talked of attacking the Prince of *Orange*.

That his Horſe ſtood in my Lord *Feverſham*'s Stables, in *Somerſet-Houſe*; as did Mr. *Hungate*'s and Mr. *Hare*'s: He thought there might be five or ſix there, that were deſigned for the ſame Expedition. That Major *Holmes* delivered him his Horſe there, and he had him to another Stable; and that he had Arms delivered him by Captain *Counter*.

Chamberlain's Evidence. *Chamberlain* being ſworn, teſtified, That Six Horſes were ſent into *Somerſet*-Houſe Stables: That Mr. *Lewis* ſent a Note to take Care of them; and they were taken away by Perſons unknown to this Witneſs, about a Week before the Plot was diſcovered: Three of them had ſtood there ten Days, and the other but a Night or two.

Rookwood's Defence by his Counſel. *John Allen* confirmed the Teſtimony of the former Witneſs: Then the Priſoner's Counſel objected, That there were not two Witneſſes to any Overt-Act; and that the being at a treaſonable Conſult was but Miſpriſion of Treaſon, according to ſome Opinions.

The Chief Juſtice anſwered, He did not know what Opinions they meant (there had been ſome ſuch Diſcourſes in Pamphlets, 'twas true; *particularly thoſe of Sir* John Hawles *on the Lord* Ruſſel's *Caſe*); but it was always held for Law, that Conſulting and Agreeing was an Overt-Act.

The Priſoner's Counſel anſwered, That there was no Evidence of an Agreement; and that the Liſt mentioned to be given by the Priſoner to *Harris*, ought not to be given in Evidence, there being no ſuch Overt-Act laid in the Indictment. By the late Act, no Evidence was to be given of an Overt-Act not laid in the Indictment.

Then they were about to call ſome Witneſſes, to prove that Mr. *Porter* was guilty of Robbing on the Highway, of Clipping, Fornication, and Buggery; which they thought would ſufficiently take off the Credit of his Evidence: But the Court ruled, That no Evidence ought to be given of any particular Crime a Witneſs had been guilty of, unleſs he had been convicted of it; but Evidence might be given of his Character in general.

The Priſoner's Counſel anſwered, It was the Crime that rendered the Man infamous; and they did not know why a Man that had the good Fortune not to be taken and puniſhed, ſhould be in a better Condition, as to the Credit of his Teſtimony, than one that was taken and underwent the Puniſhment of the Law.

The Chief Juſtice's Direction to the Jury. The Counſel on both Sides agreeing to leave it to the Chief Juſtice to ſum up the Evidence, his Lordſhip obſerved, That it had been objected by the Priſoner's Counſel, That there was no Overt-Act, legally proved, of a Deſign againſt the King's Life: But Captain *Porter* was poſitive he was at the Conſult at the *Globe* Tavern, where it was debated and reſolved on. And though Mr. *Rookwood* did diſlike it on his firſt being acquainted with it, yet, being ſent over to obey the Orders of Sir *George Barclay*, and Sir *George* producing a Scheme wherein he was to command the Party, and telling him he muſt obey Orders, he anſwered, in *French*, *There is an End of it*: And whether that did amount to a Conſent and Agreement to be engaged in it, he left to the Jury; for, if it did, it was plainly an Overt-Act. 1696. 8 W. 3.

Then *Harris* teſtified, That *Rookwood* told him, he ſhould be of his Party; be his *Aid de Camp*, and go to *Turnham-Green*, and attack the Prince of *Orange*; and that *Rookwood* gave him a Liſt of the Men he was directed to get ready; which was another Overt-Act.

Here *Rookwood* objected, That the Liſt given to *Harris* was not mentioned in the Indictment; but the Liſt in the Indictment referred to Mr. *Cranborne*.

The Chief Juſtice anſwered, That this Liſt of Men, given to *Harris*, was an Evidence of the Conſent and Agreement of Mr. *Rookwood* to command the Party.

To which the Priſoner's Counſel replied, That, by the Words of the late Act, no Overt-Act could be given in Evidence, that was not expreſsly laid in the Indictment; and they had charged in the Indictment, That *Cranborne* had carried a Liſt backward and forward, as an Overt-Act of the Treaſon; which ſhewed the King's Counſel thought it neceſſary to be alledged by this Act of Parliament, or they could give no Evidence of it. But the Liſt they gave Evidence of here, was the Liſt ſuppoſed to be delivered by the Priſoner to *Harris*, which was no Evidence of the Liſt alledged to be carried about by *Cranborne*: And as this Liſt, given to *Harris*, was not mentioned in the Indictment, no Evidence could be given of it.

The Chief Juſtice ſaid, Although the Act did exclude the giving Evidence of an Overt-Act that was not laid in the Indictment, yet it did not exclude ſuch Evidence as was proper to prove that Overt-Act that was laid in the Indictment. Therefore the Queſtion was, Whether the giving this Liſt to *Harris* did not prove ſome Overt-Act that was alledged in the Indictment? There was laid, in the Indictment, an Agreement to kill the King; and, if that was proved, That was an Overt-Act of this Treaſon. And, when the Agreement to that Deſign was proved, there was no Doubt but his giving a Liſt of the Men who were to be Actors in it to *Harris*, was a further Proof that he did agree to it: And then it was very proper to be given in Evidence: For if by the new Statute no one Act could be given in Evidence to prove another, then not only the Overt-Act, but alſo all the Evidence of that Act, muſt be expreſſed in the Indictment.

Concluding, That if the Jury did, in the firſt Place believe, that there were ſuch Conſults and Meetings, where the intended Aſſaſſination of the King was debated and reſolved on, and that Mr. *Rookwood* was preſent, and did agree to it, that was an Overt-Act: And

1696. 8 W. 3. again, if they were ſatisfied, That there was an Agreement to prepare and produce a Number of Men to ſet upon the King and his Guards in the Manner they had heard, and the Priſoner was concerned in making this Proviſion, and was to have a Poſt, and command a Party in that attack; That was a further Proof of that Conſent and Agreement that was laid in the Indictment.

Then the Jury withdrew, and after a Receſs of a Quarter of an Hour, brought in the Priſoner GUILTY. 1696. 8 W. 3.

The Sentence and Execution will be found at the End of Lowick's *Trial, who was condemned the ſame Day Mr.* Rookwood *was condemned.*

1695. 8 W. 3. Cranborne's *Trial.*

The Trial of CHARLES CRANBORNE, for *High-Treaſon*, at a Seſſions of *Oyer* and *Terminer*, held for the County of *Middleſex*, in the Court of *King's-Bench, Weſtminſter*, on *Tueſday* the 21ſt of *April*, 1696. 8 *W.* 3. 1695. 8 W. 3.

The Priſoner's Irons taken off. THE Priſoner being brought to his Trial in Irons, the Chief Juſtice ordered them to be knocked off, that he might ſtand at Eaſe to manage his Defence.

The Indictment. The Priſoner was indicted for High-Treaſon, in compaſing the Death of the King and the Subverſion of the Government (*See* Rookwood's *Trial*): But the particular Overt-acts with which the Priſoner was charged, were, That he did meet and conſult with the ſaid Traitors, how to aſſaſſinate the King, and agreed that Forty Horſemen, of which the Priſoner did undertake to be one, ſhould attack the King's Coach as he came from Hunting: That he did provide Horſes and Arms for that Purpoſe, *and carried a Liſt of the Conſpirators from one to another.*

Exceptions to the Indictment. The Priſoners Counſel took ſeveral Exceptions to the Indictment, as that it ſaid *Anno Regni dicti Domini Regis nunc ſeptimo*, and *Lewis* was the laſt King mentioned: To which it was anſwered, that *Dominus Rex* muſt be underſtood of the King of *England*. 2. That it was ſaid, *diverſis diebus et vicibus, tam ante quam poſtea*, and afterwards ſays, *poſtea ſcilicet eodem decimo die Februarij*, which was repugnant: To which it was anſwered, that *poſtea* was another Sentence, and related to different Matters. 3. That this Indictment, being againſt a Subject born, ought to have had the Words, *contra Supremum naturalem Ligeum Dominum ſuum.*

The Chief Juſtice anſwered, he had ſeen abundance of Precedents, that had only the Words *contra Ligeantiæ ſuæ debitum.* That Allegiance was the *Genus*, and if that was ſuggeſted, all the *Species* of Allegiance, whether natural or local, were comprehended in it. 4. It was objected, that one of the Overt-acts was not laid to have been done *traitorouſly*. It being only ſaid, *conſenſerunt aggreaverunt & aſſenſerunt, quod quadraginta homines, &c.*

The Chief Juſtice anſwered, That after they had laid the Word *Proditorie*, as to the particular Treaſon, It was not neceſſary to lay it again to the Overt-Act, for the Overt-Act was but the Evidence of the Treaſon: The Treaſon it ſelf lay in the compaſſing, which was an Act of the Mind 5. That it did not appear, any of the Overt-Acts were the Preſentment of the Jury: In reciting the Overt-Acts, they ought to have begun again with a *Quodque*, or ſomething that ſhould have referred to the firſt *Juratores preſentant*; or elſe they ſhould have begun quite again with a *Juratores ulterius preſentant*, and not have coupled them, as this was, with an *Et*. To this the Chief Juſtice anſwered, that the High-Treaſon charged in the Indictment was but one and the ſame Offence: The other Facts mentioned were but Overt-Acts to manifeſt this Treaſon (*viz.*) The Compaſing the Death of the King; and therefore he thought the Form of the Indictment better as it was, than if it had been otherwiſe.

A Juryman who had convicted his Accomplices on this Jury. Then the Priſoner's Counſel moved, That thoſe, who were upon the laſt Jury, might not be called upon this; becauſe they had given a Verdict upon the ſame Indictment, and therefore could not be ſo indifferent as the Law intended they ſhould be.

The Court anſwered, Though it was upon the ſame Indictment, the Evidence was not the ſame; for they were diſtinct Offences.

The Evidence of Porter. Then the King's Witneſſes were called; and firſt Mr. *Porter* was ſworn, and teſtified, That about a Year before the Aſſaſſination Plot was on Foot, he employed *Cranborne* the Priſoner, to buy Arms of the Brokers at ſecond Hand: That he gave him Ten Pounds at ſeveral Times, and he bought him Ten Caſe of Piſtols, and brought a Sword-Cutler to him, of whom the Witneſs bought Twenty Swords: That when Sir *George Barclay* came to *London*, he (the Witneſs) acquainted *Cranborne* with the intended Aſſaſſination, and he was ready both *Saturdays* to go with him. That on *Saturday* the 22d, he ſent *Cranborne* to Sir *William Perkins* for two Horſes, and returned, and ſaid, He knew where to have the two Horſes, and that the King was to go out that Day; but Mr. *Charnock* was afraid they ſhould want their full Number of Men, and deſired him (*Porter*) to ſend

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ſend the Names of his Men: That he did ſo, and *Cranborne* brought back the Liſt of his (*Porter*'s) Men, with a Liſt of Mr. *Charnock*'s Men written underneath; and at the ſame Time News was brought, that the King did not go out that Day.

It being demanded, for what Purpoſe *Cranborne* was employed to buy Arms a Year before this Plot? *Porter* anſwered, *Cranborne* knew he was a Captain in Colonel *Parker*'s Regiment, and thoſe Arms were bought to be in a Readineſs againſt the King landed, which had been deſigned ſeveral Times.—— That the Week before the 15th of *February*, he told the Priſoner, he had ſet him down to be one of his Party in the Enterprize againſt the King, and would provide him Horſe and Arms, and he (the Priſoner) agreed to go along with him; and the *Friday* before the 15th, he ſent him with three Caſe of Piſtols to Sir *William Perkins* to furniſh the three Men he was to mount with his own Horſes; and on the *Friday* before the 22d, he ſent him to look after the Horſes which *Jeffery Gunn* ſaid he could help him to; and *Cranborne* brought him Word, that he and *Gunn* had found three Hackney Horſes in *Bloomsbury* for their Purpoſe; and that he told *Cranborne*, the Conſpirators were reſolved to put the Deſign in Execution the next Day, and that *Cranborne* drank the Health with them, *To the Squeezing of the Rotten Orange.*

De la Rue's *Evidence.*

Mr. *De la Rue* teſtified, That he met *Cranborne* the Priſoner with Mr. *Porter*, on *Saturday* the 15th, being the firſt Day the Aſſaſſination was intended; that he ſaw him at Captain *Porter*'s on *Saturday* the 22d, and Mr. *Porter* ſent *Cranborne* with a Liſt of the Conſpirators to Mr. *Charnock*: That he brought the Liſt back, with a Liſt of Names Mr. *Charnock* had added; and *Cranborne* told Mr. *Porter*, that the King did not go out that Day; and Mr. *Charnock* was apprehenſive the Thing was diſcovered, and deſired him (*Porter*) to have a Care of himſelf; as for his Part he was reſolved not to lie at Home that Night: That *Keys* the Trumpeter came in while they were at Dinner, and told them, my Lord *Oxford*'s Regiment of Guards was returned from *Richmond* foaming, and he ſaw the King's Coaches returned to the *Meuſe-Gate*, Mr. *Cranborne* being preſent, who after Dinner drank the uſual *Jacobite* Healths with them, particularly that, *To the Squeezing of the Rotten Orange:* But imagining the Thing had taken Air, the Company ſoon broke up, and *Porter* went out of Town.

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Pendergraſs's *Evidence.*

Captain *Pendergraſs* teſtified, That he dined with *Cranborne* and ſeveral more of the Conſpirators, at the *Roſe* Tavern in *Covent-Garden*, on *Friday* the 14th of *February*, and there they diſcourſed of getting ready to aſſaſſinate the King the next Day: That the next Day, *Saturday* the 15th, they dined at the *Blue Poſts* in *Spring-Garden*, and diſcourſed of the Aſſaſſination, and were mightily concerned when they heard the King did not go out that Day; but appointed it to be done the *Saturday* following: *And Mr.* Pendergraſs *confirmed the Evidence of the two former Witneſſes in ſeveral other Particulars.*

Cranborne *convicted.*

The Chief Juſtice demanding, If he was ſure *Cranborne* did agree to this Matter before the 15th? *Pendergraſs* anſwered, he was ſure of it; he agreed to it on the 14th at the *Roſe* Tavern, and to make one in the Execution of the Deſign.

Then the Chief Juſtice ſummed up the Evidence, and the Jury withdrawing, returned within a quarter of an Hour with their Verdict, that the Priſoner was GUILTY.

See the Sentence and Execution at the End of Lowick's *Trial.*

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Lowick's *Trial.*

The Trial of Major ROBERT LOWICK, for *High-Treaſon*, at the Seſſions of *Oyer* and *Terminer*, held for the County of *Middleſex*, in the Court of *King*'s-*Bench* at *Weſtminſter*, on *Wedneſday* the 22d of *April*, 1696. 8 *W.* 3.

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The Indictment.

THE Indictment charges the ſaid *Robert Lowick* with High-Treaſon, in compaſſing and imagining the Death of the King; and ſets forth, That the Priſoner, together with *Chriſtopher Knightley*, *Ambroſe Rookwood*, *Charles Cranborne*, and other falſe Traitors, did, on the 10th Day of *February* in the Seventh Year of his preſent Majeſty, and divers other Days and Times, as well before as after, at the Pariſh of St. *Paul*'s *Covent-Garden*, in the County of *Middleſex*, conſult and agree, by lying in wait, to aſſaſſinate and murder his Majeſty: And in order to effect the ſame, that Forty Horſemen or thereabouts, of whom the ſaid *Robert Lowick*, *Chriſtopher Knightley*, *Ambroſe Rookwood*, and *Charles Cranborne* were to be four: And every one of them traitorouſly took upon himſelf to be one ſhould ſet upon the King in his Coach, and upon the Guards attending him as he came from *Richmond*, and ſo ſhould aſſaſſinate and murder his ſaid Majeſty: And that they, the ſaid *Robert Lowick*, *Chriſtopher Knightley*, &c. on the Day and Year aforeſaid, the better to execute

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execute their ſaid traitorous Intentions, did provide Horſes and Arms, *&c.* againſt the Duty of their Allegiance, *&c.*

Exceptions to the Indictment,

The Priſoner being arraigned, his Counſel objected, that the Time and Place were not aſcertained in every Overt-Act that was laid in the Indictment: The Time and Place, when and where they met and diſcourſed of the Ways and Means to kill the King, indeed, were mentioned; but when they came to the *Aſſenſerunt*, *Conſenſerunt*, and *Agreaverunt*, which were other Acts, they had neither aſcertained Time or Place; and they inſiſted that the Court ought not to permit them to give Evidence, therefore, of this Part of the Indictment, which was vicious —— The Chief Juſtice anſwered, The Indictment ſaid, They met ſuch a Day at St. *Paul's Covent-Garden*, and conſulted to kill the King, and conſented and agreed that it ſhould be done in this Manner, which muſt refer both to the Time and Place mentioned in the Beginning of the Indictment, and they might give Evidence of it; becauſe that this was but a ſetting forth the Manner agreed upon for the Execution of the Deſign which was before conſulted of: And if it had been omitted, there would have been a ſufficient Overt-Act alledged to prove the compaſſing the King's Death: For if People meet at ſuch a Time and Place, and propoſe Means to effect this, the Indictment would be good without laying the particular Means agreed on; and they might give this in Evidence, as a Proof of that Overt-Act.

anſwered by the Court.

The Evidence of Harris.

Then the Witneſſes were called, and firſt Mr. *Harris* was ſworn, who teſtified, That he was ſent from *France* by King *James*, and ordered to obey Sir *George Barclay*'s Orders, who ſubſiſted him in *London*, giving him five Shillings a Day before he had a Horſe, and ſix Shillings a Day after he furniſhed him with a Horſe: That he ſaw the Priſoner, Major *Lowick*, at a Confectioner's over-againſt *Gray's-Inn* in *Holbourn* (where Sir *George Barclay* and Mr. *Counter* lodged), on the firſt *Saturday* the Aſſaſſination was intended: That before the following *Saturday* he met Mr. *Lowick* in *Red-Lyon-Fields*, and diſcourſed with him of the Aſſaſſination, obſerving, how barbarous a thing it was that they ſhould be ſent over to be Murderers of the Prince of *Orange*; and the Major anſwered, It was ſo; but, in Concluſion, ſaid, he would obey Orders, and was ſure Sir *George Barclay* would not do it without Orders: And, as they were talking, they met Sir *George Barclay*, and Mr. *Holmes*, on Horſeback, and ſpoke to them: That afterwards Mr. *Lowick* told this Witneſs, the Thing was diſcovered, and that his Name and other Gentlemen's were given in, as one *Harriſon* informed him, and adviſed him not to lie in his Lodgings; and believed it would not be ſafe for the reſt to lie in their Lodgings.

That Mr. *Lowick* ſeeing him in a Sweat on *Saturday* the 22d of *February*, and demanding the Reaſon of it, the Witneſs told him, He had been getting Capt. *Rookwood*'s Party ready; and *Lowick* anſwered, You may very well do it, for you have ſix Shillings a Day, and I have nothing, and yet brought a couple of Men at my own Charge; and their Horſes cannot be diſcharged unleſs I go. It being asked, Why they were to be diſcharged that Day? *Harris* ſaid, Becauſe Capt. *Rookwood* had told *Lowick*, the Prince of *Orange* did not go out that Day.

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Bertham's Evidence.

Then Mr. *Bertham* was ſworn, and teſtified, That about the Beginning of *February* laſt, Major *Lowick* asked him, if he would eſpouſe any thing that might be for his Advantage? and he anſwered, He thought he might eſpouſe any thing the Major thought fit to engage in; and the Major bid him ask no more Queſtions. That on the 14th of *February*, the Major deſired him to be at his Lodgings, and told him, when he came, he believed they ſhould ride out in a little Time: He believed the King was to be ſeized in his Coach; and then gave him a Guinea to buy Neceſſaries: That the Major deſired him not to be out of the Way, but to meet him the next Morning at the Purl-houſe in *Hart-ſtreet*; but he did not meet him; and the next Time he ſaw the Major, he asked him, why he did not meet him according to his Appointment? and ſaid he believed, if the King had been in the Field, he would have done the ſame.

It being demanded, if he was not told the Deſign? *Bertham* anſwered, The Major did not tell him of any other Deſign than he had mentioned, for he believed he knew of it; the Witneſs thought ſo at leaſt. Being asked, If this Money was given him in Charity, he anſwered, The Major had given him Money ſeveral Times; and the Reaſon he believed was, that they were both Natives of one Town, and nearly related.

One of the Jurymen asked *Bertham*, If he underſtood what the Major meant by riding out ſuddenly? he anſwered, He believed, it was about ſeizing and killing the King (which he underſtood was deſigned by Mr. *Charnock*); and he did not think it lawful, and therefore he did not meet the Major.

The Major demanding, if *Bertham* ever knew him guilty of any bloody thing? *Bertham* anſwered, He had known him theſe 20 Years, and he had always the Character of a good Man, and was ready to ſerve any one in Neceſſity: That he was bred a Soldier, had ſerved King *James* in *Ireland*, and ſaved the Lives of many a Priſoner the Enemy took there, as the Priſoners themſelves told this Witneſs.

Fiſher's Evidence.

Capt. *Fiſher* being ſworn as a Witneſs, teſtified nothing that could affect the Priſoner, only that he met him on the 8th of *February*, and he ſaid he ſhould be ready to ſerve his Maſter, King *James*, to the utmoſt of his Power; and that there was an Act of Parliament on Foot, that nothing ſhould affect a Man's Life, in Treaſon, that was not proved by two Witneſſes; and therefore nothing treaſonable ought to be diſcourſed before more than one at a Time.

Then Sir *Bartholomew Shower* ſummed up the Evidence, and made his Obſervations on it for the Priſoner.

Sir

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His Defence by Sir Bartholomew Shower.

Sir B. Shower. May it please your Lordship, and you Gentlemen of the Jury, I am of Counsel in this Case for the Prisoner at the Bar, and we do hope have it in our Power to convict him of High-Treason. The Question is not, whether there was a Plot or a Conspiracy to assassinate the King, or to prepare for an Invasion; but all that you are to consider Gentlemen, is, whether the Evidence against Mr. *Lowick* be sufficient to convince you, that he did design to seize and assassinate the King: There are three Witnesses produced, but we think this last Witness *Fisher*, his Testimony does not hurt him in the least. We know your Lordship will declare, and direct the Jury, that the Evidences in a Case of Treason ought to be plain, not only with Respect to the Fact that it was done; but also of such Facts as are the Evidence of a Man's Intentions, and these are not to be construed by Strains, and Intendments, or Implications; Unless they be such as evidently, naturally, and to common Understanding, express the Intention, it cannot be good Evidence in Treason. Now, we say, that Captain *Fisher* has said nothing at all that will affect the Prisoner; for all that he says, is, that on the eighth of *February*, he said he was ready to serve his Master to the utmost of his Power; and any Words, as well as these, may be construed to make a Man guilty of Treasonable Intentions; For it might be a Recollection of Favours received, or it might be a grateful Intent to serve him upon particular Occasions; but that is no Evidence upon this Indictment; Suppose it was to serve him upon the supposed intended Invasion; yet, with Submission, that is not Evidence of the Overt-Act laid here; here is no Overt-Act mentioned, of preparing Arms, or encouraging Men, or seducing the King's Subjects, in order to the better restoring of the late King *James*, or the expected Landing of the *French*, or the like. All that is laid to the Prisoner's Charge, is the compassing the King's Death, and a Design to assassinate him in his Coach, and in order to the Assassination he was to buy Arms and Horses: Now all that he says is quite of another Nature, of a quite different Strain, and has no Tendency to this Matter; and nothing he says, that *Lowick* should say, but is applicable the other Way, and tends more naturally to the Invasion, than to the Assassination. Your Lordship observes, there was some Notice taken of what *Lowick* should say concerning the Act of Parliament, That he would not talk with above one at a Time: How far, when Life is concerned, such loose Discourse ought to be inforced before a Jury, I must leave to your Lordship; though a Man may be innocent, yet he may be cautious, and the more innocent, perhaps the more cautious; but that is applicable to the Invasion too, and has no Relation to the Treason in this Indictment more than any other: It shews he was more wary than others were, but it is not applicable to the Fact that he now stands charged with. Then the Whole of the Evidence depends upon the Testimony of Mr. *Harris* and Mr. *Bertram*; and we think they are not two Witnesses to one Thing; and what they say must be strained, and intended, and presumed, to make Evidence of Treason. For what Mr. *Harris* says about the Discourses between him and the late King

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James, about receiving Orders from Sir *George* [illegible] and his Passage over from *France*, and the several Stages he, and Mr. *Hare* travelled, and the Discourses between Sir *George Barclay* and him; your Lordship will acquit the Jury. That is no Evidence to affect Mr. *Lowick*, nor what *Berkenhead* and *Hare* agreed upon, does any Way affect Mr. *Lowick*; for those may be all true, and yet Mr. *Lowick* innocent of what he stands charged with in this Indictment. He says, that upon the first *Saturday* he saw Mr. *Lowick* at the Confectioners; but he cannot say he staid there at all, there was not a Word spoken by Mr. *Lowick* that he remembers then: But what he says that seems to much, and the only Thing that touches Mr. *Lowick* in all this Evidence, is, That upon *Monday*, *Tuesday*, *Wednesday*, or *Thursday*, it is a pretty large Time between the fifteenth and the twenty-second, he was talking with Mr. *Lowick* about the Barbarity of this Business; and that Mr. *Lowick* after all said, he would obey Orders. Now, with Submission, my Lord, to make that to have Relation to the Assassination, must be by a forced strained Intendment; he does not declare what the Orders were, nay, he does not affirm there were any Orders for the Assassination, but only that he would obey Orders: Here is no Order by Writing, no Order by Parole, that Mr. *Lowick* declared he would obey: As to what *Lowick* declared about his Intention of riding out and seizing the King in his Coach; that cannot be intended the Order that he was to obey, to assassinate the King; that Order does not appear, there are no Footsteps of it in all the Evidence; so that there is nothing in that Testimony that will hurt Mr. *Lowick*. Then upon the twenty-second, when they dined together, Mr. *Harris* says, That there was a Discourse of two Men; but it does not appear, nor does the Witness give any Account, what those two Men were to be for: It is true, two Men he was to get discharged; but that is not Evidence that these Men were to make a Part of those forty; neither the Words before, nor the Words after, can have that Construction; nay, it does not appear it was for any Purpose at all. Now, in the Case of Life, where a Man stands at the Bar, we hope such an Evidence shall not be construed to make a Proof of a Treasonable Intention, that these were to assassinate the King, or to make Part of the Forty that were to do it, when it does not appear they were there, nor who they were, nor any Sort of Notice taken or given, upon what Account they were provided. And then, as to Mr. *Bertram*'s Evidence, it is palpable, that his Evidence, and whatsoever he says, cannot amount to make one Witness to prove an Overt-Act within this Statute, and that there must be two Witnesses, the Law requires: What does Mr. *Bertram* say, to prove any Man guilty of Treason, but only by Intendment, Thought, or Suspicion? It is true, Mr. *Bertram*'s Evidence would be good enough to commit a Man upon Suspicion of Treason; but to convict him it cannot be: He says, that in the Beginning of *February* he spoke to him, and told him, he would imploy him in a Business that would be for his Advantage; but he must ask no Questions: This is very dark, for the Meaning of it does not appear what was intended by it; it might be one

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Thing as well as another; it might be to imploy him in his Family, or it might be to send him of a Journey, or it might be the taking of a Farm; but to apply that as an Evidence of a Charge of High-Treason, that we think is very hard, and we hope your Lordship will think so too: But then he comes and tells you further of a Discourse upon the fourteenth, of his riding out suddenly, and that the King was to be seized in his Coach; but he does not say, that he was to seize him, nor that he would be concerned in it; nor that he knew of it, nor did declare at what Time it was to be done, nor any Thing certain, whether it was a Prophecy, or a Dream, or a Story, that he related again, or what it was; there is no Connection between the riding out suddenly, and the other Words, of seizing the King in his Coach: Then he says he gave him a Guinea to buy him Necessaries; the Man acknowledges Mr. *Lowick* several Times had given him in Charity, Money, Clothes, and other Things, and gave his Wife a Guinea, as you observe, in Charity; but he gave him this Guinea on Purpose to buy him Necessaries; and, it is hard, that a Man's Charity to a Countryman, to a Townsman, to an antient Acquaintance of twenty Years standing, to a Person that he had been familiar with formerly, and known to have lived well, should be misinterpreted and strained, to make it a giving him Money, as a Subsistence and a Reward for doing such a mischievous bloody Act: We say, his Charity to this Man formerly, is inconsistent with the Supposition that he could be privy to such a barbarous Design now; and we hope the Jury will consider the Character that very Man has given to my Client; for the same Witness gives you an Account of his Behaviour all along; that he was not given to rash and barbarous Actions, nor guilty of any malicious Thing; nay, that he prevented Mischief, and the killing of People in cold Blood. We must leave it to the Jury's Consideration, and your Lordship's Direction. All these Things that they say may be true, and *Lowick* be not guilty; and the acquitting Mr. *Lowick* will be no Reflection upon the Witnesses, nor any Discredit to the Testimony that has been given of this Conspiracy; but we hope it is doing Justice to this Man, the Witnesses not coming up to the Proof of what is laid in the Indictment. We must beg your Lordship's Patience a little longer, and call some Witnesses to give you an Account how long they have known Mr. *Lowick*, and what his real Character is: They will tell you, that he is a peaceable Man, and shew you that his Temper and Inclination was rather to a quiet sober Life, than to lead him to such an Action, and that they cannot think him likely to be tempted to be concerned in such a Design; and then we must leave it to the Jury.

The Prisoner's Witnesses.

Then the Prisoner called some Witnesses, who declared, That he was an honest, good-natured, virtuous Man, free from Passion and Malice: And the Prisoner made the most solemn Protestations of his Innocence: After which Mr. Attorney-General made his Observations on the Evidence for the King.

Mr. Attorney's Observations on the Evidence.

Mr. Att. Gen. My Lord, I must beg Leave to answer to the Objection that the Counsel for the Prisoner have made, That there are not two Witnesses to prove the Overt-Act laid in the Indictment, and so the Law is not satisfied. In Answer to that, I desire your Lordship's Favour, to observe how the Evidence is; and then we shall see, whether there are not plainly two positive Witnesses of the Overt-Act, by agreeing to assassinate the King. The first Witness is Mr. *Harris*: Your Lordship observes that Mr. *Harris* gives you an Account, that Mr. *Lowick* was at Sir *George Barclay*'s Lodgings, the first Day it was to have been executed; and that afterwards, between the fifteenth and the twenty-second, those being the first and second Days that this was to be done, when he, and *Rookwood*, and the Prisoner *Lowick*, were walking together in *Red-Lion-Fields*; and there had some Discourse about the intended Assassination, and the Barbarity and Bloodiness of it, and Mr. *Harris* and Mr. *Rookwood* were averse to it. Mr. *Lowick* said, he would obey Orders; and he was sure Sir *George Barclay* would not do it, unless he had direct Orders for it; that was twice repeated by him, as *Harris* swears: And afterwards Mr. *Harris* tells you, that the two and twentieth he dined with Mr. *Lowick*; and Mr. *Lowick* observed, that Mr. *Harris* came in in a very great Sweat, and asked him, How it happened? He said, he had been about to get ready *Rookwood*'s Party, that were to seize the King; for he was to have one Party: Says Mr. *Lowick* to him, You need not grudge to do it, you have six Shillings a Day; I have nothing, and yet I, at my own Charge, am to provide two. This is as positive Evidence, as well can be, of his being privy to the Design; and his ingaging People at his own Charge, shows a great deal of Forwardness and Zeal in the Prisoner in the Business. My Lord, I think this is positive and plain Evidence, and not only made out by Inferences and Constructions, as Sir *Bartholomew Shower* says, but plain positive Proof. The first Day he was with several of them, and when they discoursed of the Thing afterwards, he declared he would obey Orders; and what could those Orders be, but for what they were discoursing of? and nothing was discoursed of but this Design they were engaged in, and this was to justify the Thing, and take off the Apprehension of the Barbarity of it: This is *Harris*'s Testimony. The next Witness is *Bertram*, and he tells you, That the 5th of *February* the Prisoner sent for him, and when he came to him, he asked, If he would ingage in a Business that might be for his Advantage, and ask no Questions? so at that Time he did not acquaint him what the Thing was; but that shews it was a Thing that was to be kept secret at that Time, in regard he did not think fit to acquaint him at the first Instance. But the 14th of *February*, when he met him again, the Day before the first Time that it was to be put in Execution; *Bertram* swears he told him, that they were to ride out the next Morning, that must be *Lowick* and *Bertram*, for there was no Body else there; and that the Prince of *Orange* was to be seized in his Coach: Was it possible the Prisoner could be ignorant of it? When he ingaged him to go upon a Design without asking Questions; sent for him the Day before, acquainted him they were to ride out the next Morning, and that the King was to be seized

1696. 8 W. III. ed in his Coach, and bid him be ready against next Morning, and gave him a Guinea at that Time; The Witness says it was for Necessaries; but he does not pretend it was for Charity, as formerly; and that must be for Necessaries for that Purpose that they were then discoursing of; when he desired him to be ready the next Day, and gives him Money to buy him Necessaries: What can that be, but Necessaries for what he was to be ready for? And then he did not come the next Day, and he tells you why, because he thought it a very wicked and unlawful Thing, and so he disappointed him; and the next Time *Lowick* chid him, and told him he would have served him so, if the King had been in the Field. This is plain, though I believe *Bertram* does speak as tenderly as he can, being his Friend and old Acquaintance, and is willing to say as little as he can of him; so that, I believe, no body thinks but what *Bertram* says against the Prisoner is true, and what he swears is plain and positive, to shew that *Lowick* did engage in the Design: He acquainted him with it the 14th, by telling him the King was to be seized, and they were to ride out, and he was to be ready the next Day.

The Chief Justice's Directions to the Jury.

The Chief Justice, in summing up the Evidence, observed, That two Witnesses were not necessary to every Overt-Act; but one Witness to one, and another to another Overt-Act was sufficient: That they ought not, indeed, to put any forced and violent Construction upon Words in Cases of Life: But if the Evidence was plain and clear, though the Prisoner did not say, in express Words, he designed to assassinate his Majesty; *yet if upon the whole of the Discourse, that passed between* Bertram *and the Prisoner, it appeared plainly and satisfactorily to them, that he did consent and agree to this Design, or was engaged in it; then* Bertram *was another Witness to prove him guilty besides* Harris, *which was as much as the Law required.*

The Prisoner convicted.

Then the Jury withdrew, and after half an Hour's Recess brought in the Prisoner GUILTY.

Lowick, Rookwood, and Cranburn condemned and executed.

After which *Cranburn* and *Rookwood* were set to the Bar with *Lowick*, and having nothing to offer in Arrest of Judgment, more than they had insisted on before, Sentence of High-Treason was passed upon them, and they were all three executed at *Tyburn*, on *Wednesday* the 29th of *April*, 1696. when *Lowick* and *Rookwood* left the following Papers with the Sheriffs.

Major Lowick's *Paper.*

Lowick's Paper.

"IN the Name of the most Holy Trinity, "Father, Son, and Holy Ghost, *Amen.* "In the first Place, I die in the Religion I was "baptized, *viz. Roman* Catholick, and humbly beg the Prayers of all good People for a "happy Resurrection, and of all Catholicks "for the Good of my Soul.

"As for being engaged in this, for which I "die, it was never so positive that I had a Horse "from the Beginning to the very last, nor never "see any allowed me, or the two Men I was to "provide, as was sworn against me at my Tri-"al; nor had I any on that Account; nor was "I at any of their Meetings, when they settled "any such Thing. And as for any Order or "Commission from King *James*, I never saw "any since I came last into *England*, which is "now about five Years; and I am confident, "none that knows King *James* will believe he "gave any such Order.

"Indeed, I must confess, I believe King "*James* was coming to assert his own Right; "and I should, if on Shore, have done any "thing in my Power to have assisted him; and, "in order to that, I should should have been "very glad to have had a Horse, but never "had any.

"And as for being concerned in any bloody "Affair, I never was in my Life; but have "done my Endeavour to prevent it, as much as I "could, on all Occasions; and if the killing "the most miserable Creature in the World, or "the greatest Enemy, would now save my "Life, restore the King, and make me one of "the greatest Men in *England*, I first would "chuse to die, because against the Law of "God.

"If any, who are now Sufferers on this Ac-"count, think I have been too forward, and a "Promoter to this Design, I do now declare it "was never my Inclination to do any rash "Thing: However, I beg their Pardons, and of "all the World, if I have offended in Thought, "Word, or any Action whatsoever; and do "freely forgive my Enemies, and hope, through "the Mercy of my Saviour *Jesus Christ*, to have "Remission of all my Sins. Good God pre-"serve the King, Queen, Prince, and Princess, "and all that Royal Blood of *Stuarts*! and may "*England* never want one of that direct Line to "govern them, and make them once more hap-"py! I have had the Honour to serve my Royal "Master in several Commissions, and the last "as Major; and strove ever to serve him to the "best of my Power, and ever to be just to "those whom I had the Honour to command. "Lord *Jesus*, into thy Hands I commend my "Spirit! O *Jesus*, receive my Soul!

ROBERT LOWICK.

Brigadier Rookwood's *Paper.*

Rookwood's Paper.

"HAVING committed the Justice of my "Cause, and recommended my Soul to "God, on whose Mercies, through the Merits "of *Jesus Christ*, I wholly cast myself, I had "once resolved to die in Silence; but second "Thoughts of my Duty to others, chiefly to "my true and liege Sovereign King *James*, "moved me to leave this behind me.

"I do therefore, with all Truth and Sincerity, declare and avow, that I never knew, "saw, or heard of any Order or Commission "from King *James* for the assassinating the "Prince of *Orange*, and attacking his Guards; "but I am certainly informed, that he, the best "of Kings, had often rejected Proposals of that "Nature, when made unto him.

"Nor do I think he knew the least of the "particular Design of the attacking the Guards "at his Landing, so much talked of, in which "I was engaged as a Soldier, by my immediate "Commander, much against my Judgment; "but his Soldier I was, and as such I was to "obey and act according to Command.

"These twelve Years I have served my true "King and Master, King *James*, and freely now lay "down

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"down my Life in his Cause. I ever abhored "Treachery, even to an Enemy. If it be a "Guilt to have complied with what I thought, "and still think, to have been my Duty, I am "Guilty: No other Guilt do I own.

"As I beg all to forgive me, so I forgive all "from my Heart, even the Prince of *Orange*, "who, as a Soldier, ought to have considered "my Case, before he signed the Warrant for "my Death. I pray God may open his Eyes, "and render him sensible of the much Blood "from all Parts, crying out against him, for to "prevent a heavier Execution, hanging over "his Head, than what he inflicts on me.

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AMBROSE ROOKWOOD.

The Remarks on the Trials of the Conspirators for the Assassination Plot, will be found at the End of Mr. Cook's Trial.

1696. 8 W. III. Knightly's *Trial.*

The Trial of ALEXANDER KNIGHTLEY, Gent. for *High-Treason*, in the Court of *King's-Bench*, on the 30th *April*, and 20th of *May*, 1696. 8 *W.* III.

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Indicted by a wrong Name.

THIS is no more than an Arraignment and Confession. The Prisoner had been indicted before, as a Conspirator in the Assassination Plot, together with *Rookwood*, *Cranburn*, and *Lowick*, by the Name of *Christopher*; but his Name appearing to be *Alexander*, he was not tried upon that Indictment.

Indicted a second Time.

He was now arraigned on another Indictment, on the 30th of *April*, by his right Name of *Alexander*, and pleaded *Not Guilty*; but being brought to his Trial on the 20th of *May*, he retracted that Plea, and pleady *Guilty*: Whereupon the Attorney-General moved his Confession might be recorded, and that the Court would pass Judgment on him; but the Chief Justice answered, they could not give Judgment then, because there ought to be four Days from the Time of the Confession or Verdict, to move in Arrest of Judgment, if there be so many Days in the Term remaining; Indeed in *Staley*'s Case, who was tried for the Popish Plot, Judgment was given the same Day; but that was a Precedent that ought not to be followed, for a Prisoner ought to have four Juridical Days to move in Arrest of Judgment, where he is tried in the Court of *King's-Bench*; and accordingly *Knightley* was sent back to *Newgate*, and being brought into Court again on *Monday* the 25th of *May*, being the last Day of the Term, Sentence was pronounced on him as a Traitor, and he was executed at *Tyburn*.

Pleads guilty.

Four Days allowed to move in Arrest of Judgment in the King's-Bench.

1696. 8 W. III. Cook's *Trial.*

The Trial of PETER COOK, Gent. for *High-Treason*, at the *Old-Baily*, *London*, on the 9th and 13th of *May*, 1696. 8 *W.* III.

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The Indictment.

THE Indictment charges the Prisoner with compassing the Death of the King, and adhering to his Enemies; and the Overt-Acts laid as Evidence of the said Treasons were, his meeting and consulting with *Robert Charnock*, Sir *John Freind*, Sir *William Perkins*, and other false Traitors, how to raise a Rebellion; and sending over the said *Charnock* to *France*, to the late King *James*, to perswade the *French* King to furnish him with a Body of his Forces to invade the Kingdom; and that the Prisoner did buy up Horses and Arms in order to promote the said Rebellion and Invasion.

So many of the Pannel challenged, that there was not a Jury left.

The Prisoner was brought to the Bar on *Saturday* the eighth of *May*, when he was arraigned, and pleaded Not guilty: And the Jurors being called to be sworn, there were so many challenged, that there did not remain enough to try him; whereupon the Court ordered another Pannel to be ready on the *Wednesday* following; and then adjourned to that Day.

Mr. *Cook* being brought into Court again, on *Wednesday* the thirteenth of *May*, his Counsel objected, That the Court could not direct a new Pannel; but that they should have ordered a *Tales* to supply the Deficiency of the first Pannel; and that the Prisoner ought to be tried by the first Pannel, according to the late Act: But the Court answered, A *Tales* did not lie in the Felony, upon a Commission of *Oyer* and *Terminer*; and that where there was a Defect of Jurors, there was an absolute Necessity for a new Pannel.

Exceptions of the Counsel to the new Pannel, answered by the Court.

But it was admitted, That upon Appeals and Indictments removed into the *King's-Bench*, where the Process for the Jury was by Writs of *Venire*, *&c.* there must be a *Tales* awarded, if a full Jury did not appear.

The Witnesses examined apart.

The Evidence of Porter.

The Jurors being called to the Book, in Order to be sworn, Mr. *Cook* desired the Opinion of the Court, If a Juryman had said he was guilty, or that he would find him guilty, or that the Prisoner would be hanged, or the like; whether such a one was fit to be upon the Jury? To which the Chief Justice answered, He thought it was a good Cause of Challenge.

Causes of Challenge.

Then

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Then Mr. *Walker* being called as a Juryman, Mr. *Cook* demanded, If he had not ſaid he believed him guilty?

Mr. Attorney hereupon obſerved, If he made any ſuch Objection, he muſt prove it by others, and not out of the Juryman's Mouth, becauſe it would make him guilty of a Miſdemeanor.

The Lord Chief Juſtice *Treby* ſaid, A Juryman need not anſwer any Queſtion, where the Anſwer would ſubject him to Reproach. And he thought it a ſcandalous Behaviour, if not criminal, to prejudge any one before he was tried; and this was to ask a Juryman, if he had not defamed or ſlandered him in the higheſt Degree.

Mr. Serjeant *Darnel* anſwered, Nothing was more common, when one heard a Fact reported of any one, than to ſay he thought him guilty, and he would be hanged; and there was no Crime in this: To which the Lord Chief Juſtice *Holt* replied, If upon a Report of clear Evidence, a Man ſhould ſay, *Suppoſing this to be true, ſuch a Man is guilty, and I ſhould find him ſo, if I were of his Jury*: This was not criminal, nor was it ſufficient to ſet aſide a Juror; for it imported, if the Evidence ſhould not be true and clear, he would acquit him: But for one to declare poſitively, a Priſoner was guilty, and he would find him ſo, let the Evidence be what it will; This he thought was a Miſdemeanor, and puniſhable. Another of the Judges admitted, that, in a Civil Caſe, it would be a good Cauſe of Challenge, if a Man gave his Opinion about a Right one Way or other; and ſo might be asked the Queſtion upon a *Voir dire*; but he could not be obliged to charge himſelf with what was criminal: And the Court ruling, that ſuch Queſtions ought not to be asked; the Priſoner challenged Mr. *Walker* peremptorily.

Then the Priſoner challenged ſeveral more, becauſe they had not ten Pounds *per Annum* Freehold; which the Court admitted to be a good Cauſe of Challenge: (An Act having lately paſſed, That Jurors ſhould have ten Pounds a Year Freehold). Whereupon Mr. Attorney moved, that the Jurors might anſwer upon Oath, whether they had reſpectively ten Pounds a Year Freehold, or not; and they were examined accordingly, and a great many of them ſet aſide for Want of Freeholds of that Value; and the Priſoner objecting, That thoſe who were upon the Grand Jury, and found the Bill, could not be upon the Petit Jury. The Court admitted this alſo to be a good Cauſe of Challenge; and that the Jurors ought to anſwer, whether they had ſerved on the Grand Jury, or not: The Priſoner having challenged his full Number of thirty-five peremptorily, beſides thoſe that were challenged for Cauſe, at length twelve unexceptionable Men were ſworn.

The Witneſſes examined apart.

Then Mr. *Cook* deſired that the Witneſſes might be examined apart, which the Court indulged him; but ſaid, He could not demand this of Right.

The Evidence of Porter.

Mr. *Porter* then was called, as a Witneſs for the King, and teſtified, That the Conſpirators had two Meetings laſt Year; the firſt in the Beginning of *May*, at the *King's-Head* in *Leaden-hall-Street*; where were preſent Lord *Ayleſbury*, Lord *Montgomery*, Sir *John Fenwick*, Sir *John Freind*, Sir *William Perkins*, Mr. *Charnock*, the Witneſs, and the Priſoner; and *Goodman* came in after Dinner. Here they conſulted on the beſt Way to reſtore King *James*; and it was at length agreed to ſend over Mr. *Charnock* to King *James*, to put him upon borrowing of the *French* King 10000 Men, to make a Deſcent in *England*; and to promiſe King *James*, that they would join the *French* Troops with 2000 Horſe upon their Landing: And that when Mr. *Charnock* demanded of them ſeverally, whether he might aſſure the King of this; he remembered Mr. *Cook* was kneeling upon a Chair, and anſwered, *Yes, you may*.

That Mr. *Charnock* deſiring another Meeting at Mrs. *Mountjoy*'s eight or ten Days after, moſt of the ſame Company met there again, and particularly the Priſoner; and they aſſured Captain *Charnock*, that they perſiſted in their former Reſolution: That Mr. *Charnock* afterwards came to ſee this Witneſs in *Newgate*, and told him he had been in *France*: That King *James* thanked them for the kind Offer; but the *French* King could not ſpare ſo many Men that Year: Adding, That he had communicated this Anſwer to the Lord *Ayleſbury*, and the reſt of the Gentlemen that ſent him over.

Goodman's Evidence.

Then Mr. *Goodman* was ſworn, who depoſed, That he was at that Meeting of the Conſpirators, at the *King's-Head*, mentioned by Mr *Porter*; but did not come in till after Dinner: When they agreed to ſend over Mr. *Charnock* to King *James*, to deſire he would procure 10000 Men of the *French* King, to make a Deſcent in *England*; and to aſſure him they would join him at their Landing with 2000 Horſe at leaſt: And when Mr. *Charnock* demanded of them reſpectively, if they might aſſure King *James* this was their Reſolution: Mr. *Cook* kneeling upon a Chair, and laying his Elbows on the Table, anſwered, *Yes, you may*. That he ſaw Mr. *Charnock* after he came back; and he ſaid, He had been with the ſeveral Gentlemen that ſent him, with Compliments from King *James*; but the *French* King could not ſpare ſo many Men at that Time.

Mr. *Cook* demanding of *Goodman*, If he ever heard him ſpeak ten Words, or was ever in his Company: *Goodman* anſwered, Yes, he was in his Company, at the *Cock* in *Bow-Street*, where he came in accidentally; and that he expreſſed his Conſent at the aboveſaid Conſultation, in the Manner he had related.

Evidence to Goodman's Credit produced by the Priſoner.

Then the Priſoner's Counſel produced a Record; whereby it appeared, That *Goodman* was convicted of hiring one *Alexander Amadei* to poiſon the Dukes of *Grafton* and *Northumberland*; and was adjudged to pay a Fine of 1000 Pounds, and to be committed to the *Marſhalſea* till paid; to give Security for his good Behaviour during Life; and alſo Security for the Peace, and particularly towards the ſaid two noble Dukes.

Then *Edwards* was called as a Witneſs for the Priſoner, and teſtified, That he was confined in *Newgate* with *Goodman*; and that *Goodman* told him, He and *Porter* were to be Witneſſes againſt *Cook*: That *Cook* had ſworn againſt him (*Goodman*); but could not have his Pardon, becauſe he would diſcover no body elſe: Adding, *He or I muſt ſuffer; but it is a fooliſh Thing to be hanged: All that is ſaid of a Man, is, That he hanged handſomely, or died bravely.*

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Other Evidence in Behalf of the Prisoner.

Mr. *Cock*, the Landlord of the *King's-Head*, deposed, That about a Twelvemonth before, there dined at his House, the Lord *Aylesbury*, Lord *Montgomery*, Sir *William Perkins*, Sir *John Fenwick*, Sir *John Freind*, Captain *Charnock*, Captain *Porter*, and Mr. *Cook*: That my Lord *Aylesbury* and Lord *Montgomery* went away about four o'Clock, and the rest of the Company at eight or nine: That *Goodman* was not there, he believed, at all; for he never saw him till this Trial: But he could swear that *Goodman* was not there before the two Lords went away. And Mr. Attorney demanding, Why he was not as sure *Goodman* was not there at all, as that he was not there before the Lord *Aylesbury* went away? *Cock* answered, He was in the Room half a Dozen Times after Dinner, and there were no more in the Room than dined there when Lord *Aylesbury* went away.

It being demanded, If he knew the Persons that dined at his House? Or if they used to meet there? He answered, Sir *John Freind* commonly came once a Week; Mr. *Charnock* he knew, when he was a Drawer, and Sir *William Perkins*; and the rest he knew by hearing their Names only. Being asked again, How he could be positive who was in the Room, when the Lord *Aylesbury* came out? *Cock* answered, He went up into the Room, just after Lord *Aylesbury* went away, and he had been there just before; he believed he was in the Room half a Dozen Times after Dinner, and there were no more than what dined there.

Crawford, one of *Cock*'s Drawers, deposed, That he remembered that Company's dining there about a Twelvemonth before the Trial: That he did not see Mr. *Goodman* there at all; but was sure he was not there till the two Lords went away, which was about four o'Clock; and the rest of the Company staid till it was dark.

Huntley, another Drawer, testified, That he attended only on that Company: And that neither *Goodman*, or any one else, came into that Company after Dinner; nor had he ever seen *Goodman* in his Life till now: And that there were no Orders given for their being in private, but the Drawers went backwards and forwards as usual.

Peachy testified, That Mr. *Cook* never absconded, but went Abroad, and received Company, after the Plot was discovered; and was taken in his own Room at his Father's House, on a *Sunday* Morning; which Evidence was confirmed by two more: And other Witnesses gave the Prisoner a great Character for his Piety and Virtue.

The King's Counsel endeavour to support the Credit of their Witnesses.

Then the King's Counsel called Mr. *Porter* and Mr. *De la Rue*, who testified, That *Edwards*, one of the Prisoner's Witnesses, was to have been an Actor in the intended Assassination. *Goodman* also was called again, to confront Mr. *Cock*, the Master of the *King's-Head* Tavern: And testified, That he was introduced into that Company by Mr. *Porter*: That it was true, the Lords *Aylesbury* and *Montgomery* went away first; but as to what *Cock* said, That he did not know him (*Goodman*), he had dined at his House four or five Times with Sir *John Freind*; and one of the Days, not being well, he went down to the Bar for a little Brandy, and *Cock* gave him some, telling him, it was the best he ever tasted; and the Witness would have bought a Quantity of it; but *Cock* told him, he had but little of it: And he was sure *Cock* had seen him five or six Times. *Cock* however persisted in that Part of his Evidence, That he never saw *Goodman* before, and remembered nothing of the Circumstances he mentioned. 1696. 8 W. III.

Then it was demanded of *Porter*, If *Goodman* came into the Company at the *King's-Head* before the Lord *Aylesbury* went away? To which *Porter* answered, He did; and he remembred *Goodman* bowed, and took his Leave of my Lord, as he went out of Doors.

It being demanded, If he remembred the Manner of *Goodman*'s coming in? *Porter* answered, *Goodman* sent up his Name; and he (*Porter*) told the Company who he was, assured them he was an honest Man, and much ingaged in King *James*'s Interest; and then with their Consent, he went down, and brought him up. The Court demanding, How long *Goodman* was there before the Lord *Aylesbury* went away, if it was half an Hour? *Porter* answered, It was near two Hours; for *Goodman* came in about four, and the Lords did not go away till near six; they discoursed the whole Business after *Goodman* came into the Room.

Then Sir *Bartholomew Shower* summed up the Evidence, and made his Observations on it for the Prisoner.

The Prisoner's Defence by Sir B. Shower.

Sir B. Shower. May it please your Lordship, and you Gentlemen of the Jury; I am of Counsel in this Case for the Prisoner at the Bar; and I must beg your Lordship's Patience, and your Favour, Gentlemen, to make a few Observations upon the Evidence that has been given: For we humbly insist upon it in Point of Law, that here is not sufficient Evidence before you to convict the Prisoner. You are, Gentlemen, to have Respect and Regard to your Consciences, and the Oaths which you have now taken to give a Verdict, and make true Deliverance between the King and the Prisoner: You are not to go according to your own private Opinions, nor according to publick Fame, nor according to common Report, nor according to the Verdicts in other Cases, nor according to the Confessions or dying Speeches of Criminals who have been executed, whether made by themselves or by others for them, but you are to go by the Testimony of credible Witnesses; and if you have not the Evidence of two credible Witnesses before you, my Lords the Judges will inform you how the Law stands. That by the Statute of *Edward* VI. and the new Statute for Trials of Treasons, there must be two Witnesses to prove the Prisoner guilty of the Overt-Act of the Treason that is laid in the Indictment: And whether there have been two credible Witnesses produced before you, is the Question that you are to consider, upon your Oath and Conscience; That is, whether you are satisfied here be two such as the Law requires. The Question is not merely, whether Mr. *Cook* be guilty; but whether in your Consciences he be legally proved guilty, whether there be Evidence to satisfy your Consciences, according to the Laws of the Land, that he is guilty, and we insist there is not; and therefore I beg Leave to recapitulate what has been sworn against him, that we may see how far it reaches, and wherein it is defective.

Gentlemen, Mr. *Porter*, he swears, That about the Beginning or Middle of *May*, he cannot

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not tell which, there was this Meeting, at the *Old-King's-Head* Tavern in *Leaden-hall-Street*; in which I would obſerve to you, that he confines himſelf to a certain Month; the Reaſon is very plain, and therefore I asked him, whether it was not in *April*; for if he had ſaid it had been then, there had been no Danger to the Priſoner, becauſe of the Act of Indemnity, therefore he was careful to fix it in *May*; and he would not lay it in *June*, for the tenth of *June* is a famous Day; and then, or ſoon after, *Newgate* had him; he was confined there for a Riot on that Day, and ſo they have reſtrained it to a Month, and the only Month that he is capable of ſwearing to, as to any Act done the laſt Year, till they came in *January* to the Aſſaſſination Plot, which the Priſoner is not accuſed to have had any Concern in: But it ſhould ſeem, he cannot tell what Day of the Week, or of the Month; but about the Beginning or Middle of *May*, eight Perſons dined at this Place; and then after Dinner Mr. *Goodman* came in, and they diſcourſed about this Matter.

Firſt, Gentlemen, we inſiſt upon it, That it is very improbable that *Engliſh* Proteſtants of pious Converſation, and good Morals, ſhould agree, as he ſays, to ſend ſuch a Meſſage to the late King, to invite over a *French* Popiſh Force: We may eaſily ſee the horrid and miſchievous Conſequences that would have followed ſuch a Practice, ſuch as muſt affect every *Engliſhman* with a Concern; ſo that it is improbable a Man of Virtue and Piety could ingage in ſuch an Enterprize: And if it be improbable, you will never believe it, unleſs the Conviction or Proof be irreſiſtible: And if you have any other Reaſons to diſtruſt this Man's Truth, we hope you will go upon the Side of Probability; and not let popular Prejudice, common Fame, or any thing elſe, but legal and undeniable Evidence have the Aſcendant over you. If you are not ſatisfied, that Mr. *Cook* did aſſent (as from the Character of the Man, it is not probable he ſhould) to ſend *Charnock* into *France*, to perſuade King *Lewis* and King *James* to ſend 10000 Men to invade our Country, then he is not guilty.

In the next Place, Gentlemen, he is not guilty we ſay in the Eye of the Law, if they have not two Witneſſes; and for that we ſay you have but one, or but one that is to be believed; and if you have but one that is to be believed, that in Law is but one; and conſequently my Client is not guilty: So the King's Counſel agree, that if there be but one Witneſs, he cannot be convicted; the Law is plain in the Caſe. Now to make it out that here is but one Witneſs at moſt, we have offered you ſeveral Objections, and made them out by Evidence, againſt the Teſtimony of Mr. *Goodman*; that he is not a Perſon fit to be believed; and if he be out of the Caſe, then does Mr. *Porter*'s ſtand alone, and all will amount to one Witneſs, ſuppoſe it ſhould be granted that his Teſtimony were true.

Firſt, we have read a Record of Conviction againſt him, of a Crime one of the greateſt next unto Treaſon, that is known in our or any other Law. That he hired a Man to poiſon two Dukes, Branches of a noble Family, to which he had ſuch great Obligations, as all Mankind do know, and he himſelf cannot but acknowledge: And if there were not that Aggravation in it, of his Obligations to that Family; yet to lie in Wait to murder and poiſon, is ſuch an Offence that any Age can ſeldom ſhew the like. And the Objection is not ſo very eaſily anſwered as they would have it; nor can it be ſo ſoon paſſed over as they think, by ſaying he is a Witneſs of a Confederacy, with which the Priſoner is accuſed, a Crime greater than the Thing objected. It is true, none can bear Teſtimony in ſuch a Buſineſs, but he that is a Party: But we ſay, if theſe Perſons who come and ſet themſelves up for Witneſſes, were not *probi Homines*, and did not appear to be Perſons of indifferent Credit between Man and Man, and did not ſtand impartial in the Eye of the World in other Reſpects before; then they are not to be believed, as to what they charge themſelves and others to be guilty of. Now, if Mr. *Goodman* ſtands convicted of ſuch an Offence, as this that is alledged againſt him, though he is pardoned by the Act of Parliament, or Satisfaction acknowledged upon the Record, though it be even the very next Term, yet that does not purge him from the Infamy and Diſgrace, or from the Imputation of being concerned in ſo villainous a Deſign. It is impoſſible that he ſhould be good a Witneſs, that would be ingaged in ſuch a Matter, eſpecially when we have thoſe various Witneſſes, and ſuch a concurring Teſtimony, that what he has ſworn is abſolutely falſe.

Gentlemen, If there were nothing but his own Teſtimony in this Caſe, there could be no Queſtion at all in it. And as to Captain *Porter*'s Teſtimony about his being there, we have produced three Witneſſes; who, if they be of Credit, then Mr. *Goodman* is not to be believed, but is falſified throughout: For it is not the Queſtion, Whether Mr. *Cook* went away before the Conſultation and the Reſolution? For if my Lord of *Aylesbury* or my Lord *Montgomery* went away, Mr. *Goodman* is falſified in that, and conſequently you ought not to believe him in the reſt: For he actually ſwears, That my Lord of *Aylesbury*, my Lord *Montgomery*, and theſe other Gentlemen, were all preſent, and at the Conſult; and did conſent and agree to the Reſolution, by uſing theſe Words, *Yes, you may*; *Yes, you may*. Now we ſay there are three Witneſſes that ſwear, That my Lord of *Aylesbury* was gone before he came there: I do not care whether he came there or not; that is not material: For if there were no body there, when my Lord of *Aylesbury* was there, but thoſe that were at Dinner, then Mr. *Goodman* was not there at any Conſultation, as they would inſinuate was at that Time, in that Place, in that Company.

My Lord, we have proved to you Mr. *Cook*'s Abhorrence and Declaration, which we think ought to go a great Way in Satisfaction of his Innocence, at leaſt to induce you to the favourable Side: For, Gentlemen, you are not brought hither to convict a Man only, but to try and examine him; and it is your Duty to acquit as well

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well as convict, according as the Evidence ſtands; it is your Duty to go according to your Conſciences, and declare whether he be guilty or not guilty, upon the Evidence you have before you; you are to examine the Truth of the Fact in all its Circumſtances, and upon your own Conſciences to declare whether he be guilty or not guilty: Now we propoſe it to you, and ſubmit it to your Conſciences, That here are three Witneſſes that ſpeak upon their Oaths, againſt whom there is no Objection, that ever they were guilty of lying in wait to poiſon any body, nor in any Plot for an Aſſaſſination, nor any Conſpiracy for inviting an Invaſion from *France*, nor any other Objection againſt them; but they ſtand upright in the Face of the World, and they three ſwear that he was not there at that Time: The Anſwer that we expect is, That he might be there, and they not ſee him; and becauſe it was poſſible he might be there, and they not ſee him, therefore that is no Evidence; but, my Lord, becauſe it may be ſo is no Evidence that it is ſo; that is no Objection; for you will take it as the Nature of the Thing will afford, and the Matter itſelf allow: Now there can be no better Evidence than this, that they went in and out continually, the Drawers, and the Maſter of the Houſe five or ſix Times himſelf, were in the Room, and they ſay there was no ſuch Perſon there; why then it is very improbable, if not impoſſible, that any ſuch Man ſhould be there: The one ſwears he came down from my Lord of *Aylesbury* juſt before he went away; and another ſays, he followed him out of the Room; and the Maſter ſays, he met my Lord of *Aylesbury* at the Stairs-Head; all which falſifies Mr. *Goodman* in that Particular, that he was with my Lord of *Aylesbury* at the Stairs-Head, when he went away; theſe are incompatible; and if we falſify him in any one Thing, he is not to be believed in any other.

Then, Gentlemen, we offer to your Conſideration an Anſwer to another Objection: They ſay theſe Witneſſes ſeem to ſwear that he was not there at all; we are not concerned whether he was there afterwards or not; if you are ſatisfied that he was not there, as our Witneſſes ſwear, while my Lord of *Aylesbury* was there, that is enough.

But then they make an Objection, How comes the Maſter of the Houſe to remember my Lord of *Aylesbury*'s going away, more than any body elſe? Gentlemen, you know the Nature of the Thing ſhews, not only that it was more probable the Maſter of the Houſe ſhould make his Obſervations near the Time of Dinner, rather than afterwards at Night, when there is more Hurry; but it is more probable he ſhould take Notice of it from the Quality of the Perſon, from the Diſcourſe he had with him about the White-Wine; which was a good Medium to refreſh a Vintner's Memory, it being a Matter in his own Trade, and that might make him call it to Mind.

Therefore, Gentlemen, we think theſe three Witneſſes ſtand free and clear in their Credit; and being ſo, are inconſiſtent with Mr. *Goodman*'s Teſtimony; and we hope, in Favour of Life, the Credit inclines on their Side, eſpecially when the Queſtion is, Whether a Man ſhall be executed for Treaſon who never fled for it, who was never charged with any Treaſon or treaſonable Practices before; nay, not ſo much as with any particular Crime or Immorality? and Whether three Witneſſes ſhall be believed, againſt whom there is no Objection, rather than two, againſt one of which there are ſuch Objections?

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My Lord, we are not now debating or attacking the Evidence of the Plot, or arraigning the former Judgments againſt the Conſpirators that have ſuffered: But, Gentlemen, we are putting you now upon a ſerious Enquiry, (as God and your own Conſciences ſhall incline you), whether our Client be guilty, or not guilty upon this Evidence; that is, whether Mr. *Goodman* ſwears true or not: We hope that we have given you ſufficient Satisfaction, that upon Mr. *Goodman*'s Part the Evidence is inſufficient, and we hope you will accordingly find our Client Not guilty.

Mr. *Cook*'s Vindication of himſelf.

Mr. *Cook* being afterwards permitted to ſpeak for himſelf, made the moſt ſolemn Proteſtations, That he was ever averſe to the introducing foreign Forces; that he did not ſo much as hear of the intended Invaſion, till it was common Talk; poſitively denied he ſaw *Goodman* at the *King's-Head*; declared he deſigned to receive the bleſſed Sacrament ſoon, and wiſhed he might periſh when he did it, if he ſpoke an Untruth; and if ever he bought Arms towards promoting ſuch a Deſign, he wiſhed God might ſink or ſtrike him dead; and appealed to all that knew him, if he had not the Character of a pious and virtuous Man, whoſe ſolemn Aſſeverations deſerved ſome Credit in ſuch a Caſe as this: He acknowledged, indeed, that he had never taken the Oaths, but he ſaid, he had never refuſed them, for they had not been tendered to him; however, he was now ready to take them: And he called Mr. *Hammond* to teſtify, That he heard him declare his Deteſtation of a *French* Force, and wiſh Succeſs to the *Engliſh* Fleet againſt the *French*; that when the Plot broke out, he ſpoke with Abhorrence of it; and that he never heard him ſpeak diſreſpectfully of the King or Government.

Calls a Witneſs of his Loyalty.

After which Mr. Solicitor made his Obſervations on the Evidence for the King.

Mr. Solicitor's Reply to the Defence.

Mr. Solicitor-General. May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am of Counſel in this Caſe for the King, and I could have been very glad that this Gentleman's Defence, that he hath made, had been ſtronger than in Truth it has been; and I ſhould have been very glad too that his Counſel had been able to have made it better for him: But that he and they may be ſatisfied as much is done as the Caſe will bear; they have had all the Liberty in the World to make his Defence they could deſire, nay more than in Strictneſs could be allowed them.

Gentlemen, our Evidence is very poſitive againſt the Priſoner at the Bar, and for the higheſt Crime that the King's Subjects can be guilty of, by the Confeſſion of the Gentleman himſelf, and of his Counſel. We have, I ſay, two poſitive Witneſſes againſt him; they ſay, they are not legal ones: I muſt own, if we have not two Witneſſes, we have never a one; for whatſoever falſifies Mr. *Goodman*'s Teſtimony, falſifies whatever Mr. *Porter* has ſworn. Now the Evidence that Mr. *Porter* has given againſt him is this: He ſays there was to be a Meeting at the *King's-Head*

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Mr. *Porter* goes further, and tells you, That Mr. *Charnock* would have another Meeting, to know and ſee whether all the Company were of the ſame Mind they had been; and that afterwards they met at Mrs. *Mountjoy*'s Houſe, and there the Priſoner at the Bar was preſent, and conſenting to the ſame Thing: Thereupon Mr. *Charnock* went into *France*, and came back again, and ſaid, The *French* King could not ſpare ſo much Force. Mr. *Goodman* gives the ſame Evidence that Mr. *Porter* had given: It is true, he was not at Mrs. *Mountjoy*'s Tavern; but he tells you withal, he ſpoke with Mr. *Charnock* when he came back from *France*, and *Charnock* returned him the ſame Anſwer that he did to Mr. *Porter*, That the *French* King could not ſpare ſo many Forces. This is the Evidence, in ſhort, Gentlemen, that is given againſt the Priſoner; and if this Evidence be true, then is he guilty of the Crime for which he is indicted.

Againſt theſe Witneſſes, they have produced, firſt, a Record of Conviction againſt Mr. *Goodman*, and that was for hiring one *Amadei* to poiſon the Duke of *Grafton*, and the Duke of *Northumberland*: They have produced the Record, whereby it appears he was convicted, and fined 1000*l.* and was to find Security for his good Behaviour during Life; and he was to lie in Priſon till the Fine paid, and Security given: But it happens, in that very Record, it appears, there was Satisfaction acknowledged upon that, even the very next Term; and that gives a great deal of Suſpicion to believe, that the Evidence that was given was not much credited; for though the Counſel for the Priſoner has ſaid, that it was the Payment of the 1000*l.* that was the Satisfaction; no, it is not ſo; it is a Satisfaction of the whole Judgment, for finding Security as well as the Fine. They ſay he was not able to pay the Fine; and there is nothing appears of the other Parts of the Judgment being complied with, but the whole Judgment is ſet aſide.

But all this does not make a Man *no legal* Witneſs; if they thought this Conviction tended to ſet aſide his Evidence, they would have produced it at another Part of the Trial than where they did; that is, when Mr. *Goodman* was firſt called to be ſworn as a Witneſs; then they ſhould have produced this Record, and ſaid he had been no Witneſs: But they knew well enough that that was no Exception againſt the Legality of his Evidence, but tends only to his Credit, and nothing elſe. Now, though it be a black Crime to endeavour to poiſon another, yet that does not totally deſtroy any Man's Credit; if it did, then the other Gentleman, Mr. *Porter*, has confeſſed himſelf guilty of a greater Crime than that for which Mr. *Goodman* is convicted by this Record; for he owns himſelf one that was in that Deſign of Aſſaſſinating the King: And Mr. *Goodman* owns himſelf too, guilty of a greater Crime than what is objected to him, which is that of High-Treaſon; and I hope it may be believed, when he owns himſelf guilty of High-Treaſon, which is a greater Crime than poiſoning a private Subject; or guilty of ſuch a Deſign as the Aſſaſſination of the King, which Mr. *Porter* has charged himſelf with, and notwithſtanding which, they have not offered that as an Exception againſt Mr. *Porter*'s Evidence, (for they very well know his Evidence has been received and credited); Mr. *Goodman* may be credited, though guilty of the Crime objected to him: And the conſtant Practice in all Trials of this Kind hath been, that it does not take away the Witneſs's Evidence, however it affects his Credit, which in this Caſe is ſupported by the concurrent Teſtimony of Mr. *Porter*: And ſo then, I ſay, we have two legal Witneſſes, (notwithſtanding all the Exceptions) to prove Mr. *Cook* guilty of the Crime for which he is indicted.

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Then they go on further, and produce other Witneſſes: Firſt, they produce one *Edwards*, a Perſon that is committed for High-Treaſon himſelf, and under Suſpicion of his being to be one of thoſe that was to have a Hand in the Aſſaſſination; but his Evidence goes no further, than that Mr. *Goodman* told him he was to be a Witneſs againſt Mr. *Cook*, and either he, the Witneſs, or Mr. *Cook*, muſt ſuffer; and that it was a fooliſh Thing to be hanged. My Lord, there is nothing at all in this Matter that takes away Mr. *Goodman*'s Evidence: It is very plain Mr. *Goodman* had forfeited his Life, and muſt do ſomething to ſave it; and, I think, he could not do a better Service to intitle himſelf to the King's Mercy, than to diſcover thoſe that were equally guilty with himſelf. It was his Duty to have done it, if he had not been in Danger; and if he hath done no more than what was his Duty, I hope that is no Objection againſt his Teſtimony.

They have produced likewiſe a Drawer of the *King's-Head* Tavern, one *Crawford*; and he ſays, he attended in this Room, while this Company was there: But then he goes a little further than the Counſel or the Priſoner would have had him; for they called him to prove that Mr. *Goodman* was not there when my Lord of *Aylesbury*, my Lord *Montgomery*, and Mr. *Cook* were there. But when the Drawer comes, he knows nothing of Mr. *Goodman*'s being there at all: He ſays, Mr. *Cook* was there, but not Mr. *Goodman*; and yet he does acknowledge, that Mr. *Goodman* might be there, and he not ſee him come up: He acknowledges he attended upon other Company as well as this; ſo that it is plain in the Nature of the Thing, and his own Confeſſion, that *Goodman* might be there. This

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cannot take off the positive Evidence of Mr. *Goodman* and Mr. *Porter*, who both swear, That *Goodman* was there.

But then they produce another Drawer, and that is one *Huntley*; and he gives the same Account; only indeed, he says, He was there all the Time they were at Dinner: But that is nothing, because it is acknowledged, both by Mr. *Porter* and Mr. *Goodman*, that he was not there at Dinner-time, but he might be there after Dinner, and yet *Huntley* could not see him at Dinner: He tells you likewise, he passed up and down in the Room afterwards, and did not see Mr. *Goodman* there; but yet he might be there, and he not see him.

Then they produce the Master of the House, and he gives much the same Evidence in Effect, which his Servants do, That he did not see Mr. *Goodman* there all the while; but he says something that is a little incredible: He can be positive that Mr. *Goodman* was not there while my Lord of *Aylesbury* was there, but he cannot be positive that he was not there afterwards. He tells you, he met my Lord of *Aylesbury* and my Lord *Montgomery* upon the middle of the Stairs, coming down, and he is sure Mr. *Goodman* was not there at that Time. Now, is that possible that he could be sure of that, when he owns, (and cannot but own) that Mr. *Goodman* might go into the Room and he not see him? So that he has made a Strain in his Evidence that is very little to be credited, which was not designed so much for the Advantage of Mr. *Cook*, as for the Advantage of somebody else: And in itself it is almost an impossible Thing that it should be true, by what he offers as the Reason of his Evidence.

But then, Gentlemen, you are to consider, that all these three Witnesses, if they swear true, do falsify not only Mr. *Goodman*, who swears that he was there, but they likewise falsify the Evidence of Mr. *Porter*; and, for that Reason I asked Mr. *Porter* the Question, Whether he did not give the same Evidence against Sir *John Freind?* And if what he swears now be not true, neither was it true when Sir *John Freind* was tried, for he was the only Witness at that Time against Sir *John Freind* for this Meeting; and therefore these Men's Testimony tends to overthrow both Witnesses as well as one: And I must tell you, that if Mr. *Goodman* be not a legal Witness, because he has sworn a Thing that is not true, then Mr. *Porter* is not a good Witness, who has sworn the same Thing, *viz.* That Mr. *Goodman* was there; and then you ought to acquit the Prisoner, because there is no Witness against him at Law; for there is the same Evidence against Mr. *Porter* that there is against Mr. *Goodman*, as to this Matter.

Then, Gentlemen, as to the Character of Mr. *Cook*, they say he is a good *English* Protestant: I hope he is so; but it is plain that Religion does not vary the Case: 'Tis within the Reach of every Man's Memory that is here, that the same Thing has fallen upon other Gentlemen that have had the same Character; particularly Sir *John Freind* and Sir *William Perkins*, who both said the same Things, in the same Place, That they were true Protestants of the Church of *England:* But that is no Manner of Evidence that will be of Weight against positive Oaths.

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Now, Gentlemen, it is fit likewise you should reflect upon another Thing; What is it that should engage Mr. *Porter* and Mr. *Goodman*, or invite either of those two Gentlemen to give a false Evidence against the Prisoner at the Bar? It does not appear that there was any Injury done by him to them, to provoke them to it; so that it could be for nothing, but for the Sake of Truth.

It has been further said, in Behalf of Mr. *Cook*, That he abhorred the *French*, and any Invasion upon his Country, and the like: It is a Matter that is easily said; and it has been said by others that have been in the same Place where he now stands, That they hated all Plots, and they might punish them if ever they caught them: But these are only Sayings, and nothing else. If there can be any Constructions made of the Evidence given by these two Witnesses, that does not directly prove the Indictment, then the Prisoner ought to be acquitted: But if there can be no other Construction made, but only, That there was a plain Design to send *Charnock* into *France* to King *James*, to perswade him to prevail with the *French* King to come and invade us with a foreign Force; and if our Witnesses be legal Witnesses, (as I, doubt not, my Lords the Judges will tell you they are; if there be no Exception to the Credit of Mr. *Goodman*, but only that he was in such a Design of poisoning the two Dukes, which is really no Objection of Discredit to his Testimony), then, with Submission, I think there is no Room for you, Gentlemen of the Jury, to doubt but that the Prisoner is as guilty of this Crime laid to his Charge, as any others that have been tried and condemned for the same: And so, Gentlemen, I leave it to you.

The Lord Chief Justice's Directions to the Jury.

The Lord Chief Justice *Treby* afterwards summed up the Evidence, and made the following Observations upon it, in his Directions to the Jury.

Gentlemen, it ought to be considered, that here are several Circumstances, some of which seem very pregnant. It is agreed on all Hands, that the Prisoner dined there with those other seven Persons, concerning four of whom we must conclude nothing; but concerning three of them, we in this Court may take Notice, they are attainted of High-Treason; and so it is evident, that the Prisoner was for a long Time a Companion of three Traitors, and had a Conversation with them. I do not find that he had any Occasion to be there; nor any of the rest of the Company. Concerning my Lord of *Aylesbury* indeed it is said, he proposed to treat about a Hogshead of White-Wine: But that seems to be casual, and not the End of his coming, and dining with this Company there: But, be that how it will, that relates to his Lordship alone; but for the others, I do not find they do pretend any Occasion of meeting there, and therefore it leaves it the more suspicious; and it is the more so, because it was managed so privately and cautiously; They were not attended according to their Qualities: The Lords went away together in a Hackney Coach that was called, as they had come

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come thither in another: The reſt thought fit to ſtay there till it was dark; and, as ſoon as it was ſo, went away. There was ſome extraordinary Cauſe for all this: It did import the Priſoner to ſhew that it was for ſome good Cauſe and Purpoſe.

And further, it is obſervable, that this Houſe was a Place, which, as the Maſter ſays, none of this Company did uſe to reſort to, except Sir *John Freind*; which makes it probable, (this being a Houſe that Sir *John Freind* frequented, and none of the others) that He beſpoke this Place, and brought the reſt thither: And if it were ſo, that makes it more probable, that there was ſuch a Treaſon there to be hatched, as is evidenced by the King's Witneſſes: For you may remember, and it appears by the Record in this Court, that Sir *John Freind* was indicted and attainted (not for the Aſſaſſination, but) for the Treaſon for which the Priſoner is now a trying; an Invaſion that was to be ſupported with an Inſurrection. Now, if Sir *John Freind* was chiefly acquainted with this Houſe, and brought this Company together; it is very probable, it was about this Buſineſs which Sir *John Freind* was ſo concerned in: And that he is attainted for it, appears upon the Record before us; which ſhould be read, but that the Priſoner's Counſel admit it, and are ſo far ſatisfied in it, that they won't arraign the Verdict; nay, they did acknowledge that there was a Plot; and there was no Doubt of it, there was ſuch a Plot.

Now then, Gentlemen, here it is certainly proved, by theſe two Witneſſes (and not gain-ſayed by the Priſoner's own Witneſſes) that there was ſuch a Meeting, and that the Priſoner was there; and they both have poſitively ſworn that this Treaſon was committed there. You have heard what has been objected to their Credit; they have delivered their Teſtimony upon their Oaths; and ſo, Gentlemen, are you upon your Oaths: If you are ſatisfied, and can take it upon your Conſciences, that theſe two Witneſſes are, or any one of them, is, forſworn (if ſuch Diſtinction can poſſibly be made in this Caſe) then you are to acquit the Priſoner; but if you are ſatisfied, and think they have ſworn true, you are to find him Guilty.

Mr. J. Rokeby. Nay, if one be forſworn, both are; for the Evidence is intirely in all Parts the ſame; and if Mr. *Goodman* be perjured, Mr. *Porter* is ſo too.

Sir B. Shower. Forſworn and Perjured, are hard Words: We only ſay miſtaken.

Mr. J. Rokeby. Well, that Objection goes to one as well as the other.

L. C. J. Treby. It muſt be ſo, ſince they ſpeak of the ſame joint Matter, *viz.* their being together in Company: If Mr. *Porter* ſwears true, when he ſwears that Mr. *Goodman* was there with him and the reſt, Mr. *Goodman* muſt ſwear true, when he ſwears, that he was there with Mr *Porter* and the reſt. There was one Thing that I forgot: Sir *Bartholomew Shower* obſerved, That it might be an Invention of Captain *Porter*, becauſe he fixeth it in Point of Time to the Month of *May*, that he does not ſay it was in *April*; for that then it would be within the Pardon, which extends to *April* the twenty-ninth laſt Year: Nor would he ſay it in *June*, for then he was in *Newgate*; and others of them were diſperſed, by Reaſon of a Riot committed in *Drury Lane*; and this Sir *Bartholomew Shower* alledges was a Piece of Skill and Contrivance; but really this is a Piece of Ingenuity in himſelf: For, beſides that the King's Witneſſes affirm poſitively that it was in *May*, and remember it by a certain Token, *viz.* That it was within a very few Days after the King went beyond Sea, one or two of the Priſoner's Witneſſes (*Crawford* I am ſure) did ſay, that this Meeting was this Time Twelve-month; and you know we are now near Mid-*May*.

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Then the Jury withdrew; and after a Receſs of about three Quarters of an Hour, returned with their Verdict, That the Priſoner was GUILTY: And Sentence paſſed on him as a Traitor. After which he preſented a Paper to the Court, recommending himſelf to the King's Mercy; which the Judges promiſed to lay before his Majeſty, who was pleaſed to pardon him.

Mr. Cook *convicted and condemned;*

but pardoned.

In theſe Trials of the Conſpirators againſt King *William*, *viz.* Of *Charnock*, *Perkins*, *Rookwood*, *Lowick*, *Cook*, &c. moſt of the Points of Law are ſettled, in Relation to Trials, which were ſo much conteſted in the preceding Reigns: And it appears that the Friends of the Faction, who were condemned for Treaſon and Rebellion in thoſe Times, had not that Injuſtice done them, as ſome of their Advocates; and particularly as Sir *Robert Atkyns* and Sir *John Hawles* complain of, in their voluminous Remarks on the Trials of the *Rye-Houſe* Conſpirators. Sir *John Hawles*, who was Solicitor-General in King *William*'s Reign, at the Trials of *Charnock*, &c. was obliged to purſue the very ſame Methods, in order to their Conviction, and inſiſt on the ſame Maxims that had prevailed in King *Charles*'s Reign; and of which he complains ſo loudly, in his Remarks on the Trials of the Lord *Ruſſel*, &c. But to deſcend to Particulars.

Remarks on the Aſſaſſination Plot.

Charnock inſiſted on a Copy of his Indictment, and Counſel, as his Right; but was told, he had no Right to either; and yet the Conſpirators in King *Charles*'s Reign were ſaid to have great Injuſtice done them, when theſe Things were denied them.

Charnock alſo objected, That an Accomplice in Treaſon could not be a Witneſs (as the Conſpirators in the *Rye-Houſe* Plot had done): But it was reſolved, an Accomplice was a good Witneſs, before he was indicted.

He objected alſo, as they had done, That Words were not Treaſon: But was told, That Words and Diſcourſe explained the Imagination of the Heart, which was the Treaſon; and that Words of Perſwaſion, in order to bring others into a Conſpiracy, were ſufficient Manifeſtations or Overt-Acts of the Treaſon of the Heart.

He objected alſo againſt Hear-ſay Evidence, as the *Rye-Houſe* Conſpirators had done; but this was however admitted on ſome Occaſions: Indeed the Jury were told, it ought not to weigh with them; but, if it was not given to influence the Jury, to what Purpoſe was it it ſuffered?

Another Thing that Mr. *Charnock* deſired, was, That he might have a Perſon to ſtand by him, and aſſiſt him at his Trial: But he was told this was an Innovation, and it was refuſed him; though this was a Favour allowed to the Lord *Ruſſel* in King *Charles*'s Reign, and to ſome others.

Major

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Major *Rookwood* inſiſted at his Trial, That conſulting or conſpiring to levy War, was not Treaſon, unleſs a War was actually levied; as had been ſaid alſo in the Lord *Ruſſel*'s Caſe, and great Injuſtice ſaid to be done that Noble Lord, in being condemned for High-Treaſon, for conſpiring to attack the Guards, and levy War upon the King: But it was reſolved by the Lord Chief Juſtice *Holt* at *Rookwood*'s Trial, That the conſulting or conſpiring to levy War, in order to depoſe or impriſon the King; or to put any Force or Reſtraint upon him, was High-Treaſon, though no War was actually levied: And he added, That the contrary Opinion might have been maintained in ſome Pamphlets; but the conſulting and agreeing to levy War againſt the King, was always deemed an Overt-Act of High-Treaſon.

Another Hardſhip complained of by the *Rye-Houſe* Conſpirators, was, That Evidence was ſuffered to be given of Facts done in another County: But the Lord Chief Juſtice *Holt* reſolved in the Trial of Sir *William Perkins*, That if Treaſon was committed in ſeveral Counties, the Party might be indicted in any one of them, and Evidence given of Facts done in all of them; provided Evidence was firſt given of ſome Fact done in the County where the Indictment was laid.

It was objected further by the *Rye-Houſe* Conſpirators, as it was by Sir *William Perkins* and others at theſe Trials, That the Law required two Witneſſes to prove every Overt-Act: But the Chief Juſtice informed them, That if there was one Witneſs to one Overt-Act, and another Witneſs to another Overt-Act of the ſame Species of Treaſon, that was all the Law required: And that a conſpiring to raiſe a Rebellion, or to promote an Invaſion, was the ſame Species of Treaſon as the conſpiring to aſſaſſinate the King; for that either of them had a Tendency to his Deſtruction.

The Act for Regulation of Trials in High-Treaſon.

There was an Act paſſed during theſe Trials, in the Year 1696, which did not only confirm many of theſe Reſolutions of the Judges, but made ſome Alteration in the Laws relating to Trials for High-Treaſon; of which it may be proper to take Notice in this Place: For Inſtance,

The Priſoner to have a Copy of the Indictment,

It was provided by this Act, That a Perſon proſecuted for High-Treaſon, or Miſpriſion of Treaſon, whereby his Blood might be corrupted, ſhould have a Copy of the whole Indictment (but not the Names of the Witneſſes) delivered to him, five Days at leaſt before his Trial; his Attorney or Agent requiring the ſame, and paying the Officer his Fees, not exceeding five Shillings for ſuch Copy.

and Counſel.

That the Priſoner ſhould be permitted to make his Defence by his Counſel, who ſhould be aſſigned him by the Court, not exceeding two; and they ſhould have Liberty to reſort to him: And that the Priſoner's Witneſſes ſhould give their Teſtimony upon Oath: That one Witneſs to one Overt-Act, and another Witneſs to another Overt-Act of the ſame Species of Treaſon, ſhould be ſufficient to convict him.

His Witneſſes ſworn.

Proſecution within three Years.

But the Proſecution is limited to be within three Years after the Treaſon committed.

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A Copy of the Pannel.

It is provided alſo by the ſaid Act, That the Priſoner ſhall have a Copy of the Pannel of the Jurors duly returned and delivered to him, two Days at leaſt before the Trial: And that he ſhould have the Proceſs of the Court to bring in his Witneſſes: And that no Evidence ſhould be given of any Overt-Act not laid in the Indictment.

The Overt-Act muſt be laid in the Indictment.

It was alſo enacted, That no Indictment for the Offences aforeſaid ſhould be quaſhed on Motion for miſwriting, mis-ſpelling, falſe or improper *Latin*; unleſs ſuch Exception be made in Court, before any Evidence given: And that no ſuch miſwriting, mis-ſpelling, falſe or improper *Latin*, after Conviction, ſhould be deemed a Cauſe to ſtay or arreſt Judgment: But Judgment may be reverſed upon a Writ of Error in the ſame Manner (and no other), as if this Act had not been made.

All the Peers ſummoned on the Trial of a Peer.

And, it was further enacted, That upon the Trial of any Peer or Peereſs, for Treaſon, or Miſpriſion of Treaſon, all the Peers ſhould be duly ſummoned, twenty Days at leaſt before the Trial; and every Peer, ſo ſummoned and appearing, ſhould have a Voice at ſuch Trial, firſt taking the Oaths, and repeating and ſubſcribing the Declaration againſt Tranſubſtantiation; provided that the ſaid Act ſhould not extend to Impeachments, or to the Treaſons for counterfeiting the Coin or Seals.

Jurors to have 10 l. per Annum.

And it was provided by an Act made in the 4th and 5th of *W.* & *M. cap.* 24. That Jurors ſhould have ten Pounds *per Annum* (for Life at leaſt) within the County, or it ſhould be a good Cauſe of Challenge; and the Juror might be examined, as to that Point, upon Oath.

The firſt Trial after that Act.

The firſt Trial after the Commencement of the ſaid Act, for regulating Trials in Caſes of High-Treaſon, was that of *Ambroſe Rookwood*, above-mentioned; at which Trial his Counſel obſerved, that by the Words of the ſaid Act, the Priſoner ought to have had a Copy of the Pannel of the Jurors *duly returned* two Days before the Trial; but the Court reſolved, That it anſwered the Intent of the Act, if the Priſoner had a Copy of the Pannel arrayed, *though not returned*, at the Time it was given the Priſoner.

Mr. *Rookwood*'s Counſel alſo moved, that they might offer their Exceptions to the Indictment *after Plea pleaded, and the Jury ſworn*; for that Act ſaid, they might offer their Exceptions to the Indictment *before Evidence given.*

But the Court ruled, *That they ought to have moved this upon the Arraignment, before Plea pleaded, notwithſtanding the Words of the Act*; That the Act intended they ſhould move at ſuch Time before Evidence given, as the Law allowed, and did not eſtabliſh any new Method of Trial.

In what Caſe a Felon pardoned may be a Witneſs.

It was reſolved alſo at this Trial, that one *convicted* of Felony, and pardoned, might be a Witneſs; but one that had been *attainted* of Felony, and pardoned, could not.

The Effect of a Pardon.

That a Pardon from the King was as beneficial as a Parliament Pardon; and a Parliament Pardon would not reſtore an Offender to Blood, unleſs the Attainder was reverſed, or there were ſpecial Words in the Act to reſtore him; and, where-

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An Overt-Act not laid may be given in Evidence, to prove an Act that is laid.

whereas that Acts says, that no Evidence shall be given of any Overt-Act not laid in the Indictment; yet the Court held, That any Fact might be given in Evidence (though not laid in the Indictment) that tended to prove an Overt-Act that was laid in the Indictment.

A Prisoner not to be tried in Irons.

The Chief Justice, 'tis observed at the Trial of *Cranborne*, declared, That a Prisoner ought not to be in Irons at his Trial, and ordered them to be knocked off; giving this Reason for it, That he ought to stand at Ease, that he might be the better enabled to make his Defence: But if this Reason be a good one, it should hold equally where a Prisoner is brought to his Arraignment; because then he is to make his Exceptions to the Indictment, which is a considerable Part of his Defence, and often takes up a great deal of Time: And yet we find this Privilege was denied Mr. *Layer* at his Arraignment.

Causes of Challenge.

It was also ruled at this Trial, That it was no good Cause of Challenge to a Juror, that he had given a Verdict against another Prisoner on the same Indictment; but it was held to be a good Cause of Challenge if he had been upon the Grand Jury, or if he had declared the Prisoner was guilty before hand. It was also resolved, That a Juryman was not bound to answer whether he had given such an Opinion or not; but this must be proved by Witnesses, as must every Thing else, where the Juror's Answer would subject him to any Reproach or Damage.

Jurors.

One Overt-Act proved maintains the Indictment.

And it was resolved at *Lowick*'s Trial, That if any one Overt-Act laid in the Indictment was proved, that was sufficient to maintain it; the Indictment could not be quashed for any Defect or Uncertainty in the other Overt-Acts that were laid: And in *Knightley*'s Case, the Chief Justice declared, That where a Trial is in the *King's-Bench*, a *Venire facias* ought to issue for the Jury as in Civil Cases; and there must be fifteen Days between the *Teste* and the Return; and that there ought to be four Days after Conviction in that Court, if there be so many Days remaining in the Term, before Judgment be pronounced: And yet we find in *Stayley*'s Case, who was condemned for the Popish Plot, Judgment was given the same Day: So furiously did the Faction drive on that Prosecution!

Trials in the King's-Bench.

Stayley not fairly dealt with.

A Jury cannot be discharged before Verdict.

It appears also, from Mr. *Cook*'s Trial, That a Jury cannot by Law be discharged, after they are once charged with a Prisoner, till they have given a Verdict, and that the Prisoner ought to be convicted or discharged thereupon: And yet we find in the Trial of the two Jesuits, *Whitebread* and *Fenwicke*, after the Jury were charged with them, and the Evidence actually given, the Jury were discharged of them, and they were afterwards indicted, convicted, and condemned for the same Offence, and consequently they were illegally put to Death, if the Opinion of the Court at Mr. *Cook*'s Trial be Law: But every thing was esteemed fair by the Faction in those Days, especially in the Prosecution of Priests and Jesuits.

The Injustice done the Jesuits in the Trials of the Popish Plot.

There being a Defect of Jurors at Mr. *Cook*'s Arraignment, occasioned by the numerous Challenges, as well on the Part of the King as of the Prisoner, the Court ordered another Pannel to be ready on the *Wednesday* following; when the Prisoner being brought to the Bar again, his Counsel insisted, that there ought not to have been a new Pannel awarded, but a *Tales*; for, by the late Act, the Prisoner was to be tried by the first Pannel: But the Court was of Opinion, a *Tales* did not lie upon a Commission of *Oyer* and *Terminer*; but where there was a Defect of Jurors, there was an absolute Necessity for a new Pannel.

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No Tales on a Commission of Oyer *and* Terminer.

Having taken Notice of the principal Points of Law resolved in these Trials, and made some Observations on them, I proceed, in the next Place, to make some Historical Remarks on this Conspiracy.

Historical Remarks.

The *French* King had in a Manner ruined and depopulated his Country, by maintaining a long and expensive War against most of the Powers of *Europe*, in Behalf of his Ally King *James*; by whose Restoration he proposed the bringing over *England* to his Party, and to make this Kingdom subservient to his grand Design of Universal Monarchy: As a last Effort therefore, when he found but little Impression could be made on the Confederates in *Flanders*, he projected the making so sudden a Descent upon the *English* Coast, when most of our Troops were on the other Side the Water, as to bring about another Revolution, by the Assistance of the Malcontents here, before any Provision could be made to oppose him; and, accordingly, in the Winter of the Year 1695, he drew down an Army towards *Dunkirk* and *Calais*, with the utmost Secrecy, and King *James* came to *Calais*, attended by Marshal *Boufflers*, in order to embark for *England*; the Duke of *Berwick*, and Sir *George Barclay* being sent over before, with some reformed Officers, to prepare King *James*'s Friends in *England* to join him when he should land: And, in order to facilitate the Enterprize, some desperate Men, without the Knowledge of King *James*, or indeed of many considerable Men of their Party, resolved to attack King *William*'s Guards as he came from Hunting, to take him Prisoner, and hurry him into *France*, and had actually treated for a Ship for that Purpose; and there were others, it is said, that had determined to kill him, if they could not carry him off: From whence this Conspiracy obtained the Name of *The Assassination Plot*; though it appears from these Trials, that this Branch of it was not known to several of the Conspirators, nor were they so much as charged with it; and every one of the Prisoners, at their respective Executions, declared with their dying Breath, That King *James* had given them no Orders or Authority to kill King *William*; the Commission, which some of them said they had heard of, being only a general Commission to make War on the Prince of *Orange*; which they imagined, perhaps, would have excused them from the Guilt of Treason, if they had joined King *James* and the *French* Troops on their Landing.

Bishop *Burnet*, indeed, speaking of the Assassination Plot, in his posthumous History, Vol. II. Pag. 172, *&c.* says, That King *James* gave the Conspirators a Commission to attack the Prince of *Orange*'s Person; but it does not appear certainly, from the Trials of the Conspirators, that they had any Commission at all; some of the Witnesses, and particularly *De la Rue*, testifying, that they once resolved to act without a

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Commiſſion; and *Porter*, who teſtifies he heard that there was a Commiſſion, only ſays, That it was *to make War upon the Prince of* Orange; which is very far from being a Commiſſion *to attack King* William's *Perſon in particular*, or, in other Terms, to *aſſaſſinate* him. Had King *James* and the *French* Forces landed, and joined the *Engliſh* Malcontents, who would have acted, it is preſumed, under Generals commiſſioned by King *James*, they would, no doubt, have looked upon themſelves to have been authorized to attack King *William*'s Guards, or any other Part of his Forces; and King *William*'s Generals probably were authorized to attack King *James*'s Guards, or any other Part of his Forces, whether commanded by that King in Perſon or not: The Commiſſions on both Sides poſſibly were much of the ſame Tenor, and the like Inferences might be drawn from each.

'Tis true King *William* might have been killed in this War, and ſo might King *James*; there were no Orders given, that ever I heard of, on either Side, to avoid firing, where either King was perſonally preſent: And, if we may credit Biſhop *Burnet*, Queen *Mary* was in the utmoſt Conſternation, after the Battel of the *Boyne*, till ſhe heard her Father was ſafe; though it cannot be ſuppoſed any particular Orders were given to take him off.

Give me leave to take Notice of another groſs Miſtake of Biſhop *Burnet*'s, in Relation to theſe Trials, *Pag.* 188, and 193 of his laſt Volume of pohumous Hiſtory; where he ſays, *That the Priſoners did not, either at their Trials or Examinations, deny any Circumſtance in the Evidence againſt them*; whereas every Man of them denied that their Meeting at the *King's-Head* was with an Intention of ſending *Charnock* to *France*, to procure a Body of *French* Troops, as had been ſworn; but averred that nothing of this kind was mentioned at that Meeting; and Sir *John Fenwick*'s Words, at his Execution, are very particular, (*viz.*)

As for what I am now to die, I call God to witneſs, I went not to that Meeting in Leadenhall-Street *with any ſuch Intention, as to invite King* James *to invade this Kingdom by Force; nor was I myſelf provided either with Horſe or Arms, or engaged for any Number of Men, or gave particular Conſent for ſuch Invaſion, as it is moſt falſly ſworn againſt me.*

Nor was the diſpatching *Charnock* into *France* for a Body of Troops, at that Meeting, denied only, by every one of the Priſoners at their Execution, but there is a noble Lord ſtill living, who was one of that Company, who abſolutely denies, to this Day, that there was any ſuch Matter treated of, or mentioned, at the Meeting at the *King's-Head*; but ſays, that *Charnock*, deſiring to ſerve the late King *James* in *France*, prevailed on him, and the reſt of the Company, to meet there, in order to get a Recommendation to the Lord *Montgomery*'s Father, who was then Chamberlain to King *James*: That there was no Diſcourſe at that Meeting, of inviting over *French* Forces, or encouraging the raiſing Forces to join them at their Landing, as *Porter* and *Goodman* had teſtified: That the Aſſaſſination was a Reſolution taken by *Charnock*, *Porter*, and ſome deſperate Men, who communicated it only to thoſe few who were to be Actors in it: And that neither at this Time, or any other, did King *James* give Encouragement to ſuch a barbarous Attempt on King *William*, or was ever privy to ſuch a Conſpiracy; and that Biſhop *Burnet*'s Account of the Aſſaſſination Plot is not to be relied on. This the Author of theſe Sheets has ſeen, in a Letter under the Hand of that noble Lord to one of his Friends, and can aſſure the Reader that it was written at ſuch a Time and Place, that his Lordſhip could be under no Neceſſity or Temptation of diſguiſing the Truth. But to proceed: The Nation never appeared in a greater Ferment and Conſternation than on the Diſcovery of this Plot: The three Perſons who diſcovered it, and were made Witneſſes againſt the Conſpirators afterwards, namely, *Pendergraſs*, *De la Rue*, and *Porter*, had no ſooner given Advice of it to the Court, but King *William* went to the Houſe, (*viz.* on the 24th of *February*, 1695-6.) and acquainted his Parliament, that he had received ſeveral concurring Informations of a Deſign to aſſaſſinate him, and invade the Kingdom at the ſame Time; and that he had therefore given Orders for equipping a Fleet, and for bringing over ſuch a Body of Forces from *Flanders* as might ſecure them againſt any Attempts from abroad; that ſeveral of the Conſpirators were already in Cuſtody, and Care was taken to apprehend the reſt; and he did not doubt the Zeal of his Parliament to do every Thing that was proper for their common Safety.

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Both Houſes hereupon attended his Majeſty the ſame Day with an Addreſs, congratulating him on his Preſervation, and declaring their Abhorrence of the barbarous Deſign; aſſuring him they would ſupport his Perſon and Government againſt the late King *James*, and all his Enemies; and in Caſe his Majeſty came to a violent Death they would revenge it; deſiring he would proceed to ſeize and ſecure ſuch Perſons as he ſaw fit: And the next three Days the Members of both Houſes were employed in taking and ſigning a voluntary Aſſociation, which they entered into, wherein they declared King *William* their rightful and lawful King, and mutually engaged to ſtand by each other, in his Defence, againſt King *James* and his Adherents; and in Caſe his Majeſty ſhould come to a violent Death, they obliged themſelves to unite and aſſociate in revenging it upon his Enemies, and in ſupporting the Succeſſion of the Crown, according to the Act of Settlement: And a Proclamation iſſued for apprehending the Duke of *Berwick*, Sir *George Barclay*, Major *Lowick*, Captain *Courtney*, *George Higgons*, *George Porter*, *Cardel Goodman*, and ſeveral other ſuſpected Perſons, (the Earl of *Aylesbury* having been apprehended and committed to the *Tower* before).

A Fleet of fifty Men of War alſo was equipped in a few Days, and ſent, under the Command of Admiral *Ruſſel*, to lie before *Dunkirk* and *Calais*; and twenty Battallions were at the ſame Time brought over from *Flanders*, under the Command of the Duke of *Wirtemburgh*: So that the late King *James*, on his Arrival at *Calais*, found the deſigned Enterprize entirely defeated, and thereupon returned to *St. Germains*, leaving his Friends in *England* at the Mercy of his Rival; and they were thereupon condemned and executed, in the Manner above related.

Proceed-

1696. 8 W. III. Fenwick's Attainder.

Proceedings againſt Sir JOHN FENWICK, on a Bill to attaint him of *High-Treaſon*; which was debated in the Houſe of Lords and Commons, in the Months of *November* and *December*, 1696, and received the Royal Aſſent on the 11th of *January* following.

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SIR *John Fenwick* lay concealed in *London*, from the Time of the Diſcovery of the Aſſaſſination Plot, till the Beginning of *June* 1696; when endeavouring to make his Eſcape over to *France*, he was apprehended at *Romney*, on the Coaſt of *Kent*, before he could embark: And being in Cuſtody at *Romney*, wrote a Letter to his Lady; which was intercepted, and great Uſe made of it in the ſubſequent Proceedings againſt him; being of the following Tenor.

His Letter to his Lady, after he was taken.

" What I fear'd is at laſt happened. Had I " gone alone, I had done it: But the other was " betrayed from *London*. It is God's Will, ſo " we muſt ſubmit. I know nothing can ſave " my Life, but my Lord *Carliſle*'s going over " to him, backed by the reſt of the Family of " the *Howards*, to beg it; and offering, that I " will be Abroad all his Time, where I cannot " hurt him; and that I will never draw Sword " againſt him. I muſt leave it to you what " elſe to ſay: All Friends muſt be made: My " Lord *Devonſhire* may perhaps, by my Lady: " My Lord *Godolphin* and Lord *Pembroke*, by " my Lady *Montgomery*; Mr. *Nelſon*, by the " Biſhop of *Canterbury*; My Lord *Arran* " might ingage his Brother *Selkirk*, to uſe his " Intereſt with *Keppel*. I believe, if my Lord " *Carliſle* would go, it were beſt before my " Trial; or elſe they will cut me ſhort, for " Want of Time: If he can prevail with him " for a Pardon, he will procure it as well before " my Trial as after; at leaſt, he may prevail for " a Reprieve, till ſome come over to him: My " Lord alſo will have an Opportunity to ingage " *Bentinck*; and get my Lord of *Eſſex* to join " with him. I cannot think what elſe to ſay; " but the great Care muſt be the Jury: If two " or three could be got that would ſtarve the " reſt, that or nothing can ſave me: Money " I know would do it; but alas! that is not to " be had; nor ſhall I get enough for Counſel. " I beg of you not to think of being ſhut up " with me, I know it will kill you; and be- " ſides, I have no ſuch Friend as you to take " care of my Buſineſs; though it would be the " Comfort of my Life, the little Time it laſts, " to have you with me; and I have this only " Comfort now left, that my Death will make " you eaſy. My deareſt Life, grieve not for " me, but reſign me to God's Will: You will " hear, as ſoon as they bring me to Town, " where they put me; and then I would have a " Servant, or ſome body, with me. I am in- " terrupted, ſo can ſay no more now: Engage " Sir *John Lowther*, the new Lord, who has " more Intereſt than any body: Let my Lord " *Scarſdale* engage *Germaine*, to engage *Overkirk* " for me: Speak to my Lady *Arlington*. If " my Trial could be put off till the King " comes back, there would be more Opportu- " nity to ſollicit him."

As Sir *John Fenwick*'s principal Hopes ſeemed to lie in getting his Trial put off till the King came over; and great Promiſes of Favour were made him; if he would diſcover the Noblemen and Gentlemen which were ſuſpected to be concerned with him. Sir *John* amuſed the Miniſtry from Time to Time, with one plauſible Story or other; and, at length, delivered in a Paper; wherein he charged the Duke of *Shrewsbury*, the Earl of *Marlborough*, the Earl of *Bath*, Admiral *Ruſſel*, the Lord *Godolphin*, and Commiſſary *Crawford*, of holding a Correſpondence with King *James*: Which the Lords Juſtices giving little Credit to, they cauſed Sir *John* to be indicted on the Evidence of *Porter* and *Goodman*; and the Indictment was found by a *Middleſex* Jury: But *Goodman* being tampered with, as was ſuppoſed, by ſome great Men, who were ſuſpected to be in the Plot, made his Eſcape into *France*, before Sir *John* was brought to his Trial; and there being now but one Witneſs againſt him, they did not think fit to bring him upon his Trial afterwards; but deferred the Proſecution of him till his Majeſty ſhould come over from *Flanders*, when they propoſed to lay the Caſe before the Parliament.

King *William* returning to *England* on the ſixth of *October*, and the Parliament meeting on the 20th of the ſame Month; Admiral *Ruſſel*, who was one of the Perſons accuſed by Sir *John Fenwick*, prevailed on Mr. Secretary *Trumbal* to bring the ſeveral Papers, containing the Informations Sir *John* had given to the Lords Juſtices, into the Houſe of Commons, on the ſixth of *November*; and moved that they might be read, that he might have an Opportunity of juſtifying himſelf; Mr. Secretary declaring at the ſame Time, that he had his Majeſty's Leave to lay thoſe Papers before the Houſe. Then the Papers were read, and Sir *John Fenwick* was brought before them, by an Order of the Houſe, that Afternoon; when Mr. Speaker required him to make a full Diſcovery of what he knew of the Conſpiracy: To which Sir *John* anſwered, He was indicted of High-Treaſon, and a Diſcovery there might be prejudicial to him, unleſs he had ſome Security to indemnify him, and then he ſhould be ready to tell all he knew: But was anſwered, the beſt Way to obtain their Favour, was, to make a free and candid Confeſſion. Then he deſired only ſome Time to recollect himſelf; but this alſo was refuſed; and Sir *John* being withdrawn, it was reſolved, after ſome Debate, to attaint him of High-Treaſon; *Yeas* 179, *Noes* 61: And on *Monday* the ninth of *November*, a Bill was brought in for attaint-

Sir John brought before the Commons.

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A Bill of Attainder brought in againſt him, and read.

attainting Sir *John Fenwick* of High-Treaſon; and it was read a firſt Time, and the Queſtion put for a ſecond reading; upon which the Houſe divided; *Yeas* 196, *Noes* 102; and *Friday* was appointed for the ſecond reading: And that Sir *John* ſhould have a Copy of the Bill, and of the Order, and be allowed Pen, Ink, and Paper; and that Mr. Attorney and Mr. Solicitor ſhould be ready to produce the Evidence againſt him that Day.

Fuller *offers to be an Evidence againſt Sir* John.

In the mean time Mr. Speaker read a Letter from Mr. *Fuller*, the Forger of the Warming-Pan Plot, offering to become an Evidence againſt Sir *John*; but the Houſe knowing him to be ſo notorious an Impoſtor, rejected his Teſtimony: Mr. *Speaker* alſo acquainted the Houſe, that he had read a Letter from Sir *John Fenwick*, deſiring, That Sir *Francis Pemberton*, Sir *Thomas Powis*, and Sir *Bartholomew Shower*, might be his Counſel, and Mr. *Dighton* his Solicitor: Whereupon it was ordered he ſhould be allowed two Counſel, and the Sollicitor he deſired; and that he ſhould be heard by his Counſel.

A Debate about the Form of Proceeding.

Accordingly Sir *John* being brought to the Houſe again, on *Friday* the 13th of *November*, before he was brought in, a Debate aroſe, Whether the Mace ought to lie upon the Table, or whether the Serjeant ought to ſtand by him with it at the Bar? For there was not a Member in the Houſe that had been preſent at the hearing a Priſoner againſt a Bill of Attainder.

Some Gentlemen held, That Sir *John Fenwick* being a Priſoner, the Mace ought to be at the Bar, and then no Member could ſpeak: Others ſaid it ought to lie upon the Table, and then every Member was at Liberty to ſpeak, and ask Queſtions: A third was of Opinion, the Sheriffs of *London* could not have him in Cuſtody here; but he muſt be delivered to their Serjeant: To which it was replied, He might be in the Cuſtody of the Serjeant without his Mace; and another ſaid, The Mace ought to lie upon the Table: For never any Bill was read, but when the Mace was on the Table.

Others obſerved, That when the Lord *Torrington* was brought Priſoner from the *Tower*; and the Houſe, upon Account of his Quality, did not order him to the Bar; the Mace was upon the Table, while he was in the Houſe; and he gave an Account of his Conduct, and every Member was at Libertyto ask him what Queſtion he pleaſed: And another Member ſaid, If the Mace was not upon the Table, their Mouths were muzzled: They were not in the Nature of Judges; and ſhould they paſs a Vote, That the Judges ſhould ask no Queſtions? Would they act in their higheſt Capacity without being a Houſe? Adding, That when the Duke of *Leeds* appeared there, the Mace was upon the Table.

To this it was anſwered, That though when the Mace was carried from the Table, no Member had the Liberty to ſpeak; yet any Member had the Liberty to deſire, that the Counſel and the Priſoner withdraw; and then the Mace might be brought to the Table.

At length, the Queſtion being put, it paſſed, That the Mace ſhould ſtand by Sir *John Fenwick* at the Bar.

It was reſolved alſo, That the Bill ſhould be read to Sir *John* in the Houſe, though the Mace was off the Table: But then that it ſhould be read again after Sir *John* was withdrawn, when the Mace was upon the Table before the Queſtion was put.

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Then Sir *John Fenwick* was brought in, and the Serjeant took him to the Bar; where he ſtood by him with his Mace: And Sir *Thomas Powis* and Sir *Bartholomew Shower*, were admitted as Counſel for Sir *John*; and Mr. Serjeant *Gould*, and Mr. Recorder *Lovel*, appeared as Counſel for the Bill.

The Counſel on both Sides.

Mr. Speaker then acquainted Sir *John*, That the Houſe had ordered a Bill to be brought in, to attaint him of High-Treaſon; which had been once read; and to which they permitted him to make his Defence by his Counſel, before it was read a ſecond Time: But they muſt not permit his Counſel to diſpute the Power of Parliaments to paſs Bills of Attainder, whenever they ſaw fit: After which the Bill was read, being of the following Tenor:

The Bill read to Sir John.

That whereas Sir *John Fenwick*, Bart. had been indicted for High-Treaſon, on the Oaths of *George Porter* and *Cardel Goodman*, for compaſſing the King's Death, and adhering to his Enemies: And whereas the ſaid Sir *John* had procured his Trial to be put off from Time to Time, on Pretence of making a full Diſcovery of the Conſpiracy againſt his Majeſty; and, inſtead thereof, had contrived ſeveral falſe and ſcandalous Accuſations; reflecting on ſome Peers and Members of the Commons, with an Intent to undermine the Government, and create Jealouſies between the King and his Subjects: And whereas the ſaid *Cardel Goodman*, one of the Witneſſes againſt the ſaid Sir *John*, was in the mean Time withdrawn, ſo that his Evidence could not now be had: It was therefore enacted, That the ſaid Sir *John Fenwick* ſhould be convicted and attainted of High-Treaſon.

Mr. Serjeant Gould opens the Charge and the Evidence.

After the reading the Bill, Mr. Serjeant Gould *opened the Charge and the Evidence; and ſaid,*

Mr. Speaker, We are here, in Obedience to your Commands, to give an Account of the Charge, and likewiſe the Evidence of the Fact, that is againſt this Gentleman, Sir *John Fenwick*. The Charge againſt Sir *John Fenwick* is for High-Treaſon, and High-Treaſon of the higheſt Degree; it is no leſs than a Deſign of depoſing the King, and ſubverting the Government, and ſubjecting it to a *French* arbitrary and ſlaviſh Power: It further charges, That in Proſecution of this Conſpiracy, he hath met together with ſeveral others, that have conſulted, conſented, and agreed together, to bring in a *French* Army upon us; and, in order to that, as a particular Overt-Act, it is charged, That they contrived to ſend one to the late King *James*, to bring in a *French* Power upon us: It is charged likewiſe, That he conſpired to levy War upon us; and, for that Purpoſe, did provide Piſtols, and other warlike Arms. This I take to be the Subſtance of the Charge, as laid in the Indictment.

Now, may it pleaſe you, Mr. Speaker, as for the Evidence of the Fact, charged and alledged in the Indictment, it is no Secret certainly to any at this Time of Day (after ſo many Trials, ſo many Convictions, ſo many Attainders), that for ſome Years laſt paſt, there hath been a wicked Conſpiracy to bring in a *French* Power upon us, to ſubject this good Govern-

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Government, and to depoſe the King; but God Almighty, by ſpecial Providence, hath always prevented and diſappointed them. We know, ever ſince the Buſineſs of *la Hogue* (in which, even by a Miracle, God diſappointed them), they have been ſtill reſtleſs, and have been induſtrious to ſet up again this Deſign; and for this have plotted to bring in a *French* Power, and have not had any Regard to the King's Mercy ſhewed to them, and that in paſſing ſeveral Acts of Parliament but have ſtill perſiſted in the ſame Deſigns.

As to the Charge upon this Gentleman at the Bar, we ſhall ſhew that in Time. In the Year 1694, for ſeveral Months there was a Conſpiracy carried on, but did not take Effect: Afterwards in Time, I think the Beginning of *June*, or the latter End of *May*, there were ſeveral Conſults, or Meetings, at the *King's-Head* Tavern, at the upper End of *Leaden-hall-Street*; where this Gentleman, that now ſtands charged at the Bar, was preſent: There were ſeveral Gentlemen, and, among the reſt, (as it hath and will appear upon the Evidence), there was Sir *John Fenwick*, my Lord *Montgomery*, and ſeveral others; whereof Captain *Porter* and *Goodman* were there likewiſe preſent: It was then propoſed, that one *Charnock* (ſince executed, and agreed upon by all to be preſent), ſhould go over into *France* to the late King *James*, to communicate to him their Reſolution and Sincerity in being ſerviceable to him in levying War here, to depoſe the King, and ſubvert the Government; who was to intercede with the *French* King, ſo that there might be Forces ſent from *France*. But after this, *Charnock* (preſent ſtill this Gentleman) comes and propoſes this Thing again, and tried whether they were ſincere and real in their former Reſolutions: To which they all replied, and did agree and aſſent, That it ſhould be done; and they were very zealous in the Matter, and the Forces were at that Time propoſed. And what was that? Why truly, no leſs than 8000 Foot, and 2000 Dragoons of *French*, with an Aſſurance of 2000 Horſe from this Country. *Charnock* did go into *France*, and did communicate this Matter; and, after he had communicated this Matter, he came back, and brought Anſwer, That King *James* had endeavoured to anſwer their Expectations, but at that Time the *French* King could not ſpare his Forces; but however, returned his Thanks to them.

This paſſed on till towards *Chriſtmas* laſt: Then comes over Sir *George Barclay* upon this Expedition, and there was a Commiſſion prepared for that Purpoſe: And as to one Part, he brought along with him a Detachment of ſome of King *James*'s Guards, who was to aſſaſſinate the King: The next Part was for raiſing a Rebellion; now that fell to Sir *John Fenwick*'s Part: As to the aſſaſſinating Part, you have had ſeveral Examples made already: This we have Evidence to prove; and if we prove this Matter as we have opened it, then I think there is no Perſon whatſoever, but will agree that this is High-Treaſon in the higheſt Degree. Now, Sir, here ſtands our Matter: Here was an Indictment found, according to the Law you made laſt Seſſions of Parliament, by two Witneſſes to one Species of Treaſon againſt Sir *John Fenwick*: We have one of the Witneſſes here, *viva voce*; but Sir *John Fenwick* hath protracted his Trial, by frequent Aſſurances of making a Diſcovery, which hath terminated in what you have already mentioned in your Bill; by Means of which Sir *John Fenwick* hath not been tried; whereas he had been tried in Courſe, without theſe Applications, and found guilty: But now he hath had all this Time, that *Goodman* is withdrawn is plain, and, we think, (but that we muſt leave to the Judgment of this Honourable Houſe) may be reaſonably ſuppoſed, by Contrivance, to take off this Proſecution of Sir *John Fenwick*: For why? The Inference is from a Fact that we ſhall prove to this Honourable Houſe. There hath been the like Attempt upon Captain *Porter*; but Captain *Porter* hath been more ſtedfaſt: He hath been ſo reſolved, that he ſtood his Ground; and, to ſpeak the Truth, notwithſtanding he hath been highly attempted: For we ſhall prove to you, that one *Clancy* comes to Captain *Porter*, and attempts him to withdraw into *France*, with Aſſurance of a Pardon; and he hath 300 *l.* paid him in Hand, and 300 *l.* more he was to be paid when he ſhould come into *France*, to be remitted by Bills of Exchange: Beſides, he was to have 300 *l.* a Year; 100 *l.* from my Lord *Aylesbury*, 100 *l.* from my Lord *Montgomery*, and the other 100 *l.* a Year from Sir *John Fenwick*; and this to be an Annuity during his Life: And thus far we ſuſpect Sir *John Fenwick* may be concerned; for his Lady came (he did not come perſonally, but his Lady did), and gave her Honour and Aſſurance that it ſhould be all performed, and much more, if he would withdraw himſelf. Captain *Porter* preſently makes a Diſcovery of this, and takes the 300 *l.* which was paid down: Upon this it hath been ſo far proceeded, that *Clancy* hath been indicted for it, and convicted, and hath received Judgment; and, I ſuppoſe, there hath been Execution: We have the Record of all theſe Proceedings.

We have this Circumſtance further in the Caſe, (which it is my Duty to open to this Houſe) to ſhew what Labour there hath been to ſtifle the Truth of the Fact, upon taking of Sir *John Fenwick*: There was one *Webber* taken with him, and he ſlid a Letter into one *Fowl*'s Hand, and this was to be ſent to my Lady *Fenwick*; and what is the Import of this Letter? The Import of it is they could not prevail with *Porter*, (as I opened it juſt now); therefore You muſt influence the Jury, get two or three ſtout Jury-men to ſtarve the reſt, for we have nothing elſe to depend upon. Theſe Things we ſhall humbly offer to prove, according to our Duty, and according to the Order of this Houſe; and then leave Sir *John Fenwick* to make his Defence.

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Then the King's Counſel being about to produce their Evidence, Sir *Thomas Powis*, in Behalf of the Priſoner, ſaid, Mr. Speaker, ſince I am here aſſigned Counſel for the Priſoner, by the Allowance of this Honourable Houſe, upon his Application, without my Privity, I crave Leave humbly to acquaint you, in Behalf of my Client; I take it for granted that he is, I am ſure, we that are Counſel for him are, a little

Sir Thomas Powis *objects, they had no Notice to be ready with their Evidence.*

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little ſurpriſed in what the King's Counſel are going about; for, in Truth, we were not aware, nor do we find that any Notice was given to the Gentleman at the Bar, that there would be any Proceeding againſt him by examining of Witneſſes, or giving of Evidence: He had, (it ſeems), the Vote of the Houſe ſent to him, and likewiſe a Copy of the Bill; but I could not underſtand, that the Houſe had given Notice, that he ſhould be prepared by Witneſſes, if he had any, or be at Liberty to produce them: Nor was there the leaſt Notice to him, that there would be a Proceeding againſt him by Way of giving Evidence. He did, as I find, humbly apply himſelf, by Petition, That he might be heard by Counſel, againſt the paſſing of the Bill; and I ſhall very carefully obſerve thoſe Directions you gave us; which I hope we ſhould not have ſtood in Need of, but have behaved ourſelves as becomes us, and not have drawn in Queſtion the Power of Parliament: I never had a Thought to do ſuch a Thing; but this I humbly lay before you for your Conſideration, Whether, without any Sort of Notice, that I perceive he had from this Houſe, to make his Defence to any Evidence, and conſequently there could be no Need of Witneſſes on his Behalf; whether you will ſo proceed, unleſs he had had Fore-warning to provide himſelf otherwiſe than by the printed Votes, which (I ſuppoſe) he had no Opportunity of ſeeing? And Whether, within the Words, you are pleaſed to acquaint us with, we may be heard, as to the Reaſonableneſs of this Proceeding, that by and by we muſt crave Leave to ſpeak unto?

Sir Bar. Shower *moves for further Time.*

Sir *Bartholomew Shower*, alſo of Counſel for the Priſoner, added, That they were ready to offer ſome Conſiderations againſt the Suggeſtions in the Bill; but were not ready to make his Defence againſt the Matter of Fact: That the firſt Time they had Notice that Sir *John* was to be brought to their Bar, was at nine or ten o'Clock the laſt Night: And the Order ſaid indeed, That the King's Counſel ſhould produce Evidence for the King as this Day; but it was not ordered, that the Evidence ſhould be produced on the Behalf of Sir *John Fenwick* at this Time, or indeed, that he ſhould be perſonally preſent; nor had they any Way to compel their Witneſſes to appear here.

Mr. Serjeant *Gould* anſwered, If the King's Counſel are to produce their Evidence by the Order, for what Reaſon could this be ordered, but that Sir *John* ſhould apply himſelf to anſwer it?

Then Sir *John*, and the Counſel on both Sides, being withdrawn, a Debate aroſe, Whether Sir *John* ſhould be allowed further Time to produce his Witneſſes? the Debate being opened by Sir *Thomas Littleton*, who ſaid,

A Debate thereupon.

Mr. Speaker, The Counſel could not think that the Bill ſhould ſet forth, That Sir *John Fenwick* was indicted, but that the Houſe would know by what Means. And that *Goodman* was gone away, and we ſhould not enquire by what Means. What are the Objections made by the Counſel to the Bill? Say they, We are ready to give Reaſons againſt the Bill: They do not ſay downright againſt your Juriſdiction; but that they are ready to ſhew you, it is not reaſonable in this Caſe, as Circumſtances ſtand, to paſs this Bill: Sir *John*'s Petition was to be heard downright againſt the Bill. If that was your Intention, to hear him to that only, I conceive you would not have worded your Anſwer as you did: You ordered him Counſel to make his Defence; and, at the ſame Time, ordered the King's Counſel to produce the Evidence: How could they underſtand it, but to make a Defence to the Evidence? It may be they have a Mind to another Fee: Whether you will think fit in the Circumſtances you ſtand, to give them further Time, I do not know; but the Circumſtances of the Kingdom, and the King's Life, muſt be conſidered as well as Sir *John Fenwick*: What is the Meaning that they are not prepared? I ſuppoſe it is to have a Pretence for further Time: But I think your Order is ſo plainly worded, that they could not miſtake it.

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Mr. *Cowper*, of the ſame Side, ſaid, The Counſel for Sir *John Fenwick* ſay, we come prepared to make a Defence to every Thing charged in the Preamble of the Bill; but what is not charged, we do not come prepared to make a Defence to. Now they conceive the Fact of High-Treaſon is not charged upon him by the Bill; and, if that be true, it is of great Weight; but as it is, 'tis none: For firſt, it is plain, the Preamble recites, That he was indicted for High-Treaſon by the Grand Jury, That is a Charge of High-Treaſon within the Bill: For it ſays, he was charged by the Oaths of his Country, upon the Oaths of two Witneſſes; and there is the very Overt-Act recited in the Preamble of the Bill. Now, allowing this its due Weight, can any one think, that ſits here as a private Judge, That the High-Treaſon thus recited, as found by the Grand Jury, is no Part of the Charge? The very Nature of the Bill ſpeaks: For could any one think, you would ground a Bill of Attainder upon a Suggeſtion, That he, being indicted of High-Treaſon, had ſpirited away one of the Witneſſes, or given a falſe Information? So that this is trifling with the Houſe, with Submiſſion.

Sir *Richard Temple*, on the other Side, ſaid, Can any body ſay any Thing of the Intention of the Houſe, when it is reduced into a Bill? Is it not the Bill he is to make his Defence to? And the Gentleman who ſpoke laſt, ſays, That no body could think otherwiſe: Why Sir, no body is to think otherwiſe than as the Bill ſtates it.

Now the Thing before you is, Whether, upon the Suggeſtions in this Bill, it is fit for you to paſs it? The Caſe of *Mortimer* was, That he had made his Eſcape, being under an Indictment of High-Treaſon, and it came before the Houſe, Whether upon the Statute of 25 *Edw.* III. it was High-Treaſon? but they did not debate the Fact. Now you have brought a Bill here; and all the Ground is, That he was indicted for High-Treaſon; had thus and thus prevaricated and delayed his Trial upon Promiſes of Confeſſion; and in Concluſion, one of the Witneſſes is withdrawn. Sir, no Man is to make his Defence but to what is in the Bill; nor can you examine to any thing but what is ſuggeſted in the Bill. If you had put the Iſſue upon the *Guilt* of Sir *John Fenwick*, he muſt have had a fair Trial in ſome Place, and that he cannot have here upon Oath; for upon all Bills of Attainder hitherto, they have had a fair Trial above (*in the Houſe of Peers*).

Mr.

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Mr. *Hooper*, on the ſame Side, ſaid, The Queſtion is, Whether or no there be a ſufficient Guilt laid to this Man's Charge? For in all Courts of Judicature, this is a certain Rule, you muſt proceed *ſecundum allegata & probata*; and you ſhall not go about to prove a thing unleſs it be alledged. Now the Queſtion is, Whether this Thing be alledged in the whole Bill, *That Sir* John Fenwick *is guilty of High-Treaſon?* And if not, you will not go about to prove what is not alledged. 'Tis true, it is alledged that a Bill hath been found; but ſeveral have been indicted who have been acquitted. It is poſſible the Priſoner at the Bar may be guilty; but I think we muſt obſerve that Method here, that is obſerved every where elſe; and that is, not to go about to prove any thing that is not alledged.

Mr. *Sloane*, on the other Side, ſaid, I will allow the Bill might have been drawn better, and that a bare Indictment is not a ſufficient Ground of itſelf for a final Deciſion of this Matter: But when, at the Time of finding the Indictment, there were two Witneſſes, and one of them is withdrawn, and, as is ſuppoſed, by his Means; if the Bill ſeems imperfect for any thing before you now, you will not ſtay all Proceedings upon it; but if you ſee it imperfect, and it may be amended, you will amend it at the Committee. I think, the Favour you have given is abuſed, and that it is perfect trifling from the Bar: In one Breath they ſay, They could not get ready, for they had no Notice till laſt Night; and in the next they ſay, They will go on to every thing, but his being guilty; and I believe they never will be prepared for that. Whereupon *Mr. Attorney-General* ſaid,

Sir, I am very unwilling to ſpeak any thing in this Matter; becauſe, Sir, by the Place I have the Honour to ſerve his Majeſty in, as one of his Counſel, if it was in the Courts below, I muſt proſecute on the Behalf of the King: But, I am very ſenſible, while I am in this Houſe, I am in another Capacity; I am to vote here as a Judge, and not as a Party.

That which I do now trouble you about, is in Relation to the Matter that hath been objected, That the Bill does not expreſly affirm, that Sir *John Fenwick* was guilty of High-Treaſon, but only that he was indicted for it: Truly, I thought, and do ſtill, with humble Submiſſion to the Houſe, That that Matter of affirming him to be guilty of High-Treaſon, was not to be inſerted in the Bill; for that will be the Conſequence of your Judgment and Opinion upon hearing of the Evidence. That worthy Member that ſpake laſt, ſaid, the Bill might be better drawn: I am ſorry we had not his Aſſiſtance in it; but, with Submiſſion to his Underſtanding, I think that had been too much Preſumption, till you are ſatisfied whether he was guilty or no: We could only go ſo far as to ſet forth the Faults that we knew; as, that he was indicted, that we can verify, and cannot take this to be like the Caſe of an Indictment; for there you muſt affirm ſuch and ſuch Things that cannot be altered afterwards; but a Bill in Parliament hath many Steps, you read it ſeveral Times, and commit it; ſo that you alter the Suggeſtions of the Bill as the Caſe appears to you to be verified; and if you be of Opinion that he is Not guilty, you will not condemn him becauſe he is indicted: However, that is not immaterial, but proper to be ſet forth for a Ground of your Proceedings, That there was a Probability of his being guilty from that Accuſation: Therefore, Sir, I confeſs, I cannot think that thoſe Gentlemen, that are of Counſel for Sir *John Fenwick*, could think that you did intend to proceed otherwiſe than to hear Counſel as to the Fact; they could not think that, upon Proof of his being indicted, that would be Ground enough for you to proceed to paſs the Bill; for how could any body think, but you would come to examine the Fact? I cannot ſee how they ſhould come to miſtake, unleſs it was wilfully.

Colonel Granvill, on the other Side, ſaid, Sir, the Counſel (by what I obſerved from them) have ſtarted two Difficulties, and really (to me) both ſeem very material: The Firſt is, whether the King's Counſel ſhall be at Liberty to prove any thing that is not ſuggeſted in the Bill; the Other is, whether Sir *John Fenwick* had due Notice to make his Defence.

The Firſt is a Matter of very great Moment: You are proceeding upon a Bill, where not only the Life of Sir *John Fenwick*, but the Life of every Man in *England*, is in ſome Meaſure concerned: When a Precedent is made in this Caſe, no body knows who may be affected or hurt by it; and therefore I deſire you will ſettle that Matter, and have the Judgment of the Houſe, whether they will admit the Counſel to prove any thing that is not ſuggeſted in the Bill: If you will, I do not ſee how any Man that ſtands at the Bar of your Houſe can be prepared to make his Defence; for there ſhall be one Crime alledged in the Bill, and when he comes to the Bar, the Counſel that are to proſecute, ſhall go quite off from that which is laid in the Bill, and produce you Evidence to a new Crime; and he ſtares and looks round him, and you had as good allow him no Counſel or Copy of the Bill. This you thought ſo neceſſary for every Man, that was to come upon his Trial for his Life, for Treaſon, that you altered that Trial, and declared, No Man ſhould have any Treaſon proved againſt him, that is not alledged againſt him in the Indictment.

We have had great Complaints of *Weſtminſter-Hall*, and, if the Parliament ſhould proceed in this Manner, may have the ſame again: If they are too raſh in their Proceedings, they will be countenanced mightily in them, if you ſhould proceed againſt a Man, and condemn him for one Thing when he is accuſed of another. I deſire to know how we can proceed in a Bill, upon which Sir *John Fenwick* is to be proved guilty, and he hath no Opportunity to anſwer it? I take it, as this Bill is drawn, Sir *John Fenwick*'s Guilt is no way concerned in it: For, whereas the worthy Gentlemen tell you, the Treaſon is ſpecified, there is no Treaſon ſpecified, otherwiſe than he is indicted for it.

Mr. Whitaker, on the other Side, ſaid, As to the Exceptions made to the Inſufficiency of the Bill, by which they pretend Sir *John Fenwick* was led into an Error, ſo that he had no due Notice; I muſt needs ſay, if they had been in *Weſtminſter-Hall*, they would have been in the Right: But this Houſe is not bound to thoſe Forms; for, I believe, the enacting Clauſe would do the Buſineſs of Sir *John Fenwick* well enough,

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enough, if all the reſt were laid aſide; and I will conſider it, with as much Tenderneſs and Conſcience for the Priſoner at the Bar, as any that bring Arguments from *Weſtminſter-Hall*: I would conſider, whether ſuch a Defence as they have made, that from the Bill (as to what is laid in it) he had not Notice enough to prepare to make his Anſwer. They ſay, a Recital is no direct Affirmation: In Civil Matters, it is an Affirmation; for to ſay, *Whereas ſuch a one is bound*, is good in a Declaration upon a Bond; now, I would know, Whether it be not enough to ſay, *That he is indicted*, without an Allegation *that he is guilty?* Had the Bill no Recital at all, it might have been neceſſary for them to have deſired the Opinion of the Houſe, to what they ſhould have anſwered; but here the Treaſon is ſpecified in the Preamble of the Bill; and I agree, that the King's Counſel ought not to give Evidence of any Treaſon that is not ſo ſpecified.

Sir *Edward Seymour*, addreſſing himſelf to ſpeak on the other Side, and obſerving a great many Lords in the Gallery, ſaid, My Lords, and you Mr. Speaker, what hath been ſaid by that worthy Perſon that ſpoke laſt, no doubt, is true; *That if there had been no more than the enacting Clauſe, it would have done Sir* John Fenwick's *Buſineſs, with a Witneſs*, or, rather, *without a Witneſs*. But that is not the Queſtion we are diſputing here; the Queſtion is, Whether you will give Sir *John Fenwick* longer Time to make his Defence to that Part he inſiſts on, *which is not contained in the Bill?* You are well ſatisfied, you cannot go through with the Suggeſtions to Night, and the Debates, and what relates to them; and I find no Perſon againſt putting it off, but becauſe it would be a Delay; and, if it be no Delay, that Reaſon is out of Doors. They tell you, the Counſel could not but take Notice of the Matters ſuggeſted in the Indictment; I cannot think that is reaſonably argued, becauſe they do know the Practice and Method is ſuch, that they can take Notice of nothing but what is ſpecified and contained in the Bill; and therefore, there being no Guilt charged on Sir *John Fenwick* in the Bill, is it reaſonable they ſhould come and accuſe themſelves here, or make a Defence to what is not charged? No: But, ſay they, it is implied. This is an untrodden Path, and you ought to walk as ſecurely in it as you can. 'Tis extraordinary that you bring Sir *John Fenwick* here to anſwer for Treaſon, when it is allowed, in the Suggeſtions of the Bill, you have but one Witneſs to that Treaſon; and, when you take theſe extraordinary Steps, you ſhould comply with him as much as you can in Forms: For if Treaſon be not Treaſon, unleſs it be proved by two Witneſſes, and you will give him Liberty to make his Defence, I think it no Loſs of Time (for you cannot go through the Bill to Night) to ſee whether Sir *John Fenwick* be guilty of what is contained in the Indictment: And I will give you one Reaſon, why he could not be prepared to make his Defence in ſo ſhort a Time, namely, becauſe he could not produce his Evidence, if he had any; and, if you give him longer Time, I ſuppoſe you will think fit that Sir *John Fenwick* ſhould give an Account of what Witneſſes he ſhall make uſe of for his Defence, and give him an Order for thoſe Witneſſes to attend.

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Mr. *Harley*, of the ſame Side, ſaid, I find all Gentlemen that ſpeak of this Subject, do ſay, that this Matter is of an extraordinary Nature, and you have entered into it by very extraordinary Methods: But I muſt obſerve, that this being the firſt Bill of this kind, that hath been brought into the Houſe before any Proof, Gentlemen muſt be excuſed if they are cautious what Steps they take; and when the Wiſdom of the Houſe hath thought fit to take quite different Methods as to the Preliminaries, it is not to be wondered at if they meet with Difficulties in their Proceedings.

Some Gentlemen preſs for more Time to be given Sir *John Fenwick*, to be prepared; and others urge, that you ſhould declare, whether the Counſel ſhould be heard to any thing, but what is ſuggeſted in the Bill: And, I think, you muſt give a Determination to the laſt Queſtion, though the Houſe agree to give him longer Time: For if you give him longer Time, it will afterwards come to the ſame Debate, Whether they ſhall be heard to any thing but what is ſuggeſted in the Bill? If you ſhould think fit to add any thing, then it will be reaſonable that he ſhould be alſo heard to that; for in the Caſe of the Death of a Man, let him deſerve never ſo much, yet he does not deſerve to die unjuſtly by our Hands. It ſeems a very plain Propoſition, that when a Man is accuſed, he ſhould not anſwer to what he is not charged with; and to charge it with Innuendo's and Implications is ſo uncertain, that I have always ſeen it denied in this Houſe; ſo I hope, I ſhall not ſee ſo great an Aſſembly give Countenance to it. They did tell you, they were prepared to ſpeak to the Reaſonableneſs of the Bill; but this Matter not being ſuggeſted, they are not prepared to ſpeak to it.

This Debate continued till it was very late, and at length two Queſtions were, by the Direction of the Houſe, put by Mr. Speaker. *Reſolved to give Sir John further Time; but that Evidence might be given of the Treaſon in the Indictment.*

1. That Sir *John Fenwick* be allowed further Time to produce Witneſſes in his Defence, againſt the Charge of High-Treaſon; and that he name his Witneſſes.

2. That the Counſel, that manage the Evidence againſt Sir *John Fenwick*, be allowed to produce Witneſſes, touching the Allegations in the Bill, and the Treaſons whereof he ſtands indicted.

Both which being reſolved in the Affirmative, Sir *John Fenwick* was called in again; and Mr. Speaker acquainted him, that the Houſe was willing to give him till *Monday* next to make his Defence; and that if he gave in a Liſt of his Witneſſes, he might have his Warrant for their appearing at that Time.

Sir John brought to the Bar again.

Sir *John* being brought to the Bar again, on *Monday* Morning about Eleven o'Clock, Mr. Serjeant *Gould* opened the Charge and the Evidence again, in the ſame Manner he had done the firſt Day, and therefore it is unneceſſary to repeat it here: After which Captain *Porter* was called as a Witneſs for the King, and gave the ſame Evidence he had done at the Trials of the other Conſpirators, of their meeting at the *King's-Head* in *Leadenhall-Street*, and at Mrs. *Mountjoy*'s, at *St. James's*; at both which Places he affirmed Sir *John* was preſent, and agreed to ſend over *Charnock* to *France*, to invite over *French* Troops; and that Sir *John* and all the Company agreed, to raiſe two thouſand Horſe here, and join them on their Landing.

Porter's Evidence.

Then

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Evidence offered of Lady Fenwick's tampering with the Witneſſes. Oppoſed by Sir John's Counſel.

Then Mr. Serjeant *Gould* was proceeding to aſk *Porter* concerning the Lady *Fenwick*'s and *Clancy*'s tampering with him, which Sir *John*'s Counſel oppoſed: They ſaid, Where a Law was to be made ſubſequent to the Fact, to condemn a Man to Death, they hoped they would expect legal Evidence at leaſt. It has been ſaid, indeed, in the Lord *Strafford*'s Caſe, that where the Houſe proceeded in a legiſlative Way, there needed no Evidence at all; but they hoped the Houſe would be of another Opinion: That here they were about to ſhew that my Lady *Fenwick*, the Wife of the Priſoner, had uſed Means to take off *Goodman*'s Evidence; but what was ſaid by a Man's Wife, could not be made uſe of againſt him, or for him, in any Court whatever; nor was ever offered, except in the Caſe of the Lord *Audley*, and that was held to be contrary to Law ever ſince; and though the Houſe had declared the King's Counſel might produce Evidence of the Allegation in the Bill, and the Treaſons in the Indictment, they had not ordered they ſhould produce Evidence concerning the carrying away of a Witneſs; nor was it alledged in the Bill, that *Goodman* was withdrawn by Sir *John Fenwick*'s Privity: And as to *Porter*'s being tampered with, there was no ſuch Suggeſtion in the Bill.

The Counſel for the Bill inſiſt on this Evidence.

To this the Counſel for the Bill anſwered, They only made uſe of it, as preparatory to let them in to tell what *Goodman* had ſworn, and they would afterwards produce an Indictment, where, upon *Goodman*'s Oath, and the ſame Evidence they offered here, another of the Conſpirators had been convicted: That this was Part of the ſame Contrivance they charged the Priſoner with, to prevent his being brought to condign Puniſhment; and therefore, let the Proceedings of other Courts be what they would, they hoped the Houſe would hear the whole Matter, whether the Evidence was poſitive or circumſtantial.

The Priſoner's Counſel replied, What my Lady *Fenwick* had ſaid or done was not ſo much as circumſtantial Evidence; for it was no Evidence at all againſt her Husband.

A Debate in the Houſe thereupon.

The Priſoner and the Counſel being withdrawn, the Houſe entered upon the Debate, Whether Evidence ſhould be admitted of the Lady *Fenwick*'s tampering with the Witneſſes? And thoſe who were for hearing this Evidence,

Arguments for admitting this Evidence.

obſerved, That if they were tied up by the Forms and Methods of inferior Courts, it was to no Purpoſe to bring the Priſoner before the Houſe; if he could have been convicted in the Courts below, there was no Occaſion for this Bill: That in the Courts of Common Law all Facts were tried by Juries, but here the whole Houſe ſat as Judges: A common Jury might be influenced by illegal or incompetent Evidence, which might not be fit, therefore, for them to hear; but in the Court of Chancery ſuch Evidence was admitted every Day; and the Reaſon was, that a Cauſe was diſpatched ſooner by hearing it than not: That here they ought to inform themſelves by the beſt Lights they could get; and if it ſhould appear Sir *John* employed his Lady to tamper with the Witneſſes, it would have ſome Weight with them.

Arguments againſt it.

On the other Hand it was obſerved, That if the Houſe was not governed by the Rules of inferior Courts, they ought to be guided, however, by that which was the Ground of their Practice, namely, Reaſon and good Senſe, and the common Rules of Equity: The Houſe would not puniſh one Perſon for the Act of another. The Counſel for the Bill had not ſo much as opened, that Sir *John* was inſtrumental in the withdrawing of *Goodman*; and if the Lady *Fenwick* was concerned in it, this could only affect Sir *John* by way of Inference. But the Queſtion being put, *That* Porter *be examined to the Attempt of taking off his Teſtimony*, it was reſolved in the Affirmative.

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The Houſe reſolve to admit it.

Then Sir *John*, with the Counſel and Witneſſes, being called in, and *Porter* required to give an Account what Attempts had been made to take off his Teſtimony, he anſwered, That *Clancy* offered him three hundred Guineas to go into *France*, and to bear his Charges thither; that he promiſed him three hundred more on his Arrival there, and that three hundred Pounds a Year ſhould be ſettled upon him: That *Clancy* met him ſeven or eight Times upon this Affair, and told him, the Ladies *Fenwick* and *Montgomery* would confirm every Thing he had ſaid; and accordingly, the Day before he was to go, the Lady *Fenwick* met him, (this Witneſs) and promiſed, that what *Clancy* had propoſed ſhe would certainly make good. That *Clancy* actually paid him the firſt three hundred Guineas, and promiſed him a Bill for three hundred more, which he ſaid was depoſited in his Hands by one *Fenwick*, to be ſent after him into *France*. That *Clancy* alſo brought a Letter, which he ſaid was written by Sir *John Fenwick* to King *James*, on his Behalf, and he (the Witneſs) read it, and then it was delivered to one Captain *Donelagh*, who was to go with him; and the Writer deſired his Majeſty, in that Letter, he would pleaſe to pardon what he *(Porter)* had done, ſince his going away was to ſave the Lords *Aylesbury* and *Montgomery*, and other Friends: The Letter was not ſubſcribed by Sir *John*, but he was told, King *James* would know who it came from; and they acquainted him, a Boat was provided, in which he was to have gone the next Day, but they were taken up ſoon after.

Porter's *Evidence of their tampering with him.*

Then Mr. *Roe* was called as a Witneſs, who teſtified, That having ſome Buſineſs with *Dighton*, Sir *John*'s Solicitor, *Dighton* took an Opportunity to acquaint him, that it lay in his *(Roe's)* Power to do Sir *John* a Piece of Service, as he was acquainted with *Goodman*; and that, if he could diſcredit *Goodman*'s Teſtimony, he ſhould have an hundred a Year ſettled on him for Life: That *Dighton* particularly aſked him, if he ever heard of *Goodman*'s attempting to poiſon the Duke of *Norfolk*, of his robbing on the Highway, or of his being concerned with Clippers: And that he *(Roe)* immediately went and told *Goodman* of the Propoſal that had been made him; whereupon *Goodman* adviſed him to get ſomething under *Dighton*'s Hand; and that *Dighton* afterwards made ſolemn Proteſtations, that what he had promiſed ſhould be punctually performed: And that *Goodman* alſo told him *(Roe)*, that Sir *John Fenwick*'s Siſter had been with him, and made ſome Overtures. Clancy's *Conviction alſo was read, as Evidence againſt the Priſoner.*

Roe's *Evidence.*

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Goodman's Examination offered as Evidence. Opposed by Sir John's Counsel.

Then the Counsel for the Bill were about to read the Examination of *Goodman*, taken by Mr. Secretary *Vernon*, which the Prisoner's Counsel opposed, representing, that an Examination ought not to be read against Sir *John Fenwick*, to which he was neither Party or privy, and had no Opportunity of cross-examining the Witness: That in a Suit for the Value of five Shillings, an Examination could not be read as Evidence; and if it was not admitted where Property was concerned in the lowest Degree, much less ought it to be admitted in a Case of Life.—That the Deposition of a Person beyond Sea could not be read in Civil Cases, unless the Party, against whom it was read, had been privy to the Examination, and had an Opportunity of cross-examining him, or objecting to his Credit: But in Criminal Cases it was never admitted; and even in an Appeal of Murder, the Depositions taken before the Coroner could not be read, because it was another Suit, as this was no more than an Information before a Justice of Peace: If *Goodman* had been dead it could not have been given in Evidence; or if he had been sick, or withdrawn without the Prisoner's Privity, it would not have been Evidence in any other Place.

The Counsel for the Bill answer them.

The Counsel for the Bill, on the other Hand, insisted, That though an Examination could not be read where the Witness might be produced, yet it was every Day's Practice to read Depositions where the Witnesses were dead, and here the Witness was withdrawn: And it appeared there had been tampering with another, from whence it may be presumed *Goodman* was tampered with too; and one Reason for bringing this Matter before the Parliament was, to provide a Remedy against such Practices; nor did there want Instances of reading an Information, even in a Capital Case, where it appeared the Witness was withdrawn by the Practice of the Prisoner, as this Case was: However, they observed this House was not tied up by ordinary Rules. The Counsel for the Bill added, That they did not offer this Evidence as conclusive alone, but to corroborate *Porter*'s Testimony, who had given his Evidence *viva voce*: But the Counsel for the Prisoner still affirming, That no such Examinations were ever read in Capital Cases, both the Prisoner and the Counsel were withdrawn, and the House debated that Matter among themselves.

A Debate as to the reading Goodman's Examination.

One Gentleman said, he never till now heard any of the Long Robe endeavour to maintain, that an Examination before a Justice of Peace ought to be read as Evidence against a Man for his Life. To which another answered, that the Lord Chief Justice *Hales*, in his Pleas of the Crown, under the Head of Evidence, held, That such Examinations might be given in Evidence, where the Party was dead or absent. Another Member replied, That such Depositions were never given in Evidence in the worst of Times; even at the Trial of the Lord *Mordant*, when Juries were disused, it would not be admitted; and they were tried by the Rules of Law, or they were tried by nothing.

Arguments for it.

Another said, He should not look upon himself to be so tied up by the Rules of Law, but that he might hear all the Evidence that could be offered: If they could not have the two Witnesses, on whose Testimony the Bill was found, they would take such Evidence as they could get: And one said, he had seen a Justice of Peace examined concerning the Depositions he had taken, and he took it to be ordinarily done.

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Arguments against it.

On the other Side, a learned Member observed, That if they were to collect all the Absurdities out of the Trials of the late Reigns, they would not find more than had been advanced by the Counsel for the Bill; and if those Depositions were Evidence, where the Witness was absent, there had been no need of this extraordinary Way of proceeding in Parliament. This Gentleman was seconded by another, who observed, *That Bills of Attainder, and Judgments of Attainder, had been reversed, for no other Reason, but because the Parliament had not proceeded by the Rules of Law*; and if they were not bound by the Rules of Inferior Courts, yet they must by the Laws and Practice of Parliaments; and it was never known that this House ever admitted Affidavits as Evidence; for if they did, they must make this, which was a Superior Court, lame and defective, and to want the Assistance of an Inferior Court.

For it.

It was replied, by a Gentleman for the Bill, That though this might be Evidence in Felony, in a Court of Law, yet it could not be deemed Evidence there in Treason, because the Law required two living Witnesses in Treason; there was a Necessity therefore of resorting to the Parliament: But in Cases of Felony, where two Witnesses were not required, such Evidence was admitted frequently; The Lord Chief Justice *Hales*'s Opinion, also, was so, and that was grounded on an Act of Parliament.

Another Member's Reasons against it.

A Gentleman, who was against the Bill, thereupon observed, That if an Act of Parliament could be produced for it, the Debate was at an End; but if there was an Act positively against such Evidence, then he hoped they would reject it: That the Case in the Lord Chief Justice *Hales* related only to Felony; He says, that Informations may be taken of the Person himself, (though not by the Common Law) by particular Acts of Parliament; and the Depositions of Witnesses might be admitted, but then the Party ought to be present; and if they would produce a Statute for an Authority, they must offer a Statute that was in Point: He thought it was of the last Consequence to admit Affidavits in that House.

Answered by the other Side.

To this a Member for the Bill answered, There had been a Statute lately made, indeed, which required two living Witnesses in Treason; but in that very Statute it was provided, that Proceedings in Parliament should not be affected by it; and he was not for refusing any Evidence in this Case, though never so small. And a Gentleman observing, on the other Side, that an Affidavit was never read in Case of an Impeachment, which very much resembled this:

A Member for the Bill took notice, That all the Cases that had been cited, were brought from Inferior Courts, except the last, which related to the Usage in less considerable Cases; But a Bill of Attainder was an extraordinary Thing, and never used but upon extraordinary Occasions: The Question here was only as to the Forms of their Proceedings; and the Law had entrusted the Parliament with a greater Power than they were now about to execute: They might declare that to be a Crime, which

was

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was deemed no Crime before it was committed; and ſurely they might determine what they would admit as Evidence of a Crime: Another added, There was lodged in the Legiſlature, a Power to judge thoſe Crimes that were ſheltered from the Law; and he thought never any Attainder was brought in upon a juſter Occaſion than this: The Priſoner was not only in a Plot to bring in a Foreign Power; but had given in a falſe and ſcandalous Information, to create a Diſtruſt and Jealouſy between the King and his People; and had trifled with the Government, and gained ſo much Time, that he had found an Opportunity to corrupt one of the Witneſſes; and it would be hard, if the Legiſlative Power could not reach him.

A Reply by the Members againſt it.

It was replied by the other Side, That though this Houſe was not bound by the Rules of inferior Courts, they ought to give ſuch Rules and make ſuch Precedents as were fit for other Courts to imitate: That this might be a dangerous Precedent for future Parliaments to act by: For ſuppoſe the Information Sir *John Fenwick* had given in, ſhould hereafter be produced as Evidence againſt any of thoſe Honourable Perſons he had accuſed; and ſome Raſcal in a future Reign ſhould come in alſo againſt them, would it not be thought a great Hardſhip, and a Piece of Injuſtice, to make ſuch a Paper to ſupply the Place of a ſecond Witneſs; and paſs a Bill to attaint them of High-Treaſon on ſuch Evidence? Of what Conſequence would this be?

Reſolved that Goodman's Examination ſhould be read.

But the Queſtion being put, *That the Information of* Cordell Goodman, *taken upon Oath, the twenty-fourth of* April, 1696, *ſhould be read*: It was carried in the Affirmative; *Yeas*, 218, *Noes*, 145.

The Tenor of it.

Then the Priſoner and the Counſel were called in again; and the Information of *Goodman*, made before Mr. Secretary *Vernon*, was read; wherein he depoſed, That there had been a Conſpiracy to ſeize the Perſon of King *William*, and raiſe a Rebellion, for two Years then laſt paſt: That the Conſpirators had applied themſelves to King *James* for a Commiſſion to countenance the Attempt; but that Prince was angry that his Name had been uſed in it: Then he gave the ſame Account of the Meeting of the Conſpirators at the *King's-Head*; and their ſending over *Charnock* to *France*, to procure a Body of *French* Troops, as *Porter* had done: And further depoſed, That Sir *John Fenwick* uſed to ſend over Liſts to *France* of the Number of our Forces here, and where they were quartered from Time to Time: And that after Colonel *Parker* eſcaped out of the *Tower*, he (the Informant) asking Sir *John Fenwick* how much Money it coſt to procure the Colonel's Eſcape, Sir *John* anſwered, 300 *l.* And that it was agreed, If Colonel *Parker* did not bring timely Orders, He (*Goodman*) and *Porter* ſhould receive their Orders from Sir *John Fenwick*, when the Forces were to be raiſed; and that Sir *John* looking upon it as dangerous to keep their Horſes together, leſt they ſhould be ſeized, thought it the beſt Way to have them diſperſed in the Stables about Town, and a Liſt made of their Numbers, and the Places where they ſtood.

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The Grand Jury-men examined.

Then the Counſel for the Bill called ſome of the Grand Jury-men, who found the Indictment againſt Sir *John*, to give an Account what Evidence *Goodman* gave to induce them to find the Bill: And though it was objected by the Priſoner's Counſel, That an Indictment it ſelf was but an Accuſation, and could not be given in Evidence againſt any Man; and that nothing which was ſworn before the Grand Jury was ever made uſe of at the Trial of the Priſoner; yet a Majority of the Houſe being of Opinion that this was good Evidence in this Caſe, *Gracedieu* and *Mead*, two of the Jury, were examined, and teſtified, That *Goodman* gave the ſame Evidence before them, he had given at his Examination before Mr. Secretary *Vernon* (already recited).

The Record of Cook's *Conviction offered as Evidence.*

The Counſel for the Bill afterwards produced the Record of *Cook*'s Conviction; alledging, That the Evidence *Goodman* gave at that Trial affected Sir *John Fenwick* as much as it did Mr. *Cook*; To which the Priſoner's Counſel objected, That this was ſuch Evidence as was never given in a Court of Law: For at this Rate, the Trial of one Conſpirator would be the Trial of all the reſt; and they hoped it would not be admitted here.

Oppoſed.

Whereupon the Counſel for the Bill anſwered, Thoſe Gentlemen made their Objections as if they were in the inferior Courts: But the Houſe here were Judges of the Methods of coming at the Truth: And that, a Witneſs being withdrawn by Artifice, they came there to get that Defect ſupplied.

The Priſoner and the Counſel being withdrawn again, the Houſe entered upon the Debate of this Matter: And a Gentleman, who was againſt the Bill, obſerved, That ſuch Evidence had never been admitted in a Court of Law, or in that Houſe; namely, the Evidence that was given at the Trial of another, made Evidence againſt a Perſon who was not preſent, and had no Opportunity of defending himſelf againſt it: Another Member demanded, If they were to read all the Trials for the Plot? Whereupon it was demanded, by a Gentleman who was for the Bill, Why they admitted the Evidence *Goodman* had given to the Grand Jury to be repeated? This was but the Evidence of what he had ſaid to the Petit Jury: If nothing but ſtrict Proof was to be offered, this Bill had never been brought in; but they were to accept of ſuch Proof as the Nature of the Thing would bear.

To which the other Side anſwered, If they had determined at firſt, that they would not expect legal Proof, they might have ſhortned their Debates pretty much: Another ſaid, They were put upon paſſing a Bill of Attainder againſt a Man, and were not allowed to talk of Proof: If they had no Evidence for it, he was ſure there was Evidence againſt it: For at *Cook*'s Trial, two or three Witneſſes had ſworn, that *Goodman* was not at the Meeting at the *King's-Head*, where he ſwore he was. Another Gentleman put them in Mind, that a great many Judgments in the late Reign had been reverſed, becauſe they received ſuch Evidence at thoſe Trials, as was not legal Evidence; and that this

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this Grievance was taken Notice of in their Bill of Rights.

To which it was replied, by a Gentleman for the Bill, That had *Goodman* ſworn at that Trial, that Sir *John Fenwick* was not at the *King's-Head*, Sir *John* might have produced a Witneſs, to prove what he had ſworn; and why might not the Evidence which made againſt him be proved? Whereupon a Member, who was againſt the Bill, replied, It was one Thing to produce a Record to convict or attaint a Perſon, and another, when it was produced, to prove a Man perjured, or to invalidate his Teſtimony: For when Evidence was brought againſt a Priſoner, he had no Way to leſſen it, but by what was collateral: And where the Witneſs had given contrary Evidence at another Trial, or the Priſoner had been acquitted, Then the Record might be made uſe of againſt that Witneſs; but could never be made uſe of to convict or attaint any Perſon.

The other Side ſaid, They did agree, that neither the Conviction of *Cook*, nor any Evidence upon his Conviction, could be Evidence againſt Sir *John Fenwick*: But it was one of the Allegations in the Bill, That ſeveral Gentlemen were preſent at the Meeting at the *King's-Head*, where Sir *John Fenwick* was charged to be; and they produced it to make good that Allegation: And the Queſtion being put, That the Record of the Conviction of *Peter Cook* be read, it paſſed in the Affirmative; *Ayes* 181, *Noes* 110; and accordingly that Record was read.

Reſolved to read the Record of Cook's *Conviction.*

The next Thing the Counſel for the Bill propoſed, was, to examine ſome of the Jurymen who ſerved at *Cook*'s Trial, and ſome other Witneſſes, to prove what *Goodman* had ſworn at that Trial; which the Connſel for the Priſoner oppoſing, they were all ordered to withdraw again.

The Evidence of what Goodman *ſwore at* Cook's *Trial offered.*

Then a Member, who was againſt the Bill, ſaid, He thought it had been admitted by the other Side, in the former Debate, That no ſuch Evidence ought to be admitted: But, if they were not to be guided by the Rules of *Weſtminſter-Hall*, he was ſure they ought not to ſeek a Way to the King's Favour, by attainting a Man of High-Treaſon, upon incompetent Evidence.

A Debate thereupon.

It was ſaid on the other Side, That it was every Day's Practice in Civil Caſes, to hear what a Witneſs had ſaid at another Trial between the ſame Parties, where a Witneſs was dead: To which it was anſwered, That in thoſe Courts a Witneſs muſt ſwear true at his Peril; for if he did not, he might be puniſhed for it: But here, if he takes away a Man's Life by what he ſays, What Remedy was there againſt him?

Others ſaid, If there was not another Place where the Witneſſes would be ſworn, they could not give their Conſent to the paſſing this Bill, for the Witneſſes for the Priſoner were not ſworn: So that they could only *give an Opinion* upon the Probability of the Matter.

Another Member againſt the Bill, ſaid, He could not but take notice of what had been ſaid by the other Side, That they had done as much as this comes to already: This made him ſtill more apprehenſive, and to take care what he did now; ſince what the Houſe did, had ſo quick an Operation, and they were already citing Precedents of that very Day, and ſtill making one Thing a Handle to draw on another.

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Reſolved to examine the Witneſſes of what Goodman *ſwore at* Cook's *Trial.*

However, it was reſolved upon the Queſtion, *That the Counſel for the Bill ſhould be allowed to examine Witneſſes of what* Goodman *ſwore at the Trial of* Cook; *Ayes* 180, *Noes* 102: And thereupon the Priſoner and the Counſel being called in again, two or three of the Jury-men at *Cook*'s Trial were examined, as to what *Goodman* ſaid at that Trial; and anſwered, That *Goodman* depoſed, he was introduced into the Company of the Conſpirators at the *King's-Head*, by Mr. *Porter*; and there Sir *John Fenwick* and the reſt agreed to ſend *Charnock* to *France*, to procure Forces from thence; and another Perſon, who was preſent at *Cook*'s Trial, teſtified the ſame: And it being demanded of the Witneſs, If any Exception was taken then to *Goodman*'s Credit? He anſwered, It was objected that *Goodman* had been guilty of ſeveral Crimes; to which it was ſaid, he had his Pardon, and was then a good Witneſs. Then the Counſel for the Bill deſired to read the Letter above-mentioned, to be written from Sir *John Fenwick* to his Lady from *Romney*, after he was apprehended: But Sir *John*'s Counſel inſiſted, that this Caſe came ſhort even of Colonel *Sidney*'s; for there, as the Act of Reverſal recited, The Writing was found in the Colonel's Cloſet, and proved to be his Writing by a Compariſon of Hands; and yet that was held to be illegal Evidence: But here was no Proof even by Compariſon of Hands, or that the Letter was ever in Sir *John Fenwick*'s Poſſeſſion: And at length, the Counſel for the Bill, thought fit to waive this Piece of Evidence: And it being now very late, Sir *John*'s Counſel were ordered to make their Obſervations on the Evidence for the Priſoner the next Morning: But were told, If they had any Witneſſes to examine, they muſt produce them that Evening; for they could not hear Witneſſes afterwards: To which Sir *John*'s Counſel anſwering, They ſhould call no Witneſſes; but when they came to ſpeak, they ſhould give the Houſe Satisfaction why they did not think it neceſſary to produce any; the Priſoner and his Counſel withdrew, and the Houſe ſoon after broke up.

Sir John's Letter to his Lady offered as Evidence; but rejected, the Hand not being proved.

On *Tueſday*, the 17th of *November*, Sir *John Fenwick* and the Counſel on both Sides were called in again; and the Speaker directing the Counſel for Sir *John* to make their Obſervations on the Evidence that had been given, Sir *Thomas Powis* ſaid, Mr. Speaker, I am of Counſel for Sir *John Fenwick*, who now ſtands before you, upon the greateſt Concern he can have in the World; and as you have been pleaſed to aſſign us to be of Counſel for him, and, I muſt own, have very favourably heard us hitherto; ſo I ſhall think my ſelf very unfortunate, if I ſhould let fall any Expreſſion in his Defence, that would ſeem indecent and give Offence to this Houſe, for I am ſure I have no Intention to do it; but, on the contrary, to behave myſelf with all the Deference that is poſſible, in a Caſe of this Nature. I ſhall inſiſt upon three Heads: 1. The Manner of Proceeding, and Method that hath been taken in this Proſecution: 2. I ſhall take notice of thoſe Things that are alledged againſt him in the Bill: And, 3. I ſhall beg your Favour, to obſerve what Sort of Proofs

Obſervations on the Evidence by Sir Thomas Powis.

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Proofs they have offered on the other Side; and *which they call Evidence.*

As to the First Matter, I must intreat the Favour of you to be thus understood; That when I say any thing in Relation to the Manner of Proceeding, I do not speak in Opposition to the Power of Parliaments; for I know very well, that our Lives and Estates, and all that we have, are subject to Acts of Parliament: But I hope you will permit me to offer some Reasons, which (I hope) may be of Weight, in Opposition to the exercising of that Power, in the Way you are now going. No body can say, but when an Act of Parliament is passed, though the Party concerned may think it was upon hard Terms; yet, when it is become a Law, it is not to be opposed. I cannot say, but those Persons, who in the last Sessions were imprisoned by an Act *ex post facto*, and subsequent to the Fact complained of, might think it a Hardship; yet when it was passed into a Law, they were legally detained: But, I hope, I may so far take notice of their Case, as some Kind of Reason against this, to the End that those Laws may not grow familiar, that they may not easily be obtained; because Precedents generally grow; and as that Law *ex post facto* extended to Liberty, so this extends to Life: One Precedent is apt to beget another; and therefore surely you will be careful how you give Precedents, especially in Cases of Life.

The first Thing I observe is obvious; that is, The Person who is to be sentenced by this Bill is forth-coming, in order to be tried in the ordinary Method of Justice. He is not only indicted, and actually under Process, but hath pleaded; and is ready when his Majesty, in the Course of Justice, shall call upon him, to undergo his Trial: And either there is sufficient Evidence, legal Evidence against him, as the King's Serjeant insisted there was; and if there be so, then, under Favour, there is no Reason but he should have the Benefit of an Ordinary Trial, which is the Birthright of all the King's Subjects: Or there is not such Evidence against him; and if there be not, it will be a good Reason against the making a particular Law for taking away his Life: For, we think, nothing can be said for this Law, but Want of Evidence; and that, to my Understanding, is a very odd Reason.—Sir, I would not spend Time in taking Notice, That the meanest Subject in the Kingdom is entitled, by being born in this Kingdom, to be tried by a Jury, where there are those just Advantages that cannot be had in another Case: There is a Liberty of challenging thirty-five, without shewing any Reason, and as many more as he can any Way object to with Reason. The Witnesses are upon Oath, and all the Proceedings are by certain known Rules and Methods; and not only by the Statute of *Magna Charta*, but by the Common Law of *England*, much more antient than that Statute: And though the Proceedings therein, are such as a Criminal may sometimes escape; yet the just Advantages are so much beyond any thing of that Nature, that I hope we shall never complain of that antient Course of Proceeding by Jury: I am sure it is the Honour of our Government, the Mark of our Freedom, and the Envy of our Neighbours; and I hope that Method of Trial shall never be laid aside, though it sometimes may not have the Effect that is desired by it.

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I would take notice to you, That in a Case of the greatest Crime, and most Notoriety of Fact; yet the Persons concerned in it were brought to their Trial. The Regicides, who did not fly, but were found upon the Restoration of King *Charles* II. though their Treason had the worst Effect, even the Murder of the King; yet notwithstanding, though the Fact was so notorious, those that were found upon the Place, were admitted to their Trials, in the ordinary Course of Justice; although at the same Time, there was a Bill of Attainder against some that fled, and some that were dead, and so could not be tried ——— I would, with your Favour, likewise observe, That the Parliaments of *England* have been so far from depriving Persons of their ordinary Trials, that whereas the common Law of *England* says, That Persons out-lawed for Treason and Felony, if taken, shall be put to Death without Trial; yet the Parliament, in the Reign of *Edward* VI. made a Law, providing, That Criminals, who returned within a Year according to that Law, should be admitted to their ordinary Trials.

Sir, all along the Statutes run in Favour of Trials: There are no less than two Acts of Parliament in the Reign of *Edward* VI. in the first and fifth Years of his Reign; which say, There shall not be less than two Witnesses against any Person for Treason: And I hope I shall never see a Law made so much in Opposition to those Acts, as that a Person shall be sentenced to Death, without so much as one Witness.

Perhaps it may be thought extraordinary, That in the same Parliament that passed a Bill for regulating Trials in Cases of High-Treason, requiring two Witnesses with great Strictness, and giving further Advantages to the Prisoner than ever were allowed before; an Act should pass to put a Person to Death, without any Trial at all. Let any one compare the Preamble of that Act with this Bill.

Sir, I take it, with humble Submission, that the present Case is not at all to be likened to most of those Bills of Attainder that may be cited: Those, when they come to be looked into, will be found either to have passed against such Persons as fled from Justice; and therein they only pursued the Rules of the common Law, which allowed them to be out-lawed, and consequently attainted. And the Parliament therefore, in attainting them, did but the same Thing; and therein there was nothing done extraordinary. True it is, that where Persons have been forth-coming, there have been some few Bills of Attainder; but I will presume to say, they are never mentioned without heavy Censures, and a great Complaint against them.

This Case is not like the late Instance of the Bill of Attainder against the Duke of *Monmouth*, who was present in the Kingdom indeed; but in direct Opposition to any Method of Trial, he stood in Defiance of all Courts of Justice: But here is a Person that submits himself, and hath pleaded, and stands ready to be tried: And I hope I may take notice, to take off all Prejudice that may be raised, That this Gentleman, though he was of the Parliament that passed that Bill (against the

8 W. III. 1696. Duke of *Monmouth*), yet he was not in Town till a Month, at leaſt, after the Bill was paſſed.

I do agree, there are ſome Caſes where Perſons have been attainted, without being admitted to be tried. In the Beginning of the Reign of *Edward* III. *Roger Mortimer* was attainted and executed, without being tried; but in the 28th of *Edward* III. *it was reverſed, becauſe he was not brought to Judgment, according to the Law of the Land.* The like happened in the Caſe of *Edmund* Earl of *Arundel*, 1 *Edw.* III. But in 4 *Edw.* III. *Richard* his Son petitioned the Parliament, ſetting forth the Proceedings to be againſt the *Great Charter*; and inſiſting, that there ought to have been due Proceſs of Law; and he was then reſtored in Part: And in the 28th of *Edw.* III. there was an Act of Reverſal, declaring, That it clearly appeared, that the ſaid *Edmund* was unduly put to Death; and that the Statute by which he was attainted, was void, erroneous, and null: There is an Inſtance in 32 *Hen.* VIII. *Co.* 4. *Inſt. fol.* 37. of *Thomas Cromwell* Earl of *Eſſex*, who, though he was in Cuſtody in the *Tower*, yet was attainted without being tried: But the Words of my Lord *Coke* thereupon, are as follows: *Auferat oblivio, ſi poteſt; ſi non, utcunque ſilentium tegat:* For the more high and abſolute the Juriſdiction of the Court is, the more juſt and honourable ought it to be in its Proceedings; and to give Examples of Juſtice to Inferior Courts. And he adds further, to the End, as I apprehend, that the Reverſal of this Attainder may be of no ill Uſe: I am confidently perſuaded, ſuch worthy and honourable Members, ſhall from Time to Time, be of both Houſes of Parliament, as never any Attainder, when the Perſon is forthcoming, ſhall be had hereafter, without hearing him; which I underſtand to be without trying of him: And it is memorable what my Lord *Coke* recites, That he, who thus died, attempted the like againſt another.

There is another Caſe of *Thomas Seymour*, Admiral of *England*, who was likewiſe attainted by Act of Parliament, and executed, 3 *Edw.* VI. 1549.——You have an Account thereof in the ſecond Part of the Hiſtory of the Reformation, *fol.* 98, *&c.* whither I will refer you, only to read the Sentence of the learned Author, there pronounced againſt him. There is a later Caſe of my Lord *Strafford*, which every Body knows. I ſhall, as the beſt Account of that Matter, crave Leave to read the Words of the Parliament in the Act of Reverſal: I will not trouble you with reciting the Whole, but only read the Beginning, and ſome other Paſſages.

Whereas Thomas, *late Earl of* Strafford, *was impeached of High-Treaſon, upon Pretence of endeavouring to ſubvert the Fundamental Laws; and called to a publick and ſolemn Arraignment and Trial before the Peers in Parliament, where he made a particular Defence to every Article objected againſt him; inſomuch that the turbulent Party, then ſeeing no Hopes to effect their unjuſt Deſigns, by an ordinary Way and Method of Proceedings, did at laſt reſolve to attempt the Deſtruction and Attainder of the Earl, by an Act of Parliament; to be therefore purpoſely made to condemn him upon* Accumulative *Treaſon.*—It goes on to ſhew it was carried by the Tumult of the People, and then follows ——*And to the End that Right be done to the Memory of the deceaſed Earl: Be it further enacted, That all Records and Proceedings of Parliament, relating to the ſaid Attainder, be wholly cancelled, and taken off the File, or otherwiſe defaced and obliterated, to the Intent the ſame may not be viſible in After-Ages, or brought into Example, to the Prejudice of any Perſon whatſoever.* So that the Parliament that enacted that Reverſal, did conſider thoſe Proceedings as very evil and unjuſt; and was not willing there ſhould be any Remains of ſuch an Example to future Ages. 1696. 8 W. III.

Sir, having made theſe Obſervations as to the Manner of Proceeding, I come now to that which is the Subject Matter of the Bill at preſent before you, and which we take to be the Charge againſt Sir *John Fenwick*. I muſt crave Leave to obſerve, that in all Courts of Juſtice, where any Perſon is accuſed, he is to make his Defence *ſecundum allegata & probata*: 'Tis not enough that a Matter is proved, if it be not alledged; nor that it is alledged, if it be not proved: But if it be both alledged and proved, then it is a full Charge, and requires an Anſwer. It is not only the Law of *England*, but, I believe, of all Nations; and wherever any Perſon is to make his Defence, eſpecially in Capital Crimes, that to which he is to anſwer, muſt be alledged againſt him; from whence I ſhall obſerve, what is alledged againſt Sir *John Fenwick*: For I hope we are not concerned to defend him further, than as to what at this Time he is charged with. This Bill of Attainder, as it is drawn, and now ſtands before you, doth not ſo much as alledge, or ſay, that Sir *John Fenwick* is guilty of the Treaſon whereof he was indicted; and that hath prevented us from producing Witneſſes, to that and ſeveral Matters which the King's Counſel have entered upon: For though you have permitted them to examine Witneſſes to ſeveral Things quite out of the Bill; yet I hope you are not come to any Reſolution, that theſe Matters ſhall be thought fatal to Sir *John Fenwick*, which are not ſo much as alledged againſt him. We do not therefore think we are bound, or ought to follow them in thoſe Things that are totally out of the Bill; and therefore his being guilty, is not now the Queſtion, becauſe it is not a Charge upon him.

The firſt Thing that is alledged in the Bill, is, That Sir *John Fenwick* was indicted at the Seſſions, for that which is laid in the Indictment to be Treaſon, (which by and by I ſhall crave Leave to be heard to); and I think no body will ſay, this alone does require any Anſwer, further than to own the Fact, or to deny it: And we do admit, that he was ſo indicted. I need not labour much to clear him of the Conſequence of that alone; for very often innocent Perſons have been indicted and accuſed (for an Indictment is no more than an Accuſation); and this Bill, as I have obſerved, doth not ſay he is guilty. When the Bill hath recited that Matter, it proceeds to take notice, That he, by ſome unfair Prevarications, (for ſo I do agree they were, if the Facts alledged in the Bill are true; which, by the Way, have not been yet proved, by producing one Witneſs) did obtain the King's Clemency to put off his Trial, in Expectation of an ingenuous Confeſſion; which the Bill takes for granted he hath prevaricated in, by charging ſeveral Perſons of Honour

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Honour and Fidelity with Matters of a high Nature, only by Hear-ſay; and by uſing other unfair Artifices to put off his Trial. How far it is made out, that I muſt ſubmit to you: We think at preſent, there is no Proof of it, and by Conſequence we are not concerned to anſwer it: But had they proved it as fully as it is laid, (though far be it from me to excuſe ſuch a Behaviour); yet, when a Criminal is to be tried for that which will be of fatal Conſequence to him, if he be convicted, no body can ſay it comes near Treaſon, by unfair Means to contrive to put off his Trial.

The next Thing the Bill recites, is, That one of the Witneſſes, who might have been produced againſt him upon his Trial, if it had proceeded as was intended, is ſince withdrawn. I cannot ſay but *Goodman* is withdrawn; but as the Bill does not ſo much as alledge, that it was by the Means, or Procurement, or Privity of Sir *John Fenwick*, ſo from thence that Part of the Bill charges no Offence home to Sir *John Fenwick*: For in Caſe the ſame Witneſs had happened to have died by the Act of God, that would not have been a good Reaſon for this Bill of Attainder againſt Sir *John Fenwick*, unleſs he had contributed to it.—— From theſe Premiſes follows the enacting Part, That Sir *John Fenwick* be attainted of High-Treaſon; and in future Times the Act muſt be ſuppoſed to be grounded upon the Inducement to it: And I humbly ſubmit it to you, whether this Bill, condemning him for High-Treaſon, upon ſuch Recitals, will be thought Reaſonable. Theſe being the Allegations of the Bill, I will now, with your Favour, come to that which they, on the other Side, do call Proofs; and I muſt humbly obſerve to you, and ſubmit it to your Judgments, Whether, in a Caſe where a Man's Life is to be taken away, by a ſubſequent Law made on Purpoſe for him, the Proofs in that Caſe ought not to be much more evident, than if he were to be tried by a Law already in being? In my poor Apprehenſion (I ſpeak it with all Submiſſion to you, Sir,) it would be too much, at once to make a ſubſequent Law to condemn a Man to Death, and to do it upon doubtful and uncertain Evidence, or rather upon no Proof at all: Nothing could excuſe ſuch a Law, but an undeniable Proof of the Fact. And, therefore, ſurely the Poſition we find of Mr. *St. John*'s, in Lord *Strafford*'s Caſe, is of moſt dangerous Conſequence. I am afraid none are ſafe if that be admitted, *That a ſubſequent Law may take away a Man's Life without any Evidence, other than the private Opinion or Conſcience of every particular Law-maker*. He is pleaſed ſo to aſſert, That it may be done, as in *Ruſhworth*'s Hiſtory of that Trial, *Fol.* 677. I am ſure if this be ſo, no Man knows how long his Life is his own: I hope this Doctrine ſhall never be followed or approved. Sir, we have the Happineſs to live under an Eſtabliſhment, that every Man does, or may, know the Law he is to go by: Every one is bound, at his Peril, to take Notice of the Laws, and to act accordingly, becauſe they may be known: But at this Rate none but Prophets can live amongſt us. In the next Place, I would obſerve, what Courſe they have taken in their Evidence who are the King's Counſel. Firſt, they have betaken themſelves to that which is not alledged in the Bill; and we think that this is not agreeable to a Courſe of Juſtice.

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In the next Place, to make out that they inſiſt on, they have produced but one Perſon, that comes hither *viva voce* to ſpeak to it; and I muſt take Notice to you, that he is not upon Oath. I know very well, it is not your Courſe in this Houſe, to adminiſter an Oath; yet, I hope, that is ſo far from being a Reaſon why this Bill ſhould paſs here without an Oath, that it is a good Reaſon why ſuch a Bill ſhould not begin here. *There is no Place in the World where a Perſon is ſentenced to Death without an Oath:* In the Caſe of my Lord *Strafford*, the Proceeding firſt was by way of Impeachment, and the Witneſſes had been firſt examined upon Oath in the Houſe of Peers; and the Bill of Attainder takes Notice of it, reciting that it had been fully proved; and, by Conſeqence, we may ſuppoſe, that they would not otherwiſe have paſſed it; that being the Ground of their proceeding upon the Bill of Attainder: *But for the Bill to begin originally in this Place, to form ſuch a Judgment, the heavieſt that can be pronounced againſt a Man; a Judgment of Death, corrupting his Blood, and forfeiting all he has in the World; and this upon bare Allegations, without ſo much as the Sanction of an Oath, is extremely hard.* Mr. *Porter* is ſuch a Perſon, I know not how he hath gained ſo much Credit, that this Act ſhould paſs upon his Parole, to take away the Life of a Man: He was lately of that horrid Conſpiracy to aſſaſſinate the King; and ſhall that Man, who was ſo lately of that villainous Diſpoſition, to be engaged in a Crime of that black Nature, and not convicted by his own Conſcience, but by the Danger he had run himſelf into, not ſo much as pardoned his Crime, but at this Time, if I may without Offence uſe that Expreſſion, *drudging for his Pardon*; I ſay, ſhall this Perſon's Life be taken away by his Parole?

Sir, the next Thing I would go to, is, that (which likewiſe they call Evidence) which is an Examination, as they term it, of *Goodman*, taken before a Juſtice of Peace: But he was not examined; and I muſt inſiſt upon it, that though you permitted it to be read, you did not declare it to be Evidence; but you were, I preſume, willing to hear all Things, and then judge what would be the Evidence; and I think the King's Counſel did not preſs it further. Sir, as this is not Evidence that would be allowed in an inferior Court, ſo, I hope, you will not allow it to be Evidence here; for then it is likely to be followed by other Courts, who obſerve the Proceedings here as their great Rule. 'Tis only what Mr. *Goodman* thought fit to write down, without being examined.—— Sir, the next Thing they reſort to, is, what *Goodman* ſwore upon his Examination in another Cauſe, where Sir *John Fenwick* was neither Party, nor preſent: Sir, there are, I ſuppoſe, ſuch Reaſons againſt that Sort of Evidence, from natural Juſtice, that it is not admitted in any Court; becauſe there may be a weak Defence; or the Perſon that ſwears it againſt one, perhaps may not, when Face to Face, have the Confidence to perſiſt in it, in caſe it be falſe againſt another; or, at leaſt, that Perſon, who was not a Party before, when he comes upon his Trial, may think of ſuch Queſtions as may go a great Way to diſcover the

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the Truth, may produce ſuch Evidence againſt his Credit as may overthrow it.

But if what is ſworn at one Time againſt one Man, muſt be always taken for Truth againſt all others, then the Trial of one of the Company is the Trial of all the reſt: And how contrary is this to a fundamental Rule in our Law, that no Evidence ſhall be given againſt a Man, when he is upon Trial for his Life, but in the Preſence of the Priſoner? becauſe he may croſs-examine him who gives ſuch Evidence, and that is due to every Man in Juſtice.

But I would, with Submiſſion, enquire, how they are ſure that *Goodman* would have ſworn this Matter again, if he was now forth-coming? Becauſe he did ſwear ſo in *Cook*'s Caſe, is it neceſſary that he ſhould ſwear ſo again now, if Face to Face with Sir *John Fenwick?* No body can ſay ſo, poſitively and abſolutely; they only can imagine it, becauſe he once ſwore it, that it is poſſible he would do ſo again: Whereas we may as well ſay, he did then ſwear to ſave his own Life; and having done that, and found an Opportunity to get out of the Way, his own Conſcience might put him upon Flight, to prevent his doing of it again; and that might be the Reaſon for the withdrawing himſelf. However, I inſiſt upon it, That there is no Proof that it was by the Procurement of Sir *John Fenwick*: The Bill does not alledge it, and the Proofs do not come up to it; nay, there is nothing offered to ſuch Purpoſe, ſave only that Mr. *Porter* was pleaſed to ſay, That another Man told him, that the three hundred Guineas he was offered, and three hundred more he was to have received, were to have come from Sir *John Fenwick:* But hearſay Evidence is to be rejected, eſpecially againſt a Man for his Life, becauſe every Man is at Liberty to talk at large: But God forbid that That ſhould be allowed for Evidence.

The next Thing they went upon was, what Mr. *Roe* ſaid; That Mr. *Dighton*, who, by your Permiſſion, is Solicitor for Sir *John Fenwick*, was enquiring of him, what he could ſay to take off *Goodman*'s Evidence; the Words, I think he uſed, were, what he could ſay to diſcredit *Goodman*'s Evidence; and, I hope, that does no way affect Sir *John Fenwick:* For it does not appear that he had any Authority from him; but 'tis only ſuſpected, becauſe he is now Solicitor for him, which he was admitted to after the Time ſpoken of. But I take the Words to be nothing relating to *Goodman*'s withdrawing himſelf; but to enquire what he could ſay to diſcredit his Teſtimony, which ſuppoſes he would appear, and imports the quite contrary to withdrawing himſelf: And if he had gone no further, I think there had been no Fault in that; for any Solicitor may enquire up and down for the Advantage of his Client; and the Word Solicitor imports his Employment. As to the Offer Mr. *Roe* ſays he made him, of a very great Recompence, how far he is guilty of that, I ſuppoſe he can give ſome Account, if you ſhould pleaſe to enter into the Examination of it; and, as I find, he does not doubt to clear himſelf: So that Sir *John Fenwick* is in no Sort proved to be privy to Mr. *Goodman*'s withdrawing himſelf, much leſs to be proved to have had a Hand in it.

There is one Thing more I would offer, and that is grounded upon the Bill of Indictment, preferred at the *Old-Baily* againſt Sir *John Fenwick*; That the Matter in the very Indictment that they have read on the other Side, as it is there laid, and as far as it hath been offered to be heard, does not amount to Treaſon; or, at leaſt, it hath been made a very great Doubt, and by ſome within theſe Walls; but this I offer with all Submiſſion: I have the Author in my Hand, who is a Perſon of Note of the King's Counſel; he hath furniſhed me with ſuch Arguguments, as, I hope, I may be permitted to put you in Mind of without Offence.

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The Indictment lays, That there was a Conſpiracy and Agreement to call in a foreign Power, and to that Purpoſe to ſend *Charnock* to *France*; but the Indictment does not ſay, That *Charnock* was ſent, only that there was a Meeting, and an Agreement, and a Conſpiracy to ſend him: So the Indictment does not lay it as a Thing done, nor does the Bill charge it ſo; but only takes Notice, that Sir *John Fenwick* was indicted for conſpiring, and agreeing to call in a foreign Force: So that this Bill does not ſay that *Charnock* was ſent; and I appeal to you, whether it be proved that he was ſent: For Mr. *Porter* ſays no more, but there was a Meeting at the *King's-Head*, and he named Sir *John Fenwick* to be one that was preſent; and there it was, he ſays, agreed, That *Charnock* ſhould be ſent to *France*. Now, if there was nothing more than an Agreement and Conſpiracy to do it, and no further Act, but ſuch a Meeting to do it, and the Perſon was not actually ſent, or at leaſt not proved to be ſent; then, from this learned Author's Opinion, I inſiſt upon it, that this is not a ſufficient Overt-Act of Treaſon. In the late Caſe of my Lord *Ruſſel*, whoſe Innocence is vindicated by this Author, he takes Notice, That a Conſpiracy or Agreement to levy War is not Treaſon, without actual levying War; and of that Opinion was my Lord *Coke*, and my Lord Chief Juſtice *Hales*. A Conſpiracy or Agreement to call in foreign Forces, unleſs actually done, or a Perſon at leaſt actually ſent, or ſomething more than a bare Agreement for that Purpoſe, is the ſame as a Conſpiracy to levy War: And in the Caſe of my Lord *Ruſſel*, the Proof being only, That he and others met together, and agreed to ſeize upon the Guards, and levy War, which he never actually did; it is inſiſted upon by this Author, That that was not Treaſon; for that Indictment went no further: And therefore my Author ſays, *Shew me where ſuch an Accuſation was ever agreed to be more than a Conſpiracy to levy War, and that ſuch a Conſpiracy was ever agreed to be Treaſon within the Statute of* Edw. III. *till within theſe few Years.*

Sir Barth. Shower's *Argument for the Priſoner.*

Sir, now I muſt humbly ſubmit it to you, Whether this be any thing more? And for the Purpoſe you will pleaſe to conſider, What this preſent Bill, and what that Bill of Indictment is: For it is not, for that *Charnock* was ſent to *France* to ſolicit foreign Forces, but only that Sir *John Fenwick* was at a Meeting where they did agree ſo to do. Calling in foreign Forces is levying War; but a Conſpiracy to levy War is not Treaſon, unleſs it be actually done: A Conſpiracy to call in foreign Forces is nothing more. And therefore, I humbly inſiſt upon it, That neither by this Bill, or by the Indictment recited in it, or the Proofs offered before you, any thing is charged,

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charged, but only an Agreement at that Meeting, (mentioned by Captain *Porter*, a ſingle Perſon, and he not upon Oath), to call in foreign Forces; for he only ſays, That *Charnock* told him he had been in *France*. I ſhall not trouble you any further. We have not thought fit to produce Witneſſes, for the Reaſons I have offered; for that we do not find that Sir *John Fenwick*, throughout the Bill, is charged with being guilty of Treaſon; and we are not willing to enter upon the Defence of a Matter not charged upon him. I hope, Sir, you will not make a Precedent, That where a Perſon is indicted, and ready to abide his Trial in the ordinary Courſe of Juſtice, as Sir *John Fenwick* now is, that he might be taken out of the Hands of the ordinary Judges, and be brought to this Bar, to receive his Trial here.

A Matter of this Nature may be of very great Conſequence: We know at preſent upon what Ground we ſtand; for by the Statute of *Edw.* III. we know what is Treaſon; by the two Statutes of *Edw.* VI. and the late Act of Treaſon, we know what is Proof; by the Statute of *Magna Charta*, we know how we are to be tried, *per legem terræ, & per judicium parium*; that is, a Peer by his Peers, and a Commoner by a Jury: But if Bills of Attainder come into Faſhion, *we ſhall neither know what is Treaſon, what is Evidence; nor how, or where we are to be tried.* Sir, I ſubmit it to you, and hope this Bill ſhall not paſs.

Sir Barth. Shower's *Argument for the Priſoner.*

Sir *Bartholomew Shower*, who was Counſel alſo for Sir *John Fenwick*, ſaid, He ſhould not enter into any Debate or Argument concerning the Power of Parliaments: No doubt there was a Supreme Power in all Governments, and by our Conſtitution it was lodged in the King, Lords, and Commons: He admitted alſo, that there had been many Attainders; but not one, he obſerved, for a ſingle Act that was Treaſon at Common Law: That they might obſerve the Statute of the 25th of *Edw.* III. reſerved a Power to the Parliament, to proceed upon Treaſons *not expreſſed there*; but as to the Compaſſing the King's Death, Levying War, and Adhering to his Enemies; it ſeemed to be the Senſe of the Parliament, to leave theſe to the Rules of the Common Law: He did admit, indeed, *ſalus populi*, the Safety of the State, to be the Supreme Law; but this Proſecution being for an Act done laſt *May* was twelve Months, the Danger paſſed, and the Conſpirators executed, and no Fears now remaining from that Conſpiracy; he hoped they would not reſort to their extraordinary Legiſlative Power to puniſh ſuch a Fact, which might be puniſhed by the ordinary Rules of Law: The moſt they could do, in Juſtice, was, to ſupply the Want of the abſent Witneſs, and enact, that *Goodman*'s Depoſition ſhould be read at the Trial; but he hoped they would not think fit to condemn Sir *John Fenwick* without Trial, and put him in worſe Circumſtances than he would have been if *Goodman* had not been withdrawn; eſpecially ſince it was neither charged nor proved, that *Goodman* was withdrawn by Sir *John*'s Procurement: Nay, it was not proved that *Goodman* was withdrawn at all; he might be ſtill in his old Lodgings, and ſhould he appear again, and contradict the Teſtimony he had given, it might then be too late to do Juſtice to Sir *John Fenwick*. —— That as to the Overt-Acts, of buying Horſes and Arms, laid in the Indictment, none of theſe had been proved, nothing but his being at a Conſult; and in my Lord *Ruſſel*'s Caſe, there was not only a Conſult to ſeize the Guards, laid as an Overt-Act of Treaſon, but it was proved Sir *John Armſtrong* was ſent to view the Guards, in order to ſurprize them; and yet the Act for reverſing the Lord *Ruſſel*'s Attainder, declared he was unlawfully convicted, upon ſtrained Conſtructions of Treaſon; and he obſerved, that the conſulting to attack the King's Guards, and the inviting over foreign Forces, were either of them Conſults to levy War; and if the one was not Treaſon, neither was the other: And as to the Treaſon of adhering to the King's Enemies, with which Sir *John Fenwick* was charged, he muſt either have been preſent, aiding and abetting them, or ſent them Arms, Ammunition, Money, or other Supplies, to have brought him within that Branch of the Statute: That here was not ſo much as the ſending to *France* proved, only an Agreement to ſend one. He deſired the Houſe would take it into their Conſideration, alſo, That Sir *John* might undergo another Trial, if he ſhould be acquitted here: The King's Counſel might proſecute him at Common Law, if this Bill ſhould be thrown out; and it was contrary to all Laws, that a Man ſhould be brought in Danger of his Life twice for the ſame Fact; and for theſe Reaſons, and thoſe already offered by Sir *Thomas Powis*, he hoped they would not proceed againſt the Priſoner in their Legiſlative Capacity.

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Mr. Serjeant *Gould's Argument for the Bill.*

Mr. Serjeant *Gould*, in his Reply to the Priſoner's Counſel, obſerved, That they had admitted it was proper to apply to the Parliament in extraordinary Caſes; and this was ſuch a one; for they had been deprived of the Evidence that was neceſſary in the ordinary Courſe of Proceedings: And in Anſwer to that Objection, That the Evidence they had produced was not legal Evidence, they were now before the Parliament, which would make uſe of ſuch Informations as might give them any Light into the Matter: They were Judges of their own Methods, and how far Sir *John Fenwick* was concerned, upon the Circumſtances before them: And as to the Objection, That this was a Power which had been ſeldom exerted, but when the Party was withdrawn from Juſtice, and could not be come at otherwiſe; this, he inſiſted, was a parallel Caſe: They could not come at Juſtice in the ordinary Courſe, their Witneſs having been tampered with; and therefore, by their own Arguments, it was proper to come before the Parliament.

Mr. Serjeant *Lovel's Argument.*

Mr. Serjeant *Lovel*, being alſo Counſel for the Bill, ſaid, Mr. Speaker, I ſhall not trouble you nor the Houſe very long; but I humbly hope, with a little Pains, to ſatisfy the Houſe, that moſt that hath been ſaid on the other Side, is not much to the Purpoſe: Sir, I will conſider, with the Leave of this Houſe, what the Common Law was before the 25th of *Edw.* III. and how the Law does now ſtand; and draw ſome Conſequences from thence, and the Neceſſity of this Caſe.

The Statute of the 25th of *Edw.* III. I muſt obſerve it, is not an enacting Law, it is only a Law declaratory; for all thoſe particular In-

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ſtances of Treaſon that are mentioned there, were Treaſons before that Law was made, and ſo, by the Preamble of it, plainly appears: But the Judges had a greater Liberty upon conſtructive Treaſons, and upon accumulative Treaſons; and that was left too much at the Diſcretion and Liberty of the Judges below, and the executive Power of the Law. Then that Statute comes and reſtrains the Judges in that Point; and ſays, That they ſhall not give Judgment in any Caſes of Treaſon, but only in theſe Caſes particularly mentioned there: And that Statute ſays, That if any other Matter, which ſhall be thought Treaſon, ſhould come before them, they ſhall not proceed to Judgment, but acquaint the King in Parliament with it. I only make uſe of it to prove how Treaſon ſtood before that Act, and how it comes to be altered from the Common Law; and I am ſure it cannot be denied, but that one Witneſs was ſufficient at the Common Law: But then comes 1 *Edw.* VI. *Cap* 12. and that, for the Security of the Subject, does ordain, That in Caſes of High-Treaſon, there ſhall be two Witneſſes of the Fact: But that Statute does not alter the Law, but was made for the more Security of the Subject in Point of Proof. In that Statute of 1 *Edw.* VI. *Cap.* 12. it is provided, There ſhall be two Witneſſes in Caſes of High-Treaſon; but there is an Exception of Treaſon, for counterfeiting and forging of the Coin; and that is the Reaſon that the Law is taken now, That though there muſt be two Witneſſes in the Caſes of other Treaſons, yet in the Caſe of Coining there needs but one. The Offence or Crime is never the greater, becauſe there are to be two Witneſſes to prove it. In this Caſe that is here before you, we come to deſire your Help, becauſe one of the Witneſſes is, by Art and fraudulent Means, withdrawn: Does that purge the Crime at all, or leſſen it? No Man will ſay the Crime is leſs; but it does prevent a regular Trial before the Courts below, and that is the Reaſon why we did come here; and we hope this Defect ſhall be ſupplied by a ſpecial Law: But, ſay they, 'tis very hard a Law ſhould be made *ex poſt facto*, to take away a Man's Life. It would be very hard, if the Caſe was as they have ſtated it, to make a Crime, *ex poſt facto*, that was not ſo before: But I do not take it to be hard for a Law to be made to repeal another, to make a Matter triable that was not triable before.

Suppoſe a Law ſhould be made, That all Treaſons, from and after ſuch a Time, ſuppoſe from a Time before the Fact is here ſuppoſed to be committed, as laſt *May* was twelve Months, ſhould be triable as at the Common Law, no doubt the Parliament may repeal a Law in Part, or in All: No Man can ſay, but Sir *John Fenwick* might be tried at the Common Law by one Witneſs before the Statute of 1 *Edw.* VI. So that I do obſerve, and humbly ſubmit it to you, That this Law, by the Act, is not changed as to the Crime: The Crime is as it was before; it is only changed as to the Number of Witneſſes. The Inſtances that have been obſerved on the other Side, with humble Submiſſion, I think, do not reach our Caſe: We do not inſiſt that there are two legal Witneſſes; we do confeſs, the Information that hath been read is not a legal Proof; but this Houſe, in their Legiſlative Capacity, is not to be confined to the Evidence that a Jury muſt have below: This Houſe may take what Ways and Methods they pleaſe, to ſatisfy themſelves. Say they, here is the Life of a Gentleman that is concerned; I know all good Men will be tender of the Life of a Man: But here is the Life of the King, and the Safety of the Kingdom, the Peace and Safety of us all, that is concerned in the ſame Caſe; and let them put theſe Things into the Ballance, and conſider which ought to weigh moſt.

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You have a Record before you of the Conviction of *Peter Cook*, who was indicted by the ſame Witneſs.

A learned Gentleman, that is of Counſel for the Priſoner at the Bar, did make the ſame Objections as are made now, at the *Old-Baily*, (it may be there are ſome other Particulars now); and after all the Debates and Arguments that could be uſed at that Time, it was unanimouſly reſolved, That the Crime was High-Treaſon: And if it was High-Treaſon in *Peter Cook*, 'tis no leſs in Sir *John Fenwick*, who was preſent at the ſame Time, and engaged in the ſame Buſineſs: For what was a Crime in one, was the ſame in both.

I think it is too determinative an Expreſſion to ſay, This was nothing but a little Twittle Twattle. They did there meet upon a ſolemn Conſultation; and not only once, but they did meet a ſecond Time: And what was it to do? It was to invite a foreign Power to invade this Land, and to make War with the King and Kingdom; and they did promiſe and ſolemnly engage to aſſiſt them with armed Forces; and it was proved, that they did agree with *Charnock* to go into *France*; and *Charnock* was not willing to go the firſt Time he was deſired, till he found they were ſtanch and ſteady in their Reſolutions; and upon a ſecond Meeting they were all found ſo, and then he would go: I think that is an Overt-Act of Treaſon, if there be any. And when he came back, he ſaid, he had been in *France*, and brought an Anſwer to the Meſſage he went about: This is all now laid before you. But, ſay they, this is an extraordinary Caſe: I do agree to it; but becauſe it is an extraordinary Caſe, and for the Safety of the King and Kingdom, it is fit there ſhould be an extraordinary Remedy.

They aſk, What Miſchief it would be, if this Gentleman ſhould be left to the ordinary Courſe of Law? It hath been the Wiſdom of all Ages to make Laws to puniſh ſuch as by their Artifice would evade the Law. Here is this Gentleman, as we ſay, guilty of High-Treaſon; but that we ſubmit to you.

This Gentleman was in the Proſecution of the Law, and might have been tried in the regular Way, had we the Witneſſes upon their Oaths (the Grand Jury have found *Billa Vera* upon their Oaths); but we muſt appeal to a worthy Member of the Houſe, (who becauſe he was a Member we did not call upon him), to give you an Account how he did delay and protract his Trial; and now they know he can't be tried at all, they pretend he is willing to be tried; and becauſe he cannot be tried, they would have it as an Argument that he ſhould not be puniſhed by any other Means.

Sir, If ſo notorious a Crime as this is, ſhould be committed againſt the Body of a Nation, and

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and go unpuniſhed, either in the common Courſe, or by ſome extraordinary Methods, the Nation would be in a doubtful and dangerous Caſe.

When this Houſe hath paſſed their Judgment in this Matter, it will go to another Place, where it will have another Examination; and it will have that regular Conſideration that all other Acts have. We are in an extraordinary Caſe; and do think, that this extraordinary Caſe does deſerve an extraordinary Puniſhment. After which, the Counſel were ordered to withdraw.

The Gentlemen, charged by Sir John, move, he might prove the Charge.

Sir *John Fenwick* and the Counſel being withdrawn, Admiral *Ruſſel* moved, that Sir *John* might be called in again, and asked, What Proof he had, that he (the Admiral) ſent Captain *Lloyd* to *France*, and was guilty of the other Facts mentioned in the Paper he ſent to the King?

Then Colonel *Crawford* for himſelf, Colonel *Godfrey* for the Lord *Marlborough*, Mr. *Bridges* for the Duke of *Shrewſbury*, Mr. *Boſcawen* for the Lord *Godolphin*, and Colonel *Granvill* for the Lord *Bath*; deſired Sir *John* might be asked, What Proof he could make of the Facts, he had charged them with reſpectively in the ſaid Paper?

Another Member moved, That he ſhould be asked in general, what Proof he had of the Particulars in that Paper? But at length it was agreed, that the Paper ſhould not be produced; and that they ſhould only ask him upon every Name in that Paper, in the Order they were mentioned there, What he knew of that Gentleman? And accordingly, Sir *John* and his Counſel were called in again, and Mr. Speaker demanded of him, What he knew of the Lord *Godolphin* (being the firſt Perſon mentioned in the Paper)? To which Sir *John* anſwering, He hoped they would not put him upon anſwering any thing that might hurt himſelf, he was ordered to withdraw.

Sir John refuſes to anſwer on that Head.

Then it was moved, That Mr. *Vernon* might give an Account of Sir *John*'s Practices, to get his Trial put off from Time to Time, on Pretence of making a Confeſſion; This being one of the Allegations in the Bill, of which no Proof had been made: And it being agreed, that this ought to be done in the Preſence of Sir *John* and the Counſel, they were called in again:

Mr. Vernon relates the Endeavours uſed by Sir John to put off his Trial.

And Mr. *Vernon* related, that the Lady *Mary Fenwick* had applied to him to get Sir *John*'s Trial put off, on Pretence of his making Diſcoveries; and that ſeveral of the Miniſtry had attended Sir *John*, on his Promiſes of making a full Confeſſion; but that he had only amuſed them from Time to Time, till *Goodman* was gone.

After which Mr. Speaker demanded of Sir *John*'s Counſel, If they had any thing to obſerve upon that Head?

The Obſervations of his Counſel upon it.

Sir *Thomas Powis* anſwered, He did not find there was any Degree of Treaſon in this Part of the Charge; and what Crime they would conſtrue it, he could not tell: That it was uſual for Perſons, under an Accuſation, to endeavour to put off their Trial, on Account of the Abſence of their Witneſſes, or for other Reaſons: But this was no Crime; at leaſt, not of the Nature the Bill charged.

Sir *Bartholomew Shower* added, If Sir *John* had prevaricated, as they called it, he hoped that was far from making him guilty of High-Treaſon; and that if this was an Offence, it was ſo at Common Law, and he might be puniſhed for it by common Methods: And if it was no Offence, he hoped they would not make it an Offence by a new Law, ſo as to inflict the greateſt Puniſhment for ſuch an Artifice.

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The Priſoner and Counſel being withdrawn, the Bill was read a ſecond Time, after which there was a profound Silence: Whereupon Mr. Speaker demanding, If he ſhould put the Queſtion of Committment? a Debate aroſe, which was begun by Sir *Thomas Dyke*, who ſaid, He hoped he would not put the Queſtion of Committment, till ſome Exception was made to the Bill; for he was ſure it was as liable to Exceptions, as any Bill that had been brought in a great while.

A Debate on the ſecond reading of the Bill.

But, as it is not conſiſtent with a Work of this Nature, to give every Speech that was made during this Debate, I ſhall firſt ſum up the Arguments impartially on both Sides; and then ſelect ſome few of thoſe Speeches, I apprehend may give moſt Satisfaction to the inquiſitive World.

Arguments for the Bill.

The Gentlemen who were for the Bill, ſaid, That the Parliament would never take a Cauſe from the ordinary Courts of Juſtice, or attaint a Perſon of High-Treaſon, unleſs in extraordinary Caſes: But here, it appeared, they had been deprived of the Evidence that was neceſſary in Inferior Courts; and, in ſuch a Caſe, it was uſual for the Parliament to interpoſe: For the Parliament were not bound down by what was called legal Evidence; but might make uſe of any Information that could give them any Light into the Matter: They were Judges of their own Methods, and could paſs a Judgment on Sir *John Fenwick*'s Guilt, from the Circumſtances before them; and were not tied down by the Rules of *Weſtminſter-Hall*: That this Power indeed had been ſeldom exerted; but where the Party was withdrawn from Juſtice, and could not be come at in the ordinary Courſe: But this was a parallel Caſe; they could not come at Juſtice in the ordinary Courſe, their Witneſs having been tampered with and withdrawn; and therefore, from what was admitted on the other Side, the Parliament ought to exert their Power, when the Offender could not be come at otherwiſe. This Caſe was proper to be brought before the Parliament, which was veſted with a diſcretionary Power, to do whatever they apprehended for the Good of the Kingdom; and this they looked upon as a fit Occaſion to exert that Authority: That, indeed, this Power was like Thunder in the Hands of Providence, not to be uſed but upon extraordinary Occaſions; and then it never ought to fail of doing Execution: For Men would trifle and contemn that Power which was not able effectually to exert itſelf. Some Gentlemen were afraid of making an ill Precedent; but it was for that very Reaſon others were for paſſing the Bill: For as the Law ſtood, he was but a bungling Politician, that could not ruin the Government, and yet not come within the Bill of Treaſon to be hanged for it: And therefore, for the keeping Miniſters of State in Awe, and that the Parliament might have it in their Power to puniſh ſuch Offenders

as

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as they saw fit, as well as the Prisoner, they were for the Bill.

It had been objected indeed, That Sir *John Fenwick*'s Life was not of that Consequence as some pretended: He was not so considerable, that his Escape could bring any Danger to the Publick. But it was a very just Observation, That if a Plot was discovered, and not throughly prosecuted, it would strengthen and grow upon the Administration; and it was ten to one, but the Government was subverted by the Conspirators in the End. That no one could imagine, that Sir *William Perkins*, Sir *John Freind*, and the rest that had been discovered, were the only Persons concerned in this Conspiracy; there must be much greater Men concerned in it: And when they saw such a Struggle to get People out of Jayl, and send them out of the Way, they must suppose there was something extraordinary still to be done: And they would not have Men think to secure themselves by bribing and tampering with the Witnesses. It was notorious that Parties were forming for King *James*; Persons were plotting in every Part of the Kingdom, and an open Invasion threatened: And, if this was not a Time to exert their extraordinary Power, when would it be a proper Time?——Others observed, That if the Laws of God and Nature required, that no Man should be put to Death without two Witnesses, it was strange that all Christian Nations were not governed by such Laws: But in Fact, no two Nations agreed in their Manner of Proof; and we differed from all other Nations, in bringing the Witnesses and the Prisoner Face to Face; and requiring two Witnesses in Cases of Treason: Nor did we ourselves, require the same Proof in some Cases as we did in others; for one Witness was sufficient in Felony: And before the Statute of *Edward* VI. any Evidence was sufficient, even in Treason, which was sufficient to incline the Jury to give a Verdict: And for the Treason of coining such Evidence was still sufficient. That if this Precedent had been made in the Case of an innocent Person, or even where the Fact was doubtful, by a prevailing Party, it had been an ill Precedent: But it being made for a Man that was notoriously guilty, and one who deserved this extraordinary Resentment of the Nation; and who would have been brought to Justice in the ordinary Manner, if he had not eluded it, and made it impracticable; they thought, if it should appear, that the Nation would not be put off so, but made an Example of him, Posterity would applaud and thank them for it. They did not however condemn him, because he had protracted his Trial; but because he had been guilty of High-Treason, the worst of Treasons; which would have been proved against him in the ordinary Way of Proceedings, if he had not pretended to make Discoveries, and by that Means put off his Trial till a Witness was gone; and when he found himself out of the ordinary Reach of Justice, set the Justice of his Country in Defiance: And if these were not sufficient Reasons to put him to Death, yet they were sufficient to justify their Proceeding against him in this Manner. And notwithstanding Sir *John* was represented as too inconsiderable to indanger the Government; it appeared he was to have been a General, and was acquainted with a great many Officers: That he had not made an Amendment to his injured Country, as he ought to have done, by an ingenuous Confession; and unless they proceeded steadily against him, they should have none of the Discoveries they expected. Not that they would hang a Man because he would not confess; but, because he had been guilty of that deepest Treason, and aggravated his Offence in that Manner, he deserved to die, unless he would merit his Life by a Discovery of what he knew.

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Arguments against the Bill.

On the other Hand, the Gentlemen who argued against the Bill, insisted, That the Person they intended to condemn by this Bill was forthcoming: He had been indicted, had pleaded, and was ready to undergo his Trial in the ordinary Courts of Justice: That the meanest Subject was intitled to a Trial by Jury: Even the Regicides who actually murdered the King, and did not fly, were admitted to a Trial in the ordinary Courts of Justice, though a Bill of Attainder passed against the rest: And it must be thought strange, that the same Parliament, which passed an Act requiring two Witnesses in Treason, should pass an Act to put a Man to Death without one legal Witness, and without allowing him any Trial at all. If Mr *St. John*'s Position in Lord *Strafford*'s Case was admitted, (*viz.*) *That a subsequent Law might be made, to take away a Man's Life, without any Evidence, other than the private Opinion or Conscience of every particular Law-maker*; then no Man was safe. In the Lord *Strafford*'s Case, the Proceedings were first by Impeachment: The Witnesses had been examined upon Oath in the House of Peers; and the Bill of Attainder recited, that the Facts had been fully proved: But for a Bill to begin originally in the House of Commons; and Judgment to be given there to deprive a Man of his Life, and all that was valuable, without the Sanction of an Oath, was extremely hard.——That Bishop *Burnet*, in his History of the Reformation, had observed, *That such Bills could not be enough condemned; for that they were a Breach of the most sacred and unalterable Rules of Justice.* Had the Government been in Danger from the Prisoner, indeed ordinary Rules might have been dispensed with: But this being for an Offence committed a Year before the Persons executed, who were concerned in it, and all the Danger over, there could be no Manner of Reason for resorting to their Legislative Power to punish this Man: The most that could be thought reasonable in this Case, would be, to enact, That *Goodman*'s Evidence, the Witness who was fled, should be read at his Trial: They could not condemn the Prisoner, and thereby put him in a worse Condition than if *Goodman* was here; for then he would have had a Trial by a Jury, the Benefit of his Challenges, the Witnesses sworn, and might have made his Exceptions to their Testimony; all which he was deprived of here: That the Parliament had Power to make such a Law, was admitted; but they thought it ought not to be used but upon extraordinary Occasions, when the Offenders were so big, that they could not otherwise be brought to Justice; or where the Crimes did not fall under the Denomination of the Common Law, which was not the present Case: That there was not one Precedent for attaint-

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attainting a Perſon who was in Cuſtody and forthcoming; but what had been univerſally branded: They were rather Reproaches to the ill Reigns they were made in, and to be marked out as Rocks to be avoided, than Patterns to be imitated: That though it was true they were not tied up by the Rules of *Weſtminſter-hall*, yet what was Reaſon and Juſtice in *Weſtminſter-hall* was ſo every where elſe; and ſo far as thoſe Rules were founded on Reaſon and Juſtice, they ought to be imitated: That they had indeed made a Law to prevent People's being executed by an arbitrary Power, and in an unlawful Manner in *Weſtminſter-hall*; but if they made this Example, the Subject might be perpetually executed here, and would be never the ſafer for the Bill of Treaſons: That after this Precedent, every Man would be in Danger of being proceeded againſt in like manner, we had ſeen Parties hang one another by Turns, with great Violence. Some Gentlemen indeed had ſaid, they did not aim at the Priſoner's Blood, but at his Confeſſion; and ſo he was to be racked to Death from one reading of the Bill to another, and poſſibly might come to be hanged at laſt, not for High-Treaſon, but for not confeſſing it. As to the Safety of the Government, which was pretended, they did not ſee how the Safety of the Government depended upon his Life; or that it would be a Penny the worſe if the Bill did not paſs: The Preamble to the Bill for attainting the Duke of *Monmouth* gave a ſubſtantial Reaſon for it, *That he was in Arms and could not be brought to Juſtice*; which implied, that if he could have been brought to Juſtice, they would not have attainted him: They did admit indeed, where the Government was at Stake, and nothing could preſerve the Kingdom but breaking through the ſettled Forms, there the Government might, and in all ſuch Caſes would, break through them, whatſoever Rules were preſcribed; but they did not think Sir *John Fenwick*'s living or dying of that Conſequence as the paſſing this Bill of Attainder was. As to the Allegation of his having protracted his Trial, it was natural, and what every Body in ſuch Circumſtances attempted, and could not be a ſufficient Ground to attaint him: And as to his being inſtrumental in withdrawing the Evidence, this was neither proved, or ſo much as ſuggeſted in the Bill; and if it had, did not demand ſo ſevere a Puniſhment, any more than his having aſperſed ſome great Men as the Bill charged: That it was true, he had charged ſome Gentlemen, and it was very hard they ſhould ſit as Judges on the Perſon who accuſed them, and endeavoured to baffle his Evidence, by cramming a Bill of Attainder down his Throat: And there were other Gentlemen in the Houſe who were the King's Counſel and Proſecutors; and it was hardly agreeable to Juſtice, that theſe ſhould ſit in Judgment on the Priſoner: That High-Treaſon indeed was a great Crime, but what was there in this Caſe to make it differ ſo much from other Treaſons, that they muſt proceed in this extraordinary manner? He had aſperſed great Men, he had prevaricated with the Government, and protracted his Trial till a Witneſs was withdrawn: But if theſe Reaſons were ſufficient to induce them to have recourſe to a Bill of Attainder, then whenever there ſhould be but one Witneſs for the future, by Virtue of this Precedent, the Legiſlature muſt interpoſe, and a Bill of Attainder be brought in. True it was, this might ſufficiently convince Men that they could never be ſafe, how artful ſoever they were in practiſing againſt the Government: But then, what Security to the Subject were all the Laws made for regulating Trials in Caſes of Treaſon? If when there was but one Witneſs, and perhaps not one, the Perſon accuſed might be taken out of the ordinary Courts of Juſtice and condemned to die, becauſe common Fame had declared him guilty: And if *Goodman*'s Paper, who was withdrawn, was to be admitted as an Evidence before the Houſe, the Conſequence of that would be, that if a Miniſter of State could hereafter get an Examination ſworn before a Juſtice of Peace, and then ſend the Witneſs away, a Bill of Attainder might be clapped on the Back of the Party accuſed, and this ſhould be deemed ſufficient Evidence to deſtroy him: If after this Precedent, forty Men ſhould be taken up for a Plot, and there ſhould be two Witneſſes againſt twenty of them, and one againſt the other twenty, then a Bill of Attainder muſt be brought in to condemn the latter without legal Evidence: And if this was to be the Method of proceeding for the future, Men would be more unſafe than they were before the Acts of Treaſon were made, inaſmuch as Parliaments were as liable to be influenced as Juries, and their Power was irreſiſtable.

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That moſt of the Attainders which had been produced as Precedents had been reverſed; becauſe the Perſons condemned had not had the Benefit of the Law, and if that was a good Reaſon for reverſing ſuch Attainders, it was a good Reaſon alſo why they ſhould not proceed by Attainder: And to tell them the Government was in Danger, and that the Fate of *England* and *Europe* depended on this Bill, was certainly offered, rather to amuſe than convince them; it was impoſſible the Government could be in Danger from one they had in their Power, and might reſtrain him of his Liberty for Life, and whoſe Eſtate and Intereſt were ſo inconſiderable. It was ſtrange, the Government could not ſupport it ſelf without taking away the Life of ſuch a one, contrary to the Rules of Law.

Theſe Debates having continued till Eleven at Night, the Queſtion was put, *That the Bill be committed*, which paſſed in the Affirmative, *Ayes* 182, *Noes* 128: But the Committee made an Amendment, by adding the following Words to the Bill, *viz. Of which Treaſon Sir* John Fenwick *is guilty*.

The Bill paſſed on the ſecond reading, with an Amendment.

The Bill being read a third Time on the 25th of *Nov.* 1696. ſeveral Speeches were made for and againſt it; but the preceeding Abſtract contains the Subſtance of theſe as well as the former.

The Queſtion being afterwards put, *That the Bill do paſs*, it was carried in the Affirmative, *Ayes* 189, *Noes* 156: And then the Bill was ſent up to the Houſe of Lords, where it

Read a third Time, and paſſed the Commons.

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Paſſed the Lords by a Majority of five.

Proteſts of the Diſſenting Lords.

was paſſed by a Majority of five Lords only, excluſive of the Lords Spiritual, who did not vote, and ſeveral Peers entered their Proteſts againſt the Bill for the following Reaſons; 1. becauſe Bills of Attainder againſt Perſons in Priſon, and who are therefore liable to be tried by Common Law, are of dangerous Conſequence to the Lives of the Subjects, and may tend to the Subverſion of the Laws of the Kingdom. 2. Becauſe the Evidence of Grand Jurymen of what was ſworn before them againſt Sir *John Fenwick*, as alſo the Evidence of the petty Jurymen in another Cauſe, was admitted here, both which are againſt the Rules of Law; and beſides thoſe Jurymen diſagreed in their Teſtimony. 3. Becauſe the Information of *Goodman* in Writing was received, which by Law could not be admitted, and the Priſoner on account of his not being brought Face to Face, as the Law required, could not have the Advantage of croſs-examining him; nor did it appear by any Evidence, that Sir *John Fenwick*, or any others employed by him, had tampered with *Goodman*, or perſwaded him to withdraw, and it would be of dangerous Conſequence, if a Perſon ſo accuſed ſhould be condemned; for by this Means, a Witneſs that was inſufficient to convict a Man, ſhould have more Power to deſtroy him by his Abſence, than if he was produced *viva voce* againſt the Priſoner. 4. Becauſe if *Goodman* had appeared againſt the Priſoner, he was infamous in the whole Courſe of his Life; and therefore could not be a good Witneſs, eſpecially in a Caſe of Blood. 5. Becauſe in this Caſe there was but one Witneſs (*viz. Porter*), and he a very doubtful one. 6. Becauſe Sir *John Fenwick* was ſo inconſiderable a Man, that he could not endanger the Peace of the Government, and there was no Neceſſity therefore of proceeding againſt him in this extraordinary Manner.

The Royal Aſſent given to the Bill.

The King gave the Royal Aſſent to this Bill for the Attainder of Sir *John Fenwick* on the 11th of *January*, but was contented he ſhould be beheaded only, and not put to Death as a Traitor; and Sir *John* was beheaded accordingly, on the 28th of *January* 1696-7 on *Tower-hill*, when he left the following Paper with the Sheriffs, *viz.*

Sir John Fenwick *executed.*

The Paper he left.

SPeaking nor Writing was never my Talent, I ſhall therefore give a very ſhort but faithful Account, firſt, of my Religion, and next, what I ſuffer moſt innocently for, to avoid the Calumnies I may reaſonably expect my Enemies will caſt upon me when dead, ſince they have moſt falſely and maliciouſly aſperſed me whilſt under my Misfortunes.

As for my Religion, I was brought up in the Church of *England*, as it is eſtabliſhed by Law, and have ever profeſſed it; though I confeſs I have been an unworthy Member of it, in not living up to the ſtrict and excellent Rules thereof, for which I take Shame to my ſelf, and humbly ask Forgiveneſs of God, I come now to die in that Communion, truſting as an humble and hearty Penitent to be received by the Mercy of God, through the Merits of Jeſus Chriſt my Saviour.

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My Religion taught me my Loyalty, which I bleſs God is untainted; and I have ever endeavoured, in the Station wherein I have been placed, to the utmoſt of my Power, to ſupport the Crown of *England* in the true and lineal Courſe of Deſcent, without Interruption.

As for what I am now to die, I call God to witneſs I went not to that Meeting in *Leaden-hall-Street*, with any ſuch Intention as to invite King *James*, by Force, to invade this Nation; nor was I my ſelf provided with either Horſe or Arms, or engaged for any Number of Men, or gave particular Conſent for any ſuch Invaſion, as is moſt falſely ſworn againſt me.

I do alſo declare in the Preſence of God, that I knew nothing of King *James* his coming to *Calais*, nor of any Invaſion intended from thence, till it was publickly known: And the only Notion I had that ſomething might be attempted, was from the *Thoulon* Fleet coming to *Breſt*.

I alſo call God to Witneſs, that I received the Knowledge of what is contained in thoſe Papers that I gave to a great Man that came to me in the *Tower*, both from Letters and Meſſages that came from *France*: And he told me, when I read them to him, that the Prince of *Orange* had been acquainted with moſt of thoſe Things before.

I might have expected Mercy from that Prince, becauſe I was inſtrumental in ſaving his Life: For, when about *April* 1695, an Attempt formed againſt him came to my Knowledge, I did, partly by Diſſuaſions, and partly by Delays, prevent that Deſign; which, I ſuppoſe, was the Reaſon that the laſt villainous Project was concealed from me.

If there be any Perſons whom I have injured in Word or Deed, I heartily pray their Pardon; and beg of God to pardon thoſe who have injured me; particularly thoſe who with great Zeal have ſought my Life, and brought the Guilt of my innocent Blood upon this Nation, no Treaſon being proved on me.

I return my moſt hearty Thanks to thoſe noble and worthy Perſons who gave me their Aſſiſtance by oppoſing this Bill of Attainder, without which it had been impoſſible I could have fallen under the Sentence of Death. God bleſs them and their Poſterity; though I am fully ſatisfied they pleaded their own Cauſe while they defended mine.

I pray God to bleſs my true and lawful Sovereign King *James*, the Queen, and Prince of *Wales*, and reſtore him and his Poſterity to this Throne again, for the Peace and Proſperity of this Nation; which is impoſſible to proſper till the Government is ſettled upon a right Foot.

And now, O God! I do with all humble Devotion commend my Soul into thy Hands, the great Maker and Preſerver of Men, and Lover of Souls; beſeeching thee that it may be always dear and precious in thy Sight, through the Merits of my Saviour Jeſus Chriſt. *Amen.*

In this Place I ſhall, as I propoſed, give ſome ſelect Speeches for and againſt this Bill of Attainder

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Attainder in the House of Commons, and then make my Remarks upon the whole as usual.

Sir John Hawles, Sollicitor General.

Mr. *Sol. Gen.* This is a Bill for attainting Sir *John Fenwick* of High Treason: 'Tis the greatest Crime we know in the Law; and, I think, the greatest Crime known in a Government. It is much greater than Murther, or any thing else; because it subverts the Government, and the Law whereby these Crimes are punished; and Persons should be deterred from committing these Crimes.

It hath been made a Question by the Gentlemen at the Bar, (I think two of them) Whether this Matter that Sir *John Fenwick* is indicted and accused of is High Treason or not? I must confess I heard something of it without Doors; and that they would make it out, That if he was guilty of the Matter charged it was not High Treason. I thought it somewhat a bold Matter, but did not think they would have undertaken it in this Place, though they might have pretended some Flaw in the Indictment. But it seems they have the Authority of a good Lawyer in it, and they have quoted one learned Author, as they please to call him; though I take that for a great Compliment: I believe they may mean my self; and they have done me some Honour; for they say my Lord Chief Justice *Hales* was of the same Opinion; and then said something of *Dyer*. Now he hath read something at large out of that Author he speaks, and challenges any one to shew any Opinion, That ever a Conspiracy to levy War was High Treason within the Statute of 25 *Edw.* III. Now I would give a Challenge on the other Side, That he would shew me any Opinion before that Time, or since, That a Design to depose the King is not High Treason within that Statute? The Author that he speaks of, says that expressly in the Matter of my Lord *Russel*, and tells you particularly; and in *The Government Vindicated*, which was only an Answer as to the Prosecution of my Lord *Russel*, there are several Cases cited, That a Design to depose the King was High Treason, and agreed to by that very Person; and it always was agreed to be High Treason. Then take the State of this Case, and that of my Lord *Russel*: The great Matter was, That he sent some Persons to view the Guards (it was said, in order to seize the King); this was Evidence against my Lord *Russel* for a Conspiracy to levy War: But it was said, That this was not so much a Conspiracy to levy War against the King as against the Guards. But this is of a quite different Nature: Capt. *Porter* hath given you an Account of it, (and I think *Goodman*'s Examination is to the same Purpose): That they met in *Leaden-hall-Street*, and consulted how to bring King *James* back again; and the only Method they could think of was, to send *Charnock* over to King *James*, that he might prevail with the *French* King to send them 10,000 Men, and they would meet him here with 2000 Horse; and for what Purpose was this? It was to bring back King *James* again. I would be glad to hear if those Gentlemen that were at the Bar, or any Body else, could say this was any thing else but a Design to depose King *William*? And they can't shew me one Lawyer's Opinion, but that designing to depose the King was ever called the imagining the Death of the King within the Statute of 25 *Edw.* III. The first Resolution of this Matter was pretty early; I think it was *Henry* IV's Time, and that was pretending *Richard* II. was alive, and that he was the lawful King. So that the Matter is Treason, as it is charged in the Indictment.

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Then as to the Precedent, That 'tis an ill Precedent: I must confess I am not afraid of a Precedent of this Kind. I should be glad if these Gentlemen should turn back, and see how many Attainders have been by Act of Parliament: But I dare say, there have been more Men destroyed by the irregular Judgment of a Commission of Oyer and Terminer, than by all the Acts of Parliament, whether legal or illegal.

As to what they say of my Lord *Coke*, who mentions the Attainder of my Lord *Cromwell*, and Sir *J. Mortimer*, the Gentleman pretends to repeat my Lord *Coke*'s Words at large; but he did not deal so well as he ought to do by you; for he should have told you all my Lord *Coke* tells you; That *Cromwell* was never brought to answer, neither permitted to say any thing for himself, neither in Parliament, nor where he was. Now, pray Sir, is this the present Case? Hath not Sir *John Fenwick* been heard by you? I would be glad that Gentleman, or any body could shew me, that any Person hath had so fair an Hearing before Commissioners of *Oyer* and *Terminer*, as Sir *John Fenwick* hath had before you. As to Sir *J. Mortimer*, 'tis much of the same Nature. My Lord *Coke* says, there was a Jealousy of Sir *J. Mortimer*'s pretending to the Crown; and because they suspected him, they did give out that he said, That the Earl of *March* was Heir to the Crown; and, if he did not, he would pretend to it himself, &c. Now, says my Lord *Coke*, this was but a bare Pretence, and nothing else. He speaks as if he did not ever think him guilty of those Words; and says, having indicted him, they not being able to proceed that Way, they made it good by Act of Parliament, and he was condemned. So that what my Lord *Coke* complains of is, That these Persons so condemned were never heard: And, if this be the Truth of the Matter, these Precedents (with Submission) have no Affinity with yours. But I believe this may be said in this Case, Sir *John Fenwick* hath been heard, and that more than ever any one in Parliament was before, in a Capital Matter.

As to the Case of my Lord *Strafford*, he had Counsel assigned him to stand by and hear, but not to prompt him. If there arose any Point of Law, he was to propose the Matter to the Lords, and the Counsel was to assist him by their Directions. And, in the Case here before you, you have allowed Sir *John Fenwick* Counsel; not only to assist him in Point of Law, but to assist him in Point of Fact too. They have made Answer for him; so that I say he hath been tried fairer than any Man ever was in Parliament, be it upon Bill,

or

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or upon Impeachment; that is, as to the Matter of Precedent. Then it hath been ſaid, This would not be good before the Judges. I muſt confeſs it; but the Evidence, Captain *Porter* gave of his own Knowledge of Sir *John Fenwick*, every body will agree, is what the Law will allow. But he is but a ſingle Witneſs, and you ought not to proceed upon the Evidence of a ſingle Witneſs. Let us ſee how the Law ſtands upon the whole Matter. You have made an Act of Parliament laſt Seſſions, and I own the Law was before that, that there ſhould be two Witneſſes in Caſe of Treaſon; but all that goes no farther than to Trials in the *King's-Bench*, and Commiſſions of *Oyer* and *Terminer* and Goal Delivery. And if you look upon thoſe Acts, 'tis very plain, for they refer moſtly unto the Judges, what they ſhall do in ſuch and ſuch Caſes: But then you will ſee what is the Reaſon of making thoſe Rules: I think there was good Reaſon that you ſhould not put that Power in Perſons below that you have in your ſelves: You give them Rules to proceed by, and they are to keep up ſtrictly to them: You may act by other Rules. 'Tis one thing when I command my Servant to do ſuch a Thing, and another thing when I act my ſelf: And there is a Difference when a Judicature is by few, and when 'tis by many; the Law puts a greater Confidence in many, than in a few. The ordinary Trial is by twelve Jurors; but if it be a Matter of an high Nature, as an Attaint, then it ſhall be by twenty-four; and you do prefer a greater Number in every thing to a few. 'Tis ſaid, tho' a Judge do think in his Conſcience a Perſon guilty, yet he ought not to make uſe of that private Knowledge; and a Caſe was quoted out of *H.* 4. but I think that Judge might have behaved himſelf ſomething better than he did; and, ſure I am, now he would be blamed. I do not ſay that a Judge, upon his private Knowledge, ought to judge, he ought not: But if a Judge upon the Bench knows any thing whereby the Priſoner might be acquitted or convicted (not generally known) then, I ſay, he ought to be called from the Place where he ſate, and go to the Bar, and give Evidence of his Knowledge: And ſo the Judge, in *H.* IV's Time, ought to have done, and not to have ſuffered the Priſoner to have been convicted, and then get a Pardon for him; for a Pardon will not always do the Buſineſs; for there may be a Forfeiture that the King's Pardon does not reſtore. But though we act as Judges here, do we act only as Judges? I thought we were as well Triers of the Fact as Judges. There is this Difference between the Judicature of *Weſtminſter-Hall* and this Court. They are to judge upon a Fact found by a Jury; but we act both the Part of a Jury in trying, and alſo of Judges in judging what the Fact amounts to: So that if a Jury-man may make Uſe of his private Knowledge to acquit the Priſoner, as (I think) no body doubts but 'tis his Duty to do, then every Gentleman in this Houſe may make uſe of his private Knowledge to acquit the Priſoner, or convict him.

I confeſs, for my Part, I am ſatisfied, that Sir *John Fenwick* is guilty of this Crime for which he ſtands accuſed. I do think this Crime is High Treaſon: I think there is no Danger of a Precedent in this Caſe, if you convict him, being convinced, upon the Evidence you have heard, that he is Guilty. I own, if any Gentleman think he is not guilty of meeting at the *King's-Head* Tavern in *Leadenhall-Street*, or at Mrs. *Mountjoy's*, for the Purpoſe given in Evidence, he ought to be againſt the Bill: But I think every Man that is of that Opinion ought to be for the Bill. I am one of thoſe that think he is Guilty; and therefore am for committing the Bill.

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Mr. *Harcourt*. I can readily agree with the Gentleman that ſpoke laſt, that High Treaſon is the higheſt Crime in the Law; and further, That the Matter of the Indictment, that is mentioned in the Recital of the Act, is undoubtedly High Treaſon: And I am ſure he will agree with me in one Thing alſo, That the greater the Crime is that any Perſon is accuſed of, the clearer the Proof ought to be by which he is convicted.

Mr. Harcourt, (*afterwards Lord* Harcourt.)

Some Gentlemen have begun their Diſcourſe in Relation to the Power; but ſure 'tis no Argument becauſe I can do a thing, therefore I will do it; becauſe we have Power to repeal *Magna Charta*, and all other ſubſequent Laws which have been made in Favour of Life and Liberty, and Property, by the ſame Conſequence we ought to do it. A better Reaſon muſt be given me, before I conſent to this Bill.

Then for the Precedents 'tis ſaid, There have been many, aud many have been mentioned: And, if I thought it worth while, I would mention many more you have not heard of: As for Precedents in general, they are ſo far imitable as they are grounded upon true Reaſon, and agreeable to Juſtice: But I don't remember any one Precedent of this Nature for a Perſon in Cuſtody, forth-coming to be tried, yet to be attainted without a Trial at Law, but what has been univerſally branded; and they all ſeem to be Reproaches even to theſe ill Reigns in which they were uſually made; and rather to be marked out as Rocks for us to avoid, than Patterns for our Imitation.

Before I particularly mention the Facts how they ſtand before you, I would beg Leave to obſerve upon the general Method of your Proceedings, and tell you what ſtaggers me in it.

I have often heard this called a Trial, and that we are the Judges: The Gentleman that ſpoke laſt gave us another Title, and told us we were the Jury alſo: I know no Trial for Treaſon but what is confirmed by *Magna Charta*, *per Judicium Parium*, by a Jury, which is every *Engliſhman's* Birth-right, and is always eſteemed one of our darling Privileges; or *per legem terræ*, which includes Impeachments in Parliament; but if it be a Trial, 'tis a pretty ſtrange one, where the Perſon that ſtands upon his Trial hath a Chance to be hanged, but none to be ſaved. I can't tell under what Character to conſider our ſelves, whether we are Judges or Jurymen. I never heard of a Judge, I am ſure not of a Jury-man, before, but he was always upon his Oath:

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Oath: I never heard yet of a Judge but had Power to examine Witneſſes upon Oath, to come to a clear Sight and Knowledge of the Fact: I never heard of a Judge, but, if a Priſoner came before him, the Priſoner was always told, he ſtood upon his Deliverance, and had not only a Power to condemn the Guilty, but to ſave the Innocent. Have we this Power? Suppoſe, upon ſuch a Trial as this (if it muſt be called ſo), it may ſo happen, that a Perſon that comes before us ſhould be the innocenteſt Man in the World; what Judgment is it that we can give, for ſo much as ſuch a Perſon hath made his Innocency fully appear? Is the Speaker, by his Warrant, to ſend him back again to *Newgate*? You can't diſpoſe of him otherwiſe, though you were ſatisfied of his Innocency: But, in ſuch a Caſe, the Party muſt undergo a double Trial, which is contrary to all the Rules I have heard of. If I am a Judge in the Caſe, I beg Leave to tell you, for my own Juſtification only, what a Definition I have met with of a Judge's Diſcretion. My Lord Chief Juſtice *Coke* ſays, 'tis *Diſcernere per Legem*; and, by that Diſcretion, I beg Leave to conſider this Caſe: If Judges make the Law their Rule, they can never err; but if the uncertain arbitrary Dictates of their own Fancies, which my Lord *Coke* calls the crooked Cord of Diſcretion, be the Rules they go by, endleſs Errors muſt be the Effect of ſuch Judgments.

As to this particular Caſe, I did expect from the Gentleman that ſpoke laſt, that he would have told you, there was a plain Evidence why you ſhould go on to the paſſing of this Bill; but, inſtead of that, I am ſurprized to hear a thing mentioned, that in Parliamentary Proceedings a Man may be hanged by one Witneſs; certainly that is not to be taken for granted.

As to this particular Caſe, I would take Capt. *Porter* as upon his Oath, for Suppoſition: You have one Witneſs againſt Sir *John Fenwick* for High Treaſon; and, with your Leave, I deſire to examine what you have more in this Caſe.

Yeſterday you voted a Paper to be read — *Goodman*'s Narrative or Examination; 'tis a different Caſe now; you have it before you to determine upon. Yeſterday the Queſtion was only for hearing: But, Gentlemen, now conſider how far they ought to believe it, and the other Evidence we heard. And firſt, there is ſome Evidence that *Clancy* tampered with *Porter*, and gave him a Sum of 300 *l.* and ſo they would infer, becauſe *Porter* was tampered with to be gone, therefore *Goodman* was. It was told us further (and I deſire I may be informed, if I am miſtaken) that *Clancy* ſaid, he came from Sir *John Fenwick*, and afterwards my Lady *Mary Fenwick* ſaid ſhe would make good what *Clancy* had ſaid: And from theſe Arguments they preſume that Sir *John Fenwick* knew of it. Give me Leave to tell you a Rule I never heard contradicted, That Preſumption is to be made in Favour of Life; but to preſume a Man Guilty becauſe *Porter* was tampered with by another,—Becauſe he ſaid it was by Sir *John Fenwick*'s Order, ſhall we preſume Sir *John Fenwick* did it? Is Hear ſay to be Evidence? Or is a Man to be had to the Gallows upon Preſumption? How often, and with how much Reaſon have we heard Examinations againſt Judgments, upon Preſumptions, Inuendo's, conſtructive and accumulative Treaſon? *&c.*

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Gentlemen, There is ſome further Evidence; and that is of what was ſworn at *Cook*'s Trial: And ſome Gentlemen thought fit to have the Record read, and an Examination of what was ſworn there. I can never go ſo far as to think it reaſonable, That what Evidence hath been given in one Caſe ſhould affect another Man; but all this is to be anſwered, by calling it Parliamentary Proceedings. We doubt 'tis no Evidence in the Courts below; but they are mentioned with ſome kind of Diſdain, as very inconſiderable. In this Caſe, I beg Leave to ſay this in their Vindication, That whatever the Rules of *Weſtminſter-Hall* are, 'tis not therefore Reaſon, becauſe 'tis a Rule; but becauſe 'tis Reaſon, and Reaſon approved of by long Experience, therefore 'tis a Rule: And if they make their Rules for that Cauſe, I hope that is a Cauſe why we ſhould imitate them: But I would not have thoſe Rules thought Matters of Form, but Subſtance, or, more properly, Part of the Law it ſelf.

Upon the whole Matter, if no Gentleman will give us a Reaſon why this is Evidence, but one Witneſs, and that not upon Oath; and if we are come to our Parliamentary Diſcretion, to ſupply that Defect, the Want of the other, 'tis a Diſcretion I will diſclaim all the Days of my Life: And I hope you will reject the Bill.

Sir Thomas Littleton. Sir, I ſhall not trouble you long in this Debate, that hath taken up ſo much of your Time already in the Conſideration of ſome Matters we have been upon; though I did think your Time not very regularly ſpent, till this Occaſion offered it ſelf. I hope, therefore, now it will take up leſs of your Time: I ſee the great Matter that was inſiſted on before, is inſiſted upon ſtill; and I do think we may ſay it among our ſelves, though we would not let the Counſel, That we are tied up, in this Caſe, by the Rules of *Weſtminſter-Hall*; but, I believe, if that was the Caſe, and the Queſtion was no otherwiſe than whether or no we are tied up by the Rules of *Weſtminſter-Hall*, I believe it would receive a Determination, that we are not bound up to thoſe Rules. *Sir Thomas Littleton.*

But I will take leave to tell you what I think is proper for us to ground our Judgment on. I think the great Reaſon, even of thoſe that are againſt the Precedent, why they did admit Sir *John Fenwick* to have Counſel, and to examine Witneſſes, if we had any, and to croſs-examine the Witneſſes, and why they were willing to hear Evidence on both Sides in the Nature of a Trial; the great Reaſon was, becauſe that, in a Caſe of ſo great Conſequence as this is, they would have the beſt Information they could obtain. Why did they deſire to be informed; but that afterwards they could lay their Hands upon their Hearts, and give their Judgment upon their private Opinion, Whether he was guilty or no?

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no? They ſay, we are not to give our Judgment upon our private Opinion; I always will. (It was not long ago we were not to have our Religion upon our private Opinion neither.) And, when I am juſtified in that, I will rely upon it: Whether this be ſtrictly legal Evidence, I do not lay ſo much Weight upon it, as whether it hath ſatisfied my Conſcience; and I believe there is not a Man in the Houſe but is ſo (upon what he hath heard), and doth believe that Sir *John Fenwick* is Guilty; and, if we believe he is Guilty, I would be glad to know by what Rules in the World any Man can give his Vote againſt this Bill, being of that Belief. And I tell you why I think every Man believes ſo—becauſe every Man in the Kingdom, that hath not heard ſo much as we have heard, does believe him to be ſo: And I can't think that their Repreſentatives only ſhould be of another Opinion.

What Evidence have you had? You have had Capt. *Porter's* Evidence, and that would be good even in inferior Courts: And beſides that, you have the Evidence of what *Goodman* did ſwear before the Grand Jury; you have heard what he did ſwear, and the Grand Jury did believe him: You have heard likewiſe what he did ſwear in another Cauſe to the Petit Jury, and they believed him, and convicted the Priſoner upon it: And though this be not legal Proof, ſtrictly ſpeaking, will any body ſay that I have Reaſon to disbelieve this Man, and think he hath ſworn falſe? Ay, but here is but one Witneſs, Gentlemen tell you. I will put a Caſe where I believe this Houſe would attaint a Man without any Witneſs. Suppoſe two Perſons had ſeen Sir *John Fenwick* kill the King (I believe we ſhould not have pulled him in Pieces in a barbarous Manner, but he would have had a Trial); and ſuppoſe, before his Trial, they had been conveyed away, if before they had ſworn this to a Grand Jury, and they had found the Bill; I believe this Houſe would have attainted him for it.

Sir, I do not think that we ſhould ſtand upon theſe little Niceties, nor be bound by the little formal Proceedings of other Courts, when the Government is at Stake. We are ſent hither to take Care that the Publick Safety do not ſuffer any Miſchief from the Enemies of it: We have had Plot upon Plot; and I have heard ſo much ſaid on Behalf of the *Lancaſhire* Plot without Doors, that I wiſh we do not get an ill Name upon our ſelves before we have done. We have this Power to exert upon extraordinary Occaſions; and here is a Man that hath endeavoured to ſubvert the Government and Well-being of them that ſent you hither. I hope you will uſe it now; and if they knew who were not of that Opinion, I believe thoſe that ſent them would hardly ſend them any more.

Mr. Howe.

Mr. *Howe.* Sir, as to the Argument, That if it was known how we gave our Opinion, thoſe that are againſt this Bill, the People would not chuſe them again: I am not afraid of that, I have been told ſo often: And yet I find the People that I live amongſt, uſe me better and better every Day; and I believe, Sir, they will deſire to uſe me, when they will lay other Men aſide. I muſt in ſome Meaſure ſupport what was ſeemed to be reflected on an Honourable Gentleman, in that he ſaid, he had rather be tried by 12 than 400. I am of his Opinion, and this is my Reaſon for it: I have my lawful Challenge in Caſe of the 12; and if there be any on the Pannel I have offended, I can deſire they may be withdrawn, and that cannot be done in any Caſe here.

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But Gentlemen put the Streſs of their Argument upon that which no Body denies, and prove it handſomely; and well they may: For it is ſelf-evident, the Power, of Parliament they inſiſt on, when no Body pretends but we have a Power to do what we pleaſe: But I muſt ſay of their Power what *Bracton* ſays of the King's Power, *Hoc tamen non poteſt facere, quod non poteſt juſte facere.* It is ſaid, we are not tied up to the Rules of *Weſtminſter-Hall*; we are not ſo: But I beg Leave to tell them, that what is Reaſon and Juſtice in *Weſtminſter-Hall*, is ſo every where. And I do take theſe particular Points, we ſpeak of, to be grounded upon Reaſon and Juſtice; and ſo far we are to purſue them.

Two Evidences was not given as a Reſtraint upon *Weſtminſter-Hall*, for Fear they ſhould do ſomething that is ill, for they are anſwerable for every Thing they do ill; but they were allowed to the People of *England*, that they might have a fair Trial; and it was thought conformable to the Laws of God, the Law of Reaſon, and the Law of all Countries, That no Man's Life ſhall be taken away upon any particular Occaſion: And for to ſay, that a Man's Life may be taken away by two Witneſſes in one Place, and by one in another, is to ſay, that there is no certain Rule to prove a Man guilty of a Crime that may forfeit his Life, which is not admitted in any Country whatever.

But truly, Sir, we are going a little further; for the Gentleman before told you, There was no need of two Witneſſes; one would ſerve: But now they go a little further, for they tell you there needs never a one at all; for I do ſay, If every Gentleman here is to be guided by his private Opinion, there is no Man but before he heard this Cauſe, did conceive in their Opinion ſome Judgment of his Guilt: And, Sir, I think no Man but would have told you, that would have been an unjuſt Judgment.

But they do ſay, That the Bill of Treaſon that was made laſt Seſſions of Parliament, was to limit *Weſtminſter-Hall*; and that I will truſt that with my ſelf, which I will not truſt with my Servant. Why truly, if I, or my Servant, was to commit an Error, or a great Crime, I had rather my Servant did it than my ſelf: But I do not think that my Servant ſhould be bound up from doing an unjuſt Thing, and my ſelf ſhould have the Liberty to do it. Another Thing that Law provided againſt was, the People ſhould not be hanged without ſufficient Evidence; and theſe Things have been long complained of: But I never thought that the Evidence of one Witneſs and one Witneſs would be ſupported in theſe Days.

But,

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But, Sir, what have you done? We have prevented People being executed by an Arbitrary Power, and in an unlawful Way in *Weſtminſter-Hall*; but if you give this Example, you have brought the ſame Proceedings into this Houſe, and that they may be perpetually executed here; and ſo the Subject will be never the ſafer for the Bill of Treaſon.

And I do believe likewiſe, that it is better that a very heinous Fault, or a Miſtake, ſhould be committed in *Weſtminſter-Hall* for ten Years together, than once perpetrated in this Houſe: And my Reaſon is this; becauſe *Weſtminſter-Hall* have a Law to be tried by, if they tranſgreſs that Law, and there is a Way by turning out of Judges and other Things; and this Houſe hath no Superior Power, and when they do a Thing they make it a Law: So that this Houſe (as it hath often been obſerved) can make this Nation unhappy; becauſe *this Houſe can only eſtabliſh Arbitrary Power and Miſery upon this Nation by a Law.*

Sir, as to the Evidence, to ſay ſomething to it, ſince every Body hath ſpoke to it; for my Part, I do confeſs to you, the longer I ſit here, and the more I have heard of this Trial, the leſs I have been convinced within my ſelf, that theſe Witneſſes can know any Thing of Sir *John Fenwick*'s Guilt. I have heard Captain *Porter* give his Evidence; but that is no ſufficient Proof to me: I have heard what Evidence *Goodman* did give to the Grand Jury; but whether they did ask ſuch Queſtions as I ſhould, if I had been of the Grand Jury; or whether they did confront him with Evidence, I cannot tell? Therefore, though the Grand Jury was convinced by it, it is no Reaſon to convince us; becauſe we might not be convinced by the ſame Evidence.

But to go farther: There is very great Reaſon to believe that *Goodman* was not then at this Place, and that not one Word that *Goodman* ſays is true. I have ſuch Reaſon for what I ſay, that if *Cook*'s Trial had been before this Houſe, (not to arraign *Weſtminſter-Hall*, though I think we are a Superior Power, and I may ſay what I pleaſe of that Trial); I ſay, if *Cook*'s Trial had been before this Houſe, and what I have heard be true, I do think they would hardly have found *Cook* guilty upon *Goodman*'s Evidence: It is pretty evident now, *Goodman* was not at the *King's-Head*; for there were three as poſitive Evidence as could be, that he was not at that Place when he ſwore he was: And I obſerve a little Failure in Captain *Porter*'s Evidence in that Point; for I don't think it proved by Captain *Porter*, that *Goodman* was by when this Diſcourſe was; for he ſays he ſpake of this Thing at Mrs. *Mountjoy*'s, and dined there.

Members. No, no: It was at the *King's-Head.*

Mr. *How.* Well, there was but one Place where it was. Now, whether Captain *Porter* heard them talk of it before *Goodman* came in, or whether *Goodman* be a good Witneſs, he having been there but the latter Part of the Time, which ſeemed to me to be the Time they ſhould have given over their Talk of the Buſineſs, they having been ſo long together before; but it does not appear to me, that *Goodman* can be a good Witneſs.

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But I take it, that it is not juſt, nor reaſonable to find a Man guilty upon one Witneſs and Circumſtantial Evidence. I did mention a Caſe where there was a poſitive Witneſs, and a Circumſtantial Witneſs, it was in my Lord *Delamere*'s Trial; and yet that was not thought a convincing Argument by the Lords to find him Guilty; and I hope no Conſideration will oblige us to do that which I am ſure we ſhould blame them for doing.

The Conſequence of this, Gentlemen ſay, they do not fear: I believe, if Sir *John Fenwick* had been told when he was Major-General of King *James*'s Army, that I ſhould come here to ſit upon his Life, he would have laughed at it, and thought it impoſſible; but the contrary has happened: And I have ſeen Parties hang one another with ſuch Violence, I pray God we may keep from it. I do not know, we are all concerned in ſome Meaſure, it having been the Unhappineſs of this Nation, that at one Time or another every Body hath been concerned, that they may have a Proceeding of this ſort againſt them, and this ſurmounts all that at preſent Gentlemen can do; for it extends beyond all Pardons, and will reach beyond the Act of Indempnity. God knows who may be ſerved ſo, notwithſtanding all the Acts of Indempnity.

Sir, there is one Thing that is ſaid further, which the Gentlemen at the Bar conclude with, as a ſubſtantial Argument that we do not aim at Sir *John Fenwick*'s Blood (God forbid we ſhould), but at his Confeſſion: You will here read the Bill once, and twice will commit and paſs the Bill (Sir *John Fenwick* not confeſſing), and ſtill this is not to aim at his Blood: But it happens, perhaps, that this Man knows no more of this Matter; and this Man is racked in a manner to Death from Reading to Reading, becauſe he does not confeſs; and at laſt he comes to be hanged, drawn and quartered (inſtead of High Treaſon), for not confeſſing it.

This I take to be the dangerouſeſt Part of all the Arguments that have been urged: For this I muſt tell you, that, according to my private Opinion, I do believe that Sir *John Fenwick* does know of no more Perſons concerned (nor do I believe he knows all that he ſays) than he tells you. He hath not been a Man that hath kept Company with great Men: He hath generally relieved the poor *Jacobite* Officers: There are five People, as I take it, he hath told you he did converſe with; I would fain know in what Plot any Man converſes with above Five of the Plotters? There may be a Plot that may be moſt dangerous, and yet a Perſon that knows of this Plot, may not know above two or three others that are concerned in it.

But the great Argument is, *Take care of your Government.* In the firſt Place, they muſt ſuppoſe the Safety of the Government depends upon his Execution, or why do they uſe it as an Argument? But I wiſh they would ſhew me the Government would be one Penny the worſe if this Bill does not paſs. Do you want

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want Examples of Punishment to deter Men? No; you have had lawful Proof against four or five Persons, and they have been executed: Here are Examples made, that no Body for the future may presume to plot together and not to be executed.

What is the Reason of this Bill then? Why, there is a Plot going on, Sir *John Fenwick* hath been imprisoned this six Months and more; and will you hang him because there is a Plot now going on? What Consequence is that? Do you think that he knows any Thing of it, or that he can discover it? It hath been started since his Confinement it may be, and he knows nothing of it: So that as to what is pressed of his Confession, I know no one Thing would be gained by it, that could be useful to the Government; for I believe all hath been discovered already that he knows, and that Plot hath been utterly disappointed, and they have been fain to make a new one. Will you proceed in a Bill of Attainder, unless the Matter be of the greatest Consequence? The Preamble of the Bill for attainting the Duke of *Monmouth* gave a substantial Reason for it, that he was in Arms, and could not be brought to Justice: That implied, that if he could have been brought to Justice, they would not have attainted him.

I think I need not give you more Arguments in this Matter, I wish I could hear those that have been given well answered. I shall say no more; but I know this, that my private Opinion shall never guide me in this Case; it is not the same Thing with the Case my worthy Country-man put: In the Case of Religion, my private Opinion does not affect other Persons; indeed it does the Papists, where they will murther others that are not of that Religion.

Mr. *Boyle*. The Disorder a certain worthy Gentleman was in, makes me the more concerned, for fear of falling into it my self.

I hope in this Debate, Gentlemen will be very cautious of using it as an Argument, What Application our Votes shall have without Doors, and with those we represent, when we are to give Judgment, as far as in us lies, for the Life and Death of a Man; and therefore I must observe, that the Eagerness that is justifiable upon Impeachments, may not look so well, now we are Judges upon a Bill of Attainder. You have gone over the whole Course of the Evidence, and I believe that this Debate will shew you pretty plainly what is to be the Fate of this Bill; for I believe all the Arguments will now be used that can be: As to what hath been said of extorting a Confession, I take it to be quite out of the Case.

I am sorry to be engaged one Way or another: I would not, if I could help it, out of the House, be upon a Jury of Life and Death; yet, in that Case, I should know the Law, or be told it by the Judges: But in this Case, we are both Jurymen and Judges, and know not what Rules we are to go by; but set up a Court of Equity, which hath no Bounds, but our own Consciences.

As to Sir *John Fenwick*, I know him not; as to his Cause, I am sure I am against it; but how far I think him guilty or not, I think is not the single Point to be considered. I must confess, there have been several People accused of this Conspiracy, and have been named by the Evidence at the Trials; and I believe they are much alike Guilty, being upon the same Evidence; but as to all that hath been opened before you, and proved, it can amount to no more then this, There is but one Evidence, which by the Law would be a good Evidence to convict him in another Place; and therefore I do agree with the Gentleman that spoke under the Gallery, that this is a very extraordinary Case; for one Witness is not sufficient at Law to convict him, and the Law would be very different, if I am to judge according to my own Opinion, and not by the Rules prescribed by the Law: But though this Proceeding is not strictly according to the Law of the Land, yet, if it was such an extraordinary Case that required you to dispense with those Forms, and come to this extraordinary Manner of Proceeding, I think, for my own Part, it might be supported by the Necessity of it, for it is impossible that it should be otherwise in Practice: Thus, when the Government is at Stake, and nothing will preserve it but the breaking through the settled Forms; then the Government will break through them, and whatever Rule you prescribe, it will always happen so.

There is a very extraordinary Case, and that was in the Conspiracy of the State of *Venice*, above a Hundred Years ago, I think, set on Foot by the *Spaniards*; then the State, to get the whole Matter out, promised a Pardon to as many as were concerned in it; and after they had promised it, and treated with them about it, they thought it necessary, for the Preservation of the whole, to break their Faith, and they were all put to Death. This was upon Point of Preservation of the Government.

But Sir, as to Precedents, give me Leave to say, I do not give that Authority to them, unless I know all the Springs, and secret History and Transactions, that were their Guide in making those Precedents; and as to Precedents that have been quoted, when the Parliament has declared what was Treason, and what was not Treason, or have declared Constructive Treason, they may be grounded upon the Statute of 25 *Edw.* III. But I think, there is no Statute upon which they can ground the Condemnation of a Man upun one Witness.

In the Case of my Lord *Strafford*, upon Constructive Treasons, it was there said, That it was a Fire that had lain hid for 240 Years; and that it never broke out before, but to consume him and his Posterity. It was answered by *Pym*, If that was the Case, it was not for want of Law to justify such a Proceeding, but all that Time had not produced such an Offender.

I do not doubt, but if any one will consider the late Conspiracy; and if that was the Question, but it was as extraordinary as any Thing can happen; for it was to subject their Country to a Foreign Power, which is very extraordinary, and several Persons were concerned

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concerned in it: But there is one extraordinary Part which I do not remember this Gentleman is accuſed of, and that is the Aſſaſſination. Treaſon it ſelf is a very extraordinary Crime; but, give me Leave to ſay, that extraordinary Part is not alledged againſt this Gentleman; and this Bill does not ſeem to be brought in for that, wherein he is concerned in common with ſome others, but for the ſubſequent Matter alledged in the Bill. This Bill is grounded, not ſo much upon that he is guilty, as a great many more are, as upon ſeveral Circumſtances which have happened to no Body elſe. Give me Leave to inſtance in a Caſe now in my Head, (I beg your Pardon that I ramble; 'tis from the Awe I have upon me from this Aſſembly). in *Catiline*'s Conſpiracy; and if that was our Caſe, no doubt there would be another ſort of Argument for it: There they conſulted what to do with *Cethegus* and the other Conſpirators; he was at the Head of an Army, which only expected his Orders to lay *Rome* in Aſhes: The Queſtion was, Whether they ſhould break the *Porcian* Law? And for the Safety of the Senate, they were put to Death before the Aſſembly roſe.

Now to come to this Part of it: Though Sir *John Fenwick* is a great Offender, yet I think his Caſe is not ſo extraordinary, as to make you proceed upon this Bill. I do take his living, or dying, not to be of that Conſequence as this Bill of Attainder: I know not how he comes to be ſo conſiderable when in Hold; for when he walked about Town, I never heard he was feared or regarded at that Time.

But to come to the Allegations in your Bill, upon which you are to ground your Judgment; the firſt Part is a new Conſpiracy, that is, for intending to create a Jealouſy between the King and theſe Noble Perſons: As to them, you have already paſſed a Vote in their Juſtification; and I think, their Actions may juſtifie them to the World, as much as any Vote of the Houſe of Commons: But whatever that may be, I think it was a fooliſh Piece of Conſpiracy, as well as an ill one, for one, when he was in Danger of being hanged for one Plot, to venture upon another; and I think, there was at that Time two Witneſſes to bring him to his Trial, and that is an Allegation in the Bill. And as to the Protracting of his Trial, it is natural, and ſo juſtifiable, whether innocent or not, and what every Body attempts; and no Body can wonder at it: But in one Caſe or the other, it can be no ſufficient Ground to attaint him.

The next Thing that is ſaid is, That he hath been the Occaſion of the withdrawing of the Evidence. Now I muſt obſerve, that is not alledged in the Bill, and is proved but by Hear-ſay: But ſuppoſe it was true, and alledged; if any Man concerned in Treaſon, ſhall endeavour, by Friends or otherwiſe, to get off an Evidence, can that amount to that which is deſigned to be puniſhed by this Bill? To High-Treaſon? It is the Part of thoſe that are entruſted with thoſe Matters, to be in Expectation of ſuch Practices. Whar are Gaols for, but to keep them in Cuſtody? And the People employed in thoſe Buſineſſes are to to take Care of it. Are we to ſupply a Defect of what ought to have been done in another Place?

So that I do ſay, That a Precedent in an extraordinary Caſe, is no Precedent to be uſed in a little Caſe; it may be urged, but it is but a Pretence: When you have paſſed this Bill, which is the Record, the Matter will appear no otherwiſe, than are the Suggeſtions of your Bill. A Man hath aſperſed great Perſons, which is a great Fault indeed (for he is not charged with the withdrawing of the Evidence); therefore attaint him upon one Evidence: I think by this Bill you will open a Door for a Precedent of all Treaſons of the ſame Nature. Sir, there have been many Precedents mentioned; I will trouble you with none, becauſe moſt Gentlemen have read the Argument of Mr. *St. John* in this Caſe: I muſt confeſs, unleſs there was that Neceſſity as is pretended, which I do not ſee, I do not ſee how you can juſtify paſſing this Bill of Attainder, either by the Law of God or Man, in any Nation allowed.

I muſt confeſs, I have no manner of Concern how this Queſtion goes; what I have ſaid, is more to ſatisfy my own Judgment, than work upon other People: I am not ſatisfied there is that Neceſſity that is pretended; and therefore, as my Judgment is now informed, I cannot give my Vote for committing of this Bill.

Mr. *Harley*. It would be very unreaſonable and impertinent to trouble you long, after ſuch a Debate; I ſhall avoid Repetition of what hath been ſuggeſted to you, much better from other Perſons than would have been from me. *Mr* Harley (*afterwards Earl of* Oxford.)

I own, 'tis a Caſe of great Concern, and it is my Misfortune that I ſhould ever ſit upon a Thing of this Nature; but I will diſcharge my Conſcience always, and give what Arguments occur to me, why I am againſt this Bill.

Gentlemen have been pleaſed in their Arguments, to enter upon the Debate of your Power and Authority, and have made that a Part of their Argument; but I think, with Submiſſion, we need not diſpute that at all. It is admitted, that there hath been Bills of Attainder paſſed formerly, and your Authority is not under Diſpute; for the Legiſlative in all Nations, have a Power lodged in them, for the Safety of the whole.

But your proper Enquiry is, Whether this is ſuch a Caſe as you ought to exerciſe this extraordinary Power? *omne regnum ſub graviore regno*: Though you have this abſolute Authority, yet it is to be executed by the Rules of Reaſon, and by the Rules (for ſuch there are) of Eternal Juſtice; and I look upon this as one that is inviolable, That no Man can forfeit his Life, in ſuch a Caſe as this is, without two Witneſſes: I muſt adhere to that, becauſe I have heard nothing in this Debate that can make me quit that Maxim; and it is ſuch an antient Land-Mark, that I will never draw a Curſe upon me, and my Poſterity, for removing of it. I beg Leave to ſpeak with this Earneſtneſs to you.

Gentlemen have been pleaſed to make it Part of their Arguments, *The great Danger*

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the Government is in, if this Bill does not ſucceed. I will not uſe many Words, but I think that Argument ought not to be taken in the Groſs, but to be examined, Whether this Argument, of the Hazard of the Government, is of equal Poize for you to break the Eternal Rules of Juſtice. I won't quote the Caſe, becauſe every Gentleman knows it, (though there was two Witneſſes in that Caſe, to put an innocent Perſon to Death) where it is urged, the *Romans* will come, and take our State and Nation: But with how much Reaſon that was urged, every Body knows, and how far Government is now in Danger. Let us conſider, Is this Gentleman out of your Power? Is the Government in Danger of a Man that is your Priſoner? Is he in open Rebellion againſt you, if this Law does not paſs? If you have not your Hands in this Blood? Is he not under the Power of the Law? Did not he tell you ſo himſelf?

Every Gentleman ought to have a Zeal for the Government, and I wiſh it was as viſible in every Thing elſe; but if that be ſo, give us Leave alſo to ſpeak with Zeal for our Liberty and Antient Conſtitution. The Argument is turned two Ways; on one Side you are told, That this probably may make him confeſs ſomething; and by others, he is to be made an Example of Puniſhment. *This is the firſt Beginning of a Bill of this Nature*; but the ſame Reaſon that leads you to this, muſt lead you to all the reſt: The ſame Reaſon that is urged for this Bill to make him confeſs, will lead you to bring in a Bill to make him a good Evidence; this every Body muſt allow to be the Conſequence of it.

How does this Bill come before you? It comes before you upon a villainous, ſcandalous Aſperſion of ſome great Men; though I know them not all, yet I have a great Value for them, and I would make their Caſe my own: But if they were the neareſt Relations I had, I would be againſt this Bill upon their Account; and let any one examine the Reaſon of it.

Sir, I won't run into Precedents, but only becauſe it hath been told you, That the Precedents were made in one Reign by one Faction, and then the Attainders were reverſed in another Reign, by another Faction. There is one occurs to my Mind which hath been touched at, and is at leaſt of Inſtruction to me: There was a Caſe in *Edw.* the IIId's Time; there was the Depoſition of a King, a King barbarouſly murthered, and his Son upon the Throne; and there was the Notoriety of the Fact, for which a great Man was attainted in his Son's Reign, and no different Title: And four Years after, a Bill was brought in againſt the Earl of *March*; and one of the Articles againſt him was, That he had procured that Attainder of that Noble Lord, under Pretence of ſome Letter, or Paper, that was ſigned by him; which, if it was ſo, ſays the Record, was no Evidence.

I lay this before Gentlemen, to ſhew them how Things have turned, and Precedents that have been made very unanimouſly; but in bad Times have been turned to ſhed the beſt Blood in *England*. It grieves me to my Soul to hear of Mr. *Corniſh*, whoſe Attainder you have reverſed, to hear that quoted as a Precedent in this Houſe: It is not whether two Witneſſes be the Rule of *Weſtminſter-Hall*, it is the Rule of right Reaſon; and it is a Maxim in your Law, Make what Law you will againſt the Law of God, it is void; and this is the Law of God, and right Reaſon. 1696. 8 W. III.

You muſt provide for the Government; and when you cannot do it by Courſe of Law, then Armies muſt do it when the Courts are ſhut. I hope Gentlemen will not put a hard Conſtruction upon what I have ſaid; I have done it to diſcharge a good Conſcience.

Sir *Chriſtopher Muſgrave*. I am ſure, at this Time of Night, I am unfit to ſpeak in ſo great a Matter; I muſt confeſs, I ſhould not have troubled you, if it had not been in the Caſe of Blood. Sir Chriſtopher Muſgrave.

You have had a great Debate before you of the Power of Parliaments, and that hath been ſufficiently argued; and I have not Learning enough to give you any Precedents that have not been already quoted: But every Body does agree in this, That what Power you have of this kind, is not to be exerciſed but upon extraordinary Occaſions. Now I would be glad to know, What this extraordinary Occaſion is?

Every Body allows, that Treaſon is the greateſt Crime a Man can be guilty of; and the Charge of this Gentleman is High-Treaſon: But therefore in this Caſe, muſt you exerciſe this Authority? Pray wherein does this Caſe differ from any other Caſe of High-Treaſon, that any other Perſon will be practiſing againſt the Government? All the difference that I can make of it, conſiſts in two Points; the one is, That he hath prevaricated with the Government, and the other, That Gentlemen ſay, he hath been a Means of Procraſtinating his Trial; in which Time, an Evidence hath made his Eſcape. I will allow you, that it is a very great Crime for any one to aſperſe ſo great Men as he hath done; but I would be glad to know, whether there being ſuch an Ingredient, it be ſufficient to attaint him of High-Treaſon upon that Account.

Then as to that of a Witneſs being gone, Gentlemen have ſaid, They are apt to believe, and there is great Preſumption, that he hath been the Occaſion of this Witneſs being gone. Is that an Ingredient ſufficient, though at preſent it hath not been proved to you? But if it had been proved, I ſhould not however think that is Treaſon: Then if this be the only Difference between this Gentleman, and any other Perſon that ſhall be practiſing to ſubvert the Government, I would know, if there be but one Witneſs againſt any Man for conſpiring againſt the King, if they may not have Recourſe to this Precedent, to proceed againſt him by Bill of Attainder? For the Argument is, Whoſoever is endeavouring to ſubvert the Government, provided there be but one Witneſs, you are obliged by Virtue of your Legiſlative Power, to bring a Bill of Attainder againſt him: And what then? Of what Uſe is the great Care and Wiſdom of your Anceſtors, and your ſelves, that where a Crime is ſo great, and the Puniſhment ſo great, there ſhould be two Witneſſes?

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I was mightily ſurprized to hear Gentlemen tell you, That two Witneſſes is a Form in your Law, and a Form in inferior Courts: I never could believe that was a Form; for according to your Law, no Man ſhall be declared guilty of Treaſon, unleſs there be two Witneſſes againſt him; ſo that it gives in a manner, a Determination to the Crime: That I take to be the Caſe.

A Gentleman told you, That he was fully ſatisfied by Proof, that this Gentleman is Guilty: But how can a Man ſatisfy his own Conſcience, to condemn any Man by a Law that is ſubſequent to the Fact? For that is the Caſe; and pray ſee the Danger of Precedents: It now will appear upon your Journals, that you have cauſed to be read, a Depoſition of a Perſon that was abſent, taken before a Juſtice of Peace, when the Perſon accuſed had no Opportunity to interrogate him; and likewiſe, that you have heard a Witneſs as to what a Man ſwore in the Trial of another Man: All this will appear upon your Books.

And truly, I would be glad to know, if another Age may not be apt to think, that you took theſe to make good the Defect of a another Witneſs; and then I muſt appeal to you, if you have not admitted of a Teſtimony, which according to no Law is admitted.

They ſay, you are not tied to the Rules of *Weſtminſter-Hall*, nor their Forms: Is there any Law in being, that ſays a Judge may hear a Witneſs as to what was ſworn upon the Trial of another Perſon, to condemn him that was not Party to that Trial? If there be no ſuch Law, then the Rule is founded upon Juſtice and common Right, that nothing ſhall be brought againſt a Man, when a Man was not a Party when the Oath was made, and he had no Opportunity to examine him.

I thought it my Duty to tell you, That when you have made this Precedent, if any Perſon ſhall be accuſed of Treaſon but by one Witneſs, there will be the ſame Reaſon to proceed thus againſt him.

Remarks on the Bill of Attainder againſt Sir John Fenwick.

The principal Points to be conſidered in this memorable Proceeding, are, 1. Whether Sir *John Fenwick* was *charged* with High Treaſon by the Bill of Attainder, when he appeared at the Bar of the Houſe of Commons?

2. If the Treaſon was duly proved, which was afterwards added to the Charge?

3. If it was not duly proved, Whether the Government was in ſuch imminent Danger from Sir *John*, that there was a Neceſſity of making an Act of Parliament, on Purpoſe to execute him without Proof?

1. As to the firſt Particular, Whether Sir *John* was *charged* with High Treaſon by the Bill of Attainder, when he was brought before the Commons? His Counſel ſhewed, beyond Contradiction, that he was not; and therefore never applied themſelves to defend or diſprove that Treaſon which was only recited in the Bill, and not charged upon him. And the Commons themſelves ſufficiently acknowledged, that there was *then* no ſuch Charge in the Bill, by that very material Amendment they afterwards made to the Bill in theſe Words, (*viz.*) *Of which Treaſon the ſaid Sir* John Fenwick *is Guilty.* The Counſel for Sir *John* had made it ſo evident, That no Tribunal in the whole World ever condemned a Man *unleſs the Charge were both alledged and proved*, that this Amendment appeared neceſſary even to the Houſe of Commons: But then, Whether Sir *John* ought not to have been heard in his Defence, after they had charged him poſitively with the Treaſon, I leave to others to determine.

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2. As to the ſecond Particular, Whether the Treaſon was duly proved? it ſeems to be admitted: If by *due Proof* we mean *legal Proof*, they had very little of this Kind when the Commons paſſed the Bill: Not a ſingle Witneſs to prove it *upon Oath*, and but one that appeared to *affirm* it on his bare Word, and he of a very bad Character. Indeed it was ſaid, that the Legiſlature were not tied up to Rules and Forms, but whatever they determined in their private Thoughts or Conſciences, whether they had a Syllable of legal Proof or not, was lawful; for thoſe who made the Law, might repeal or alter it as they ſaw fit; nothing they did could, ſtrictly ſpeaking, be unlawful.

And it muſt be admitted, that the Legiſlature may make what Proof they pleaſe to be legal Proof: But when this very Parliament had, within two Years, made a Law that no Man ſhould be accuſed, much leſs condemned for High Treaſon, but on the Oaths of two Witneſſes, Was it decent for them to condemn a Man without one Witneſs, till that Law was repealed, unleſs upon abſolute Neceſſity, where the Fate of the Nation depended on his Life?

Had the Legiſlative Power been lodged ſolely in the Prince here, as it is in a neighbouring Nation, and he had juſt made a Law, That no Man ſhould be accuſed of High Treaſon, but on the Teſtimony of two Witneſſes; and yet ſhould have put a Man to Death ſoon after, upon leſs Evidence, What would his Subjects have thought of it? Would it have ſatisfied them, to have ſhewn he was veſted with a Legiſlative Power; and therefore nothing he did could be unlawful? Would they not have retorted upon him, That, in Juſtice, he ought to have repealed his former Edict, before he had condemned a Subject upon leſs Evidence than his own Laws required?

Had the ſame Prince promulged a Law, That no Man ſhould get drunk, would it have been decent (though his Supreme Authority might make it lawful) to get drunk himſelf, while he puniſhed that Offence in others?

Had the Prince ſhewn, indeed, that unleſs he broke through the ordinary Rules and Forms of Law, and diſpenſed with ſome Statutes for a Time, the Nation would infallibly have been ruined; not a Subject, I believe, not a reaſonable Man, I am ſure, would have been diſſatisfied with ſuch Diſpenſations, for the Safety of the Whole: The Properties, and even the Lives, of private Men muſt ſometimes be expoſed and hazarded, where the Government is at Stake. *The Safety of the People*, no doubt, *is the Supreme Law.* The ſole Queſtion, therefore, ſeems to be, by the Conceſſions of all Parties, *Whether there was a Neceſſity of taking off Sir* John Fenwick? Which

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Which has been ſo thoroughly debated in this Trial, that nothing can be added to the Arguments on either Side. And as the Legiſlature ſeem to have determined, that there was ſuch a Neceſſity by paſſing this Bill, it would not be decent in any private Man to affirm the contrary.

It was intimated, indeed, in ſome of the Speeches that were made upon this Occaſion, *That if ſome great Men had not been perſonally affronted and aſperſed by Sir* John Fenwick, *this Cauſe had never been brought before the Houſe*; and that, in Reality, he died for High Treaſon committed againſt ſome of the Miniſtry, rather than for High Treaſon againſt his Prince. But can it be ſuppoſed the Wiſdom of the Nation ſhould be biaſſed or influenced by the Piques and Reſentments of deſigning Miniſters in a Caſe of Blood?

However, it is certainly a Point of Prudence in all Gentlemen, to give as few perſonal Affronts and unneceſſary Provocations to their Enemies as poſſible; for theſe are too often remembered to their Prejudice, when Fortune frowns.

If we are to give any Credit to Sir *John*'s Dying Speech, or to the Speeches of ſeveral others at their Executions, *Charnock* was not ſent over to *France* to procure Foreign Forces, by the Company that met at the *King's-Head*, which was the very Overt-Act he and they were condemned for: And a Noble Lord, now living, as I have related already, proteſts ſolemnly, *Goodman* was not at that Meeting, and that there was no ſuch Diſcourſe there. So that, notwithſtanding Sir *John*'s Guilt was ſaid to be ſo evident as to have entirely ſatisfied the Conſciences of thoſe Gentlemen that were for the Bill, ſome People ſeem to doubt of the Fact, for which he was attainted, at this Day. Sir *John* was, indeed, a *Jacobite*, and diſaffected to that Government: And if an Act had been made to hang up every *Jacobite* in the Nation, it would have been lawful, becauſe an Act of Parliament is Law. But ſhould the Tables have been turned, and the *Jacobites* have met with Succeſs, would not thoſe Gentlemen have thought it a Hardſhip, if a Law had been made to hang up all, or any Number of Men, who were known to be diſaffected to the Government, without ſome particular Treaſon *legally charged and proved* upon them?

It may be further obſerved, that ſome Gentlemen, who clamoured moſt violently againſt condemning Men for Treaſon in the late Reigns, without two poſitive Witneſſes, were moſt zealous, when they got into Power, to diſpenſe with ſuch Laws, and hang up their Adverſaries without any Evidence at all. What would the Friends of Lord *Ruſſel* and *Sidney* have ſaid, when a Witneſs was wanting, if the Miniſtry had procured an Act of Parliament to deſtroy them without legal Proof; when there was not one Precedent for it ſince the Foundation of the Government, where the Party was forth-coming? How would they have inſiſted on the Birth-rights and Privileges of *Engliſhmen*, to be tried by a Jury, and to have had the Witneſſes brought Face to Face. This would have furniſhed Sir *Robert Atkyns*, and Sir *John Hawles*, with abundant Matter for their Remarks, and made them much more voluminous than we find them. Which brings me to conſider Sir *John Hawles*'s Anſwer in the Houſe at this Debate, when he was charged with affirming, *That a Conſultation to levy War was not Treaſon*; and, by the ſame Rule that he vindicated the Innocence of the Lord *Ruſſel*, he ought to have vindicated the Innocence of Sir *John Fenwick*, who was only charged with a Conſpiracy to levy War, and correſponding with the King's Enemies, *The Lord* Ruſſel's *very Caſe*.

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To this Sir *John Hawles* anſwers, That though a Conſult, or a Conſpiracy to levy War, was not Treaſon, yet he always held, that a Deſign to depoſe the King was High Treaſon. That the Treaſon, charged on my Lord *Ruſſel* was no more, than that he ſent ſome Perſons to view the Guards, in order to ſeize or ſurprize them (while they were upon Duty, and watching for their Prince's Safety). This was not, he ſays, ſo much a Conſpiracy to levy War againſt the King, as againſt his Guards.

But the Lord *Ruſſel* was certainly charged with ſeveral Overt-Acts of High Treaſon, (*viz.*) his being at Treaſonable Conſults to raiſe War and Rebellion, in order to depoſe and deſtroy the King, and the ſending Perſons to view the Guards in order to ſurprize them. The firſt of theſe Sir *John Hawles* is here pleaſed to admit was High Treaſon. And as to the ſecond, which he ſuggeſts was only a Conſpiracy to levy War upon the King's Body-Guards, while they were upon Duty about his Palace, I may appeal to all Mankind, Whether there be a Government under the Sun, either Monarchical, or Republican, that would not interpret a Conſpiracy to fall upon their Guards while they were upon Duty, watching in Defence of their Perſons, to be a Conſpiracy againſt their Maſters and Sovereigns: Or whether, at this Day, if any Perſons ſhould be convicted of conſpiring to ſurprize the Guards at the Palace of St. *James*'s, and of ſending ſome of their Number to view what Poſture they were in, in order to ſurprize them, they would not be deemed to conſpire againſt the King himſelf, and be adjudged guilty of High Treaſon. But Lawyers, as well as other People, appear to be of one Opinion when they are out of Power, and of another when they are in Power, and will maintain the groſſeſt Abſurdities and Contradictions to gratify their Spleen, their Ambition, or Avarice.

I ſhall cloſe theſe Remarks with this ſhort Obſervation, That one of the principal Inducements to the paſſing this Bill was ſaid to be, that the Diſaffected might ſee that no Artifice could ſcreen them from the Reſentment of the Government. But I am fully convinced, no Laws can defend a Man againſt the Rage and Fury of a certain Party, who carry Malice in their very Countenances, and will not ſcruple to overturn the beſt Conſtitution to revenge themſelves on their Fellow-Subjects, when they happened to have Power in their Hands.

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The next Trial we find bound up with the State Trials, was for Piracy; which having little Relation to the State, I shall only give a short Abstract of the Case, that I may enlarge the more upon such as are properly State Trials.

The Trial of Dawson, &c.

Their Case.

The Prisoners, *Joseph Dawson*, *Edward Foreseeth*, *William May*, *William Bishop*, *James Lewis*, and *John Sparkes*, were tried at an Admiralty-Sessions held at the *Old-Baily*, on the last Day of *October* 1696, for Felony and Piracy; for that on the 30th of *May*, in the 6th Year of King *William* and Queen *Mary*, they did surprize and seize near the *Groyne* in *Spain*, a Ship called *The Charles the Second*, of Forty Guns, belonging to certain *English* Merchants, and commanded by Capt *Charles Gibson*, forcing the said Captain, his Mate, and several of his Men, to go on Shore, and afterwards running away with the said Ship and Furniture.

They were indicted a second Time for piratically seizing and carrying away two *Danish* Ships on the 30th of *August* 1694. And a third Indictment was preferred against them for committing Piracy on a *Moorish* Ship near *Surat* in the *East-Indies*, on the 28th of *September* 1695.

Joseph Dawson confessed himself guilty on all the three Indictments; and the Facts were unquestionably proved against the rest: Whereupon they were all condemned and executed. These Pyrates were Part of the Crew which sailed with Captain *Every*, so famous for his Piracies, and the rich Prizes he made in the *East-Indies*, and on the Coasts of *Madagascar*.

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The Trial of Capt. THOMAS VAUGHAN, for *High-Treason*, before Sir CHARLES HEDGES, Judge of the Admiralty, the Lord Chief Justice HOLT, and other Commissioners, 6 *Nov.* 1696. 8 *W.* III.

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Captain Vaughan's Trial

The Indictment.

THE Indictment charges the said *Thomas Vaughan* with High Treason, for that on the 8th Day of *July*, in the seventh Year of his present Majesty, there being then War between our said Lord the King, and *Lewis* the *French* King; and the said *French* King having fitted out a small Ship of War, called *The Loyal Clancarty*, manned with fifteen of his own Subjects, Enemies of our Lord the King, he, the said *Thomas Vaughan*, a Subject of this Kingdom, entered himself a Soldier on board the said Ship, and took the Command of it; and, as a Rebel to his said King and Supreme Lord, did, in the Service of the said *Lewis* the *French* King, on the High Seas, within the Jurisdiction of the Admiralty of *England* (*viz.*) about fourteen Leagues from *Deal*, by Force of Arms, traitorously adhere to the said Enemies of our Lord the King, and cruised in several Places within the Jurisdiction aforesaid, to take and destroy the Ships of our said Lord the King, and his Subjects.

And the Indictment further sets forth, That the said *Thomas Vaughan*, intending to stir up War and Rebellion, and to depose and destroy his said Sovereign, did, at the Time aforesaid, on the High Seas, about fourteen Leagues from *Deal*, assemble with other false Traitors, to the Number of fifteen Persons, armed and provided in a Warlike Manner, and cruised near several Maritime Places, with an Intent to take and spoil the Ships and Goods of our Lord the King, and his Subjects; against the Duty of his Allegiance, *&c.*

His Irons taken off.

The Prisoner being brought to his Trial, and complaining of his Irons, the Chief Justice ordered them to be knocked off, that he might stand at Ease while he made his Defence; after which he pleaded Not Guilty: Then his Counsel, Mr. *Phipps*, being about to make some Exceptions to the Indictment, the Court told him, He ought to have excepted to the Indictment before the Prisoner had pleaded; for it was not the Intent of the late Act to alter the Method of Proceeding: However, he might move in Arrest of Judgment, if he had any material Exceptions to make.

Exceptions to the Indictment must be before he pleads.

The Prisoner then desiring that the Witnesses might be examined apart, out of the Hearing of each other; the Court granted his Request as a Favour, but told him, he could not demand it as his Right.

The King's Witnesses being called, *Richard Crouch*, one of the Seamen belonging to the *Coventry* Man of War, was sworn, who testified, That *The Coventry* coming to the *Buoy in the Nore* (at the *Thames'* Mouth), they spied a two and twenty-Oar-Barge, called *The Loyal Clancarty*, of which the Prisoner was Commander, and perceived he had a Design upon two Pinks that lay there, but *The Coventry* coming up, prevented it. That *The Coventry* chased *The Loyal Clancarty*, whereupon she run a-ground upon the Flats, and they pursued her with the Boats belonging to *The Coventry*, and took her. That there were five and twenty Men on Board the Barge, commanded by the Prisoner *Vaughan*, an *Irishman*; and that they came from *France* with a Design to burn the Ships in the *Nore*, as they understood.

Then *Edmund Courtney*, another Witness, was called, to prove that *Vaughan*, the Prisoner,

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run away to *France* with a Cuſtom-Houſe Boat: But his Counſel objected to this Evidence, becauſe this Fact was not mentioned in the Indictment; for, by the late Act for regulating Trials of Treaſon, no Evidence was to be admitted of an Overt-Act, not expreſly laid in the Indictment.

No Evidence to be given of a Fact not laid.

To which the King's Counſel anſwered, That in an Indictment for compaſſing the King's Death, indeed, the Overt-Acts muſt be laid; becauſe the compaſſing or conſpiring the King's Death could not be diſcovered, but by ſuch Overt-Acts: But levying War, and adhering to the King's Enemies, were Overt-Acts of themſelves, and needed no other Acts to manifeſt them.

Whereupon the Chief Juſtice *Holt* declared his Opinion, That an Indictment for levying War, or adhering to the King's Enemies, generally was not good, unleſs it was alledged in what Manner the Party levied War, or adhered to the King's Enemies: And if they did expreſs in what Manner he levied War, or adhered to them, no Evidence ought to be given of any other Kind of War or Adherence that was not ſpecified in the Indictment. If it did not tend to prove ſome Fact that was ſpecially laid in it, They could not give Evidence of a diſtinct Act which had no Relation to the Overt-Act laid in the Indictment.

The Court thereupon directed the Counſel to prove what was done in *The Loyal Clancarty*; and it being demanded of *Crouch* the Witneſs, How he knew *Vaughan* was an *Iriſhman*? *Crouch* anſwered, He heard *Vaughan* tell the Lieutenant ſo, as he paſſed by; and he thought the Crew were all either *Engliſh*, *Scotch*, *Iriſh*, or *Dutch*; he did not know whether there were any *French* amongſt them.

Thomas Noden, another Seaman belonging to the *Coventry* Man of War, was ſworn, and teſtified, That as they were ſailing by the *Nore* and the *Gunfleet*, their Captain ſpied a ſmall Veſſel ſailing by the Sands, and ſuppoſing her to be a *French* Privateer, fired a Gun at her, but ſhe would not come to; whereupon they manned out their Boats, and came pretty near her, and ſhe ran a-ground: That the Long-boat belonging to *The Coventry* alſo ſtruck upon the Sands; and they waded after the Enemy (who had quitted their Veſſel) near half a League, and took all the Men, as well as the Veſſel: That it was a twenty-two-Oared Barge, called *The Clancarty*, and commanded by Capt. *Vaughan*, the Priſoner. That they had three or four and twenty Men on Board, ſeveral of whom were *French*, and they found in the Veſſel a Blunderbuſs, ſome ſmall Arms, and a conſiderable Quantity of Hand-Granadoes; and every Man had his Cartridge-box.

Samuel Oldham, another of the Crew belonging to the *Coventry*, confirmed the Teſtimony of the former Witneſſes; but ſaid, There were a Dozen Foreigners taken on board the *Clancarty*, whether *French* or *Dutch*, he could not tell, becauſe he could not ſpeak either.

Who ſhall be deemed Enemies, and not Pirates.

Hereupon the Chief Juſtice obſerved, If they were all *Dutchmen*, and appeared in a hoſtile Manner againſt the King of *England*'s Subjects, they were to be deemed Enemies, though their State was in League with ours.

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The Priſoners Counſel replied, In the Indictment they were called, *Subditi Gallici*, *French* Subjects, which they could not be by any Conſtruction: But the Court ſaid, The *French* King's Commiſſion prevented their being Pirates; and, by Virtue of that Commiſſion, they might be termed his Subjects, with Reſpect to any other State but their own: Though they were not *Frenchmen*, they were *Gallici Subditi*, being in the *French* King's Service.

Robert Bub, another of the *Coventry*'s Crew, teſtified, That the Night before *The Clancarty* was taken, *The Coventry* was at Anchor in the *Nore*: And, having taken down their Pennant, *The Clancarty* rounded their Ship two or three Times, taking her for a Merchant Ship; and that in the Morning *The Coventry* weighed and purſued her; and *The Clancarty* was taken by their Boats, with all her Crew, as the former Witneſſes teſtified: That the Pilot on Board them, who was an *Engliſhman*, declared their Deſign was to burn the Ships at *Sheerneſs*: And *Vaughan* himſelf acknowledged he was an *Iriſhman*, and came from *Calais*.

Cruttenden, the Marſhal of *Dover*, alſo depoſed, That *Vaughan* the Priſoner directed him to enter his Name in his Book, by the Name of *Thomas Vaughan*, an *Iriſhman*; but he was then in Drink: But when *Vaughan* was carried before a Juſtice next Morning, he denied, at his Examination, that he was an *Iriſhman*, but ſaid he was a *Frenchman*, born at *Martinico* in the *Weſt-Indies*.

The Chief Juſtice's Directions to the Jury.

The Priſoner's Defence.

The Priſoner's Counſel hereupon obſerved, That the Indictment was not proved; for there it was ſaid, That the *French* King fitted out *The Loyal Clancarty*: That Capt. *Thomas Vaughan* was Commander, and that ſeveral *Frenchmen*, Subjects of the *French* King, were put on board: But one Witneſs ſaid, There were one or two *Frenchmen*; another, that there were none; a third, that they were Foreigners, but he could not tell of what Nation: That there was no Proof of the Priſoner's being Captain of *The Clancarty*, or that he had committed one Act of Hoſtility. All the Witneſſes teſtified, that *The Clancarty* made no Attempt to attack *The Coventry*, but, on the contrary, run away from her.

They obſerved alſo, That the Words of the Indictment were, that he came *ad prædandum ſuper altum mare*: Whereas *Sheerneſs* was not *ſuper altum mare*, but *infra corpus comitatus*; and ſo not within the Indictment.

To this the King's Counſel anſwered, That the Words, Ships at *Sheerneſs*, did not imply, Ships that lay within the Town of *Sheerneſs*, but off-*Sheerneſs*, which was *altum mare*.

The Priſoner's Counſel replied, They ought alſo to prove that he was Captain of *The Clancarty* at that Time; for the Indictment ſaid, *Ad tunc fuit Capitaneus & Miles*.

The Court ſaid, The Witneſſes proved he acted as Captain: And beſides, one of the Overt-Acts laid of his adhering to the King's Enemies, was, That he put himſelf a Soldier on board the ſaid Ship.

Dr.

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Dr. *Oldys*, another of the Priſoner's Counſel, anſwered, This Proof was built on the Sayings of People who had no Authority to examine them: But what he chiefly inſiſted on was, that they had failed in the Foundation of the Treaſon; for they had not proved the Priſoner a Subject of *Britain*: For as to his ſaying, over Night, when he was drunk, that he was an *Iriſhman*, the ſame Witneſſes atteſted, That, when he was examined next Morning by the Juſtices of Peace, he affirmed he was a *Frenchman*; ſo that the Proof was rather againſt them. And beſides, they had Witneſſes to prove he was a Native of *Martinico*.

Then the Priſoner called ſeveral Witneſſes, who teſtified, They knew him at *Martinico*; and one depoſed, That he was at his Father's, *Thomas Vaughan's*, in that Iſland, when the Priſoner was chriſtened; but they did not agree in their Evidence. And the King's Counſel called other Witneſſes, who contradicted theſe, and ſwore poſitively, That the Priſoner was a Native of *Galway* in *Ireland*: And of them, an Inhabitant of *Galway*, produced a Letter from the Priſoner, wherein he deſired he would not appear againſt him.

The Priſoner's Counſel, on the other hand, produced Witneſſes, who teſtified, That the King's Witneſſes were Men of bad Characters; and ſuggeſted, that there was another *Thomas Vaughan* of *Galway*, who died ten or a Dozen Years ago; but affirmed, that the Priſoner was a *Frenchman*.

The Evidence being cloſed, the Chief Juſtice proceeded to direct the Jury, and ſaid,

The Chief Juſtice's Directions to the Jury.

Gentlemen of the Jury, The Priſoner at the Bar, *Thomas Vaughan*, ſtands indicted for High Treaſon, for adhering to the King's Enemies, *viz.* That he put himſelf as a Soldier in the Service of the *French* King, in a Veſſel called *The Loyal Clancarty*, with divers other Perſons on board her, that were Subjects to the *French* King, and Enemies to the King of *England*, with a Deſign to burn the King's and his Subjects Ships; and for that Purpoſe went in that Ship. That the Priſoner was on board the Ship, and with ſuch a Deſign, is proved, without all Contradiction, by ſeveral Witneſſes that have been produced; that is, that the two-and-twenty-Oar Barge, which is the ſame called *The Loyal Clancarty*, lay hovering about the *Buoy in the Nore*; thoſe Men in *The Coventry* imagined they had ſome Deſign of Miſchief to the Ships, and they made after him with *The Coventry*. It was apprehended, by Capt. *Vaughan* and his Crew, that *The Coventry* would be too hard for them, and ſo they did ſubmit and were taken: And being examined upon what Account he came on our Coaſts, it is confeſſed by him, That he came with a Deſign to burn our Ships. You may obſerve what Sort of Men were on board. You have heard it proved to you, that *Cruttenden*, the Marſhal of *Dover*, entered thoſe Perſons taken on board the *French* Veſſel, of what Nation, and what Quality they were; and there were about a Dozen of theſe *Frenchmen*, for they were entered as ſuch. Now for a Subject of *England* to join with the King's Enemies, in Purſuit of a Deſign to burn or take any of the King's, or his Subjects Ships, that is an Adherence to the King's Enemies. But it appears, not only that Capt. *Vaughan* was in their Company, but that he was their Commander; which commanding the Veſſel, on board which were *French* Subjects, Enemies of the King, and the Kingdom of *England*, is High Treaſon, and the particular Fact of Treaſon for which he is indicted. And it appears that he had a Commiſſion from the *French* King to command this Veſſel, *The Loyal Clancarty*.

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Now the Priſoner having this Commiſſion to be Commander of this Veſſel, though they that ſerved under him were not native *Frenchmen*, but other Foreigners; yet their ſubjecting themſelves to him, acting by Virtue or Colour of that Commiſſion, makes them to be the *French* King's Subjects, during their Continuance in their Service; for otherwiſe all Prizes which they ſhould take would make them to be Pirates; which none will pretend to maintain, when they acted by a Commiſſion from a Sovereign Prince, that was an Enemy. And if they ſhall cruize upon our Coaſts, with a Deſign to take or deſtroy any of the King's, or his Subjects Ships, they are Enemies, though they were the Subjects of a Prince or State in Amity with the King of *England*. But, at this Time, there is no Neceſſity of entering upon this Queſtion, becauſe it is proved, that diverſe who were on board this Veſſel, were *Frenchmen*; the joining with whom, in Proſecution of ſuch a Deſign, is that Kind of High Treaſon of adhering to the King's Enemies. So that if Capt. *Vaughan* was a Subject of *England*, he is proved guilty of High Treaſon, if you believe the Evidence.

You are, therefore, to conſider the Evidence on both Sides. The Queſtion principally is, Whether the Priſoner be a Subject of the King of *England*? If you are ſatisfied that he is not an *Engliſh* Subject, but a *French* Man, then he is not guilty of this High Treaſon; but if you are ſatisfied, by the Series of the whole Evidence, that he is an *Iriſhman*, and that he had a Commiſſion from the *French* King, and that he cruiſed upon our *Engliſh* Coaſts, in Company with the King's Enemies, with a Deſign to take, burn, or deſtroy any one of the King's, or his Subject's Ships, you are to find him guilty of the High Treaſon whereof he ſtands indicted; otherwiſe you are to acquit him.

The Jury being withdrawn, after a ſhort Time they returned into Court with their Verdict, That the Priſoner was GUILTY. *Vaughan convicted.*

And it being demanded, What he could ſay, why Judgment ſhould not paſs upon him? He anſwered, he referred himſelf to his Counſel: Whereupon Mr. *Phipps* objected, That the Treaſon of adhering to the King's Enemies was not well laid in the Indictment; for it did not ſay, the Priſoner adhered to the King's Enemies *againſt the King*, and poſſibly he might join with the King's Enemies againſt *Holland* and *Spain*: To which the Court anſwered, That the adhering to the King's Enemies againſt his Allies, was an encouraging them, and enabled them to do Miſchief to the *Moves in Arreſt of Judgment.*

King

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King: — That the 25 *Edw.* III. defined the Treaſon to be in adhering to the King's Enemies, and expreſſed the Overt Act to be a giving them Aid or Comfort. It was ſufficient to alledge the Treaſon in the Words of the Statute, *adhering to the King's Enemies*; and if the Overt-Act alledged, ſhewed it to be againſt the King, and in Purſuance of his Adherence, that was ſufficient. Mr. *Phipps* replyed, That the Indictment only ſaid, he went a cruiſing, whereas, they ought to have alledged ſome Act of Hoſtility: But the Court over-ruled that Objection, and ſaid, that the cruiſing upon the Coaſt with an armed Veſſel was an hoſtile Act, and that their going on Board, and putting themſelves in a Poſture to attack the King's Ships, was an actual levying of War: And the Court having over-ruled ſome other leſs material Exceptions to the Indictment, Sentence was paſſed on the ſaid *Thomas Vaughan* as a Traitor, and he was executed in Purſuance of it.

The Exceptions over-ruled.

He is condemned, and executed.

Here are ſome nice Diſtinctions between Piracy and Treaſon, and in what Caſes a Man ſhall be deemed a Subject, and in what Circumſtances a Foreigner.

1696. 8 W. 3. *Remarks on Vaughan's Trial.*

Particularly it is reſolved, That of whatever Nation a Man is, his acting by a Commiſſion from a Sovereign Prince, prevents his being treated as a Pirate, and that he ſhall be deemed a Subject of that Prince under whom he acts againſt all others but his own natural Sovereign; and as to him, he ſhall be deemed a Traitor, if the Prince he acts under be an Enemy to his own Sovereign; as he ſhall be alſo, if he confederates with the Subjects of another Power, in Amity with his Prince, againſt his own Country: But if he commits hoſtile Acts on others, without a Commiſſion from ſome Sovereign Prince, he is a Pirate.

And here we find it reſolved again, That no Overt-Act ſhall be given in Evidence, unleſs it be laid in the Indictment, except it conduce to prove a Fact that is laid in the Indictment.

1697. 8 W. III. Knollys's *Caſe.*

Proceedings againſt CHARLES KNOLLYS, Eſq; (commonly called Earl of *Banbury*) for the Murder of *Philip Lawſon*, Gent. which Proceedings were begun in the Year 1692, and continued to the Year 1697.

1697. 8 W. 3.

This not being a State Trial, I ſhall content my ſelf with giving a ſhort Abſtract of the Proceedings.

AN Indictment was found againſt the ſaid *Charles Knollys*, by the Grand Jury of the County of *Middleſex*, in *December* 1692. charging him with the Murder of the ſaid *Philip Lawſon*, which was removed by *Certiorari* into the *King's-Bench*, in *Hillary* Term 4 and 5 *W.* & *M.* Where the Defendant being arraigned, pleaded a Miſnomer in Abatement of the Indictment, ſetting forth, that he was Earl of *Banbury*, his Anceſtors having been ſo created by Letters Patent from the Crown. The Attorney General replied, that he had petitioned the Houſe of Peers to be tried before them on this Indictment, and they had adjudged thereupon, that he had no Right to the Earldom: To which Replication the Defendant demurred, and Mr. Attorney joined in Demurrer: And Arguments were heard on each Part by the Court of *King's-Bench*, but no Judgment was given thereupon; for the Court of *King's-Bench* differed with the Houſe of Peers, as to his Title to the Earldom; and ſo the Defendant was never tried for the ſaid Murder.

In *January* 1697, the ſaid *Charles Knollys* petitioned his Majeſty King *William*, to grant him a Summons to Parliament, as Earl of *Banbury*, and to recommend his Caſe to the Examination of the Houſe of Lords; and his Majeſty referred it to them accordingly, to conſider the Defendant's Claim to that Earldom: Whereupon, the Lords repreſented to the King, That about five Years before, the ſame Perſon did petition the Houſe of Lords, that, being indicted for the Death of *Philip Lawſon*, he might be admitted to a Trial by his Peers; and having heard him by his Counſel, as to his Title to the ſaid Earldom, the Houſe came to this Reſolution and Judgment, That the Petitioner had no Right to the Title of Earl of *Banbury*, and ordered his Petition to be diſmiſſed; which Judgment the Lords ſaid, they had great Reaſon to believe, was not made known to his Majeſty at the Time of the ſaid Reference.

1699 11 W. III. Cowper's *Trial.*

In this Proceeding it appears, that the *King's-Bench* held, that they were empowered to judge of a Nobleman's Title, and whether he made out his Deſcent from his Anceſtors; for notwithſtanding the Houſe of Peers had determined he had no Title, that Court did declare, that the Defendant had a Title to the Earldom of *Banbury*, and conſequently that he could not be tried as a Commoner for Murder in the *King's-Bench*: And if I underſtand the Lord Chief Juſtice *Holt* aright, he was of Opinion, That the Houſe of Peers were not a proper Court to try the Fact, being a Right of Inheritance; becauſe they could

Remarks on this Caſe.

1697. 8 W. III. could not command a Jury to be impanelled: And if on one Side, the Lords carried their Point by voting the Defendant out of the House, the *King's-Bench* prevented his being tried as a Commoner for that Murder. 1697. 8 W. III.

1699. 11 W. III. *Lords Warwick and Mohun,*

The Trial of EDWARD Earl of *Warwick* and *Holland*, and others, for *Murder*, before the House of Peers, in *Westminster-Hall*, on the 28th and 29th of *March*, 1699. 11 *W.* III.

1699. 11 W. III.

This being a Prosecution for Murder, and no State Trial, I shall give but a short Abstract of the Case.

Their Case. THE Indictment charged the Earl of *Warwick*, the Lord *Mohun*, *Richard French*, *Roger James*, and *George Dockwra*, Gent. with the Murder of Captain *Richard Coote*.

It seems, these Gentlemen were drinking together on the 30th of *October* 1698. at *Lockett's*, the *Greyhound*-Tavern in the *Strand*, where they staid till after Midnight; and then happening to quarrel, they called for Chairs, and were carried to *Leicester-fields*, where they fought, three of a Side, in the Dark, when they could scarce distinguish each other: And in this Encounter Captain *Coote* was killed, and the Lord *Warwick* and Mr. *French* slightly wounded; and the Lord *Warwick*'s Sword appeared to be bloody up to the Hilt afterwards.

The House of Peers having heard the Evidence, and the Observations of the King's Counsel upon it, came to a Resolution, That the Earl of *Warwick* was guilty of Manslaughter, but not of Murder: Whereupon he claimed the Benefit of his Peerage, which is equivalent to Clergy; and he was thereupon discharged.

The Lord *Mohun* was tried the next Day for the same Murder; but it appearing he had endeavoured to prevent their fighting, and was not instrumental in the Death of Captain *Coote*, he was acquitted by the unanimous Opinion of the House of Peers.

1699 11 W III. *Cowper's Trial.*

The Trial of SPENCER COWPER, Esq; JOHN MARSON, ELLIS STEVENS, and WILLIAM ROGERS, Gent. for *Murder*, at *Hertford* Assizes, before Mr. Baron *Hatsell*, on *Wednesday* the 16th of *July*, 1699. 11 *W.* III.

1699. 11 W. III.

This being one of the most memorable Trials in our Age, and the World to this Day divided in their Opinions, concerning the innocency of the Prisoners, it was thought proper to be compiled with the State Trials, though it was of a private Nature; and for the like Reasons, I presume, it will be expected I should treat more largely of it in this Work, than I have of other Trials for Murder.

THE Prisoners being severally arraigned, and pleading Not Guilty, it was demanded, If they would join in their Challenges, or challenge separately? To which Mr. *Cowper* answered, If they should challenge separately, there must be so many separate Trials; and therefore, to prevent the Trouble of the Court, they were content there should be but one Challenge for all.

Then the Pannel was called over, and there being so many challenged for the King and the Prisoners, that there was not a full Jury on the principal Pannel, Mr. *Cowper* moved, That the Counsel for the King might shew their Cause of Challenge, now the Pannel was gone through: To which Mr. *Jones*, of Counsel for the King, answered, That it never was put upon the King's Counsel to shew Cause; and insisting upon it, though the Judge was of another Opinion, Mr. *Cowper* gave it up, and others were added to the principal Pannel, till Twelve were sworn.

The Indictment. Then the Clerk of the Arraignments read the Indictment to the Prisoners in *English*, which set forth, That *Spencer Cowper*, late of the Parish of St. *John's*, in the Town of *Hertford*, in the County of *Hertford*, Esq; *John Marson*, late of the Parish and County aforesaid, Gent. *Ellis Stevens* and *William Rogers*, of the said Parish and County, Gent. not having the Fear of God before their Eyes, &c. did on the 13th Day of *March*, in the 11th Year of the King, at the Parish af St. *John's* aforesaid, make an Assault upon *Sarah*

1699. 11 W. III.

Stout, Spinſter, and a certain Rope about the Neck of the ſaid *Sarah Stout* did fix and bind, and the Neck and Throat of the ſaid *Sarah* did hold, ſqueeze, and gripe, and thereby the ſaid *Sarah Stout* did choak and ſtrangle, of which choaking and ſtrangling ſhe inſtantly died; and ſo the ſaid *Spencer Cowper*, *John Marſon*, *Ellis Stevens*, and *William Rogers*, did kill and murder her: And the ſaid *Sarah Stout* being ſo choaked and ſtrangled, they the ſaid *Spencer Cowper*, &c. in order to conceal the ſaid Murder, did afterwards throw her into a certain River called the *Priory River*; againſt the King's Peace, *&c.*

Mr. *Jones* afterwards opened the Indictment and the Evidence, in the following Manner.

Mr. Jones opens the Indictment and the Evidence.

May it pleaſe your Lordſhip, and you Gentlemen that are ſworn, I am of Counſel for the King in this Cauſe, and it is upon an Indictment, by which the Gentlemen at the Bar ſtand accuſed for one of the fouleſt and moſt wicked Crimes almoſt that any Age can remember; I believe in your Country you never knew a Fact of this Nature: For here is a young Gentlewoman of this County murdered and ſtrangled in the Night time. The Thing was done in the dark, therefore the Evidence cannot be ſo plain as otherwiſe might be.

After ſhe was ſtrangled and murdered, ſhe was carried and thrown into a River, to ſtifle the Fact, and to make it ſuppoſed ſhe had murdered her ſelf; ſo that it was indeed, if it prove otherwiſe, a double Murther; a Murther accompanied with all the Circumſtances of Wickedneſs and Villany that I remember in all my Practice, or ever read of.

This Fact, as it was committed in the Night-time, ſo it was carried very ſecret; and it is very well we have had ſo much Light as we have, to give ſo much Satisfaction: For we have here in a Manner two Trials, one to acquit the Party that is dead, and to ſatisfy the World, and vindicate her Reputation that ſhe did not murder her ſelf, but was murdered by other Hands. For my Part, I ſhall never, as Counſel in the Caſe of Blood, aggravate; I will not improve or enlarge the Evidence at all: It ſhall be only my Buſineſs to ſet the Fact as it is, and to give the Evidence, and ſtate it as it ſtands here in my Inſtructions.

My Lord, for that Purpoſe, to lead to the Fact, it will be neceſſary to inform you, That upon *Monday* the 13th of *March*, the firſt Day of the laſt Aſſizes here, Mr. *Cowper*, one of the Gentlemen at the Bar, came to this Town, and lighted at Mr. *Bareſoot*'s Houſe, and ſtaid there ſome Time, I ſuppoſe, to dry himſelf, the Weather being dirty; but ſent his Horſe to Mrs. *Stout*'s, the Mother of this Gentlewoman. Some Time after, he came thither himſelf, and dined there, and ſtaid till Four in the Afternoon; and at Four, when he went away, he told them he would come and lodge there that Night, and ſup.

According to his Word he came there, and had the Supper he deſired: After Supper, Mrs. *Stout*, the young Gentlewoman, and he ſat together till near Eleven o'Clock. At Eleven o'Clock there was Orders given to warm his Bed, openly, to warm his Bed in his hearing. The Maid of the Houſe, Gentlemen, upon this went up Stairs to warm his Bed, expecting the Gentleman would have come up and followed her before ſhe had done; but, it ſeems, while ſhe was warming the Bed, ſhe heard the Door clap together; and the Nature of that Door is ſuch, that it makes a great Noiſe at the clapping of it to, that any Body in the Houſe may be ſenſible of any one's going out. The Maid, upon this, was concerned, and wondered at the Meaning of it, he promiſing to lie there that Night; ſhe came down, but there was neither Mr. *Cowper* nor Mrs. *Stout*; ſo that we ſuppoſe, and for all that we can find and learn, they muſt go out together. After their going out, the Maid and Mother came into the Room, and the young Gentlewoman not returning, nor Mr. *Cowper*, they ſat up all Night in the Houſe, expecting what time the young Gentlewoman would return. The next Morning after they had ſat up all Night, the firſt News of this Lady was, that ſhe lay floating and ſwimming in the Water by the Mill-Damm: Upon that, there were ſeveral Perſons called; for it was a Surprize how this ſhould come to paſs. There ſhe lay floating with her Petticoats and Apron, but her Night-rail and Morning-gown were off, and one of them not found till ſome Time after; and the Maid will give you an Account how it came to be found.

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This made a great Noiſe in the Country, for it was very extraordinary, it happening that from the Time the Maid left Mr. *Cowper* and this young Gentlewoman together, ſhe was not ſeen or heard of till next Morning, when ſhe was found in this Condition, with her Eyes broad open, floating upon the Water.

When her Body came to be viewed, it was very much wondered at; for, in the firſt Place, it is contrary to Nature, that any Perſons that drown themſelves ſhould float upon the Water. We have ſufficient Evidence, that it is a Thing that never was: If Perſons come alive into the Water, then they ſink; if dead, then they ſwim; that made ſome more curious to look into this Matter. At firſt it was thought that ſuch an Accident might happen, though they could not imagine any Cauſe for this Woman to do ſo, who had ſo great Proſperity, had ſo good an Eſtate, and had no Occaſion to do an Action upon herſelf ſo wicked, and ſo barbarous; nor cannot learn what Reaſon ſhe had to induce her to ſuch a Thing. Upon View of the Body, it did appear, there had been Violence uſed to the Woman; there was a Creaſe round her Neck, ſhe was bruiſed about her Ear, ſo that it did ſeem as if ſhe had been ſtrangled, either by Hands or a Rope.

Gentlemen, upon the Examination of this Matter, it was wondered how this Matter came about; it was dark and blind: The Coroner at that Time, nor theſe People, had no Evidence given, but the ordinary Evidence, and it paſſed in a Day.

We muſt call our Witneſſes to this Fact, that of Neceſſity you muſt conclude ſhe was ſtrangled, and did not drown herſelf: If we give you as ſtrong a Proof, as can be upon the Nature of the Fact, that ſhe was ſtrangled, then

1699. 11 W. III. then the ſecond Matter under your Enquiry will be, to know who, or what Perſons ſhould be the Men that did the Fact. I told you before, it was, as all wicked Actions are, a Matter of Darkneſs, and done in Secret, to be kept as much from the Knowledge of Men as was poſſible.

Truly, Gentlemen, as to the Perſons at the Bar, the Evidence of the Fact will be very ſhort, and will be to this Purpoſe.

Mr. *Cowper* was the laſt Man unfortunately in her Company; I could wiſh he had not been ſo with all my Heart: 'Tis a very unfortunate Thing that his Name ſhould, upon this Occaſion, be brought upon the Stage: But then, my Lord, it was a ſtrange thing, here happens to be three Gentlemen, Mr. *Marſon*, Mr. *Rogers*, and Mr. *Stevens*: As to theſe three Men, my Lord, I don't hear of any Buſineſs they had here, unleſs it was to do this Matter, to ſerve ſome Intereſt or Friend that ſent them upon this Meſſage: For, my Lord, they came to Town (and in Things of this Nature, 'tis well we have this Evidence; but, if we had not been ſtreightened in Time, it would have brought out more; theſe Things come out ſlowly), theſe Perſons, Mr. *Stevens*, Mr. *Rogers*, and Mr. *Marſon*, came to Town here, on the 13th of *March* laſt, the Aſſize-Day. My Lord, when they came to Town, they came to an Houſe, and took Lodging at one *Gurrey*'s; they took a Bed for two, and went out of their Lodging, having taken a Room with a large Bed in it; and afterwards they went to the *Glove and Dolphin*, and then, about Eight o'Clock, one *Marſon* came to them there; in what Company they came, your Lordſhip, and the Jury, will know by and by: They ſtaid there, my Lord, at the *Glove*, from Eight o'Clock to Eleven, as they ſay. At Eleven theſe three Gentlemen came all in to their Lodging together at this *Gurrey*'s. My Lord, when they came in, it was very obſervable amongſt them, unleſs there had been a Sort of Fate in it; firſt, that they ſhould happen to be in the Condition they were; and, ſecondly, fall upon the Diſcourſe they did at that Time: For, my Lord, they called for Fire, and the Fire was made them; and, while the People of the Houſe were going about, they obſerved and heard theſe Gentlemen talk of Mrs. *Sarah Stout*; that happened to be their Diſcourſe: One ſaid to the other, *Marſon*, She was an old Sweetheart of yours: Ay, ſaith he, but ſhe caſt me off; but I reckon, by this Time, a Friend of mine has done her Buſineſs — Another Piece of Diſcourſe was, I believe a Friend of mine is even with her by this Time. They had a Bundle of Linnen with them; but what it was is not known; and one takes the Bundle and throws it upon the Bed: Well, ſaith he, her Buſineſs is done: Mrs. *Sarah Stout*'s courting Days are over; and they ſent for Wine, my Lord: So, after they had drank of the Wine, they talked of it, and one pulled out a great deal of Money; ſaith one to another, What Money have you ſpent to Day? Saith the other, Thou haſt had 40 or 50 *l.* for thy Share: Saith the other, I will ſpend all the Money I have, for Joy the Buſineſs is done.

My Lord, this Diſcourſe happened to be among them, which made People of the Houſe conſider and bethink themſelves; when the next Day they heard of this Mrs. *Stout*'s being found in the Water, this made them recollect and call to Mind all theſe Diſcourſes. 1699. 11 W. III.

My Lord, after theſe Gentlemen had ſtaid there all Night, next Morning, truly, it was obſerved (and I ſuppoſe ſome Account will be given of it) that Mr. *Cowper* and they did meet together, and had ſeveral Diſcourſes; and that very Day went out of Town; and, I think, as ſoon as they came to *Hoddeſdon*, made it all their Diſcourſe and Buſineſs to talk of Mrs. *Stout*.

My Lord, we will call our Witneſſes, and prove all theſe Facts that I have opened to your Lordſhip; and then, I hope, they will be put to give you ſome Account how all theſe Matters came about.

The Evidence of Sarah Walker.

Then *Sarah Walker*, Servant to the deceaſed Mrs. *Stout*, being called as a Witneſs for the King, teſtified, That on *Friday* before the laſt Aſſizes Mr. *Cowper*'s Wife ſent her Miſtreſs a Letter, acquainting her, She might expect her Husband at the Aſſizes, and he came in with the Judge accordingly the *Monday* following; and her Miſtreſs as ing him, as he rode by, if he would alight, he ſaid, No; he would go and ſhew himſelf, but would ſend his Horſe preſently, and let her know at what Time he would come; but her Miſtreſs, thinking he had forgot, ſent her (the Witneſs) to know if he deſigned to come: He anſwered, He had Buſineſs; but came, however, in leſs than a quarter of an Hour, and dined there: And, going away about Four o'Clock, her Miſtreſs asked him, If he would lie there? He ſaid, Yes; and came at Nine o'Clock; and, having ſat about half an Hour, he asked for a Pen and Ink, and wrote a Letter to his Wife; after which, he deſired he might have Milk for his Supper, which the Witneſs brought him; and, when he had ſupped, her Miſtreſs bid her make a Fire in his Chamber; and, when ſhe came and told Mr. *Cowper* ſhe had made one, he looked at her, but ſaid nothing; and her Miſtreſs, in his Hearing, bid her warm his Bed, which ſhe went up to do as the Clock ſtruck Eleven, and about a quarter of an Hour after, ſhe heard the Houſe-Door ſhut, and thought he was gone to carry his Letter; but, coming down into the Parlour a quarter of an Hour after ſhe heard the Door ſhut, ſhe found no body there; both Mr. *Cowper* and her Miſtreſs were gone, and ſhe never ſaw her more alive.

Mr. *Cowper* deſiring ſhe would be particular as to the Time he went away, *Sarah Walker* anſwered, It was a quarter after Eleven by their Clock; but that went half an Hour faſter than the Town Clock.

Mr. *Cowper* demanding Why ſhe did not enquire after her Miſtreſs that Night? the Maid anſwered, She thought her Miſtreſs was with him, and could come to no Harm. Old Mrs. *Stout*, her Mother, was againſt her making any Enquiry; becauſe, if they did not find her, ſhe ſaid, it would alarm the Town, and there might be no Occaſion: However, they

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Mr. *Cowper* demanding If her Miſtreſs did not uſe to ſtay out all Night; or, if ſhe had not ſaid ſo? the Maid anſwered, No. Then he asked If her Miſtreſs was not melancholly? ſhe anſwered, She could not ſay but ſhe was melancholly; but ſhe imputed it to a Fit of Illneſs; ſhe knew no other Cauſe.

Mr. *Cowper* asking If ſhe did not buy Poiſon within this Twelvemonth, and by whoſe Order? ſhe anſwered, That ſhe (the Witneſs) had bought Poiſon twice, to poiſon a Dog that broke ſome things; but had no Order for it.

Mr. *Jones* demanded, if ſhe ever found her Miſtreſs inclined to do her ſelf a Miſchief? ſhe anſwered, She never did.

Mr. *Jones* asking, If Mr. *Cowper*'s Horſe ſtood at her Miſtreſs's Houſe, and if Mr. *Cowper* ever returned to Mrs. *Stout*'s again? ſhe anſwered, His Horſe ſtood there, but Mr. *Cowper* never returned after that Night he went away, in the Manner ſhe related.

Mr. *Jones* asking, If Mr. *Cowper* told them he would lie there? the Maid anſwered, When he went from Dinner, he ſaid ſo.

Evidence of Mrs Stout's being found in the River.

Then *Berry* the Miller was ſworn, and teſtified, That going out at Six in the Morning, to ſhoot a Fluſh of Water, he ſaw ſomething floating, which proved to be the Cloaths of the Deceaſed, her Body being five or ſix Inches under Water: That ſhe lay on her Right Side, her Right Arm being driven between the Stakes, which ſtood about a Foot aſunder: That the Water was then about five Foot deep: She did not appear at all ſwelled, and her Eyes were open.

John Venables teſtified, That he ſaw the Corps in the River, that ſhe lay on her Right Side, rather above the Water than under, inſomuch that one of her Ruffles appeared above the Water; and both this Witneſs and the laſt agreed that her Eyes were open, and that there were no Weeds, or any thing under the Corps, to hinder it from ſinking.

Leonard Dell depoſed, That he ſaw the Corps floating, and that Part of her Cloaths were above the Water; that her Face might alſo be ſeen, it was ſo near the Surface, and her Eyes were open; and agreed with the former Witneſſes, that ſhe lay on her Right Side, with her Head and Right Arm between the Stakes or Piles, that were fixed in the River: He believed there might be about five Foot Water, and there was nothing under her to prevent the ſinking of the Corps: That he and another took the Corps out of the Water, and laid it on the Bank, where it remained an Hour: She was laced, and he did not perceive her to be at all ſwelled, or that any Water came out of the Corps on moving it, only a Froth came out of her Mouth and Noſtrils, about as much as he could hold in his Hand.

John Ulſe alſo teſtified, That he helped to take her out of the Water, and ſhe lay on one Side between the Stakes; and that upon taking her out, no Water came from her, only ſome Froth at her Noſtrils: That the Stakes did not bear up the Corps, and there was nothing under it to keep it from ſinking.

Katharine Dew depoſed, That ſhe ſaw the Corps taken out of the Water; that ſhe lay on one Side in the River, her Teeth clenched, the Water flowing a little over her Face, and ſome Part of her Coats above the Water, her right Arm lying againſt a Stake: That ſhe was laced, and not at all ſwelled, and ſhe ſaw a purging Froth iſſue out of her Noſe and one of her Eyes. 1699. 11W.III.

Thomas Dew depoſed, That ſhe lay on her Side in the Water, her right Arm within the Stakes, and her left Arm without; that her Shoes and Stockings were clean, without any Mud or dirt on them; and he did not think the Corps had ever ſunk to the Bottom; and, when ſhe was taken out, no Water came from her, only ſome Froth out of her Noſe; and ſhe was not at all ſwelled.

Edward Blackno confirmed the Teſtimony of the former Witneſſes, as to the Poſture of the Corps in the Water: As did alſo *William Edmunds* and *William Page*.

Anne Ulſe alſo confirmed the Teſtimony of the former Witneſſes, and ſaid, One of her Arms was about a Stake, and the other down in the Water: That her Shoes and Stockings were clean: Her Stockings were rolled down, and ſhe had no Garters on.

William How gave the like Evidence, obſerving, That one of her Arms and her Head were in the Grate (or Stakes.)

John Meager alſo teſtified, That the Corps floated in the Water, her Right Arm in the Grate, and her Left Arm with the Stream; but that it was not borne up by any thing but the Water.

The Evidence of the Surgeons.

Then Mr. *John Dimſdale*, jun. the Surgeon, was ſworn: Whereupon Mr. *Cowper* ſaid, There were ſome eminent *London* Phyſicians attending, and deſired they might be called into Court, and hear the Surgeons Evidence: And the Court agreeing to it, Dr. *Sloane*, Dr. *Garth*, Dr. *Morley*, Dr. *Gilſtrop*, Dr. *Harriot*, Dr. *Wollaſton*, Dr. *Crull*, Mr. *William Cooper*, the great Anatomiſt, Mr. *Bartlet*, and Mr. *Camlin*, were brought in.

Mr. *Dimſdale* then gave his Evidence, teſtifying, That he went at the Requeſt of old Mrs. *Stout*, to view the Corps, together with Mr. *Camlin*, the ſame Day it was found; and he obſerved a little Swelling on the Side of the Neck, and ſhe was black on both Sides, particularly the Left Side, and between her Breaſts up towards the Collar-Bone.

It being demanded how her Ears were, he ſaid, There was a Blackneſs on both Ears, and a Settling of Blood.

Mr. *Cowper* then asked him, If he did not ſay that the Settling of Blood was no more than a common Stagnation before the Coroner's Inqueſt? He anſwered, He did not remember a Word of that; but he confeſſed, there was no Mark or Circle about her Neck.

Sarah Kimpſon teſtified, That ſhe helped to ſtrip the Corps, and there was a Settlement of Blood behind the Ear, bigger than her Hand would cover, and another Settlement of Blood under her Collar-Bone; but ſhe ſaw no Mark about the Neck: That the Body was flat and lank; no Water in it, as ſhe could perceive: That ſhe (the Witneſs) had a Child drowned,

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not long before, in the ſame Place; and they found her ſunk to the Bottom of the River the next Morning, ſwelled to a great Degree, being very full of Water, as appeared when the Child was opened. And Mr. *Cowper* demanding of Mrs. *Kimpſon*, If there was no Settlement of Blood about the Child? ſhe anſwered, She ſaw none.

Mrs. *Peppercorn*, the Midwife, teſtified, That ſhe was preſent at the ſtripping the Body, and, at old Mrs. *Stout*'s Requeſt, examined it, and found the Deceaſed was not with Child. That ſhe had a black Place on the Side of her Head, and another about her Ear: That no Water came from her, but a Froth purged from her Mouth and Noſtrils, as was uſual.

Elizabeth Huſler alſo depoſed, She helped to ſtrip the Deceaſed, found the Body lank and thin, and no Appearance of Water in it: That there was a ſettling of Blood at the Top of the Collar Bone, and a ſettling of Blood under each Ear; but moſt under her left Ear.

Anne Pilkington gave much the ſame Evidence; and Mr. *Cowper* asking her if ſhe did not make Oath, That the Deceaſed had a Circle round her Neck? ſhe anſwered, She never did, nor durſt not do it: Whereupon Mr. *Jones*, looking upon her Examination, ſaid, It was *croſs her Neck* there.

Mr. *Coatſworth* the Surgeon depoſed, That the Body, having been buried ſix Weeks, was taken up by her Friends; and he went to *Hertford*, at the Requeſt of old Mrs. *Stout*, to ſee it opened: That her Face and Neck, to her Shoulders, appeared black, and ſo much corrupted, that they were unwilling to proceed; but the Mother inſiſting to have it done, they opened her, and found the Stomach and Guts as full of Wind, as if they had been blown with a Pair of Bellows: That, putting the Guts aſide, they came to the *Uterus*, which they viewed very nicely, and ſaw it perfectly empty: That, upon opening the Stomach, they let out a great deal of Wind, but no Water; neither was there any in the Lobes of the Lungs, or Diaphragm; but all was dry: Whereupon he (the Witneſs) obſerved, That this Woman could not be drowned; for, if ſhe had taken in any Water, it would have rotted all the Guts: As for any Marks about her Head and Neck, it was impoſſible to diſcover them, they were ſo rotten; but all the reſt was ſound to a Miracle: He did not imagine they ſhould have found them ſo.

Mr. *Cowper* here objected againſt this Kind of Evidence: For that the Body had been taken up again by the Relations, without any legal Authority, after the Coroner's Inqueſt had ſat upon it: Thus they might have broken the Skull in a hundred Pieces, after the Coroner had viewed it, and then have proſecuted him for it. He apprehended they ought to have had a Writ of *Melius inquirendum*, to authorize them to make another Inſpection, and to have given him Notice, that he might have had Surgeons there to ſuperintend their Proceedings.

The Judge anſwered, If they had done an ill Thing in taking up the Body without Orders (though he did not know there was any more Hurt in taking up that Body than another), that could be no Reaſon why they ſhould not hear that Evidence.

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Mr. *Coatſworth* alſo obſerved, That Mr. *Camlin*, Sir *William Cooper*'s Surgeon, was preſent when they inſpected the Body.

Then *John Dimſdale* the Elder teſtified, That being ſent for by Mrs. *Stout* to view the Body of her Daughter, on the 28th of *April*, they found the Head and Neck ſo mortified, that they were in Doubt whether they ſhould proceed; but Mrs. *Stout* inſiſting her Daughter ſhould be opened, to clear her of the Scandal of being with Child, they opened the Body, and found it as ſound as any Fleſh could be; no manner of Putrefaction in her Lungs, or any other Part, but very full of Wind: That they ſearched the Stomach and Thorax, but found not one Drop of Water about them; nor was the Coffin or Shroud in the leaſt wet or ſoiled: And, examining the *Uterus*, they ſaw no Sign of Conception. Then they conſulted together, whether ſhe was drowned or not; and were all of Opinion, She was not drowned: Only Mr. *Camlin* deſired to be excuſed from giving his Opinion. It being demanded of the elder *Dimſdale*, Why he believed ſhe was not drowned? he anſwered, Becauſe they found no Water in her; and if there had been any, that would have cauſed a Fermentation, and rotted the Lungs and Guts; whereas her Inteſtines were not putrified, as they would have been in a Week's Time, if there had been but a Pint of Water there.

Then *John Dimſdale* the younger, and his Brother, *Robert Dimſdale* the Phyſician, were ſworn, and teſtified, They viewed the Corps after it was opened, and did not find a Drop of Water in the Thorax, or Abdomen. Mr. *Cowper* demanding of Mr. *Robert Dimſdale*, If it was poſſible there ſhould be Water in the Thorax? he anſwered, They ſhould have expected Water, or a Putrefaction; but they found no Putrefaction either in the Bowels or Inteſtines, but only in her Head and Shoulders, and one Arm.

Mr. *Cowper* demanding how any Water ſhould paſs into the Thorax? Dr. *Dimſdale* anſwered, By the Lymphæduct, if any Way: And being asked, If any Water could paſs into a Body after Death? he anſwered, No.

John Dimſdale the younger added, That he opened the Child, above-mentioned to be drowned; and that it was extremely ſwelled in the Belly and Stomach, and had abundance of Water in it. His Brother, the Phyſician, alſo obſerved, That on opening the Abdomen of the Child that was drowned, they found abundance of Water in the ſeveral Cavities.

Mr. *Cowper* demanding, If he was not angry Mr. *Camlin* would not join with them in their Opinion? he anſwered, No: But being asked again, If he did not tell *Camlin* he was a Graduate Phyſician? he ſaid, They had ſome Words about it.

Dr. *Coatſworth* being ſworn, it was demanded of him, What was his Opinion of Bodies found floating without any Water in them?

He anſwered, Every one that was drowned was ſuffocated, by Water paſſing down the Wind-pipe into the Lungs upon Reſpiration;

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and, at the ſame Time, the Water preſſing upon the Gullet, there would be a Neceſſity of ſwallowing great Part of it into the Stomach. He had been in Danger of Drowning himſelf, and was forced to ſwallow a great Quantity of Water. If a Perſon was drowned, and taken out immediately, as ſoon as the Suffocation was effected, he ſhould not wonder if there was but little Water in the Stomach and Guts; but if it lay in the Water ſeveral Hours, it muſt be ſtrange if the Belly ſhould not be full of Water: But he would not ſay it was impoſſible to be otherwiſe.

Mr. *Cowper* demanding, Whether he attempted to drown himſelf, or was in Danger of drowning by Accident? he anſwered, By Accident: Whereupon Mr. *Cowper* obſerved, There was a Difference where a Perſon drowned himſelf on Purpoſe, and was drowned by Accident; for when he was drowned by Accident, he ſtruggled a great while, and took in much Water before he died; but when a Perſon threw herſelf into the Water on Purpoſe to be drowned, ſhe died immediately, receiving but little Water before ſhe expired.

Dr. *Naylor* being ſworn, declared he was of Opinion, That a drowned Body would have a Quantity of Water in it; and, if there was no Water in the Body, he ſhould believe the Perſon was dead before he was put into the Water.

Then Mr. *Cowper* demanded, If the Dr. did not conſtantly vote againſt the Intereſt of his Family in that Corporation? and ſaid, He ſhould have asked the *Dimſdales* the ſame Queſtion: But the Court told him, That was not material.

Mr. *Babington*, a Surgeon, alſo declared upon his Oath, he was of Opinion, That all Bodies that went into the Water alive, and were drowned, had Water in them, and ſunk as ſoon as drowned; nor did they riſe ſo ſoon as this Woman did: And this, he found, was the Opinion of Phyſicians.

Whereupon the Judge, Mr. Baron *Hatſel*, ſaid, He had heard ſo too; and that was the Reaſon they tied Bullets to dead Bodies to ſink them at Sea. Mr. *Cowper* anſwered, the Reaſon of that was, That the Bodies ſhould not riſe again, for they would ſink without.

Mr. *Babington* proceeded, and ſaid, He had once a Patient that was half an Hour under Water, and lived ſeveral Hours afterwards; and, during that Time, diſcharged great Quantities of Water: And though he fell into the Water by Accident, he did not believe that made any Difference.

Dr. *Burnet* alſo declared upon Oath, he was of Opinion, Whether one fell into the Water by Accident, or threw himſelf in, the Body would receive Water as long as it was alive; and there were Endeavours for Reſpiration; and, after thoſe Endeavours were over, no Water would come in, for all the Parts were cloſed; and, conſequently, there muſt have been Water found within this Woman, if ſhe was drowned; and he believed drowned Bodies always ſunk.

Dr. *Woodhouſe* was of Opinion, That every Body, ſuffocated with Water, muſt have a great deal of Water in the Stomach, and ſome in the Lungs. And Mr. *Cowper* demanding which Way it ſhould paſs into the Thorax? The Dr. anſwered, The Thorax was the Veſſel where the Lungs lay, in the Cavity of the Breaſt: The Wind-pipe was the Conveyance to the Lungs: That, while a Perſon was ſtruggling for Reſpiration, there might be a Relaxation of the Parts, and a Perſon muſt ſuck in ſome Water as well as Air; conſequently ſome Water would get into the Wind-pipe, and ſo enter the Lungs; but the greater Quantity, no doubt, would be in the Stomach.

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The Court demanding, What was his Opinion as to the Putrifying of the inward Parts? the Dr. anſwered, No doubt, where Water gets into the Stomach, or, wherever it was, it would putrify ſoon.

Edward Clement, a Seaman, being called as a Witneſs for the King, declared, That in the Sea-fight at *Beachy-head*, in the Year 90, he ſaw ſeveral thrown over-board, and their Bodies floated; and it was a Rule with them, That when Bodies came dead into the Sea they always floated; and therefore, when any one died a Natural Death, and was buried at Sea, they tied Weights to the Corps to ſink it: But he had ſeen ſeveral Men drowned who ſunk downright, as ſoon as the Breath was out of their Bodies. It being demanded of him, How he obſerved the dead Bodies floated after the Battel? he anſwered, They floated with their Heads juſt down, and the Small of their Backs and Buttocks upwards. That he ſaw hundreds floating ſo in *Beachy-head* Fight.

That he ſaw the *Coronation* ſhipwrecked in *Sept.* 1691, when he belonged to the Ship *Dutcheſs*: That they looked out, and ſaw them taking down their Maſts, and ſaw them walking up and down, on the Right Side of the Ship, while ſhe ſunk down; after which, they ſwam up and down like Shoals of Fiſh one after another: He ſaw them hover upon one another, and drop away by Scores at a Time; and there were not above Nineteen that ſaved themſelves by Boats or Swimming out of the whole Ship's Crew, which conſiſted of five or ſix hundred Men. The reſt ſunk downright, twenty at a Time.

Richard Gin, another Seaman, depoſed, That, when they buried any one at Sea, they tied Weights to the Body, believing that otherwiſe the dead Body would ſwim.

Evidences againſt Marſon, Stevens, and Rogers.

Some Obſervations on this Evidence.

Then Mr. *Jones*, the King's Counſel, ſaid, He hoped they had given the Jury Satisfaction, That the Deceaſed did not drown herſelf, but was carried into the Water after ſhe was killed: For, if it was true that all dead Bodies, thrown into the Water, ſwam; and Bodies, that fell into the Water alive, and were drowned, ſunk, that was ſufficient Evidence ſhe was not drowned, but came by her Death ſome other Way. They had ſhewn, That Mr. *Cowper* was the laſt Man in her Company; and, what became of her afterwards, no body could tell: And they ſhould now proceed to give Evidence, That, notwithſtanding all the Civilities and Kindneſs that paſſed between this Family and him, when the Noiſe of the Fact was ſpread abroad, Mr.

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Cowper did not come to conſult with old Mrs. *Stout*, what was proper to be done; but rode out of Town next Day, without taking any Notice of the Accident.

Mr. Cowper's Behaviour, after this Accident.

John Archer depoſed, That he ſaw Mr. *Cowper* take Horſe at the *Glove*, on *Wedneſday* Morning after the Aſſizes, and ride out the back Way; which Mr. *Cowper* obſerved, was the uſual Way he went the Circuit into *Eſſex*.

George Aldridge, the Hoſtler of the *Glove*, alſo teſtified, That he ſaw Mr. *Cowper* take Horſe on the *Wedneſday*, and go the Way that led to *Chelmsford*.—— He depoſed alſo, That Mr. *Cowper* ſent him for his Horſe to Mrs. *Stout*'s, on the *Tueſday* Night, telling him he ſhould have Occaſion for the Horſe to go out with the Judge next Morning; and he went three Times before they would deliver the Horſe.

Mr. *Cowper* thereupon ſaid, He ſent for his Horſe, becauſe he heard ſhe had drowned her ſelf; and he thought it was prudent to do ſo, for fear the Lord of the Manor ſhould ſeize every Thing that was there, as forfeited.

Mr. *Jones* obſerved, he did not think fit to take his Horſe himſelf, though he put him up there: And now they ſhould proceed to give Evidence againſt the other three Priſoners.

Evidences againſt Marſon, Stevens, and Rogers

John Gurrey teſtified, That, at the laſt Aſſizes, Mr *Stevens*, and Mr. *Rogers* came and hired a Lodging of his Wife in the Afternoon, when he was at Church: That they came to his Houſe again about Eleven at Night, and brought Mr. *Marſon* with them: They all went up Stairs, had a Fire lighted, and asked for the Landlord, whereupon he (*Gurrey*) came up to them, and fetched them Wine, and at their Deſire ſat down and drank with them: Then they asked, If Mrs. *Sarah Stout* lived in Town, and if ſhe was a Fortune? And he promiſed to ſhew them Mrs. *Stout* the next Day: And Mr. *Rogers* and *Stevens* telling *Marſon* he was her old Sweet-heart, *Marſon* anſwered, She had thrown him off, but a Friend of his was even with her by that time: —— That Mr. *Marſon* putting by his Wig, he ſaw his Head was wet; and *Marſon* ſaid, he was juſt come from *London*, and that made him in ſuch a Heat: That the next Morning he (the Witneſs) hearing of the Accident, went down to Mrs. *Stout*'s, and ſaw them laying her out in the Barn, and meeting Mr. *Marſon* and Mr. *Stevens*, and Mr. *Rogers* as he came back, he told them the News, and they deſired him to go with them to the Barn again, which he did; and while he was viewing of the Corps they went away: And about Eleven the ſame Morning he ſaw Mr *Marſon* and Mr. *Stevens* with Mr. *Cowper* in the Market-Place.

Here Mr. *Cowper* demanded of *Gurrey*, If he did not ſay to his Wife, they muſt not meddle with *Sarah Walker*, the Maid of the Deceaſed; becauſe ſhe was a Witneſs againſt the *Cowpers*? *Gurrey* thereupon acknowledged that, upon his Wives ſaying ſhe ſuſpected *Sarah Walker*, he bid her not concern herſelf with her, for Fear of taking off her Evidence.

Martha Gurrey the Wife of the ſaid *John Gurrey* teſtified, That *Stevens* and *Rogers* came to her Houſe about Five in the Afternoon, on the Day the laſt Aſſizes began, and hired a Lodging of her; after which they went away, and returned between Eleven and Twelve at Night, and brought Mr. *Marſon* with them, and deſired they might all three lie together: That ſhe made them a Fire, and her Husband fetched them Wine, and one of them asked him if he knew Mrs. *Sarah Stout*, telling *Marſon* ſhe was an old Sweet-heart of his, and *Marſon* anſwered, She had turned him off, but a Friend of his was even with her; and Mr. *Rogers* ſaid he was in with her; and afterwards ſaid her Buſineſs was done; and laying down a little Bundle they had, he added, Mrs. *Sarah Stout*'s courting Days are over: Whereupon ſhe (the Witneſs) replied, ſhe hoped it was no Hurt to the Gentlewoman, and looking on Mr. *Marſon*, ſhe ſaw him put his Peruke aſide, and his Head reeked, and he told them he was juſt come from *London*, which made him diſappointed of a Lodging: That going afterwards into the next Room, ſhe heard them diſcourſing about Money, and one of them ſaid, the Uſe Money was paid to Night: And next Morning after they were gone, ſhe found a Cord at the End of the Trunk, which ſhe was ſure was not there before, and produced the Cord in Court.

Mr. *Cowper* demanding, Why they did not give this Evidence to the Coroners Inqueſt? She anſwered, ſhe did tell her Husband ſhe thought they ought to be taken up, and he ſaid he would not do it, he did not know but it might coſt him his Life; and that ſhe was afterwards ſo troubled about it, that ſhe could not reſt Day or Night, and told him if he would not reveal it, ſhe would do it her ſelf.

Elizabeth Gurrey, the Siſter of the former Witneſſes depoſed, That ſhe heard Mr. *Marſon* ask the other Gentlemen how much Money they had ſpent? And they anſwered, what was that to him? He had had 40 or 50 *l.* to his Share; and the other demanding if the Buſineſs was done, he anſwered, he believed it was; but if it was not done, it would be done that Night: Then he pulled a Handful of Money out of his Pocket, and ſwore he would ſpend it all, for Joy the Buſineſs was done: That Mr. *Cowper*'s Name was mentioned in their Diſcourſe; but not Mrs. *Stout*'s: One of them was very hot; he wiped his Head with a Handkerchief, and his Shoes were wet and dirty; ſhe thought it was Mr. *Marſon*.

Upon this Evidence Mr. *Jones* obſerved, That Mr. *Marſon* pretended he was juſt come from *London*; but when he was examined, he ſaid he came to *Hertford* about Eight o'Clock, and went to the *Glove and Dolphin* Inn, where he ſtaid till he came to his Lodgings; but it was ſtrange he ſhould be in ſuch a great Heat and wetſhod if he came from the Tavern, where he had been ſitting four or five Hours, by his own Relation; and thereupon his Examination was read.

And here the Evidence for the King being cloſed, and Mr. *Cowper* directed to enter upon his Defence, he ſaid,

Mr. Cowper's Defence.

Now they have done on the Part of the King, my Lord, and you Gentlemen of my Jury, I muſt beg your Patience for my Defence:

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fence: I confeſs it was an unfortunate Accident for me (as Mr. *Jones* calls it) that I happened to be the laſt Perſon (for ought appears) in the Company of a Melancholy Woman. The Diſcourſe, occaſioned by this Accident, had been a ſufficient Misfortune to me, without any Thing elſe to aggravate it; but I did not in the leaſt imagine that ſo little, ſo trivial an Evidence as here is, could poſſibly have affected me to ſo great a Degree, as to bring me to this Place, to anſwer for the worſt Fact that the worſt of Men can be guilty of.

My Lord, your Lordſhip did juſt now obſerve, That I have appeared at the Bar for my Clients; but I muſt ſay too, that I never appeared for my ſelf under this or the like Circumſtances, as a Criminal for any Offence whatſoever.

Mr. *Jones* very well ſaid, when he ſpoke on the Part of the King, that if this Gentlewoman was murthered, the Crime was villainous, baſe, barbarous, and cruel; and for my Part I think ſo too: The Crime would be ſo great, that it could never be ſufficiently condemned: But at the ſame Time I may aver, that to ſuppoſe a Murther without good Grounds for it, and afterwards to charge innocent Men with it knowingly and maliciouſly, is to a Trifle as baſe and barbarous as the Murther it ſelf could be.

My Lord, I ſpeak for my own Part, I know not at what Price other Men may value their Lives; but I had much rather my ſelf was murthered then my Reputation; which yet, I am ſenſible, hath ſuffered greatly hitherto, by the Malice and Artifice of ſome Men, who have gone pretty far in making this Fact, as barbarous as it is, to be credited of me: And therefore I muſt beg your Lordſhips and the Juries Patience, while I not only defend my Life, but juſtify my ſelf alſo from theſe Things that have unjuſtly aſperſed me, by the Conſpiracy and Artifice of my Accuſers.

My Lord, in all the Evidence that hath been given, I muſt obſerve, there is no poſitive Evidence (with Submiſſion) to induce the Jury, or any one, to believe the General that this Gentlewoman was murthered; but they go upon Suppoſitions and Inferences, which are contradicted by other Circumſtances, in the very Evidence of the Proſecutor, that make full as ſtrong to prove ſhe was not murthered, as that ſhe was; ſo that, as it ſtands, it can amount only to a bare Suppoſition that ſhe was murthered by any Body.

Then, as to the Evidence that particularly relates to my ſelf or the Gentlemen who ſtand with me at the Bar, that they, or I were concerned in it, (if ſhe was murthered) there is not one Syllable of Proof; at moſt, it amounts but to make us ſuſpect of a Murther, not proved, but only ſuſpected: This I obſerve upon the Evidence as it now ſtands without Anſwer, as it has been given on the King's Part; and how far, in the Caſe of Life, Men ſhall be affected with Evidence of this Nature, which neither proves the Murther in general, nor that they did it in particular, though no Defence was made, or any further Anſwer given, I muſt ſubmit to your Lordſhips and the Jury's Judgment.

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But, my Lord, I do not doubt but I ſhall be able to wipe away, even that remote Suſpicion, by my Defence: They have been long in their Evidence for the King; and therefore I muſt beg your Patience while I give a particular Anſwer to every Part of it, in as good a Method as I am able: And I will waſte as little Time as may conſiſt with the juſtifying of my Reputation; for which I know your Lordſhip will have as tender a Regard, to ſee it doth not ſuffer unjuſtly, as for my Life it ſelf.

And I promiſe your Lordſhip, I ſhall trouble you with no Evidence which is not expreſs and plain, no Inuendo's or Suſpicions; but I ſhall prove fully and clearly, in the firſt Place, That there was no Ground at all in this Caſe, to ſuppoſe ſhe was murthered by any one but her ſelf.

The firſt Fact that they inſiſted upon, to infer a Murther from it, was, That the Body was found floating: Now, my Lord, that Fact I am able by the Evidence I have, as well as from that of the Proſecutor, to deny: For the Fact was directly otherwiſe that is, ſhe was not found floating.

And whereas the Proſecutor's Witneſſes, who have been produced to this Point, are obſcure and poor Men, and your Lordſhip obſerves, have been taught to ſay generally that ſhe floated, which, when they are required to explain, and deſcribe how ſhe lay, they contradict themſelves in, by ſhewing ſhe lay Sideways between the Stakes, and almoſt all under Water: Now I ſhall give your Lordſhip and the Jury, a full and particular Account and Deſcription from the Pariſh Officers, Men employed by the Coroner to take the Body out of the Water, of the very Manner and Poſture in which it was firſt found; which they are much better able to do than the Proſecutor's Witneſſes, having ſeen her before all or moſt of thoſe People; and theſe Officers clearly agree, that her Body was under Water, when found, except ſome ſmall Appearance of her Petticoats, near or on the Surface of the Water, which may be very eaſily accounted for; becauſe the Stakes the Witneſſes mention, and which are driven into the Ground croſs the River to prevent Weeds and Trumpery from running into the Mill-ſtand, as the Witneſſes have already ſaid, about a Foot diſtance from one another, and are ſet with their Feet from the Mill, and their Heads inclining towards the Mill with the Stream. Now, my Lord, every Body knows, that though a drowned Body will at firſt ſink, yet it is buoyant, and does not go down-right, and reſt in one Place like Lead; for a human Body is ſeldom or never in a Stream found to lie where it was drowned: A Body, drowned at *Chelſea*, has been often found by Fiſhermen at *London*, and that before it came to float above Water. Now if a Body is ſo buoyant, as that it is driven down by the impellant Force of the Current (though it do not float above Water) it ſeems a Conſequence, that when it comes to be ſtopped and reſiſted by the Stakes which lie with their Heads downwards, inclining with the Stream, the Stream bearing the Body againſt the Stakes, muſt needs

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needs raiſe it upwards, to find another Paſſage, if poſſible, when the ordinary and natural is obſtructed. I have ſeen, I remember, that where Weeds have been driven down a River, and have been rolled along at the Bottom, when they have come down to a Board or Stakes of a Wyer or Turnpike, they have been by the Force of the Water raiſed up againſt thoſe Boards or Stakes, and forced over them; though without ſuch Obſtruction, they had undoubtedly continued to roll under the Water. I do not know of any one Symptom they pretend to, of her not being drowned, from any thing obſerved of her in the Water: Then as to the flatneſs of her Belly, when ſhe was laid in her Coffin, I ſhall ſhew it is a common and natural Accident; ſometimes drowned Bodies are ſwelled more, ſometimes leſs, ſometimes not at all: I think it hardly deſerves a Phyſician to prove, that a Body may be drowned with very little Water; that a Man may be drowned by ſtrangling, or Suffocation cauſed by a little Water in the Lungs, without any great Quantity of Water received in the Body, is a certain and eſtabliſhed Truth; for I am told, that when Reſpiration ceaſes, the Party dies, and can receive no Water after that; ſo that nothing is to be inferred from a Body's having more or leſs Water found in it, eſpecially if your Lordſhip will give me Leave to obſerve this Diſtinction, where a Body is voluntarily drowned, and where it is drowned by Accident; for People that fall in by Accide nt doſtruggle and ſtrive as long as they can; every Time they riſe, they drink ſome Water into the Stomach to prevent its paſſing into the Lungs, and are drowned no ſooner then needs muſt; but Perſons that voluntarily drown themſelves, to be ſure deſperately plunge into the Water, to diſpatch a miſerable Life as ſoon as they can; and ſo that little Quantity in the Lungs, which cauſes Death, may be the ſooner taken in, after which no more is received: And I hope, by Phyſicians it will appear, there is good Ground for this Difference.

The next is the Evidence that the Chirurgeons have given on the other Part, relating to the taking this Gentlewoman out of her Grave, after ſhe had been buried ſix Weeks; whether this ought to have been given in Evidence, for the Reaſons I hinted at, in a Criminal Caſe, I ſubmit to your Lordſhip: But as it is, I have no Reaſon to apprehend it, being able to make appear, that the Gentlemen who ſpoke to this Point, have delivered themſelves in that Manner, either out of extreme Malice, or a moſt profound Ignorance: This will be ſo very plain upon my Evidence, that I muſt take the Liberty to impute one, or both of thoſe Cauſes, to the Gentlemen that have argued from their Obſervations upon that Matter.

And now, if your Lordſhip will but pleaſe to conſider the Circumſtances under which they would accuſe me of this horrid Action, I don't think they will pretend to ſay, that in the whole Courſe of my Life, I have been guilty of any mean or indirect Action; and I will put it upon the worſt Enemy I have in the World to ſay it. Now, for a Man in the Condition I was in, of ſome Fortune in Poſſeſſion, related to a better, in a good Employment, thriving in my Profeſſion, living within my Income, never in Debt, (I may truly ſay, not five Pounds, at any one Time, theſe Eight Years paſt) having no Poſſibility of making any Advantage by her Death, void of all Malice; and, as appears by her own Evidence, in perfect Amity and Friendſhip with this Gentlewoman, to be guilty of the murthering her, to begin at the Top of all Baſeneſs and Wickedneſs, certainly is incredible.

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My Lord, in this Proſecution, my Enemies ſeeing the Neceſſity of aſſigning ſome Cauſe, have been ſo malicious to ſuggeſt before, (though not now, when I have this Opportunity of vindicating my ſelf publickly) that I have been concerned in the Receipt of Money for this Gentlewoman, had her Securities by me, and ſometimes that I had been her Guardian, or her Truſtee, and I know not what. I now ſee the Contrivers and Promoters of that Scandal, and they know it to be baſe, falſe, and malicious: I never was concerned in Intereſt with her directly or indirectly; and ſo I told them when I was before my Lord Chief Juſtice: 'Tis true, it was then juſt ſuggeſted by the Proſecutors, I then denied it, and I deny it ſtill — I thank God I have not been uſed, nor have I needed, to deny the Truth.

My Lord, you find the Proſecutors have nothing to ſay to me upon this Head, after all the Slanders and Stories they have publiſhed againſt me of my having Money in my Hands which belonged to the Deceaſed: But though they do not ſtir it, I will, and give your Lordſhip a full Account of all that ever was in that Matter. When I lodged at *Hertford*, ſome Time ſince ſhe deſired me to recommend to her a Security for 200*l.* if it came in my Way: My Lord, when I came to Town, I underſtood that one Mrs *Puller*, a Client of mine, had a Mortgage formerly made to her by one Mr. *Loftus* of *Lambeth* in *Surry*, for the like Sum; and that ſhe was willing to have in her Money: I wrote to this Gentlewoman, the Deceaſed, to acquaint her of the Security; ſhe thereupon did ſend up 200*l.* and ſome odd Pounds for Intereſt (the Account of which I produced to my Lord Chief Juſtice): This Money was ſent to me by Mr. *Cramfield*, as I have been informed, and by him given to Mr. *Toller*'s Clerk, and by him brought publickly to me.

My Lord, this Mortgage I immediately transferred by Aſſignment indorſed on the Back of it, and Mrs. *Habberfield*, a Truſtee for Mrs. *Puller*, ſigned and ſealed it; and that very 200*l.* and Intereſt due was at one and the ſame Time paid to Mrs *Puller*, and by her the Principal was paid to her Daughter, in Part of her Portion: All this was tranſacted the beginning of *December* laſt, and ſhe was not drowned till the 13th of *March* following: And, my Lord, theſe People, that are now the Proſecutors, did own before my Lord Chief Juſtice, that they had found this Mortgage amongſt the Deceaſed's Writings in her Cabinet at the Time of her Death. Now, my Lord, I ſay, that, ſaving this one Service I did her, as I ſaid, in *December* laſt, I never

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was otherwiſe concerned with her in the receiving or diſpoſing of any of her Money; nor had I ever any of her Securities for Money in my keeping; and I defy any Adverſary I have to ſhew the contrary.

My Lord, as there appears no Malice, no Intereſt, ſo they have proved for me, that there was no Concealment of Shame to induce me to commit ſo barbarous an Action; otherwiſe perhaps, now they find they can aſſign no other Cauſe, they would content themſelves to give that Reaſon, and fling that Scandal at me: And though I take it, by the Experience I have had of them, they did not deſign to do me any Favour, yet, I thank them, in endeavouring to vindicate her Honour, they have ſecured my Reputation againſt that Calumny; and though I am ſatisfied, as I ſaid, they did not intend me Kindneſs, yet I thank God, they have given me a juſt Opportunity to take Advantage of their Cunning, for the clearing my Innocence in that Particular.

Then, my Lord, not to reſt it here, but to ſatisfy the Jury and the World, how this Gentlewoman came to deſtroy herſelf, I ſhall give the cleareſt Evidence that was ever given in any Court, that ſhe murthered herſelf. When I enter upon this Proof, I muſt of Neceſſity treſpaſs upon the Character of this Gentlewoman that is dead. I confeſs this is a tender Point, 'tis a Thing I would willingly be excuſed from, and it is not without a great deal of Reluctancy and Compulſion forced from me: That ſhe was melancholy, the Proſecutors themſelves have proved, but I muſt of Neceſſity ſhew you the Occaſion and Reaſons of it, and the Witneſſes will tell your Lordſhip what deſperate Reſolutions ſhe had been under formerly, and that will lead me to near the Time of her Death, to ſhow why, and upon what Accidents, ſhe made away her ſelf. I will not enumerate Particulars, by way of opening; only I muſt tell your Lordſhip, that ſome Letters of hers muſt of Neceſſity be produced, which truly, as I ſaid, I ſhould not meddle with, if I had not theſe innocent Gentlemen here to defend, as well as my ſelf. Perhaps it may be ſaid, that in Honour I ought to conceal the Weakneſs of this Gentlewoman; but then, in Honour and Juſtice to theſe Gentlemen that are falſly accuſed with me, I cannot do it; I hope this one Reaſon will excuſe me to the World, for I have no other that could have obliged me to bring theſe Letters upon the Stage: I ſolemnly proteſt, if I ſtood here ſingly in the Caſe of my own Life, upon the Evidence given againſt me, I take it to be ſo inconſiderable, I would not do it; but I muſt do it, to ſhow that theſe Gentlemen alſo are innocent, and to preſerve them; becauſe I am ſatisfied in my own Mind they are ſo. My Lord, when I have done that, I ſhall ſhew your Lordſhip in the next Place, that it is utterly impoſſible I could be concerned in this Fact, if I had had all the Motives and Provocations in the World to have done it: I ſhall ſhew your Lordſhip, in Point of Time, it could not be.

The Maid *Sarah Walker*, who is the ſingle Witneſs, I take it, that ſays any Thing in the leaſt relating to me, ſaid but now, the Clock had ſtruck Eleven before ſhe carried up the Coals, and about a quarter of an Hour after, while ſhe was warming the Bed above Stairs, ſhe heard the Door clap, and ſometime after ſhe came down, and found that I and her Miſtreſs were gone: Now in Point of Time, I ſhall prove it utterly impoſſible I could be guilty of the Fact I am accuſed of, being ſeen to come into the *Glove* Inn as the Town Clock ſtruck Eleven, and ſtaying there more than a quarter of an Hour, was, after ſeveral Things done at my Lodging, in Bed before Twelve o'Clock, and went no more out that Night, as I ſhall prove. As for that little Circumſtance of ſending for my Horſe, which they have made uſe of all along to back this Proſecution, their very telling me of that Matter, ſhews how they are put to their Shifts to juſtifie their accuſing me; I ſay in Prudence I ought to have done what I did: I ſent for him on the *Tueſday*, but as their Witneſs ſaith, I told him at the Time I bid him fetch my Horſe, not to uſe then, nor till by the Courſe of the Circuit I was to go into *Eſſex* with the Judges the next Morning; and till then the Proſecutor's Witneſs, who is the Hoſtler at the *Glove* Inn, was ordered to ſet him up there, to litter him down, and to take Care of him, and feed him; and that he ſhould be ready for me to go to *Chelmsford* on the Morrow, whither I went with the other Counſel the next Morning, being *Wedneſday*; and this, my Lord, is the Whole of that Matter.

My Lord, this Buſineſs ſlept near two Months after the Coroner's Inqueſt, before I heard of it, or imagined my ſelf to be concerned in it, and was never ſtirred, till two Parties, differing on all other Occaſions, had laid their Heads together: I beg Leave to let your Lordſhip a little into that Matter, to ſhew you how this Proſecution came to be managed with ſo much Noiſe and Violence as it hath been. I can make it appear, that one of the greateſt of the Quakers, Mr *Mead* by Name, has very much, and indirectly too, concerned himſelf in this Matter: It ſeems, they fancy the Reputation of their Sect is concerned in it; for they think it a wonderful Thing, nay, abſolutely impoſſible (however other People may be liable to ſuch Reſolutions) That one, who was by her Education entitled to the Light within her, ſhould run headlong into the Water, as if ſhe had been poſſeſſed with the Devil; of this they think their Sect is to be cleared, though by ſpilling the Blood of four innocent Men. The other ſort of People that concur with the Quakers in this Proſecution, I ſhall mention, now I come to obſerve what the Witneſſes are that have been produced againſt me: Some of them I have nothing to object to, but that they are extreme indigent and poor, and have been helped by the Proſecutor; thoſe that are ſo, ſay nothing as to me; others who live in this Town, and give their Opinions of the Manner of her Death, are poſſeſt with much Prejudice againſt me, upon Feuds that have riſen at the Elections of my Father and Brother in this Town; and theſe, with the Quakers have wholly dreſt up this Matter for ſeveral Ends; the Quakers to maintain the Reputation

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puration of their Sect, and the others to deſtroy, or break at leaſt, the Intereſt of my Family in this Place. But, however effectual theſe Deſigns may have been, to have made a great Noiſe in the World out of nothing; I am ſatisfied now, that I am in a Court of Juſtice, where no Perſon's Reputation, much leſs his Life, will be ſacrificed to the Policy or Malice of a Party without Proof; and therefore I have taken up ſo much of your Time, to ſet the true Riſe of this Proſecution before you in a clear Light.

My Lord, as to my coming to this Town on *Monday*, it was the firſt Day of the Aſſizes, and that was the Reaſon that brought me hither: before I came out of Town, I confeſs, I had a Deſign of taking a Lodging at this Gentlewoman's Houſe, having been invited, by Letter, ſo to do: And the Reaſon why I did not, was this: My Brother, when he went the Circuit, always favoured me with the Offer of a Part of his Lodging, which, out of good Husbandry, I always accepted: The laſt Circuit was in Parliament-time, and my Brother, being in the Money-Chair, could not attend the Circuit as he uſed to do: He had very good Lodgings, I think one of the beſt in this Town, where I uſed to be with him: Theſe were always kept for him, unleſs Notice was given to the contrary. The *Friday* before I came down to the Aſſizes, I happened to be in Company with my Brother and another Gentlemen, and then I ſhewed them the Letter, by which I was earneſtly invited down to lie at the Houſe of this Gentlewoman during the Aſſizes (it is dated the 9th of *March* laſt); and, deſigning to comply with the Invitation, I thereupon deſired my Brother to write to Mr. *Bareſoot*, our Landlord, and get him, if he could, to diſpoſe of the Lodgings; for, ſaid I, if he keeps them, they muſt be paid for, and then I cannot well avoid lying there: My Brother did ſay, He would write, if he could think on't: And thus, if Mr. *Bareſoot* diſpoſed of the Lodgings, I own I intended to lie at the Deceaſed's Houſe; but, if not, I looked on my ſelf as obliged to lie at Mr. *Bareſoot*'s. Accordingly I ſhall prove, as ſoon as ever I came to this Town, in the Morning of the firſt Day of the Aſſizes, I went directly to Mr. *Bareſoot*'s (the Maid and all agree in this) and the Reaſon was, I had not ſeen my Brother after he ſaid he would write, before I went out of *London*; and therefore it was proper for me to go firſt to Mr *Bareſoot*'s, to know whether my Brother had wrote to him, and whether he had diſpoſed of the Lodgings or not. As ſoon as I came to Mr. *Bareſoot*'s, there was one Mr. *Taylor*, of this Town, came to me, and I, in his Hearing, asked Mr. *Bareſoot*, his Wife, and Maid-ſervant, one after another, If they had received a Letter from my Brother, to unbeſpeak the Lodgings? they told me, No; that the Room was kept for us; and, I think, that they had made a Fire, and that the Sheets were airing. I was a little concerned he had not writ; but, being ſatisfied that no Letter had been received, I ſaid immediately, as I ſhall prove by ſeveral Witneſſes, If it be ſo, I muſt ſtay with you; I will take up my Lodging here: Thereupon I lighted, and ſent for my Bag from the Coffee-Houſe, and lodged all my things at *Bareſoot*'s: and thus I took up my Lodging there as uſual. I had no ſooner done this, but *Sarah Walker* came to me from her Miſtreſs to invite me to Dinner, and accordingly I went and dined there; and when I went away, it may be true, that, being asked, I ſaid I would come again at Night; but that I did ſay I would lie there, I do poſitively deny; and, knowing I could not lie there, 'tis unlikely I ſhould ſay ſo. My Lord, at Night I did come again, and paid her ſome Money, which I received from Mr. *Loftus*, who is the Mortgager for Intereſt of the 200*l.* I before mentioned (it was ſix Pounds odd Money, in Guineas and half Guineas) I writ a Receipt, but ſhe declined the ſigning of it, preſſing me to ſtay there that Night; which I refuſed, as engaged to lie at Mr. *Bareſoot*'s, and took my Leave of her; and that very Money, which I paid her, was found in her Pocket, as I have heard, after ſhe was drowned.

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Now, my Lord, the Reaſon that I went to her Houſe at Night, was, firſt, as I ſaid, to pay her the Intereſt-Money; in the next place, it was but fitting, when I owned my ſelf under a Neceſſity of diſappointing her, and lying at *Bareſoot*'s, to go to excuſe my not lying there; which I had not an Opportunity at Dinner-time to do. My Lord, I open my Defence ſhortly, referring the Particulars to the Witneſſes themſelves, in calling thoſe who will fully refute the Suppoſitions and Inferences made by the Proſecutors, whom firſt, my Lord, I ſhall begin with, to ſhew there is no Evidence of any Murder at all committed: And this, I ſay again, ought to be indiſputably made manifeſt and proved, before any Man can be ſo much as ſuſpected for it.

Judge *Hatſel* bid Mr. *Cowper* not flouriſh too much, but call his Witneſſes, and then make his Obſerv tions.

Then *Robert Dew* appeared as a Witneſs for the Priſoner, and teſtified, That he ſaw *Sarah Stout* taken up; that ſhe lay in the River, covered with the Water about half a Foot, and had a ſtriped Petticoat on, but nothing could be ſeen above Water; and that when he heaved her up, he found ſeveral Sticks and Flags under her; that ſhe lay on her Right Side in the Water, her Head leaning down, and her Arm between the Stakes, which ſtood ſloping, leaning down the Stream a little. That when ſhe was taken out, he perceived a white Froth come from her Mouth and Noſe, and, as they wiped it away, more came out. *The Priſoner's Witneſſes of the finding the Corps.*

Toung, the Conſtable, confirmed the Evidence of the laſt Witneſs, differing only in this, That he ſaw Part of her Coat lie on the Top of the Water, and that they found ſix Guineas, ten Shillings and three Pence half Penny in her Pockets.

Wall, one of the Coroner's Inqueſt, depoſed, That there were no Marks upon the Body when they viewed it, only a little Mark about her Ear, and ſomething near her Collar Bone; and that Mr. *John Dimſdale* told them, Theſe Marks were no more than uſual in ſuch Caſes:

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The Opinions of the Phyſicians.

Caſes: It was only a Stagnation of the Blood. —— Other Witneſſes teſtified, That ſhe frothed pretty much at the Mouth.

Then Mr. *Cowper* proceeded to examine Dr. *Sloane*, and the reſt of the Phyſicians he had brought from *London*, as to their Opinion concerning the Body's having no Water in it.

Dr. *Sloane* ſaid, A ſmall Quantity of Water, in the Wind-pipe, would ſuffocate a Perſon; and he believed, whether a Perſon came alive or dead into the Water, ſome Quantity would get into the Wind-pipe, but none into the Stomach, after the Perſon was dead.

The Court demanding, If there had been Water in the Body, if it would not have putrified the Parts? he anſwered, It would have putrified the Stomach leſs than the Lungs: That, no doubt, there would be a Fermentation more or leſs, as the Air came more or leſs to the Body: It might be otherwiſe where the Air was wholly ſhut out, which was ſuppoſed to be the modern Way of embalming or preſerving dead Bodies without Spices, which was in a great meaſure brought about by the Cloſeneſs of the Coffin.

Mr *Cowper* asking, If any Water could paſs into the Thorax, or there could be any Water in the Body after ſix Weeks? he ſaid, He thought it ſcarce poſſible that any ſhould go from the Wind-pipe into the Cavity of the Thorax, without great Violence, for there was a Membrane that covered the Lungs, that would hinder the Water from paſſing through: That, if there was any Quantity of Water in the Lungs, the Spunginеſs of the Part would ſuck up ſome Part of it; and, in the Stomach, it was probable there was a great Fermentation, and a great deal would riſe in Vapours or Steams, and go off that Way.

Dr. *Garth* ſaid, It was impoſſible the Body ſhould have floated unleſs it had reſted or been entangled with the Stakes, becauſe all dead Bodies fall to the Bottom: And, as all the Witneſſes agreed ſhe was found upon her Side, it was as hard to conceive how ſhe ſhould float in this Poſture, as that a Deal Board ſhould float edgeways: Therefore it was plain ſhe was entangled, or the Poſture would have been otherwiſe. As to the Quantity of Water in her, it need not be very great; but, he muſt own, the Water would force it ſelf into all Cavities where there was no Reſiſtance He believed, when ſhe threw her ſelf in, ſhe might not ſtruggle to ſave her Life, and ſo not ſup up much Water: However, he doubted not but ſome Water fell into her Lungs, becauſe the Weight of it would force it ſelf down; but this might imperceptibly work or fall out: Nor did he think Water in the Body would promote Putrefaction; for, in ſome Places, they kept Fleſh-meat from Corruption by preſerving it in Water; and, it was well known, it would putrify leſs in Water than when expoſed to Air. And, being asked again as to the ſinking of Dead Bodies, he perſiſted in his Opinion, That all dead Bodies would ſink, unleſs prevented by ſome extraordinary Accident; as, if a ſtrangled Body be thrown into the Water, and the Lungs being filled with Air, the Cord be left about the Neck, in that Caſe it might float, becauſe of the included Air, as a Bladder does; but here was no Cord, or any Mark of it, only a common Stagnation: The Seamen were miſtaken, when they ſaid they ſwam: He had made the Experiment on other Animals, and they all ſunk. Being asked, If any Quantity of Water could paſs into the Cavity of the Thorax? he anſwered, It was impoſſible there ſhould be any, till the Lungs were quite rotten; there was no Way but by the Lungs, which were inveſted with ſo ſtrong a Membrane, that they could not force Breath through it without their Blow-pipes.

Dr. *Morley* ſaid, There was no Neceſſity ſhe ſhould have a great Quantity of Water in her: If ſhe drew into her Lungs two Ounces of Water, it was the ſame Thing as to drowning her, as if there had been two Tons. They drowned a Dog the laſt Night, and diſſected him, and found not a Spoonful of Water in his Stomach, and about two Ounces in his Lungs; and the like Quantity in another they drowned: That they both frothed at the Mouth and Noſe: And if Bodies ſwam that had been lately killed, he thought it was by Accident: And he was of Opinion, there could be no Water in the Thorax, unleſs by an Impoſthume, or ſome Violence to Nature.

Dr. *Woollaſton* was of Opinion, It was impoſſible to diſcover if a Perſon was drowned, ſix Weeks afterwards; and that if there had been never ſo much Water in the Body, it muſt have forced its Way out before that Time: That he knew two People drowned, and taken up next Day; one was ready to burſt with Water, and the other had not the leaſt Sign of Water in him, except a watry Froth at his Mouth and Noſtrils.

Mr. *Cooper*, the Anatomiſt, depoſed, That three Ounces of Water, in the Windpipe, was enough to drown a Perſon; and admitted, that Bodies neceſſarily ſink in Water, if no Diſtention of their Parts buoy them up: That there could be no Water remain in the Body after ſix Weeks Time; and it was ridiculous to expect any in the Thorax, unleſs the Lungs had ſuffered ſome Apoſthumation: And as to the reſt, he concurred with the Phyſicians produced by the Priſoner.

Mr. *Harriot*, a Sea-Surgeon, teſtified, That dead Bodies always ſunk when thrown into the Sea: And Mr. *Bartlet*, another Seaman, confirmed his Teſtimony.

Mr. *Camlin* teſtified, That he and Mr. *Dimſdale*, and others, were ſent for by Mrs. *Stout* to view her Daughter's Corps, the Day ſhe was found; and that there was a Mark under her Left Ear, another below her Collar-Bone, and a third upon her Arm; and that Mr. *Dimſdale*, by his Conſent, and the reſt of the Surgeons and Phyſicians preſent, informed the Coroner's Inqueſt, That the Mark under her Ear was a Stagnation of Blood that frequently happened to drowned People. He added, That there were greater Marks of Stagnation on the Child that was found drowned in the ſame Place a little before: That the Child's Face was black and diſcoloured: That this Child was eleven or twelve Years of Age: And, laſtly, That there were no Signs of Mrs. *Stout*'s being ſtrangled.

Then

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Then Mr. *Cowper* proceeded to call Witneſſes to ſhew that the Deceaſed was a melancholly Woman.

Evidence that the Deceaſed was melancholly

Mr. *Bowd*, a Tradeſman of *Hertford*, depoſed, That obſerving the Deceaſed to be melancholly, he asked her, If ſhe was in Love? and ſhe confeſſed ſhe was; but ſaid, The World ſhould not ſay ſhe changed her Religion for an Husband: And that having lately bought a Gown of this Witneſs, ſhe ſaid, She believed ſhe ſhould never live to wear it.

Mr. *Firmin* alſo teſtified, That the Deceaſed was melancholly.

Mrs. *Bendy* depoſed, That ſhe acknowledged her ſelf extremely melancholly, inſomuch that her Mind was diſordered by it.

Mrs. *Low* teſtified, That the Deceaſed often complained ſhe was melancholly, and confeſſed ſhe was in Love: That ſhe ſaid, She would take her full Swing of Melancholly, when her Mother was abroad, and lay a-bed a Week. That at another Time ſhe ſaid, Her Melancholly had occaſioned an Intermitting Fever; and being adviſed to ſend for a Phyſician, ſhe ſaid, Her Diſtemper lay in her Mind, and not in her Body; ſhe would take nothing, and the ſooner it killed her, the better; and that now ſhe delighted neither in Reading or any thing elſe.

Then Mrs. *Cowper*, Wife of the Priſoner's Brother Mr. *William Cowper*, (afterwards Lord Chancellor) being called as a Witneſs, teſtified, That ſhe was frequently in the Company of the Deceaſed, both at *London* and in the Country, and ſhe was extremely melancholly; and the Witneſs ſuſpecting it was upon Mr. *Marſon*'s Account, asked, Why ſhe did not marry him, and make her ſelf eaſy? but ſhe ſaid, She could not: That ſhe appeared diſturbed alſo at the Preaching of a Quaker Waterman, who gathered a Rabble of People about him before her Mother's Door; and, preaching to them, arraigned her Conduct. That the Deceaſed once having a Fever, ſaid, She was in great Hopes it would carry her off, and neglected her ſelf with that View, often wiſhing ſhe were dead: That, at another Time, being very melancholly, the Priſoner's Wife ſaid, For God's Sake keep ſuch Thoughts out of your Head as you have had; talk no more of throwing your ſelf out of a Window. To which the Deceaſed anſwered, I may thank God that ever I ſaw your Face, otherwiſe I had done it: But I can't promiſe I ſhall not do it.

Mrs. *Toller* alſo depoſed, the Deceaſed was melancholly, and once ſaid, She would drown herſelf out of the Way.

Mr. *Taylor* depoſed, That the *Saturday* before the Deceaſed was found, ſhe appeared melancholly, and in a diſordered Head-Dreſs; and he taking Notice of it, ſhe ſaid, It would ſerve her Time.

He alſo teſtified, That the Priſoner told *Barefoot*, in his Hearing, He would lie at his Houſe, the firſt Morning of the Aſſizes, *Barefoot* having reſerved the Lodgings for his Brother, who did not come the Circuit as he intended: That the Priſoner gave this Reaſon for his lying there, *(viz.)* That his Brother muſt pay for it, and therefore he would take it himſelf.

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Here Mr. *Cowper* proceeded to open another Part of his Evidence: He ſaid, That being at *Hertford* in the Long Vacation, and Mr. *Marſhal* of *Lyon's-Inn* coming down to viſit him there, he introduced him into the Company of the Deceaſed, and he made his Addreſſes to her, and was well received as a Lover: But walking out one Evening with Mr. *Marſhal*, Mrs. *Crooke* and the Deceaſed, and Mr *Marſhal* and Mrs. *Crooke* being a little before them, Mrs. *Stout* (the Deceaſed) ſaid to him, the Priſoner, She did not think he had been ſo dull; and, he being inquiſitive to know in what his Dullneſs conſiſted? ſhe anſwered, What! Do you imagine I intend to marry Mr. *Marſhal*? and he replying, If ſhe did not, ſhe was to blame in what ſhe had done. Mrs. *Stout* ſaid, *No, I thought it might ſerve to divert the Cenſure of the World, and favour our Acquaintance*: And that he would produce ſome Letters to confirm this, after he had called Mr. *Marſhall*.

Evidence the Deceaſed was in Love with him.

Then Mr. *Marſhall* depoſed, That he came down to *Hertford* in the Long Vacation, to viſit Mr. *Cowper*, and met with Mrs. *Sarah Stout* firſt at his Lodgings: That ſhe gave him frequent Opportunities of improving his Acquaintance; and, by the Manner of his Reception, he had no Reaſon to ſuſpect the Uſe he was deſigned for: But, upon applying himſelf to her afterwards, in a Way of Courtſhip, he received a very fair Denial; and there his Suit ended. Mr. *Cowper* had been ſo friendly to give him Notice of ſome Things, that convinced him he ought to be thankful he had no more to do with her——— That he took her at her Word, when ſhe refuſed him, having partly, by his own Obſervation, but more by Mr. *Cowper*'s Friendſhip, been pretty well able to gueſs at her Meaning.

Then two Letters from the Deceaſed, to Mr. *Marſhal*, (the firſt dated the 26th of *December* 1697, the other without Date) were read, which ſhewed there was a friendly Correſpondence carried on between them, but nothing more.

After which, Mr. *Cowper* produced a Letter from the Deceaſed to himſelf, but directed to Mrs. *Jane Ellen* at *Hargrave*'s Coffee-Houſe, to prevent Suſpicion. Which Letter was in the following Words:

Letters of the Deceaſed to Mr. Cowper.

SIR, March the 5th.

" I Am glad you have not quite forgot that there is ſuch a Perſon as I in Being; but I am willing to ſhut my Eyes, and not ſee any thing that looks like Unkindneſs in you, and rather content my ſelf with what Excuſes you are pleaſed to make, than be inquiſitive into what I muſt not know. I ſhould very readily comply with your Propoſition of changing the Seaſon, if it were in my Power to do it; but, you know, that lies altogether in your own Breaſt. I am ſure the Winter has been too unpleaſant for me to deſire the Continuance of it: And I wiſh you were to endure the Sharpneſs of it, but for one Hour, as I have done for many long Nights and Days, and then, I believe,

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" it would move that rocky Heart of yours, " that can be ſo thoughtleſs of me as you " are; but if it were deſigned for that End, " to make the Summer the more delightful, I " wiſh it may have the Effect ſo far, as to " continue it to be ſo too, that the Weather " may never over-caſt again; the which, if I " could be aſſured of, it would recompence " me for all that I ever ſuffered, and make " me as eaſie a Creature as I was the firſt Mo- " ment I received Breath; when you come to " *H*—— pray let your Steed guide you, and " don't do as you did the laſt Time; and " be ſure order your Affairs to be here as " ſoon as you can, which cannot be ſooner, " than you will be heartily welcome to your

very ſincere Friend.

For Mrs. Jane Ellen, *at Mr.* Hargrave's *near* Temple-Bar, London.

Then another Letter from the Deceaſed to the Priſoner, dated the 9th of *March*, was read, and is as follows:

SIR,

" I Wrote to you by *Sunday*'s Poſt, which I " hope you have received, however, as a " Confirmation, I will aſſure you, I know of " no Inconvenience that can attend your co- " habiting with me, unleſs the Grand Jury " ſhould thereupon find a Bill againſt us; but " I won't fly for it, for come Life, come " Death, I am reſolved never to deſert you; " therefore, according to your Appointment, " I will expect you, and then I ſhall only tell " you that I am Your, *&c.*

Further Evidence, ſhe was in Love with Cowper.

Then Mr. *William Cowper*, the Priſoner's Brother, was called to give Evidence for him: He ſaid, he would bear his Brother Witneſs, that it was with great Unwillingneſs he produced thoſe Letters; nothing but the Lives of thoſe Gentlemen who were tried with him, could have inclined him to that.

He depoſed further, That Mrs. *Stout* being in *London*, ſent his Brother Word ſhe would give him a Viſit at his Chamber: To prevent which, it was contrived between him and his Brother, that he (the Witneſs) being to dine with Mrs. *Stout* at his Father *Cowper's* in *Hatton-Garden* that Day, ſhould take an Opportunity to ſay that he (the Priſoner) was gone to *Deptford*; and that the Witneſs did mention it accordingly: Whereupon Mrs. *Stout* the Deceaſed, roſe up from Dinner in Confuſion, and going into the Yard, there ſwooned away, and they gave her ſuch Aſſiſtance as was uſual in ſuch Caſes.

He alſo teſtified, That his Brother communicated the laſt Letter to him on *Friday* before the laſt Aſſizes, and thinking, as the Caſe ſtood, it was better his Brother ſhould lie at his Lodgings at Mr. *Barefoot's* at the Aſſizes, than at Mrs. *Stout's*, he did not write to Mr. *Barefoot* to diſpoſe of the Lodgings to another.

Then Mrs. *Barefoot* teſtified, The Priſoner lay at her Houſe the Night the Accident happened, and came in a little after Eleven by the Town Clock, and did not go out again that Night: The Maid of the Houſe alſo, that put him to Bed, confirmed her Miſtreſs's Evidence, and affirmed, That the Clock ſtruck Twelve after the Priſoner was in Bed. 1699. 11W. III.

Then Mr. *Cowper* proceeded in his Defence, and ſaid, he would explain that Part of the Evidence that was given by *Sarah Walker*, Mrs. *Stout*'s Maid, where ſhe ſaid, her Miſtreſs ordered her to warm the Bed, and he never contradicted it; and deſired the Court would obſerve thoſe Words in the laſt Letter, *viz. No Inconvenience can attend your cohabiting with me*; and afterwards, *I won't fly for it, for come Life, come Death, I am reſolved*; from whence might be conjectured, What the Diſpute was between them at the Time the Maid mentioned: He thought it was not neceſſary ſhe ſhould be preſent at this Debate, and therefore might not interrupt her Miſtreſs in the Orders ſhe gave; but as ſoon as the Maid was gone, he offered theſe Objections: He informed her by what Accident he was obliged to lodge at Mr. *Barefoot's*, and that the Family were fitting up for him: That his ſtaying at her Houſe under theſe Circumſtances, would provoke the Cenſure of Town and Country, and therefore he could not ſtay whatever his Inclinations were; but his Reaſons not prevailing, he was forced to decide the Controverſy, by going to his Lodging; ſo that the Maid might ſwear true, when ſhe ſaid, he did not contradict her Miſtreſs's Orders. *His Inferences from her Letters.*

Then he called Witneſſes, to ſhew it was impoſſible he could be at the drowning of *Mary Stout*; becauſe he went away from her Houſe a Quarter before Eleven, and was at his Inn, the *Glove and Dolphin*, before the Clock ſtruck Eleven, and it would take up above half an Hour to go from Mrs. *Stout*'s to the Place where ſhe was drowned, and return to the *Glove* Inn.——And calling *Elizabeth Spurr* as a Witneſs, ſhe teſtified, That he came into the *Glove* Inn juſt as the Clock ſtruck Eleven, and ſtaid there a Quarter of an Hour before he went to his Lodgings: This Evidence was confirmed by two other Servants of the *Glove* Inn. *Evidence of the Time of Night he came to his Lodging.*

Sir *Thomas Lane* and Sir *William Aſhurſt* teſtified, That they had walked over the Ground above-mentioned, and it took them up above half an Hour, a uſual walking Pace.

Mrs. *Mince* was then called as a Witneſs, to diſprove what *Sarah Walker* had depoſed, namely, *That her Miſtreſs did not uſe to go out a Nights*.

Mrs. *Mince* teſtified, That *Sarah Walker* told her, her Miſtreſs uſed to entertain Company in the Summer-houſe in the Night-time, unknown to her Mother: That ſhe uſed to go out a Nights, and take the Key with her, and make her Mother believe ſhe was gone to Bed; and that one Time ſhe went out at the Garden-Window when the Garden-Door was locked, and bid her not ſit up for her, ſhe would come in at her own Time; and what Time ſhe came, ſhe (the Maid) ſaid ſhe did not know, for ſhe was gone to Bed.

Then the Priſoner called Sir *William Aſhurſt*, Sir *Thomas Lane*, Mr. *Cox*, and Mr. *Thompſon* *Witneſſes to Mr. Cowper's Character.*

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Thompſon to his Reputation, who all gave him a great Character; and Mr. *Cox* ſaid, he had lived by him in *Southwark* Eight or Nine Years, and knew him to be a Perſon of Integrity and Worth, and all the Neighbourhood coveted his Company; that he took him to have as much Honour and Honeſty as any Gentleman whatever, and of all Men he knew, he would be the laſt Man that he ſhould ſuſpect of ſuch a Fact as this: He believed nothing in the World could move him to entertain the leaſt Thought of ſo foul a Fact.

Marſon's Defence.

Here Mr. *Marſon* entered upon his Defence, and ſaid, Their Buſineſs at *Hertford* was this: Mr. *Ellis Stevens* being Clerk of the Papers, and Mr. *Rogers* Steward, of the *King's-Bench*, were obliged to wait upon the Lord Chief Juſtice out of Town, with the Marſhal of the *King's-Bench*; and on the *Monday* he went with them to the Lord Chief Juſtice's Houſe in *Lincoln-Inn-Fields*, from whence they all ſet out for *Hertford*; but he (*Marſon*) being an Attorney of the Borough Court, and having Buſineſs there that Day, when they came as far as *Kingſland*, returned back to *Southwark*, where he attended the Court as uſual, and about four ſet out again for *Hertford*; and on the Way, at *Waltham-Croſs*, he met his Acquaintance Mr. *Hanks* a Clergyman, who had been to attend the Chief Juſtice returning to *London*; but he prevailed on him to go back with him to *Hertford*, and they galloped every Step of the Way, becauſe Night was coming on, and it was about Eight o'Clock when they came to *Hertford*, and he might be in a Sweat with riding ſo hard; but not in ſuch a Sweat as the Witneſs teſtified: That meeting with their Friends Mr. *Stevens*, Mr. *Rogers*, Mr. *Rudkin*, and other Acquaintance of the Marſhal's at the Coffee-houſe, they went from thence to the *Glove and Dolphin*, where they ſtaid till about Eleven; and from thence, he and Mr *Stevens*, and Mr. *Rogers* went to *Gurrey's*, where they lodged, and drank three Bottles of Wine before they went to Bed, and had ſome jocular Converſation with their Landlord *Gurrey*: He believed Mr. *Stevens* might ask him if he knew Mrs *Sarah Stout*, and what ſort of Woman ſhe was; and he believed he might ſay, my Friend may be in with her: That Mr. *Rogers* alſo asked him (*Marſon*) What Money he had got that Day? meaning at the Borough Court, and he anſwered, 50*s.* to which *Rogers* replied, We have been here ſpending our Money, I think you ought to treat us? As to the Bundle mentioned, he knew of none, except a Pair of Sleeves and a Neckcloth.

Rogers's Defence.

Mr. *Rogers*, in his Defence, ſaid, They came down with the Marſhal of the *King's-Bench*, and not thinking Mr. *Marſon* would have come that Day, had not provided a Lodging for him: That they went from the Coffee-Houſe to the Tavern, as Mr. *Marſon* had related; and there they had ſome merry and open Diſcourſe of this Gentlewoman, but he never ſaw her, or heard her Name before ſhe was mentioned there.

Stevens.

Mr. *Stevens* gave the ſame Account of their going to *Hertford*.

The Judge demanding, If they did not talk of Mrs. *Stout's* Courting Days being over? they all proteſted, There was not one Word of it.

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Then they called Witneſſes, to ſhew the Occaſion of the Diſcourſe they had, in Relation to Mrs. *Stout*.

Their Witneſſes.

Mr. *Hunt* teſtified, That happening to be at the *Old Devil* Tavern, on *Sunday* Night before the laſt *Hertford* Aſſizes, with Mr. *Marſon* and 3 or 4 more of *Clifford's-Inn*, and there being a Diſcourſe of attending the Chief Juſtice out of Town, and of Mr. *Marſhal's* courting Mrs. *Stout* of *Hertford*, one ſaid, If you do go, pray enquire after Mr. *Marſhal's* Miſtreſs, and bring us an Account of her.

Mr. *Foſter* confirmed Mr. *Hunt's* Teſtimony, and added, That either Mr. *Marſon* or Mr. *Stevens* ſaid, They would do their Endeavour, and enquire after the Lady.

Mr. *Hanks*, the Clergyman above-mentioned, depoſed, That he met Mr. *Marſon* at *Waltham-Croſs*, and went back with him to *Hertford*, whither they came about ſeven or eight at Night; and having ſet up their Horſes, they went to the Coffee-Houſe, where was the Marſhal of the *King's-Bench*, the Gentlemen at the Bar, and Mr. *Rudkin*; and they went from thence to the *Glove and Dolphin*, where they ſtaid till about Eleven, and then he and Mr. *Rudkin* ſaw the three Gentlemen at the Bar to their Lodgings, and left them there.

Mr. *Rudkin* alſo depoſed, That he drank with the ſame Company at the *Glove and Dolphin* till after Ten, and then went with them to their Lodgings, and left them there.

Witneſſes to their Characters.

Then the Priſoners, *Stevens*, *Rogers*, and *Marſon*, called Mr. *Cox*, Major *Lane*, Sir *Robert Auſten*, Sir *John Shaw*, and ſeveral other Gentlemen of good Credit, to their Reputations, who ſaid, They were Men of Subſtance, Attorneys of good Buſineſs in the Marſhal's or Borough Courts, and had generally fair Characters: That they were Men who would not have been guilty of ſo foul a Fact, upon any Account.

A Reply to Mr. Cowper's Defence.

Here Mr. *Jones*, the King's Counſel, obſerved, That Mr. *Cowper* gave a different Evidence now, from that he gave before the Coroner; for then he ſaid, He never knew any Diſtraction, or Love-Fit, or any other Occaſion, that ſhould put the Deceaſed upon this extravagant Action; and now he would have the whole Scheme turn upon a Love-Fit: And *John Maſon*, being called as a Witneſs for the King, teſtified, That Mr. *Cowper* made Oath before the Coroner, That he did not know any thing that ſhould be the Occaſion of her Death; *She was a very modeſt Woman.*

Mr. *Jones* demanding, Whether they asked him, If he knew any Perſon ſhe was in Love with? *Maſon* anſwered, Mr. *Cowper* ſaid he knew but of one, and his Name was *Marſhal*, and Mr. *Marſhal* told him, he was always repulſed by her.

John Archer alſo depoſed, That Mr. *Cowper* being asked before the Coroner, If he knew any thing of the Occaſion of Mrs. *Stout's* Death? he anſwered, He knew nothing of it.

Here

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Here one of the Jurymen desired they might withdraw; but the Judge told him, They must make an End first.

Then Mr. *Jones* said, The Friends of the Deceased would call some Witnesses to her Reputation; and he believed the whole Town could attest, That she was a Woman of a good Reputation: Indeed the Prisoners had produced some Letters without a Name, but if they insisted on any thing against her Reputation, they must call Witnesses.

Judge *Hatsel* answered, He believed no body disputed that she might be a virtuous Woman, and her Brains might be turned by her Passion, or some Distemper: And then he proceeded to direct the Jury in the following Manner.

The Judge's Directions to the Jury.

Gentlemen of the Jury, you have heard a very long Evidence; I am sure that you cannot expect that I should sum it up fully, but I will take Notice of some Things to you, that I think are most material; and if I omit any thing that is material, I would desire Mr. *Jones* (that is Counsel for the King) and Mr. *Cowper*, to put me in mind of it.

The Indictment against the Prisoners at the Bar is for a very great Crime, it is for Murder, which is one of the most horrid of all Crimes. You are to consider, first, what Evidence you have heard to prove it; and though there be no direct Proof, you are to consider what is Circumstantial. They do begin with *Sarah Walker*, who was Mrs. *Sarah Stout*'s Maid, and she tells you, That Mr. *Cowper*, when he came to this Town upon *Monday* the 13th of *March* last, came to Mrs. *Stout*'s House and dined there, and went away about Four of the Clock in the Afternoon; but she tells you, that the *Friday* before, there came a Letter from Mr. *Cowper*'s Wife to Mrs. *Stout*, to let her know that Mr. *Cowper* would come and lodge at their House at *Hertford*, at the Assizes; so that when he came, she thought that he had intended to have done according to that Letter. She saith, That after Dinner Mr. *Cowper* went away, and came again at Nine at Night, and there he supped, he was desired so to do (and indeed had been invited to Dinner also that Day): And she doth say, That after Supper there was a Fire made in his Chamber (for this young Gentlewoman, Mrs. *Stout*, pressed him to lie at their House) and she ordered his Maid to warm his Bed; and I believe, says she, Mr. *Cowper* heard her say so, for he was nearer to her than I, at that Time; and he doth not deny but that he heard it: She says, That accordingly she went up to warm his Bed, and having stayed there a-while, she heard the Door clap; and when she came down into the Parlour, where she had left them, they were both gone; and that she could not tell what the Meaning of it was; and they waited for her all Night, old Mrs. *Stout* and this Maid, and she did not come in all Night, nor was afterwards seen alive; but Mr. *Cowper* was the last Person seen in her Company.

The other Witnesses that came afterwards, speak concerning the finding of the Body in the River, and tell you in what Posture it was. I shall not undertake to give you the Particulars of their Evidence, but they tell you, She lay on her Right Side, the one Arm up even with the Surface of the Water, and her Body under the Water; but some of her Cloaths were above the Water, particularly one says, the Ruffles of her Left Arm were above the Water: You have heard also what the Doctors and Surgeons said on the one Side and the other, concerning the Swimming and Sinking of dead Bodies in the Water; but I can find no Certainty in it, and I leave it to your Consideration.

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Another Circumstance they build on, and which seems to be material, is, of her Belly being lank, and that there was no Swelling; whereas, say they, when a Person is drowned, there is a great deal of Water goes in and makes the Belly to swell; but here was no Swelling that Morning she was taken out, and no Water came out of her Mouth and Nostrils, only a little Froth there was, and her Belly was lank: But, say they on the other Side, that may very well be; for, perhaps, she might be choaked immediately, as soon as she was in the Water; and, say they, you may not wonder at that, for if she went to drown herself, she would endeavour to be choaked as soon as she could; for those Persons that are drowned against their own Consent, do swallow a great deal of Water; but those that drown themselves, do not swallow much Water, for they are choaked immediately by the Water going into the Windpipe, that we commonly call, Going the wrong Way. The Doctors and Surgeons have talked a great deal to this Purpose, and of the Waters going into the Lungs or the Thorax; but unless you have more Skill in Anatomy than I, you will not be much edified by it; I acknowledge I never studied Anatomy, but I perceive that the Doctors do differ in their Notions about these things: But as to Matter of Fact, it is agreed to by all the Witnesses for the King, that her Body was lank, her Belly was thin, and there was no Sign of any Water to be in it. They on the other Side tell you, That her Stays were on, and she was strait-laced, and that might occasion her Belly's being so small, and hinder the Water from going in.

Gentlemen, I was very much puzzled in my Thoughts, and was at a Loss to find out what Inducement there could be to draw in Mr. *Cowper*, or these three other Gentlemen, to commit such a horrid, barbarous Murder: And on the other Hand, I could not imagine what there should be, to induce this Gentlewoman, a Person of a plentiful Fortune, and a very sober good Reputation, to destroy herself.

Now, Gentlemen, I must confess, the Evidence that the Defendants have given by these Letters, if you believe them to be this Gentlewoman's Hand Writing, do seem to fortify all that Mr. *Cowper*'s Witnesses have said, concerning her being Melancholy; it might be a Love-Distraction, and she might have been a virtuous Woman for all that; for it might be a Distemper which came upon her, and turned her Brains, and discomposed her Mind,

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Mind; and then no Wonder at her writing thus, in a Manner different from the reſt of the Actions of her Life. Gentlemen, you are to conſider and weigh the Evidence, and I will not trouble you any more about that Matter.

As to theſe three other Gentlemen, that came here to this Town at the Time of the laſt Aſſizes, what there is againſt them you have heard: They talked at their Lodging at a ſtrange Rate, concerning this Mrs. *Sarah Stout*, ſaying, *Her Buſineſs was done*, and that *there was an End of her Courting-Days*, and that *a Friend of theirs was even with her by this Time.* What you can make of it, That I muſt leave to you, but they were very ſtrange Expreſſions; and you are to judge whether they were ſpoken in Jeſt, as they pretend, or in Earneſt. There was a Cord found in the Room, and a Bundle ſeen there, but I know not what to make of it. As to Mrs *Stout*, there was no Sign of any Circle about her Neck, which, as they ſay, muſt have been, if ſhe had been ſtrangled: Some Spots there were, but it is ſaid, poſſibly thoſe might have been occaſioned by rubbing againſt ſome Piles or Stakes in the River. Truly, Gentlemen, theſe three Men, by their Talking, have given great Cauſe of Suſpicion; but whether they or Mr. *Cowper* are guilty or no, That you are to determine. I am ſenſible I have omitted many Things, but I am a little faint, and cannot repeat any more of the Evidence.

All the Priſoners acquitted.

Then the Jury withdrawing for about half an Hour, returned with their Verdict, That neither Mr. *Cowper*, or any one of the other three Priſoners were Guilty: And thereupon they were all diſcharged.

An Appeal brought againſt Mr Cowper, and his Friends.

Mr. *Spencer Cowper*, and his three Friends, having been acquitted at the Summer Aſſizes at *Hertford*, in the Year 1699, as is related already, a Writ of Appeal was ſued out, the Beginning of *March* following, againſt the ſaid *Cowper*, *Marſon*, *Stevens*, and *Rogers*, at the Suit of *Henry Stout*, (Heir at Law of the deceaſed *Sarah Stout*) then about ten Years of Age; and Mrs. *Mary Stout*, Mother of the deceaſed, was on the 13th of *April* following, admitted Guardian to the Apellant, in order to proſecute the ſaid Suit.

The Under-Sheriff of *Hertford*, *Boſtock Toller*, not returning the Writ, was ſerved with ſeveral Rules in *Eaſter* Term by Mrs. *Stout* the Guardian, to compel him to make a Return: At length Mr. *Toller* attended the Court of *King's-Bench*, and made Affidavit, That upon the 16th of that Inſtant *April*, (being the Day after the Return of the Writ, and three Days after Mrs. *Mary Stout* was admitted Guardian to the Appellant), he delivered the Writ into the Infant's Hands.

The Writ given to a Child, by the Sheriff, and burnt.

The Court of *King's-Bench* hereupon ordered *Toller* to be examined upon Interrogatories, who in Juſtification of himſelf, declared, That the Appellant, with his Mother, his Uncle, and Aunt, came to him, and delivered him a Note from *William Cowper*, Eſq; the Brother of *Spencer*, informing him, that the Infant who attended him, was the Plaintiff in the Appeal, and one of the Women his Mother, and that, at their Requeſt, he delivered the Writ to the Infant; that he afterwards deſired the Infant and his Mother to give him the Writ back again, but they declared, *The Infant, with Advice, had burnt the Writ.*

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The Court of *King's-Bench* hereupon committed the ſaid *Toller*, and ſet a Fine of two hundred Marks upon him. And Mrs. *Stout* the Guardian, petitioned the Lord Keeper for a new Writ of Appeal, the Time (the Year and Day) being elapſed for ſuing out a Writ of Courſe; but her Petition was rejected.

The Sheriff fined.

A new Writ refuſed.

Mrs. *Stout*, the Guardian, afterwards drew up her Caſe, and preſented it to the Members of the Commons, at the Door of the Houſe, as I am informed, in hopes of obtaining an Act to renew the Writ of Appeal; but they ſaid, they would not bring in a Bill on purpoſe to try Mr. *Cowper* and his Friends again, after they had been fairly acquitted, and ſo the Matter was entirely dropped; only both Parties, in printed Papers, appealed to the World, as to the Juſtice of their reſpective Caſes.

Before I make any Obſervations of my own, therefore, on theſe Proceedings, I ſhall ſhew what Reflections the Parties themſelves made on them. *Spencer Cowper* and his three Friends obſerve, That they were all four in good Employments, and eaſy in their Circumſtances; and it was not credible, therefore, they ſhould commit ſo foul a Crime, eſpecially when they could have no Intereſt to ſerve, or paſſion to gratify, by doing it: For though it was at firſt reported, that Mr. *Cowper* did it for the Sake of Gain, this was not at all inſiſted on by the Proſecutors at the Trial, though he challenged them to ſhew in what Reſpect he could be a Gainer by this Gentlewoman's Death.

The Caſe ſtated by Spencer Cowper.

Nor was there, indeed, any Proof of a Murder being committed by any one; for the Coroner's Inqueſt, having a freſh View of the Body, on the Day it was found, after they had conſulted two Surgeons and a Midwife, gave a Verdict, that the deceaſed drowned herſelf, being *Non compos*; and nothing but the Zeal of the Quakers for the Reputation of their Sect, and to ſhew they were not liable to the Infirmities of the reſt of the World, aſſiſted by the Heat of a Faction, could ever have ſtired up this Proſecution, that had made ſo much Noiſe in the World.

That on the Day the Corps of the Deceaſed was found, Mr. *Cowper* was examined by the Coroner's Inqueſt, and then gave an exact Account of every Circumſtance which had ſince been proved againſt him: That about a Month after, all the ſaid four Gentlemen were ſeverally ſent for, and readily came, to the Lord Chief Juſtice *Holt*, by whom they were examined; and the Truih of what they atteſted before him had never been contradicted or falſified, but all proved and made good at their Trial.

That after this Examination they were diſmiſſed without Bail, and might have fled, if they had been conſcious of any Guilt. —— That upon ſome Suggeſtions of the Proſecutors, they were examined a ſecond Time, and admitted to Bail: But upon the taking up and opening the Deceaſed, ſix Weeks after her Death, and ſome Informations and Certificates of thoſe that viewed the Corps, Mr. *Cowper* and Mr. *Marſon* were committed, and the other two ſtill continued upon Bail.

That the Proſecutors procured thoſe Informations and Certificates, by applying themſelves

1699. 11W. III. to ſuch Perſons (and no others) as they knew were profeſſed Enemies to the Family of the *Cowpers*, on Account of the Controverſies ariſing at Elections.

That Mr. *Marſon* was afterwards admitted to Bail; but Mr. *Cowper* remained in Priſon all *Trinity* Term, 1699, and Part of the Vacation following, for the Space of two Months, till the Aſſizes at *Hertford* drew near, and then he ſued out a Writ for his Removal from *London* to be tried at *Hertford*, fearing his Enemies deſigned to keep him in Jail, or at leaſt to continue the Slander and Proſecution as long as they could. That the Proſecution was carried on againſt them with all imaginable Induſtry and Artifice, an Election Intereſt being thought in a great Meaſure to depend on the Succeſs of it: However, their Innocence was ſo manifeſt, that they were all acquitted on their Trial.

That the Proſecutors, to be further vexatious, and continue the Calumny, though they had nothing to object to the Fairneſs of the Trial, or any new Evidence to give, ſought for an Heir Male, in order to bring an Appeal, and try them again; and though they had found out the Infant, *Henry Stout*, in the ſame long Vacation 1699, and might have ſued out the Appeal next Term; they did not get the Writ of Appeal ſealed, till the very laſt Seal within the Year after the Deceaſed was drowned, and not above three or four Days before the End of the Year; which Delay, they ſuggeſt, was purely malicious, and deſigned merely to continue the Calumny.

That the Writ was at laſt ſued out, without either the Knowledge of the Plaintiff himſelf, or of his Mother (his Guardian by Nature), without whoſe Approbation the Writ ought not to have been ſued out by Law, nor the Infant engaged in ſuch a Proſecution for Blood.

That as ſoon as the Infant and his Mother underſtood what was done, and that the Suit was only carried on for Revenge, they declared their Diſlike of the Proceeding, and went with an Uncle and Aunt of the Infant's, to Mr. *Toller*, the Under-Sheriff, and demanded the Writ, tendering him his Fee for the Return thereof, which he (not knowing then of any Guardian aſſigned the Infant) delivered to them.

And when the Under-Sheriff was examined upon Interrogatories, how far the Appellees (*Spencer Cowper* and his three Friends) were concerned in getting the Writ from the Sheriff, the ſaid Sheriff, upon Oath, denied all Correſpondence with the Appellees, or any on their Behalf, touching the Delivery of the ſaid Writ, and denied he had any Reward, or Promiſe of Reward, or had any Security given to indemnify him for doing it; and that he delivered the Writ and Return to the Appellant and his Friends, as he believed it was fair and lawful for him to do, and for no other Reaſon whatever.

That Mrs. *Mary Stout*, the Mother of the Deceaſed, preferred a Petition to the Lord Keeper for a new Writ of Appeal; and the Infant (the Appellant) and his Mother preferred another Petition to the Lord Keeper, diſowning the former Writ, as iſſued out without their Conſent or Approbation, and deſiring that no new Writ might be iſſued out in the Infant's Name. And the Lord Keeper, being aſſiſted by the Maſter of the Rolls, and ſeveral of the Judges, having heard both Parties, by the reſpective Counſel, were unanimouſly of Opinion, 1699. 11W. III.

1. That the Chancery had Power to relieve in ſuch a Caſe, and to renew the Writ, if it were juſt ſo to do.

2. That, in this Caſe, it was not juſt or reaſonable.

And the Reaſons inſiſted on by Mr. *Cowper*'s Counſel, to maintain the laſt Point, were, 1. That the Writ was ſued out clandeſtinely and fraudulently, without the Conſent of the Appellant, or his next Friend; and no Guardian aſſigned had any Thing to do with it, till the Writ was pending.

2. Becauſe it was deferred two Terms after the Acquittal of Mr. *Cowper*, &c. and not taken out till about four Days within the End of the Year; which ſhewed they did not deſign Juſtice, but to ſpin out the Calumny as long as they could, maliciouſly, and vexatiouſly.

3. That an Acquittal on an Indictment was a Bar to an Appeal at Common Law; and though that Bar was taken away by the Statute of *Hen.* VII. which let in the Appeal within the Year and Day, leſt Perſons ſhould procure themſelves to be fraudulently indicted and acquitted on faint Proſecutions; and as this Proſecution was far from being a faint one, the Appellees were within the Reaſon and Equity of that Plea; and the rather, for that Mrs. *Stout*, the Mother of the Deceaſed, who would proſecute the Appeal, was the principal Proſecutor on the Indictment, and did it with all imaginable Induſtry, aſſiſted by the united Intereſt of the *Quakers*, and a prejudiced Party in the Town of *Hertford*, diſobliged on the Score of Elections; and four Appeals have not been favoured ſince the Statute of *Hen.* VII. except in Caſes of Conviction, and Pardon obtained by Surprize, or after ſome freſh Diſcovery by additional Evidence, which was not pretended to in this Caſe.

The Caſe ſtated by Mrs. Stout.

In Anſwer to what Mr. *Cowper* and his Friends had advanced in Relation to the Appeal, Mrs. *Mary Stout*, the Mother of the Deceaſed, and her Party anſwered, That the ſaid Writ of Appeal being ſued out within the Year, ſhe cauſed it to be delivered to *Boſtock Toller*, the Under-Sheriff of the County of *Hertford*, that he might apprehend the Appellees mentioned in the Writ; and fearing he might be remiſs in it, ſhe ſent to him to know what he had done, Whether he had executed the ſame, or would return, the Parties were not to be found? To which *Toller* anſwered, *Mrs. Stout is a very buſy, uneaſy Woman; but, however, when the Writ is out, I will make ſuch Return thereof as the Law directs.*

That on the 13th of *April* the ſaid Mrs. *Stout* was admitted Guardian to the Appellant; and on the 15th, being the firſt Day after *Eaſter* Term, ſhe appeared perſonally in the Court of *King's-Bench*, in order to arraign the Appellees; but the Sheriff had not returned the Writ.

Whereupon the Court was moved next Day, in Behalf of Mrs. *Stout*, That a ſhort Day might be given the Sheriff, peremptorily to make his Return: Whereupon it was ſuggeſted, that no Writ of Appeal was left with Mr. *Toller*, whereby Mrs. *Stout* loſt the Benefit of her Motion, and was forced next Day to get an Affidavit of the Delivery of the Writ; and moved again for

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1699. 11W. III. a Rule to compel him to appear and make a Return of the Writ; which Rule being ſerved upon *Toller*, he appeared, and acknowledged the Receipt of the the Writ; but made Oath he delivered the Writ into the Infant's Hand on the 16th of *April*, being the Day after the Writ was returnable, and three Days after Mrs. *Stout* was admitted Guardian to the Appellant.

Whereupon the Court ordered *Toller* to be examined upon Interrogatories, concerning the Delivery of the Writ; but Mrs. *Stout* was forced to be at the Charge of two or three Orders, before he would come to be examined: And then he was pleaſed to own the Receipt of the Writ of Appeal; and that he knew Mrs. *Stout* was Guardian, and yet delivered the Writ to the Infant and his Mother, (as related above).

In this Examination alſo, *Toller* acknowledged, That Mr. *William Cowper*, Brother of *Spencer*, ſent him a Letter, to know whether any Writ of Appeal was come to his Hands, againſt his Brother *Spencer*; and he (*Toller*) informed him, there was, and ſent him the Contents of the ſaid Writ: And, that he gave *Spencer* the like Information; whereby it appeared, there was a Correſpondence between *Toller* and the *Cowper*'s: Of which the Court of *King's-Bench* were ſo ſenſible, that he was fined 200 Marks. But this giving Mrs. *Stout* no Satisfaction for the Blood of her Daughter, ſhe petitioned the Lord Keeper, as above related, for a new Writ: But the Matter being heard before him, and no poſitive Proof appearing then, that any of the Appellees were privy to the Deſtruction of the firſt Writ, it was not thought reaſonable to grant a new Writ; and Mrs. *Stout*'s Petition was, chiefly for that Reaſon, rejected: But could ſhe have imagined, all the Appellees would have pretended Ignorance, as to the Deſtruction of the Writ; and that there was any Difference between the Writs being loſt by Accident or Deſign, ſhe could have informed the Court of a more particular Intelligence, concerning the Deſtruction of the Writ, and by whoſe Order it was done, and at whoſe Chamber it was burnt; which would ſufficiently evince, whether the Appellees were privy to the Deſtruction of it.

And, whereas it had been reported, that this Proſecution was merely vexatious, begun by a Body of Quakers, and eſpouſed by a Faction at *Hertford*, againſt the *Cowper*'s; every one ought to conſider, if it was their own Caſe, to have an only Child murdered, and her Reputation rendered infamous to Poſterity; Whether Nature and Duty would not have obliged them to uſe all poſſible Means to diſcover the Cauſe thereof? And whether they would not think it hard to have their Endeavours reflected on, and their Diligence cenſured, as the Effect of Party-Malice?

It had been objected alſo, That the proſecuting this Writ, had been maliciouſly delayed, to keep the Appellees in an uneaſy Suſpence: To which Mrs. *Stout* anſwered, That ſhe ſhould have ſued out the Writ ſooner, but ſhe could not find out the proper Perſon to make Appellant, though the moſt diligent Search was made for near half a Year; but, the very next Day ſhe was prepared to make out his Pedigree, ſhe cauſed the Writ of Appeal to be ſued out; ſo that it was her Misfortune, not her Fault, that there was ſo long a Delay. 1699. 11W. III.

And though it was commonly urged, as a ſtrong Argument againſt bringing the Appellees to a ſecond Trial, that ſhe had no new Evidence againſt them; ſhe aſſured them, ſhe had more material Evidence than had been yet made publick; and ſhe believed the Appellees did not care to ſtand the Teſt of it: Or why ſhould there be ſo vigorous an Oppoſition againſt ſo plain an Act of Juſtice? If nothing further could be proved againſt them, as they inſinuated, it would have been much more for their Reputation, to have undergone a ſecond Trial, than to have meanly eluded and undermined the Courſe of Juſtice, by the Deſtruction of the Writ of Appeal.

Then Mrs. *Stout*'s Friends proceed to make ſome Reflections on the Trial: And, firſt, it is obſerved, That none of the Phyſicians that appeared for Mr. *Cowper*, pretended to affirm, That a drowned Body would have no Water in it; they only ſaid, *A very little* would drown a Perſon; but in this Corps there was none at all.

And being asked, If Water would not have putrified the Parts in ſix Weeks Time, none of them directly denied it; but ſaid, The Stomach would be leſs putrified than the Lungs: But here neither Stomach or Lungs were putrified.

That the Difference made between a Perſon's being drowned by Accident and Deſign, was ridiculous; becauſe it was certain, with what Deſign ſoever a Man might go into the Water, before he was half dead, he would be deprived of his Senſes; and how he would govern himſelf then, might eaſily be determined.

And from theſe and other Reaſons, they conclude, ſhe was not drowned: They ſuppoſe rather, ſhe was knocked down, by a Blow on her Left Ear, from a large Settlement of Blood there; and after ſhe was down, they think it probable, ſhe was ſtrangled by the Gripe of a ſtrong Hand, from the Stagnation of Blood on both Sides of her Neck, under her Ears.

The Circumſtances that induced them to believe, ſhe was not acceſſary to her own Death, were, her being found without her Gown or Nightrail, which were probably torn off in the Scuffle: And when her Gown was found about a Week before the Trial, it appeared to be torn all to Rags, and her Nightrail was never found: 2. From her floating in the Water, ſo ſoon as no drowned Body ever did: 3. Becauſe her Belly was not ſwollen: 4. Becauſe no Water came out of her: 5. Becauſe her inward Parts were not putrified (though other Parts that had been injured were); which would have been, forty-ſix Days after her Death, if there had been any Water in them: 6. From the ſeveral Settlings of Blood, which was uſual in drowned Perſons: 8. From what was ſworn againſt *Marſon*, and the other two, at the Trial, as that one of them ſaid, *She has turned me off; but a Friend of mine is even with her by this Time: Her Buſineſs is done; her Courting-Days are over, &c.* And *Marſon*'s pulling out Money, and ſwearing he would ſpend it all for Joy the Buſineſs was done: 9. From the Sentiments

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ments of the Grand Jury; who, after a nice Examination, were of Opinion, ſhe was murdered, as were ſeveral of the Petit Jury; but by whom they could not tell: 10. From Mr. *Cowper*'s ſwearing before the Coroner, directly contrary to what he made his Defence at the Trial.

They are poſitive alſo, that the Letters produced in Court were not genuine, becauſe they were not at all ſuitable to her Character; and obſerve, That if the Witneſſes then in Court, had been examined to her Reputation, a great deal of that Dirt that had been thrown upon her, would have been wiped off. And what Reluctance ſoever Mr. *Cowper* pretended to expoſe her Weakneſs, and produce her Letters; he acknowledged, he had ſhewn thoſe Letters to Mr. *Marſhall* a repulſed Lover, and to his Brother, before her Death, and afterwards printed and publiſhed them.

And what made it very improbable ſhe was acceſſary to her own Death, was, That the very Evening before her Corps was found, ſhe deſired a young Gentlewoman of the Town to lie with her all Night; and when ſhe refuſed, engaged her however to dine with her the next Day, telling her what they ſhould have for Dinner.

That if the Deceaſed had been for ſeveral Years ſo fond of this *Joſeph*, it was much his Wife ſhould diſcover nothing of it; but importune her frequently to come to *London*, that ſhe might enjoy her dear Company: Nor was it probable, if the Deceaſed was ſo furiouſly in Love, ſhe would have rejected the Invitation; but would have choſen to have reſided in Town, where ſhe might have enjoyed him with greater Privacy.

As to there being no Proof at the Trial, of her Relations miſſing any of her Money; the Reaſon of this was, becauſe thoſe who could have atteſted it, and ſpeak materially on that Head, were Quakers, and were not ſuffered to give Evidence, becauſe they ſcrupled taking an Oath: But that, in Truth, her Relations wanted 1000 Pounds of her Original Fortune, beſides the Improvements ſhe had made of it: And they inſinuate, that ſhe truſted Mr. *Cowper* with a thouſand Pounds to put out for her ſeparate Uſe, in caſe ſhe married, which was never heard of: To which Mr. *Cowper*'s Friends replied, That this was but a Say-ſo; and defied them to make any Manner of Proof of it.

Mr. Cowper's Reply.

Mr. *Cowper*'s Friends alſo made a great Jeſt of that Piece of Evidence, which the *Dimſdales* gave, to prove *Sarah Stout* was a Virgin, namely, *That they found the* Uterus *perfectly free and empty, and of the natural Figure and Magnitude uſually in Virgins:* This they obſerve, cannot amount to a Proof, ſhe was a Virgin: All that could be inferred from it, was only, that ſhe had not conceived; and if it was poſſible for a Woman *in Coitu*, to miſs of Conception, the Woman might, notwithſtanding the Carnal Contact, retain the natural Figure uſually in Virgins; and all this implied no more than a bare Probability, that ſhe had not known Man: They never heard before, that the Figure and Magnitude of the Womb, were numbered amongſt the indubitable Marks of Virginity; and as to the State of the *Vagina*, the *Myrtiform Caruncles*, and *Hymen*, there was not a Word ſaid of them; and if there had, it would only have furniſhed Matter of Deriſion, the Body having been ſo long interred: And therefore, for any thing in the Surgeons Affidavit, ſhe might be no Virgin; though Charity might induce them to hope ſhe was.

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Thus we find the reſpective Parties differing very widely in their Conjectures, concerning *Sarah Stout*'s Death, and the Innocence of *Spencer Cowper*. Had I been upon his Jury, I muſt confeſs, I ſhould have acquitted him, of murdering her by his own Hands, or the Hands of his three Friends, *Rogers*, *Stevens*, and *Marſon*. I can never believe a Man of Mr. *Cowper*'s Figure and Circumſtances in the World, would dare to communicate a Secret of this Nature to three People, and deſire them to be Actors in the Tragedy; which muſt have ruined his Character and Fortune in the World, if any of them had diſcovered the wicked Propoſal, though the Fact had never been committed: Neither can I imagine, that three Men in their Circumſtances, would ever have ſubmitted to become Cut-throats and Aſſaſſins, for all they could expect from him; and much leſs for ſo trifling a Reward, as they were ſuppoſed to have.

Remarks on the Trial of Spencer Cowper, &c.

On the other Hand, her being found floating in the River without her Gown, and no Water in the Corps, and her Gown afterwards found torn in Pieces, are ſtrong Circumſtances to induce one to think ſhe was not drowned, either by herſelf or others, but came by her Death ſome other Way: However, as neither Mr. *Cowper* or his three Friends, could be ſuppoſed to have been the immediate Authors of her Death, and no other Perſon was charged with it, the Jury could not do otherwiſe than find them *Not guilty*; eſpecially if we conſider, there was no Time when they could be ſuppoſed to commit the Fact, being all in their Lodgings at eleven at Night, the very Inſtant it muſt have been done, if done at all by them; much ſooner it could not be done, becauſe Mr. *Cowper* went from her Houſe at a Quarter before eleven, and was at his Inn when the Clock ſtruck eleven, ſo that there was but one Quarter of an Hour, in which it was poſſible they could act that Tragedy in; and conſidering the Diſtance of the Places, and the Buſineſs to be tranſacted, this to me ſeems impoſſible.

1699. 11W.III. *Butler's Trial.* *The Caſe.* 1700. 12W.III. *Duke of Norfolk's Divorce.* *Proceedings before the Lords.*

It has been objected indeed, That if Mr. *Cowper* had been innocent, he would not clandeſtinely have procured the Writ of Appeal to be deſtroyed, and ſo ſtrenuouſly have oppoſed the iſſuing out of another; but I am apt to think, any Man in the like Circumſtances, would have done the ſame, and have avoided a ſecond Trial, if he could; eſpecially conſidering the whole Body of Quakers ſupported and countenanced the Proſecution againſt him, and it was impoſſible to divine, how another Judge and Jury might have taken the Matter. The World, they knew, were divided in their Opinions; and if two or three reſolute Men, who were inclined to have thought him guilty, had been upon the next Jury, both his Life and Reputation would have been in a great deal of Danger, however

ſatisfied

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satisfied the reſt of the Jury might be of his Innocence: And though the Intereſt of the *Cowper*'s was conſiderable enough to have obtained a Pardon, where a Pardon would have availed them; yet in the Caſe of an Appeal, no Pardon can be granted; and, if it might, this would not have reſtored his Character, after a Conviction. As it was, Mr. *Cowper* does not ſeem to have ſuffered much in his Circumſtances by this foul Charge, for he became one of the moſt eminent Council at the Bar, was advanced to be Chief Juſtice of *Cheſter*, and afterwards conſtituted a Judge of the Common Pleas, in which Poſt he died in the Reign of King *George* II. few Lawyers obtaining a better Reputation in all Reſpects than he enjoyed, for the Space of thirty Years and upwards, after this unhappy Accident, (*ſave in the Matter of* Uriah *the* Hittite). Thus we ſee what Trouble and Hazard frequently attends Criminal Pleaſures! Though Men may perſuade themſelves, and the unfortunate Creatures they abuſe, that ſuch Liberties are allowed to Chriſtians as well as *Mahometans*; yet, as the Generality of Chriſtians will ſcarce ever be of that Mind, no Man will ever advance his Reputation by venturing on forbidden Embraces in a Chriſtian Country: Theſe will caſt a Blemiſh on all his Actions, how plauſible ſoever, and remain an eternal Blot upon his Memory.

1699. 11W.III.

The Trial of MARY BUTLER, for a *Fraud*, at the *Old-Baily*, *London*, the 12th of *October*, 1699. 11 *W.* III.

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Butler's Trial.

THIS being no more than an ordinary Trial for a Cheat, I ſhall but juſt mention the Caſe.

The Caſe.

The Indictment charges, That the ſaid *Mary Butler*, intending to put a Cheat upon Sir *Robert Clayton*, Knight and Alderman of *London*, counterfeited a Bond from Sir *Robert* for the Payment of 20,000 *l.* to her, after his Deceaſe; and that ſhe publiſhed the ſaid Writing as Sir *Robert Clayton*'s Deed; of which ſhe was convicted, and ſentenced to pay a Fine of five hundred Pounds to the King, and to be impriſoned till ſhe paid it.

1700. 12W.III.

Proceedings in the Duke of *Norfolk*'s Divorce; which were begun in the Year 1691——and continued in ſeveral Courts, to the Year 1700. 12 *W.* III.

1700. 12W.III.

Duke of Norfolk's Divorce.

THIS being no State Matter, I ſhall only give a ſhort Abſtract of the Caſe; and the rather becauſe theſe Proceedings are very defective in the Trials at large.

Proceedings before the Lords.

On the 7th of *January*, 1691. a Bill was brought into the Houſe of Lords, to diſſolve the Marriage of *Henry* Duke of *Norfolk*, Earl Marſhal of *England*, with the Lady *Mary Mordant*, and to enable him to marry again; for that the ſaid Lady had been guilty of Adultery.

Whereupon the Dutcheſs petitioned to be heard by her Counſel againſt the ſaid Bill, and that the Duke might be more particular in his Charge: And the Duke thereupon ſet forth, that ſhe had committed Adultery with Sir *John Germaine*, at *Whitehall* and *Windſor*, in the Months of *June*, *July*, and *Auguſt*, in the Year 1685; and during ſeveral other Months, at the Pariſh of *St. Margaret*'s *Weſtminſter*, and at the Pariſh of *Lambeth* in *Surry*, in the Years 1690, and 1691.

The Dutcheſs, in her Anſwer, denied the Charge; and recriminated, That her Husband, the Duke, was guilty of Adultery, and had continued that Courſe of Life for ten Years; and therefore could, not by Law, ſue a Divorce againſt her for that Crime, if ſhe had been guilty of it.

The Peers afterwards, hearing the Counſel and Evidence on both Sides, and having debated the Matter among themſelves, threw out the Bill upon the ſecond reading.

An Action againſt Sir John Germaine.

The Duke afterwards, in the Year 1692, brought an Action againſt Sir *John Germaine*; and, in his Declaration, charges him with enticing away his Dutcheſs, and living in Adultery with her; which was tried in the Court of *King's-Bench*, in *Michaelmas* Term the ſame Year, and the Jury gave a Verdict for the Plaintiff; but no more than 100 Marks Damages, though the Duke had laid his Damages at 100,000 *l.* However, the Duke having now proved the Fact in a Court of Law, exhibited a

A ſecond Bill in the Houſe of Peers.

ſecond Bill for a Divorce in the Houſe of Peers the ſame Year, 1692. but this alſo was thrown out: Whereupon ſome Overtures were made for accomodating all Differences between them, and Articles were executed, whereby the Duke and Dutcheſs agreed to live ſeparately; the Duke allowing her ſuch a Maintenance as ſhe required: But the Duke, being informed ſhe had offended again, exhibited a third Bill for a

A third Bill.

Divorce, in the Houſe of Peers, 1699, in which he met with Succeſs: The Bill paſſed both Houſes, and received the Royal Aſſent.

This Act recites, That *Henry* Duke of *Norfolk*, and Earl Marſhal of *England*, did, ſome Years before, marry the Lady *Mary Mordant*; and that ſhe had, for divers Years, lived in Separation from him, and had unlawful Familiarity, and adulterous Converſation with Sir *John Germaine*, Bart. That ſhe was guilty of Adultery on her Part, and had broken the Bond of Matrimony: And foraſmuch as the

1696. 12W.III. Duke had no Iſſue, nor could hope for any but ſpurious Iſſue, to ſucceed him in Honour and Eſtate, unleſs the ſaid Marriage was declared void by Act of Parliament, and he was enabled to marry again, he prays, that the ſaid Bond of Matrimony be, and it is thereby enacted and declared to be, diſſolved, vacated, and made void, to all Intents and Purpoſes whatſoever; and that it ſhall be lawful for the ſaid Duke to contract Matrimony with any other Woman, or Women, as if the ſaid Lady *Mary* were naturally dead; and that all and every the Children, born in ſuch Matrimony, ſhall be deemed born in lawful Wedlock, and inherit the Honours and Eſtate of the ſaid Duke, according to the Courſe of Inheritances within this Realm. And it was enacted, That the ſaid Lady *Mary* ſhould be barred and excluded all Dower and Thirds in the ſaid Honours, Lands, and Hereditaments, of the ſaid Duke; and that, all Conveyances, Jointures, and Settlements made by his Grace, or his Anceſtors, for the Uſe and Benefit of the ſaid Lady *Mary*, or the Iſſue of her Body, ſhould be utterly void: And alſo, that all Limitations and Creations, of any Uſe, and Eſtate, Power, or Truſt, made by the Anceſtors of the ſaid Lady *Mary*, to or for the Uſe or Benefit of the ſaid Duke, his Heirs or Aſſigns, out of any of the Lands or Hereditaments of any of the Anceſtors of the ſaid Lady *Mary*, ſhould be void. 1700. 12W.III. And it was further enacted, That the ſaid Duke, his Heirs, Executors, or Adminiſtrators, ſhould, before the 25th of *March*, 1701, pay unto the ſaid Lady *Mary*, or her Aſſigns, the Sum of 10,000 *l.* which was her Marriage Portion; and, in Default of Payment thereof, the ſaid Lady *Mary* ſhould be entitled to ſuch Jointure, and other Advantages, as ſhe might have claimed by Virtue of her Marriage Settlement, dated the 13th Day of *June*, 1677; and by Virtue of the Agreements contained in certain Articles, dated the 28th of *April*, 1694; and alſo ſhould enjoy, during the joint Lives of the ſaid Duke and Dutcheſs, 500 *l. per Annum*, by Virtue of a Quadrupartite Indenture, made the 15th of *June*, 1694: And in ſuch Caſe, the ſaid Duke, his Heirs, *&c.* ſhould be diſcharged from the Payment of the ſaid 10,000 *l.*; but on Payment of the ſaid 10,000 *l.* the ſaid Lady *Mary* ſhould be wholly barred and excluded of her ſaid Jointure, and of all other Advantages out of the Real and Perſonal Eſtate of the ſaid Duke.

Remark. Notwithſtanding the Duke carried his Point, and obtained a Law on Purpoſe to divorce him from the Dutcheſs, and impower him to marry again, he never did marry, or leave any lawful Iſſue, which were made the principal Inducement for his obtaining it.

1701. 13W.III. Kidd's *Trial for Murder.*

The Trial of Captain WILLIAM KIDD, for *Murder*, at the Admiralty Seſſions, held at the *Old-Baily*, *London*, the 8th of *May*, 1701, 13 *W.* III.

1701. 13W.III.

THE Caſe was thus: Captain *Kidd* was Commander of the Ship called the *Adventure-Galley*, and *William Moore*, deceaſed, was Gunner of the ſaid Ship; and while *Kidd* was cruiſing upon the Coaſt of *Malabar*, in the *Eaſt-Indies*, he and his ſaid Gunner had ſome Diſcourſe about taking a Ship called, *The Loyal Captain*; and, among other Things, *Kidd* ſaid to the Gunner, *How could you have put me into a Way, to take that Ship and be clear?* The Gunner anſwering, *He ſaid no ſuch Thing*, *Kidd* replied, *He was a louſy Dog:* The Gunner ſaid, *If I am ſo, you have made me ſo: You have ruined me, and a great many others.* Whereupon Captain *Kidd* ſaid, *Have I ruined you, you Dog?* and taking up a Bucket, hooped with Iron, ſtruck the Gunner with it on the right Side of his Head, and broke his Skull, and the Gunner died the next Day; which being plainly proved by ſeveral Witneſſes, the Jury found him *Guilty*. *The Court proceeded afterwards to try the Captain, and nine of his Crew, for Piracy, on five ſeveral Indictments. As the ſending out Captain* Kidd *on this Expedition, which was made one Ground of an Impeachment againſt ſeveral great Men in the Adminiſtration the ſame Year, I ſhall enlarge the more on theſe Trials of Captain* Kidd *and his Accomplices for Piracy, than I have done on ſome others of the like Nature.*

The Evidence opened.

The

1701. 13W. III. *Trials of Kidd, &c. for Piracy.*

The Trial of Captain WILLIAM KIDD, NICHOLAS CHURCHILL, JAMES HOWE, ROBERT LAMLEY, WILLIAM JENKINS, GABRIEL LOFFE, HUGH PARROT, RICHARD BARLICORN, ABEL OWENS, and DARBY MULLINS, for *Piracy*, at the Admiralty Seſſions, held at the *Old-Baily*, *London*, on the 8th and 9th of *May*, 1701, 13 *W.* III.

The Indictment.

THE Indictment charges, That on the 30th of *January*, in the ninth Year of his preſent Majeſty King *William*, the Priſoners did on the High Seas, near *Catſheen* in the *Eaſt-Indies*, piratically ſeize, and rob a certain Ship called the *Quedah Merchant*, putting the Men on Board in Fear of their Lives, and taking the ſaid Ship, with her Apparel, Tackle, and Goods, and converting them to their own Uſe; againſt the King's Peace, &c.

The Priſoners being arraigned on this Indictment, and ſeverally pleading Not Guilty, *Churchill*, *Howe*, and *Mullins*, afterwards repreſented to the Court, that they ſurrendred themſelves on the King's Proclamation, offering a Pardon to all that came in upon it; and deſired, they might have the Benefit of that Proclamation. —— They added, that they had Notice of the Proclamation when they were at *Guinea* in *South-America*, and delivered themſelves up to Colonel *Baſs*, Governor of *Eaſt-Jerſey*, who was then in Court, and could atteſt the Truth of it.

Then the Proclamation was read, bearing Date the 8th of *December*, 1698, whereby a Pardon was offered to all ſuch Pirates as ſhould ſurrender themſelves, within the Times therein limited, to Capt. *Thomas Warren* (Commodore of a Squadron of Men of War, then ſent to the *Eaſt-Indies* for the Suppreſſion of Pirates); and to *Iſrael Hayes*, *Peter Dellanoye*, and *Chriſtopher Pollard*, and the Survivors of them; only *Henry Avery*, alias *Bridgman*, and Captain *William Kidd*, being excepted by the ſaid Proclamation.

The Court obſerved hereupon, that the Proclamation required them to ſurrender to certain Perſons by Name; and their ſurrendring to others could not entitle them to a Pardon, ſo as to prevent their being tried.

The Evidence opened.

Then Doctor *Newton*, Advocate of the Admiralty, proceeded to open the Evidence, and obſerved, That Captain *Kidd*, who had thus acted the Pirate himſelf, went from *England* in *April* 1696, with a Commiſſion dated the 26th of *January* preceding, to take and ſeize Pirates in the *Indian* Seas, which were then very much infeſted by them: That *Kidd*'s Ship carried thirty Guns, and he had about eighty Men on board when he went from *England*; but touching at *New-York* in *July* 1696, and giving out that he was going to *Madagaſcar*, (the known Receptacle of Pirates) to free the Seas from thoſe Diſturbers of Mankind, ſo many Men came to ſerve under him that he ſoon encreaſed his Number to 155 Men; a Force ſufficient, if he had meant well, to have made him uſeful to the Publick: That calling in at ſeveral Places afterwards for Proviſions, and among others at *Madagaſcar* in *July* 97, he ſailed from thence to *Babb*'s-*Key*, a ſmall Iſland at the Entrance of the *Red-Sea*, and a convenient Station for obſerving what Veſſels went from thence to *India*; and here, inſtead of taking Pirates, he became one himſelf; the greateſt, and the worſt of Pirates: Here he ſtaid three Weeks, in Expectation of the *Mocca* Fleet, to make his Fortune out of it: For whatever he had before pretended, this was his real Deſign; and now ſo poſſeſſed his Mind, that he could not refrain from declaring, and that often to his Men, that he ſhould make himſelf this Voyage, and ballaſt his Ship with Gold and Silver. After long Expectation, on the 14th of *Auguſt*, the Fleet, to the Number of fourteen Sail, came by; and he fell in with them, and fired ſeveral Guns at them; but finding they had an *Engliſh* and *Dutch* Convoy, his Deſign for that Time was fruſtrated.

Not diſcouraged, however, by this Diſappointment, he proceeded to the Coaſt of *Malabar*, in the *Eaſt-Indies*, where he knew the Trade was conſiderable, and expected his Advantage would be proportionable in diſturbing it: And there accordingly, for ſeveral Months together, he committed many great Piracies and Robberies, taking the Ships and Goods of the *Indians*, and others, at Sea, *Moors* and Chriſtians, and torturing cruelly their Perſons, to diſcover if any Thing had eſcaped his Hand; burning their Houſes, and killing, after a barbarous Manner, the Natives on the Shore, equally cruel, dreaded and hated both on the Land and at Sea.

Theſe Criminal Attempts and Actions had rendered his Name, (to the Diſgrace and the Prejudice of the *Engliſh* Nation) too well known, and deſervedly deteſted in thoſe remote Parts of the World; and he was now looked upon as an Arch-Pirate, and the Common Enemy of Mankind; and accordingly two *Portugueſe* Men of War went out in Purſuit of him; and one met with him, and fought him for ſeveral Hours; but *Kidd*'s Fortune then reſerved him for another Place, and another Manner of Trial.

Amongſt the great Number of Veſſels he took on that Coaſt, was the Ship he now ſtands indicted for, the *Quedah Merchant*, being then on a Trading Voyage from *Bengal* to *Suratt*, the Commander *Engliſh* (Captain *Wright*,) the Owners *American* Merchants, and others: He had taken *Moors* before; but *Moors* and Chriſtians

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ſtians are all alike to Pirates; they diſtinguiſh not Nations and Religions.

Theſe on Board the Veſſel offered 30,000 *Rupees* for her Ranſom; but the Ship was too conſiderable to be parted with, even for ſo great a Sum: So *Kidd* ſold Goods out of her on the Neighbouring Coaſt, to the Value of 10 or 12,000 *l.* out of which he took whatever he could pretend to for Ammunition and Proviſions, with forty Shares for himſelf; and the Remainder was diſpoſed of amongſt the Crew, and particularly thoſe who are here indicted with him, who accompanied him; who aſſiſted him throughout in all his Piracies; and who, now too, ſhare the Spoils and the Guilt with him.

With this Ship and another, and the Remainder of the Goods not ſold on the Coaſt, he ſailed once more for *Madagaſcar*, where he arrived in the Beginning of *May* 98, and there again, what was left on Board was divided according to the ſame Proportions, and amongſt the ſame Perſons, as before; each Mariner having about three Bales to his Share.

It is not to be omitted, That at his Return to *Madagaſcar*, there came on Board him ſome Perſons from the Ship, *The Reſolution*, formerly the *Mocca Frigate*; (for the Piratical Seizing of which Veſſel there have been formerly Trials and Convictions in this Place) of which Captain *Culliford*, a notorious Pirate, now in Cuſtody, and againſt whom two Bills have been found for Piracy by the Grand Jury, was the Commander: They at firſt ſeemed to be afraid of *Kidd*; but without any Ground, as his former Actions had demonſtrated, and the Sequel ſhewed. They, who are hardened Pirates, and long inured to Villanies, could ſcarce think that any Man could ſo betray the Truſt and Confidence the Publick had placed in him, and ſaid, They heard he was come to take and hang them: But Captain *Kidd* aſſured them, That he had no ſuch Deſign; and that he had rather his Soul ſhould broil in Hell, than do them any Harm; bid them not be afraid, and ſwore he would be true to them. And here, indeed, he did not break his Word: This was his Way of being true to his Truſt, and making good the Ends of his Commiſſion, in acting with the greateſt Treachery, and the greateſt Falſeneſs, that ever Man did. And to make all that has been repreſented of him true, Captain *Kidd* and Captain *Culliford* went on Board, treated, and preſented each other; and inſtead of taking *Culliford*, as it was his Duty to have done, and his Force was ſufficient to have performed it, he gave him Money and Ammunition, two great Guns and Shot, and other Neceſſaries, to fit him out to Sea, that he might be in a Condition the better to take and ſeize other innocent Perſons.

His own Ship he now left, and went on Board the *Quedah-Merchant*; ſeveral of his Men then went from him; but not the Priſoners; they were all along Well-wiſhers and Aſſiſtants to him; fought for him, divided the Plunder with him, and are now come to be tried with him.

This, Gentlemen, is the Crime he is indicted for, Piracy; the growing Trouble, Diſturbance, and Miſchief of the Trading World, and the peaceable Part of Mankind; the Scandal and Reproach of the *European Nations*, and the Chriſtian Name, (I wiſh I could not ſay, that the *Kidds* and the *Averys* had not made it more particularly ſo of the *Engliſh*) amongſt *Mahometans* and *Pagans*, in the extremeſt Parts of the Earth; which turns not only to the Diſadvantage of the immediate Sufferers, but of all ſuch as traffick in thoſe Countries, whether Companies or ſingle Merchants, who are to ſuffer for the Misfortunes of others, with whom, it may be, they have no Dealings; and for the Villanies of ſuch whom they and all Mankind equally and juſtly deteſt and abhor.

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This is the Perſon that ſtands indicted at that Bar, than whom no one in this Age has done more Miſchief, in this worſt kind of Miſchief; or has occaſioned greater Confuſion and Diſorder, attended with all the Circumſtances of Cruelty and Falſhood, and a Complication of all manner of Ill.

If, therefore, theſe Facts ſhall be proved upon him, you will then, Gentlemen, in finding him Guilty, do Juſtice to the injured World; the *Engliſh* Nation, (our Common Country) whoſe Intereſt and Welfare ſo much depend on the Encreaſe and Security of Trade; and, laſtly, to yourſelves, whom the Law has made Judges of the Fact.

The Evidence.

The King's Witneſſes being called, *Robert Braddinham*, the Surgeon on Board *Kidd's* Ship, was ſworn, and depoſed, That they ſet ſail from *Plymouth* in the *Adventure-Galley*, the Beginning of *May*, 1696, having about eighty Men on Board, and thirty Guns; and in their Way to *New-York* they took a *French* Bark: That having increaſed their Number of Men to 155, they ſailed from *New-York* to *Madagaſcar*, and from thence to *Babb's-Key*, an Iſland on the Mouth of the *Red-Sea*, where they waited a Fortnight, or three Weeks, for the *Mocca* Fleet, and attacked them as they came by; but finding they were under an *Engliſh* and *Dutch* Convoy, he left them, and ſailed towards the Coaſt of *Malabar*; and meeting with a *Mooriſh* Ship, commanded by Captain *Parker*, in his Way thither, he took the Captain for his Pilot, and a *Portugueſe* out of the ſame Ship for his Interpreter, with ſome Gold and Merchandiſe, and drubbed the Mariners with naked Cutlaſhes, to make them confeſs where their Money was. —That the *Engliſh* Factory ſending to demand Captain *Parker*, and the Interpreter, he kept them in the Hold, and denied he had any ſuch Perſons on Board: That he afterwards met with a *Portugueſe* Man of War, and fought him three or four Hours, and then they parted: After which they went on Shore on ſome *Malabar* Iſlands, for Wood and Water, where they burnt ſeveral Houſes, and plundered the People; and *Kidd* ordered one of the Natives to be tied to a Tree and ſhot, becauſe they had cut his Cooper's Throat; That *Kidd* afterwards took a *Mooriſh* Ship, which they carried to *Madagaſcar*, and took ſeveral Sorts of Goods out of a *Mooriſh* Ketch, and then turned her a Driſt: And that he alſo took ſeveral Cheſts of Opium, and *Eaſt-India* Goods, out of a *Portugueſe* Ship. Then he proceeded to give a more particular Account of the ſeiſing

Kidd's Defence.

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of the *Quedah Merchant*, the Ship mentioned in the Indictment. He teſtified, That in the Month of *January*, 169⅞, Captain *Kidd* put up *French* Colours, and gave Chaſe to the ſaid Ship; and coming up with her, commanded the Maſter (one *Wright*, an *Engliſhman*) to come on board; and told him, he was his Priſoner: Then he commanded his Men to go on board the *Quedah Merchant*, and take Poſſeſſion of her; and he ſold and diſpoſed of as many of the Goods belonging to the ſaid Ship, on the *Malabar* Coaſt, as amounted to ſeven or eight thouſand Pounds: That, beſides Captain *Wright*, there were on Board the *Quedah Merchant*, two *Dutchmen*, a *Frenchman*, ſome *Armenians*, and *Moors* (*Indian-Mahometans*): And that the *Armenians*, to whom the Ship and Cargo belonged, offered *Kidd* twenty thouſand Rupees (Half-Crowns) for the Ranſom of the Ship and Goods; but *Kidd* ſaid, they were worth a great deal more, and carried them to *Madagaſcar*, where the Goods were ſhared among the Men; Captain *Kidd* reſerving forty Shares to himſelf.

That at *Madagaſcar* ſome *Engliſhmen*, who were formerly acquainted with *Kidd*, came to him from *Culliford* the Pirate, and ſaid, they heard he was come thither to take and hang them; but *Kidd* anſwered, He was as bad as they; went on Board *Culliford* in the *Mocca* Frigate, and ſwore to be true to thoſe Pirates, and aſſiſt them; and furniſhed them with Guns, and an Anchor to fit them out to Sea. — That the *Adventure-Galley* being leaky, *Kidd* left her at *Madagaſcar*, and went on Board the *Quedah Merchant*, in which Ship he ſailed afterwards.

Joſeph Palmer being ſworn, confirmed the Surgeon's Evidence, as to *Kidd*'s ſailing from *Plymouth* to *New York*, and from thence to *Madagaſcar*, and *Babb's-Key*, at the Entrance of the *Red-Sea*, where he attacked the *Mocca* Fleet; and of his ſailing afterwards to the *Malabar* Coaſt, and taking ſeveral Prizes there, particularly the *Quedah Merchant*, and ſelling Part of her Cargo to the *Banians* on the *Malabar* Coaſt, and ſharing the Money, and the reſt of the Goods, with his Men, at *Madagaſcar*, whether they carried that Ship, and entered into a friendly Correſpondence with Captain *Culliford*, the Pirate, who commanded the *Mocca* Frigate.

Kidd's Defence.

Then Captain *Kidd* being ordered to enter upon his Defence, ſaid, He had a Commiſſion to take *French* Ships, and another to take Pirates; and that two of the Ships he took had *French* Paſſes; and that he called his Men upon Deck, to conſult what was to be done with them, appealing to *Palmer*, the laſt Witneſs, If he would not have given theſe Ships to the Owners again, if his Men had not all been againſt it? *Palmer* anſwered, That the *Armenian*, (who was in Court) offered twenty thouſand Rupees for the Ship, and he refuſed it: But the *Armenians* crying and wringing their Hands, the Captain ſaid, Theſe *Armenians* make ſuch a Noiſe for the Ship, I muſt ſay my Men will not part with her, though there were not a Quarter of the Men concerned in it.

Then both Captain *Kidd*'s Commiſſions were read, at his Requeſt: By the firſt of which he was authoriſed to cruiſe upon the *French*, and make Repriſals for the Damages they had done the King's Subjects in the Ship called the *Adventure Galley*: Which Commiſſion was dated the 11th of *December*, 1695. 1701. 13 W. III.

By the ſecond Commiſſion, he was impowered to cruiſe in the *Adventure Galley*, againſt the Pirates in the *Indies*; and this Commiſſion is dated on the 26th of *January*, 169⅞.

The Court demanding, how he could excuſe himſelf by Virtue of theſe Commiſſions, Captain *Kidd* anſwered, The Commander of the *Quedah Merchant* had a *French* Commiſſion; and appealed to *Palmer*, the Witneſs, for the Truth of it; but *Palmer* anſwered, he never ſaw it: And the Court told him, he ſhould have got the Ship condemned, if ſhe had been *French*.

Then Captain *Kidd* called one *Davis* as a Witneſs for him, who teſtified, That Captain *Kidd* being at *Amboyna*, in the *Eaſt-Indies*, produced two Paſſes, which he ſaid were *French* Paſſes; but he (the Witneſs) could not tell whether they had any Relation to the *Quedah Merchant* that was taken.

Captain *Kidd* alſo appealed to *Bradenham*, the Witneſs, if he did not ſee the *French* Paſſes; but he anſwered, he only heard he had *French* Paſſes.

Mr. *Say* being called as a Witneſs for *Kidd*, ſaid, He heard *Bradenham* the Surgeon ſay, he had been with Captain *Kidd* at *Madagaſcar*, and he believed he had done nothing but what he could anſwer.

Captain *Humphreys* and Captain *Bond* being called to *Kidd*'s Reputation, ſaid, He had done good Service, and acted with great Applauſe in the *Weſt-Indies*, in the Beginning of the laſt War: To which the Court anſwered, There was no doubt but the Miniſtry had a good Opinion of him in the Year 1695, when they procured him thoſe Commiſſions; but he was not then turned Pirate.

The reſt of the Priſoners being asked, What they had to ſay in their Defence? *Robert Lamley* anſwered, he was Servant to Mr. *Owens*; and *Jenkins* ſaid, he was Servant to *Buller*: *Loffe* ſaid, he went to ſerve his Majeſty, whoſe Commiſſion Captain *Kidd* had: The Court anſwered, he had Part of the Money and Goods that were taken, and he muſt believe, when *Kidd* did thoſe extravagant Things, he did not act according to his Commiſſion. *The Defence of the other Priſoners.*

Parrot alſo ſaid, He came on Board Captain *Kidd* at *Madagaſcar*, underſtanding he had the King's Commiſſion; and being told, he could not imagine he was acting according to his Commiſſion when he did theſe Things, he anſwered, he thought he was ſafe where the King's Commiſſion was.

Barlicorn ſaid in his Defence, That he was Servant to Captain *Kidd*: *Abel Owens* ſaid, he ſurrendered to a Juſtice of Peace in *Southwark* on his Majeſty's Proclamation; but was told that a Juſtice of Peace was not within the Proclamation, though that might recommend him to the King's Mercy.

Darby Mullins ſaid, He came in upon the King's Proclamation; and being told he had his Dividend of the Money and Goods, he anſwered, *Kidd* gave it him, and afterwards took it from him.

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The Lord Chief Baron's Directions to the Jury.

Then the Lord Chief Baron proceeded to direct the Jury, and ſaid: The Priſoners at the Bar, in Number ten, all ſtand indicted for Piracy, in felonioufly and piratically Seizing and Taking the Ship, called the *Quedah Merchant*, with the Apparel and Tackling thereof, to the Value of 400 *l.* and divers Goods mentioned in the Indictment, to the Value of 4,500 *l.* from the Mariners of the ſaid Ship, belonging to ſeveral Perſons unknown, (*and having repeated the Evidence, the Chief Baron goes on, and ſays;*

Now, Gentlemen, this muſt be obſerved: If this was a Capture on the High Seas, and theſe were the Goods of Perſons in Amity with the King, and had no *French* Paſs, then it is plain Piracy: And, if you believe the Witneſſes, here is a Taking of the Goods and Ship of Perſons in Amity, and converting them to their own Uſe: Such a Taking at Land as this would be Felony; and being at Sea, it will be Piracy: For this is a taking the Ship from the right Owners, and turning it to their own Uſe. So that you have Evidence as to the Seizing of the Ship, and dividing the Money riſing from the Goods ſold, and ſharing the Remainder, according to the Articles.

Now, what does Captain *Kidd* ſay to all this? He has told you, he acted purſuant to his Commiſſion; but that cannot be, unleſs he gives you Satisfaction that the Ship and Goods belonged to the *French* King, or his Subjects, or that the Ship had a *French* Paſs, otherwiſe neither of them will excuſe him from being a Pirate: For if he takes the Goods of Friends, he is a Pirate; he had no Authority for that: There is no Colour from either of his Commiſſions for him to take them. And as to the *French* Paſſes, there is nothing of that appears by any Proof; and, for ought I can ſee, none ſaw them but himſelf, if there were ever any. It is proved that the People that were Owners of the Goods, made him very large Offers to redeem the Ship, (20,000 Rupees, as I remember) but he would not accept their Propoſal; but ſaid, That is a ſmall Sum, the Cargo is worth a great deal more, or to that Effect: And further ſaid, he muſt anſwer theſe People, that his Men will not part with it. And a *Frenchman* was to be ſet up for a Mock-Buſineſs, as you have heard; and if the Witneſſes ſay true, they were ſaid by the Captain of the Ship to be, and were reputed to be, the Ship and Goods of Friends, and not of Enemies; and if they were ſo, and had no *French* Paſs, then is he, and thoſe that were concerned with him, guilty of Piratically taking this Ship, and of Piratically ſeizing the Goods in the Ship; and neither of his Commiſſions will juſtify ſuch an Action as this. If he had acted purſuant to his Commiſſion, he ought to have condemned the Ship and Goods, if they were in a *French* Intereſt, or ſailed under a *French* Paſs; but by his not condemning them, he ſeems to ſhew his Aim, Mind, and Intention, that he did not act in that Caſe by Virtue of his Commiſſion, but quite contrary to it; for he takes the Ship, and ſhares the Money and Goods, and is taken in that very Ship by my Lord *Bellamont*, and he had continued in that Ship till that Time; ſo that there is no Colour or Pretence appears, that he intended to bring this Ship to *England*, to be condemned, or to have condemned it in any of the *Engliſh* Plantations, having diſpoſed of the whole Cargo, as aforeſaid. Here I muſt leave it to you to conſider whether, according to the Evidence that appears, there is any Ground for him to ſay, he has acted by his Commiſſion in taking the *Quedah Merchant*, and Goods in her, or whether he has not acted contrary thereunto. 1701. 13 W. III.

Now for himſelf, he has called ſome Perſons here, to give an Account of his Reputation, and of his Services done in the *Weſt-Indies*; and one of them ſays, about ten or twelve Years ago he did good Service there. Why ſo he might, and might have, and it is very like he had ſuch a Reputation, when the King truſted him with theſe Commiſſions, elſe I believe he had, never had them; ſo that, whatever he might be ſo many Years ago, that is not a Matter to be inſiſted on now, but what he hath been ſince, and how he hath acted in this Matter charged againſt him: So that, Gentlemen, as to Mr. *Kidd*, I muſt leave it to you, whether he is guilty of Piracy or no; and if you believe him guilty upon the Evidence, you will find him ſo; if not, you will acquit him.

Now for the other Priſoners, it is proved they were all concerned in Taking and Sharing the Ship and Goods in the Indictment; yet their Circumſtances differ pretty much among themſelves. There are three of them that it has been made out to you, and owned by the King's Witneſſes, that they were Servants; *Robert Lamley*, *William Jenkins*, *Richard Barlicorn*. All theſe are made out to be Servants, and you have had the Indentures of two of them produced, and the King's Witneſſes prove them ſo, and they were admitted to be Servants. Now, Gentlemen, there muſt go an Intention of the Mind, and the Freedom of the Will, to the committing a Felony or Piracy. A Pirate is not to be underſtood to be under Conſtraint, but a free Agent; for in this Caſe the bare Act will not make him guilty, unleſs the Will make it ſo. Now, a Servant, it is true, if he go voluntarily, and have his Proportion, he muſt be accounted a Pirate; for then he acts upon his own Account, and not by Compulſion. And theſe Perſons, according to the Evidence, received their Part; but, whether they accounted to their Maſters for their Shares afterwards, yea or no, as they pretend, but make no Proof of it, I muſt leave that to you; and therefore there is a Conſideration to be had of them. For, if theſe Men did go under the Compulſion of their Maſters, to whom they were Servants, and not voluntarily, and upon their own Accounts, it may difference their Caſe from others, who went and acted willingly in this Matter, and upon their own Accounts. So that, as to thoſe that were Servants under the Command of their Maſters that were preſent with them, I muſt leave it to you, whether you will diſtinguiſh between them and the others, that were not Servants, but free Agents. It is true, a Servant is not bound to obey his Maſter but in lawful Things, which they ſay they thought this was; and that they knew not to the contrary, but that their Maſters

Three acquitted.

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Masters acted according to the King's Commission; and therefore, their Case must be left to your Consideration, whether you think them, upon the whole Matter, guilty or no. If you believe them guilty, you will find them so, otherwise you will acquit them.

For the other Persons, some of them pretend they came in on his Majesty's Proclamation, and for that you must consider the Evidence, and take it altogether; and consider whether you are satisfied, by what they have said or proved, that they have brought themselves within the Benefit of the King's Favour by that Proclamation. You have heard it read, and observed the Qualifications and Directions by it, and the Terms upon which the Pardon was promised, which are not made out to you, to be complied with by them. They may apply another Way for the King's Mercy; this Court must proceed according to the Rules of Law and Justice. But then all of them insist on this; We were, say they, under the Captain, and acted under him as our Commander; and, Gentlemen, so far as they acted under his lawful Commands, and by Virtue and in Pursuance of his Commissions, it must be admitted they were justifiable, and ought to be justified: But how far forth that hath been, the Actions of the Captain, and their own, will best make it appear. It is not contested, but these Men knew, and were sensible of what was done and acted, and did take Part in it, and had the Benefit of what was taken, shared amongst them: And if the taking of this Ship and Goods were unlawful, then these Men can claim no Advantage by these Commissions, because they had no Authority by them to do what they did, but acted quite contrary to them: What had they to do to enter into such Articles and to act as they did? You must consider the Evidence given here according to the Rules of the Law, and if you are satisfied, that they have knowingly and wilfully been concerned or partaken with Captain *Kidd*, in taking this Ship, and divided the Goods, and that piratically and feloniously, then they will be guilty within this Indictment. It is worthy of Consideration, what appears upon the Evidence, that they met with one reputed to be a notorious Pirate, called *Culliford*; he was esteemed an Arch-Pirate, and known to be so; yet this Captain, *Kidd*, that was commissioned to take Pirates, instead of taking him, grows to such an Intimacy with him, that he said he would have his Soul fry in Hell before he would hurt him, or to that Effect; and so they made Presents one to another, and Captain *Kidd* left three of his Men with him. Whilst Men pursue their Commissions, they must be justified, but when they do Things not authorised, or never acted by them, it is as if there had been no Commission at all. I have distinguished the Evidence as well as my Memory serves me, and must leave it to you to determine, upon the whole Matter, who are guilty, and who not; and such as you are satisfied to be guilty, you will find so, and such as you are not satisfied to be guilty, you will acquit.

Then the Jury withdrew, and, after half an Hour's Recess, brought in the following Verdict, *(viz.)*

Three acquitted. That *Lamley*, *Jenkins*, and *Barlicorn*, the three Servants, were *Not Guilty*; and that Captain *Kidd*, and the other six were all *Guilty*.

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Then all the ten were arraigned on four other Indictments; the first of which charged them with piratically seizing and robbing a *Mooriſh* Ship, on the 20th of *September*, in the ninth Year of the King, on the High-Sea, about fifty Leagues from *Carwar* in the *East-Indies*. *Seven convicted.* *Second Indictment.*

3. The third Indictment charged them with piratically taking another *Mooriſh* Ship on the 27th of *November*, near *Callicut* in the *East-Indies*. *Third Indictment.*

4. The Fourth charges them with taking a *Mooriſh* Ketch near *Callicut*, on the 28th of *December*; and *Fourth Indictment.*

5. The Fifth charges them with taking a *Portugueſe* Ship, near *Callicut*, on the 20th of *January*, in the same ninth Year of the King. *Fifth Indictment.*

The Witnesses were the same, at the Trials on these Indictments, as they were at the former, and gave much the same Evidence: And as the Prisoners were convicted already, and had little more to say in their Defence of these Facts, than they had insisted on before, it is perfectly unnecessary to go over the Evidence again: I shall only observe, therefore, That *Lamley*, *Jenkins*, and *Barlicorn*, the three Servants, were acquitted, and all the rest were convicted on two of the Indictments; and that on the fourth and fifth Indictments, *Churchill*, *How*, and *Owens* pleaded Guilty; And *Kidd*, *Loffe*, *Parrot*, and *Mullins* were found Guilty by the Jury upon the two last Indictments. *The same Evidence on these four Indictments.* *Three acquitted, and seven convicted.*

William Kidd, *Nicholas Churchill*, *James How*, *Gabriel Loffe*, *Hugh Parrot*, *Abel Owens*, and *Darby Mullins*; together with *Robert Hickman* and *John Eldridge*, who had been convicted of Piracy also, were afterwards called to Judgment, and Doctor *Oxenden* passed the following upon them, *(viz.)*

You shall be taken from the Place where you are, and be carried to the Place from whence you came, and from thence to the Place of Execution, and there be severally hanged by your Necks until you be dead. *Sentence passed on seven.*

Whereupon *William Kidd*, and three of his Accomplices, who did not come in upon the Proclamation, were hanged at *Execution Dock*, and their Bodies left hanging upon Gibbets by the *Thames* Side, for a Terror to others. *Four of the Pirates executed.*

A certain *Indian* Prince, of the Great Mogul's Family, having been taken by *European* Pirates in the *Indian* Seas, as he was going on a Pilgrimage from *India* to *Mecca*, the *East-India* Company's Factors at *Suratt* were thereupon laid in Irons, and threatened to be severely dealt with: But upon representing that these People were Robbers, alike Enemies to them and to all Mankind; and applying to the Mogul's Officers, in such a Manner as seldom fails to mollify Courtiers of any Religion or Nation, the Company's Factors obtained their Liberty: However, apprehending they should be liable to the like Insults again, if the *English* Pirates in those Seas were not suppressed; they desired the Company to procure a Man of War to be sent thither for the Protection of the Merchants on that Side, and to destroy a Nest of Pirates, that lay in some obscure Creeks in *Madagascar*; and upon the Company's petitioning the Government for a Man of War, it was granted, and Captain *Kidd* pitched upon for that Service. *Remarks on* Kidd's *Trial.*

This

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This was looked upon to be ſo gainful an Expedition, that ſome of the Miniſtry ingaged in it; as the Lord *Somers*, the Earl of *Romney*, the Earl of *Orford*, the Lord *Bellamont*, and other Perſons of Diſtinction, who laid down large Sums to fit out the Ship, and procured a Grant from the Crown, of all that *Kidd* ſhould take; who afterwards turning Pirate, their Enemies ſuggeſted, that he had ſecret Orders from thoſe great Men, who employed him for what he did, and was aſſured of Protection from them: Others ſaid, it was not becoming Miniſters of State, to ingage in ſuch Enterprizes; and hardly legal, to get a Grant of Spoils that ſhould be taken on the High Seas, before they were condemned as lawful Prize; concluding, that theſe Noblemen would never have engaged in ſuch an Enterprize, if there had not been ſome extraordinary Gains in View, more than could have been got, by taking a Pirate Ship or two: That as *Kidd* was bound to the *Indian* Seas, he had probably his Eye on the rich Ships which trade between *Perſia* and *India*, when he ſet Sail; and had given his Employers Expectations of bringing Home an immenſe Treaſure. 1701. 13W. III.

But whatever *Kidd* pretended, or theſe Noble Adventurers expected; certain it is, he made Prizes of ſeveral Merchant Ships in the *Indian* Seas, and divided the Spoils with his Crew, and returning afterwards to *New England*, was taken there by the Lord *Bellamont*, the Governor, and ſent to *England*, where he was condemned and executed for Murder and Piracy; while his Employers were ſeverely reflected on, and their Encouragement of him made the Occaſion (among other Things) of impeaching two of the ſaid Lords, (*viz.*) the Lord *Somers* and the Earl of *Orford*, as will appear by the following Proceedings.

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The four impeached Lords.

Proceedings on the Impeachment of WILLIAM Earl of *Portland*, JOHN Lord *Somers*, EDWARD Earl of *Orford*, and CHARLES Lord *Halifax*, in the Year 1701. 1701. 13W.III.

The Occaſion of impeaching them.

A Treaty of Partition of the *Spaniſh* Monarchy, having been concluded on the 15th of *March* 1700, N. S. 4 O. S. between *Great Britain* and *Holland* on the one Part, and *France* on the other; whereby the Kingdom of *Naples* and *Sicily*, and the reſt of the *Spaniſh* Territories on the Coaſt of *Italy*, together with the Province of *Guipuſcoa* and the Dutchy of *Lorrain*, were allotted to *France* on the Death of the then King of *Spain*:

The Commons took the ſaid Treaty into their Conſideration in *March* following, and preſented an Addreſs to his Majeſty; wherein they repreſent the ill Conſequences of that Treaty of Partition, whereby ſuch large Territories of the King of *Spain*'s Dominions were to be delivered up to the *French* King.

The Houſe of Peers alſo preſented an Addreſs to the King on the 20th of *March*, 1700-1. wherein they tell him, That they found to their great Sorrow, that this Treaty would be of very ill Conſequence to the Peace and Safety of *Europe*; for that beſides the Occaſion it might have given the late King of *Spain*, (who died juſt before) to have made his Will in Favour of the Duke of *Anjou*, if that Treaty had taken Effect; the Prejudice to his Majeſty and his Subjects, and indeed to all *Europe*, by the Addition of *Sicily*, *Naples*, *Guipuſcoa*, and *Lorrain* to *France*, had not only been very great, but contrary to the Pretence of the Treaty itſelf; which was to prevent any Umbrage that might have been taken by uniting ſo many States and Dominions under one Head: That by all the Informations they had had of this fatal Treaty, they could not find that the verbal Orders or Inſtructions (if any were given to his Majeſty's Plenipotentiaries) were ever conſidered in any of his Majeſty's Councils; or, That the Draught of that Treaty had ever been laid before his Majeſty at any Meeting of his Council; much leſs that it was adviſed or approved of by any Council or Committee of Council: Wherefore they thought themſelves bound in Duty to his Majeſty, and Juſtice to their Country, moſt humbly to beſeech him, that for the future, he would be pleaſed to require and admit, in all Matters of Importance, the Advice of his natural born Subjects, whoſe known Probity and Fortunes might make him and his People a juſt Aſſurance of their Fidelity to his Service; and that in order thereunto, he would be pleaſed to conſtitute a Council of ſuch Perſons, to whom his Majeſty might be pleaſed to impart all Affairs both at Home and Abroad, which might any Way concern him and his Dominions: For as Intereſt and natural Affection to their Country, would incline them to wiſh the Welfare and Proſperity of it, much more than others, who had no ſuch Ties upon them; and as their Experience and Knowledge of their Country would alſo render them more capable than Strangers, of adviſing his Majeſty in the true Intereſt of it; ſo they were confident, that after ſuch large and repeated Demonſtrations of his Subjects Duty and Affection, his Majeſty could not doubt of their Zeal in his Service, nor want the Knowledge of Perſons fit to be employed in all his moſt ſecret and arduous Affairs: And ſince it appeared the *French* King's accepting of the King of *Spain*'s Will, was a manifeſt Violation of that Treaty, they humbly adviſed his Majeſty, in future Treaties with that Prince, to proceed with ſuch Caution as might carry a real Security.

The Earl of Portland charged with negotiating the Partition Treaty

Some few Days after the Earl of *Portland* was charged directly in the Houſe of Peers with negotiating the ſaid Treaty: To which his Lordſhip ſaid, by Way of Apology for himſelf, That the Earls of *Pembroke*, *Jerſey*, and *Marlborough*, and the Lords *Somers*, *Lonſdale*, and *Halifax*

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Halifax were privy to that Negociation; and their Lordſhips did acknowledge they had ſeen a Draught of the ſaid Treaty; but ſaid, the Earl of *Portland* drew it up himſelf in *French*, and they had neither given or refuſed their Aſſent to it, for it was never communicated to the Privy Council.

The Commons alſo, in their Debates on this Treaty, reflected ſeverely on the huddling it up in the Dark; and Mr. *Howe* particularly ſaid, *That the Partition Treaty was a Felonious Treaty*; comparing it to the Diſtribution of other Men's Effects among Robbers and Highwaymen. And on the Firſt of *April*, 1701, the Houſe of Commons came to this Reſolution, That *William* Earl of *Portland*, by negociating and concluding the Treaty of Partition, which was deſtructive to the Trade of this Kingdom, and dangerous to the Peace of *Europe*, was guilty of High Crimes and Miſdemeanors, and ſhould be impeached thereupon: And Sir *John Leveſon Gower*, by Order of the Houſe, immediately went up to the Lord's Bar, and impeached the ſaid Earl; acquainting their Lordſhips, that the Commons would in due Time exhibit Articles againſt him.

Earl of Portland impeached.

The Commons afterwards being upon a Debate on the 14th of *April*, whether they ſhould impeach the Lord *Somers* for adviſing the ſaid Treaty of Partition; his Lordſhip deſired he might be heard, before the Houſe came to any Reſolution thereupon; and being admitted into the Houſe, he made an Apology for his Conduct in that Affair, containing much the ſame Matter contained in his Anſwer, (hereafter mentioned): But he being withdrawn, the Commons Reſolved, That *John* Lord *Somers*, by adviſing his Majeſty to conſent to the Treaty for the Partition of the *Spaniſh* Monarchy, whereby large Territories of the King of *Spain*'s Dominions were to be delivered up to *France*, was guilty of a High Crime and Miſdemeanor: And Mr. *Harcourt*, by Command of the Houſe, impeached Lord *Somers* at the Bar of the Houſe of Lords; declaring, that the Commons would, in due Time, exhibit Articles againſt him.

Lord Somers impeached.

Two Letters produced by Lord Somers, in Defence of his Conduct.

The Lord *Somers*, at his Hearing before the Commons, delivered in the two following Letters, as a Juſtification of his Conduct.

The King's Letter to Lord Somers, *concerning the Partition Treaty, dated at* Loo, 15---25 Auguſt, 1698.

The King's Letter to him.

" I Imparted to you, before I left *England*, " that in *France* there was expreſſed to " my Lord *Portland*, ſome Inclination to come " to an Agreement with us, concerning the Succeſſion of the King of *Spain*; ſince which " Count *Tallard* has mentioned it to me, and " has made Propoſitions, the Particulars of " which my Lord *Portland* will write to *Vernon*; " to whom I have given Orders not to communicate them to any other beſides yourſelf, " and to leave to your Judgment to whom " elſe you would think proper to impart them; " to the End I might know your Opinion upon " ſo important an Affair, and which requires " the greateſt Secrecy. If it be fit this Negociation ſhould be carried on, there is no Time " to be loſt; and you will ſend me the full " Powers under the Great Seal, with the Names " in Blank, to treat with Count *Tallard*. I believe, that this may be done ſecretly, that " none but you and *Vernon*, and thoſe to whom " you ſhall have communicated it, may have " Knowledge of it; ſo that the Clerks, who " are to write the Warrant and the full Powers, " may not know what it is. According to all " Intelligence, the King of *Spain* cannot outlive the Month of *October*, and the leaſt Accident may carry him off every Day. I received yeſterday, your Letter of the Ninth: " Since my Lord *Wharton* cannot at this Time " leave *England*, I muſt think of ſome other to " ſend Ambaſſador into *Spain*; if you can think " of any one proper, let me know it, and be " always aſſured of my Frindſhip.

William Rex.

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Tunbridge-Wells, 28*th of* Auguſt, 1698. O. S.

Sir,

Lord Somers's Anſwer to the King.

" HAVING your Majeſty's Commiſſion to try if the Waters would contribute to " the Re-eſtabliſhment of my Health, I was juſt " got to this Place, when I had the Honour of " your Commands; I thought the beſt Way of " executing them would be to communicate to " my Lord *Orford*, Mr. *Montague*, and the " Duke of *Shrewſbury*, (who, before I left *London*, had agreed upon a Meeting about that " Time) the Subject of my Lord *Portland*'s " Letter; and at the ſame Time letting them " know, how ſtrictly your Majeſty required " that it ſhould remain an abſolute Secret.

" Since that Time, Mr. *Montague*, and Mr. " Secretary are come down hither; and upon " the whole Diſcourſe, three Things have principally occurred to be humbly ſuggeſted to " your Majeſty.

" Firſt, That the entertaining a Propoſal of " this Nature ſeems to be attended with very " many ill Conſequences, if the *French* did not " act a ſincere Part; but we were ſoon at Eaſe " as to any Apprehenſions of this Sort, being " fully aſſured your Majeſty would not act but " with the utmoſt Nicety, in an Affair wherein " the Glory and Safety of *Europe* were ſo highly concerned.

" The ſecond Thing conſidered, was, The " very ill Proſpect of what was like to happen " upon the Death of the King of *Spain*, in Caſe " nothing was done previouſly, towards the " providing againſt that Accident, which ſeemed probably to be very near; the King of " *France* having ſo great a Force, in ſuch a Readineſs, that he was in a Condition to take " Poſſeſſion of *Spain*, before any other Prince " could be able to make a Stand: Your Majeſty " is the beſt Judge, whether this be the Caſe, " who are ſo perfectly informed of the Circumſtances of Parts abroad.

" But ſo far as relates to *England*, it would " be want of Duty not to give your Majeſty " this clear Account, That there is a Deadneſs " and Want of Spirit in the Nation univerſally, " ſo as not at all to be diſpoſed to the Thought of " entering into a new War; that they ſeemed " to be tired out with Taxes, to a Degree beyond what was diſcerned, till it appeared upon the Occaſion of the late Elections. This

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" is the Truth of the Fact, upon which your " Majeſty will determine what Reſolutions are " proper to be taken.

" That which remained, was the Conſideration, What would be the Condition of *Europe*, if the Propoſal took Place: Of this we " thought ourſelves little capable of judging; " but it ſeemed that, if *Sicily* was in the *French* " Hands, they will be entirely Maſters of the " *Levant* Trade: That if they were poſſeſſed " of *Final*, and thoſe other Sea-Ports on that Side, " whereby *Milan* would be entirely ſhut out from " Relief, by Sea, or any other Commerce, that " Dutchy would be of little Signification in the " Hands of any Prince: And that if the King " of *France* had Poſſeſſion of that Part of *Guipuſcoa*, which is mentioned in the Propoſal, " beſides the Ports he would have in the Ocean, " it does ſeem he would have as eaſy a Way of " invading *Spain* on that Side, as he now has " on the Side of *Catalonia*.

" But it is not to be hoped, that *France* will " quit its Pretences to ſo great a Succeſſion with- " out conſiderable Advantages; and we are all " aſſured your Majeſty will reduce the Terms " as low as can be done, and make them, as " far as is poſſible in the preſent Circumſtances " of Things, ſuch as may be ſome Foundation " for the future Quiet of *Chriſtendom*, which all " your Subjects cannot but be convinced is your " true Aim. If it could be brought to paſs, " that *England* might be ſome Way a Gainer by " this Tranſaction, whether it were by the Elector of *Bavaria* (who is the Gainer by your " Majeſty's Interpoſition in this Treaty) his " coming to an Agreement to let us into ſome " Trade to the *Spaniſh* Plantations, or in any " other Manner, it would wonderfully endear " your Majeſty to your *Engliſh* Subjects.

" It does not appear, in Caſe this Negociation ſhould proceed, what is to be done on " your Part, in order to make it take Place; " whether any more be required, than that the " *Engliſh* and *Dutch* ſhould ſit ſtill, and *France* " itſelf ſee it executed: If it be ſo, what Security ought to be expected, that if, by our " being Neuters, the *French* be ſucceſsful, they " will confine themſelves to the Terms of the " Treaty, and not attempt to make further Advantages of their Succeſs.

" I humbly beg your Majeſty's Pardon, that " theſe Thoughts are ſo ill put together; theſe " Waters are known to diſcompoſe and diſturb " the Head, ſo as almoſt totally to diſable one " from writing: I ſhould be extremely troubled " if my Abſence from *London* has delayed the " Diſpatch of the Commiſſion one Day: You " will be pleaſed to obſerve, that two Perſons " (as the Commiſſion is drawn) muſt be named " in it; but the Powers may be executed by either of them: I ſuppoſe your Majeſty will " not think it proper to name Commiſſioners " that are not *Engliſh*, or Naturalized, in an " Affair of this Nature.

" I pray God give your Majeſty Honour and " Succeſs in all your Undertakings." I am, with the utmoſt Duty and Reſpect,

Sir, *Your Majeſty's moſt Dutiful, and moſt Obedient Subject and Servant*, SOMERS.

" *P. S.* The Commiſſion is wrote by Mr. " Secretary, and I have had it ſealed in ſuch a " Manner, that no Creature has the leaſt " Knowledge of it, beſides the Perſons named.

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The Commons alſo, on the ſame 15th of *April*, impeached *Edward* Earl of *Orford*, and *Charles* Lord *Halifax*, of High Crimes and Miſdemeanors, ſeparately; Colonel *Byerley* carrying up the former Impeachment, and Mr. *Bridges* the latter. *Lords Orford and Halifax impeached.*

And they afterwards Reſolved on an Addreſs to his Majeſty, in which they declared the great Satisfaction they had received in their examining the Treaty of Partition; obſerving his Majeſty's Care in not entering on that Negociation without the Advice of his *Engliſh* Counſellors; and finding that *John* Lord *Somers*, on whoſe Judgment his Majeſty chiefly relied in that important Affair, did, in Concert with *Edward* Earl of *Orford* and *Charles* Lord *Halifax*, adviſe his Majeſty to enter into that Treaty, of ſuch dangerous Conſequence, without the Advice of his Council: That they might no longer be able to deceive his Majeſty, and abuſe his People, they deſired he would be pleaſed to remove the ſaid *John* Lord *Somers*, *Edward* Earl of *Orford*, and *Charles* Lord *Halifax* from his Council and Preſence for ever; as alſo *William* Earl of *Portland*, who tranſacted thoſe Treaties; and concluded with repeating their Aſſurances to ſtand by and ſupport his Majeſty, to the utmoſt of their Power. *An Addreſs of the Commons to remove theſe four Lords.*

To which his Majeſty anſwered, He ſhould employ none in his Service, but ſuch as were likely to improve that mutual Truſt and Confidence between them, which was ſo neceſſary at that Conjuncture for their own Security, and the Preſervation of their Allies. *His Anſwer.*

On the contrary, the Houſe of Lords, (in which the Courtiers had had a Majority for ſome Time), though they had themſelves ſaid very hard Things of the Partition Treaty, and the Manner of tranſacting it, in their Addreſs; yet, in Behalf of their favourite Brethren, they now preſented an Addreſs of another Strain; wherein they beſeech his Majeſty not to paſs any Cenſure on thoſe Lords, until they were tried upon the Impeachments the Commons had preferred againſt them. Thus Matters reſted till the Fifth of *May*, when the Lords ſent a Meſſage to the Commons, to remind them, that there were yet no Articles preferred againſt the impeached Lords: Thereupon the Commons, on the Ninth of the ſame Month, ſent up Articles againſt *Edward* Earl of *Orford*, in Maintenance of their Impeachment. *An Addreſs of the Lords to the Contrary.* *Articles againſt Lord Somers.*

Theſe Articles ſet forth, That the Earl, preferring his private Intereſt to the publick Good, had, during an expenſive War, procured ſeveral Grants from his Majeſty, of Lands and exorbitant Sums of Money: That, while he commanded the Royal Navy in the *Streights*, he received the Publick Money, and converted it to his private Uſe; and then procured a Privy Seal to diſcharge him of it: That he received conſiderable Sums from the King of *Spain* alſo, with great Quantities of Wine, Oil, and other Proviſion for the Fleet, which he converted to his own Uſe: That he ſold and diſpoſed of ſeveral Veſſels as Prizes, without Condemnation: That, preſiding in the Commiſſion of *Articles againſt the Earl of Orford.* *Lord Somers's Anſwer.*

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of Lord High Admiral, he had rejected the Requeſt of the *Eaſt-India* Company for ſuppreſſing Pirates; and had procured a Commiſſion for *William Kidd*, who had committed Piracy, encouraged thereto by his Hopes of the Earl's Protection: That, while he commanded the Royal Navy, he loſt ſeveral Opportunities of deſtroying the Enemy's Ships; and that he adviſed the King to enter into the Treaty of Partition, which was prejudicial to the Nation; with ſome other Things of leſs Moment.

His Anſwer.

To which the Earl anſwered, That his Majeſty, in Conſideration of his Services for many Years, had voluntarily made him a reverſionary Grant, of the Value of about 10,000 *l.* That he had legally paſſed his Accounts for all Monies he had received on Account of the Publick: That whatever he received of the King of *Spain* for the Fleet, was duly diſtributed among the Seamen: That he conſtantly gave Orders for proceeding againſt the Prizes that were taken according to Law: That he never diſcouraged the *Eaſt-India* Company's Requeſt for the ſuppreſſing of Pirates: That *Kidd*'s Commiſſion was granted according to Law, and intended for the Publick Good; and, if he had committed Piracy, he was never incouraged in it by the Earl: That he had not neglected his Duty againſt the Enemy; and, conſidering his Services againſt the *French* Fleet, he did not expect to be charged therewith: And denies that he adviſed his Majeſty to enter into the Partition Treaty; averring, that he objected to it, and gave his Opinion againſt the ſame.

Articles againſt Lord Somers.

The Commons alſo, on the nineteenth of *May*, ſent up Articles againſt the Lord *Somers*; wherein they charge him with adviſing the Partition Treaties, and paſſing both the Powers to treat, and the Treaties themſelves, under the Great Seal, without the Knowledge of the Council, or the other Lords Juſtices, leaving one intire Blank Sheet, with ſeveral other Blanks, to be filled up, as well in the Commiſſion and Powers for negociating the ſaid Treaties, as in the Treaties themſelves; neither did he inroll them in *Chancery*, as the Law required: That he paſſed many unreaſonable Grants under the Broad Seal; and adviſed and procured divers Grants of the forfeited Eſtates in *Ireland:* That, beſides the Fees and Perquiſites of his Office, he procured a Penſion of 4000 *l. per Annum*, and ſeveral other unreaſonable Grants, for his own Benefit, in which his Majeſty was deceived: That he had procured a Commiſſion for *William Kidd*, a Perſon of ill Fame, who had turned Pirate; and procured a Grant for himſelf and ſome others, in feigned Names, of ſuch Veſſels and Goods as he ſhould take: That he had made illegal and unwarrantable Orders, while Chancellor; with ſome other Matters of leſs Moment.

Lord Somers's Anſwer.

To which he anſwered, That he had, according to his Duty, given the King his Opinion freely on the Partition Treaties, and had his Majeſty's Letters for his Warrant in ſetting the Great Seal to the ſaid Commiſſions and Treaties: That it was not incumbent upon him, as Lord Chancellor, to ſee the ſaid Commiſſions or Treaties inrolled; but the Care of it belonged to the Prothonotary of the Court of *Chancery:* That he never paſſed any Grants without ſufficient Warrants; and that more conſiderable Grants had paſſed in the Times of his Predeceſſors: That the Annual Penſion of 4000 *l. per Annum*, had been allowed to other Chancellors: That he never begged any Grant; but what he had received, was given him voluntarily by his Majeſty, in Conſideration of his Services: That the Commiſſion to Captain *Kidd* was then thought neceſſary for the Preſervation of Trade and Navigation. He acknowledges, that *Samuel Newton*'s Name, in the Grant of the Veſſels and Goods that ſhould be taken by *Kidd*, was uſed in Truſt for him (the Lord *Somers*); but that *Kidd* having abuſed his Commiſſion, and turned Pirate, his Employers had loſt their Expences, inſtead of making any Gains by ſending him out.

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Articles againſt Lord Halifax.

The Articles againſt *Charles* Lord *Halifax*, ſet forth, That, whereas the Commons had thought it reaſonable to apply the forfeited Eſtates in *Ireland*, to the Uſe of the Publick, he had procured a Grant of ſeveral Sums, forfeited to the Crown in that Kingdom, amounting to 13,000 *l.* That he had procured ſeveral Grants alſo in *England*; particularly a Grant of 14,000 *l.* to be raiſed out of ſcrubbed Beech, Birch, Holly, *&c.* growing in his Majeſty's Foreſts; under Colour whereof, he had cut down, and ſold for his own Benefit, ſapling Oaks, and many Tuns of well-grown Timber: That he procured ſeveral Offices and Places in the *Treaſury* and *Exchequer*, which he enjoyed at the ſame Time, though they were manifeſtly inconſiſtent, and ought to have been a Check on each other: And, laſtly, that he adviſed the Partition Treaties.

Lord Halifax's Anſwer.

To this, the Lord *Halifax* anſwered, That he did accept a Grant of Debts, *&c.* forfeited to the Crown in *Ireland*, and amounting to 13,000 *l.* as he lawfully might; but that they had been taken away from him by the late Act of Reſumption, and he had not made clear of them above 400 *l.* That he had alſo accepted of the Grants mentioned in *England*; and particularly 2000 *l. per Annum* for ſeven Years, to be raiſed by the Fall of ſcrubbed Beech, Birch, *&c.* and if any Abuſe had been in cutting the Wood, he was not anſwerable for the ſame, it being done by the Direction of his Majeſty's Surveyor-General, and other Officers. He does not deny his enjoying the ſaid Places in the *Treaſury* and the *Exchequer*; but ſays it was but for a little while: He deſigned, from the Beginning, to lay ſome of them down, and had actually relinquiſhed ſome of them. He ſays, he never adviſed the Partition Treaties, or was conſulted thereupon; but when the Matter was diſcourſed of at *Tunbridge-Wells*, he made ſeveral Objections to the ſame.

A Meſſage from the Lords.

The Lords, by a Meſſage the 24th of *May*, put the Commons in Mind of replying to the Earl of *Orford*'s Anſwer, That a Day might be appointed for his Trial; and of exhibiting Articles againſt the Earl of *Portland*.

The Commons Anſwer.

To which the Commons anſwered, That they deferred bringing up the Replication againſt the Earl of *Orford*, becauſe they thought fit to begin with the Trial of the Lord *Somers*; and to the other Part of the Lords Meſſage, putting them in Mind of ſending up Articles of Impeachment againſt the Earl of *Portland*, *&c.* they held it to be unparliamentary, they, as Proſecutors,

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tors, being the proper Judges, where Articles of Impeachment ought to be brought up.

Another Meſſage from the Lords.

Then the Lords ſent a Meſſage to the Commons, acquainting them, That they had appointed the ninth of *June*, for the Trial of the Earl of *Orford*; and that the Commons might reply, if they thought fit: They alſo put them in Mind again, That no Articles were exhibited againſt the Earl of *Portland*; which, after an Impeachment had ſo long depended, they obſerved, was a Hardſhip, and not agreeable to the uſual Method of Parliament.

The Commons Anſwer.

To which the Commons replied, That it was their undoubted Right, when ſeveral Perſons ſtood impeached, to bring to Trial ſuch of them, in the firſt Place, as they ſaw fit; and that no Day ought to be appointed by their Lordſhips for the Trial, without ſome previous Signification to their Lordſhips from the Commons, of their being ready to proceed therein; and therefore the Commons could not agree to the Day appointed by their Lordſhips, for the Trial of the Earl of *Orford:* And as to that Part of their Meſſage, relating to the ſending up Articles againſt the Earl of *Portland*, they thought their Lordſhips, by the frequent Repetition of it, intended to introduce Diſputes, to the Delay of Juſtice, and in Breach of that good Correſpondence which ought to be obſerved between the two Houſes.

The Lords, in a ſubſequent Meſſage, put the Commons in Mind of replying to the Lord *Somers*; and aſſerted, That the Right of limiting a convenient Time for the Trial, was lodged in them.

Differences ariſe between the two Houſes, concerning the Trials of the four Lords.

The Commons afterwards, at a Conference, propoſed the appointing a Committee of both Houſes, to conſider of the moſt proper Ways and Methods of proceeding on Impeachments: But the Lords, by another Meſſage, inſiſted on their Right of appointing the Day of Trial, without any previous Signification from the Commons, of their being ready; and complain that the Commons ſhould charge them with delaying Juſtice.

The Commons, on the other hand, inſiſted on the nominating a Committee of both Houſes, to adjuſt the neceſſary Preliminaries to the Trials; as whether the impeached Lords ſhould appear at their Trials, at their Lordſhips Bar, as Criminals? And whether they ſhould ſit as Judges at each other's Trials, or vote in their own Caſes; as they found by their Lordſhips Journals they had been admitted to do.

The Lords appoint a Day for the Trial of Lord Somers;

Still the Lords refuſed to appoint any ſuch Committee, to conſider of the Ways and Methods of Impeachments, and appointed *Friday*, the 13th of *June*, for the Trial of the Lord *Somers*: But the Commons refuſed to appear at any Trial, till the Preliminaries were ſettled.

and declare their Reſolutions, as to the Order of the Trial.

The Lords afterwards ſent the following Reſolutions to the Commons, (*viz.*) 1ſt, That no Lord of Parliament, impeached for High Crimes and Miſdemeanors, and coming to his Trial, ſhall be without the Bar. 2dly, That no Lord, impeached of High Crimes and Miſdemeanors, can be precluded from voting on any Occaſion, except in his own Trial: And, that the Commons ſhould not pretend they were ſtreightened for Time, the Lords ordered the Trial of the Lord *Somers* to be put off to the 17th Inſtant; and agreed to a free Conference with the Commons.

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A Conference between the two Houſes thereon.

At this Conference, the Lord *Haverſham* ſaid, The Lords had ſo high an Opinion of the Juſtice of the Houſe of Commons, that they hoped Juſtice ſhould never be made uſe of, as a Maſk for any Deſign: That it was a Demonſtration, the Commons thought the Lords innocent, becauſe there were ſeveral other Lords ingaged in the ſame Things, whom they did not accuſe, but left them at the Head of Affairs, near the King's Perſon, to do any Miſchief, if they were inclined to it; when they were both alike guilty, and concerned in the ſame Facts.

The Commons reſent an Expreſſion of Lord Haverſham's.

Theſe Expreſſions were highly reſented by Sir *Chriſtopher Muſgrave*, and the Managers for the Commons, who took them to be ſuch an Aſperſion on the Honour of that Houſe, that they immediately withdrew from the Conference. As they withdrew, the Lord Steward ſaid, He hoped they would think, that Lord had any Authority from the Houſe of Lords to uſe any ſuch Expreſſions towards the Commons.

However the Managers being returned to their Houſe, it was Reſolved, That *John* Lord *Haverſham* had, at a free Conference, uttered moſt ſcandalous Reproaches and falſe Expreſſions, highly reflecting upon the Honour and Juſtice of the Houſe of Commons, and tending to the making a Breach in the good Correſpondence between the Lords and Commons, and to the interrupting the Publick Juſtice of the Nation, by delaying the Proceedings on Impeachments: And Reſolved, That *John* Lord *Haverſham* be charged before the Lords for the Words ſpoken at the ſaid Conference; and that the Lords be deſired to proceed in Juſtice againſt him, and to inflict ſuch Puniſhment upon the ſaid Lord, as ſo high an Offence againſt the Commons does deſerve.

Demand Juſtice againſt Lord Haverſham.

The Lords afterwards deſired, that the free Conference might be renewed, in order to ſet all Matters right: But the Commons Reſolved, That it was not conſiſtent with their Honour to renew the free Conference, till Juſtice was done them on the Lord *Haverſham*.

Rules to be obſerved at the Trial of a Peer.

The Lords, on the 16th of *June*, ſent the following Rules to be obſerved at the Trial of the Lord *Somers* the next Day, *viz.*

That the whole Impeachment is to be read, and then the Anſwer; which being done, the Lord Keeper is to tell the Commons, that now they may go on with their Evidence.

Then the Lord Keeper is to declare, that the Court is proceeding to hear the Evidence, and deſire the Peers to give Attention.

If any of the Peers, or Members of the Houſe of Commons that manage the Evidence, or the Lord impeached, do deſire to have any Queſtion asked, they muſt deſire the Lord Keeper to ask the ſame.

If any Doubt doth ariſe at the Trial, no Debate is to be in the Court, but the Queſtion ſuſpended to be debated in this Houſe.

The Members of the Houſe of Commons to be there before the Peers come.

None to be covered at the Trial, but the Peers.

That ſuch Peers, at the Trial of the impeached Lord, who, at the Inſtance of the ſaid Lord, or of the Commons, ſhall be admitted Witneſſes,

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Witneſſes, are to be ſworn at the Clerk's Table, and the Lord Keeper to adminiſter the Oath, and to deliver their Evidence in their own Places.

Thoſe Witneſſes that are Commoners are to be ſworn at the Bar by the Clerk, and are to deliver their Evidence there.

The impeached Lord may croſs-examine Witneſſes, *viva voce*.

Lord Haverſham juſtifies his Expreſſions.

The ſame Day the Commons received the Lord *Haverſham*'s Anſwer to their Charge; in which he juſtified the Expreſſions he had uſed at the late Conference between the two Houſes; and ſtill aſſerted, that the Commons had ſhewn themſelves partial, and even unjuſt, in proceeding againſt the impeached Lords, while they ſuffered the Earl of *Jerſey*, Mr. Secretary *Vernon*, Sir *Joſeph Williamſon*, Sir *Edward Seymour*, Sir *Stephen Fox*, and Mr. *Pelham*, who were engaged in the ſame Tranſactions, to remain unmoleſted.

The Commons Reaſons for not appearing at the Trial of the Lord Somers.

On the other Hand, the Commons gave ſeveral Reaſons why they could not appear at the Trial of the Lord *Somers*, the principal whereof were; Firſt, That the Lords had not agreed to a Committee of both Houſes for ſettling the Preliminaries. Secondly, That they never could appear as Proſecutors before their Lordſhips, till they had given them Satisfaction that Lords impeached of the ſaid Crimes, ſhould not ſit as Judges at each other's Trials for thoſe Crimes. Thirdly, Becauſe the Commons had received no Reparation for the great Indignity offered them at a free Conference by the Lord *Haverſham*.

The Peers acquit Lord Somers.

The Lords, however proceeded to the Trial of the Lord *Somers* the 17th Inſtant, in *Weſtminſter-Hall*; that is, they cauſed the Articles againſt him and his Anſwer to be read; and the Commons not having replied, and conſequently no Iſſue joined, the Lords proceeded to put the following Queſtion; That *John* Lord *Somers* be acquitted of the Articles of Impeachment againſt him, exhibited by the Houſe of Commons, and all Things therein contained; and that the ſaid Impeachment be diſmiſſed: Which was reſolved in the Affirmative, in the Abſence of the Commons.

The Lords Anſwer to the Commons Reaſons for not appearing at the Trial.

On the 20th of *June*, the Lords ſent an Anſwer to the Commons Reaſons for not appearing at the Trial of the impeached Lords; wherein their Lordſhips ſay, That they acknowledge that the Houſe of Commons have a Right of doing Juſtice upon theſe Impeachments, by bringing them to a Trial, and condemning or acquitting the Parties in a reaſonable Time: That there never was a Committee of both Houſes yielded to by the Lords, in caſe of an Impeachment for High Crimes and Miſdemeanors; and they ſhould make no new Precedent on this Occaſion: And as to the Pretence the Commons made to delay the Trials, on Account of ſome Expreſſions that fell from my Lord *Haverſham*, their Lordſhips anſwer, They had omitted nothing which might give the Commons all reaſonable Satisfaction in that Matter; and obſerved further, that the Buſineſs had no Relation to the Trial of the impeached Lords, and therefore could not imagine why the Commons ſhould make Satisfaction and Reparation againſt the Lord *Haverſham*, a neceſſary Condition for going on with the Trials.

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The Commons Reſolve, That the Lords had refuſed them Juſtice.

The Commons, on the contrary, came to a Reſolution on the ſame 20th of *June*, That the Lords had refuſed Juſtice to the Commons, upon the Impeachment againſt the Lord *Somers*, by denying a Committee of both Houſes to ſettle the Preliminaries, and afterwards proceeding to a pretended Trial of the ſaid Lord, which could tend only to protect him from Juſtice, by Colour of an illegal Acquittal; againſt which Proceeding the Commons did ſolemnly proteſt, as being repugnant to the Rules of Juſtice, and therefore null and void: That the Houſe of Lords, by the pretended Trial of *John* Lord *Somers*, had endeavoured to overturn the Right of Impeachments lodged in the Houſe of Commons by the ancient Conſtitution of this Kingdom, for the Safety and Protection of the Commons againſt the Power of great Men, and had made an Invaſion on the Liberties of the Subject, by laying a Foundation of Impunity for the greateſt Offenders: That all the ill Conſequences which might attend the Delay of the Supplies given by the Commons, for preſerving the publick Peace, and maintaining the Balance of *Europe*, by ſupporting our Allies againſt the Power of *France*, were to be imputed to thoſe, who, to procure an Indemnity for their own enormous Crimes, had uſed their utmoſt Endeavours to make a Breach between the two Houſes.

In anſwer to this Proteſt, the Lords ſent the Commons a Meſſage that Day; acquainting them, that the Commons not appearing to maintain their Articles againſt the Lord *Somers*, they had acquitted him of the Articles of Impeachment, and diſmiſſed the ſame; and that they had appointed *Monday* next for the Trial of the Earl of *Orford*: That from the Commons ſtill preſſing for a Committee of both Houſes, their Lordſhips inferred, that they never deſigned the bringing any of their Impeachments to a Trial: And as to the Lord *Haverſham*, his Anſwer was before the Commons, and the Lords reſolved to do Juſtice in that Matter.

The Earl of Orford's *Trial appointed.*

The Commons on the other hand Ordered, That no Member ſhould preſume to appear at the pretended Trial of the Earl of *Orford*, on Pain of incurring the utmoſt Diſpleaſure of the Houſe.

Warm Reſolutions of the Lords.

On *Monday* the 23d of *June*, the Lords Reſolved, That the Reſolutions of the Commons, of the 20th Inſtant, contained moſt unjuſt Reflections on the Honour and Juſtice of the Houſe of Peers, and were contrived to cover their affected and unreaſonable Delays in proſecuting the impeached Lords, and did manifeſtly tend to the Deſtruction of the Judicature of the Lords; to the rendering Trials and Impeachments impracticable for the future; to the ſubverting the Conſtitution of the *Engliſh* Government; and therefore, whatever ill Conſequences might ariſe from the ſo long deferring the Supplies of this Year's Service, they were to be attributed to the fatal Council of the putting off the Meeting of a Parliament ſo long, and to the unneceſſary Delays of the Houſe of Commons.

1701. 13 W. III. *Earl of* Orford *acquitted.*

The ſame Day the Lords proceeded to acquit the Earl of *Orford*, as they had done the Lord *Somers*; and on the 24th of *June*, the laſt Day of the Seſſion, they made the following Orders, *viz.*

The Charge againſt the Lord Haverſham, *and the other Impeachments diſmiſſed.*

" The Houſe of Commons not having proſecuted their Charge, which they brought up " againſt *John* Lord *Haverſham*, for Words " ſpoken by him, at a free Conference the 13th " Inſtant; The ſaid Charge is hereby diſmiſſed.

" The Earl of *Portland* being impeached by " the Houſe of Commons of high Crimes and " Miſdemeanors, the 1ſt Day of *April* laſt; The " Impeachment is hereby diſmiſſed, there being no Articles exhibited againſt him.

" The Houſe of Commons having impeached " *Charles* Lord *Halifax* of High Crimes and Miſ- " demeanors, on the 15th Day of *April* laſt, and " on the 14th Day of this Inſtant *June* exhi- " bited Articles againſt him; to which he hav- " ing anſwered, and no further Proſecution " thereupon: The ſaid Impeachment and Artic- " les, are hereby diſmiſſed." At the ſame Time they diſmiſſed an Impeachment, that had been preferred againſt the Duke of *Leeds* by a former Parliament.

Remarks on the Proceedings againſt the four Lords.

It ſeems to have been agreed, both by the Lords and Commons, in this Diſpute, that the Partition Treaty was of pernicious Conſequence, and that the tranſacting it in a private Manner, without communicating it to the Council, was a High Miſdemeanor in thoſe that adviſed and tranſacted it: But whether the Commons ſuſpected that the Lords, who were generally in the Intereſt of the Old Miniſtry, would not paſs any Cenſure on the impeached Lords, or what other Reaſon influenced their Conduct, is uncertain. The Commons ſeem to have been a little dilatory in their Proceedings, and might deſign the Lords ſhould have lain under an Impeachment, during the Receſs of the Parliament. There might poſſibly be ſomething of Party alſo in the Caſe: The impeached Lords were the Whig-Leaders, and had long reigned at Court, without Controul; and the Tories who ſucceeded them at this Time, had a View, perhaps, to the preventing their Return to their Poſts, as well as to the bringing them to Juſtice for negotiating the Partition Treaty, and for the other Miſdemeanors mentioned in the Articles: There are few Proſecutions of this kind, but there is a great deal of private Pique, Intereſt, and Reſentment, uſually mixed with the Proſecutors Views of publick Good. Though this Difference may be obſerved between the one Party and the other, that when the one procure a Change of the Miniſtry, and get their Rivals removed, they ſeldom proceed Capitally againſt their Adverſaries, as the others have conſtantly done on every Turn in their Favour.

I ſhall conclude with obſerving, that both Lords and Commons ſeemed to reſent it, that the Kingdom was ſo much under the Influence of *Dutch* Councils, and that ſuch exorbitant Grants were made to ſome Favourites of that Nation; and this probably gave a Riſe to theſe Impeachments: For it appears that in the Year 1695, King *William* made a Grant to the Earl of *Portland*, of the Manors of *Denbigh*, *Broomfield*, and *Yale*, being five Parts in Six of a whole County, Part of the Demeſnes of the Prince of *Wales*: This Grant the Gentlemen of *Wales* oppoſed very ſtrenuouſly; firſt before the Lords of the Treaſury, and afterwards in Parliament. 1701. 13 W. III.

They repreſented, That the *Welch* were never ſubject to any but God and the King: That thoſe Lordſhips were unalienable: That they belonged to the Prince of *Wales*, when there was one; and the Rents now ſupported the Government there, the Salaries of the Judges, and other Officers of the Crown, being paid out of them: They ſaid, the Grant was too great for any Foreign Subject to have; and the People in the Country were too great to be ſubject to a Foreigner: That if ſuch large Grants were frequently made, there would be nothing left for the King, or his Succeſſors, to ſubſiſt on: They could not conceive, how the Glory and Grandeur of *England* could be upheld by a poor landleſs Crown, and a miſerable neceſſitous People: That they were not *Engliſh*, but Foreign Politicians, that adviſed the King to theſe Grants: That the Kings of *England* always reigned beſt, when they had the Affections of their *Engliſh* Subjects; of which they were ſecure, when the People were ſenſible the King was intirely in their Intereſt, *and loved the* Engliſh *Soil as well as the People's Money.* To which Mr. *Price*, then a Member of the Commons, and afterwards a Judge of great Fame, in a Speech upon this Occaſion in the Houſe, added, " We " are in a Confederacy of War, and ſome of " thoſe Confederates our Enemies in Trade, " though planted among us; ſome of them " are of the King's Council, ſome in the Ar- " my; and the common Traders have poſſeſſed " themſelves of the Out-skirts of this great " City: We find ſome or other of them Natu- " ralized, and others made Denizens: Every " Parliament, we find, endeavours for a " general Naturalization, and that warmly " ſollicited from Court: We ſee our good " Coin all gone, and our Confederates openly " coining baſe Money of *Dutch* Allay for us: " We ſee moſt Places of Power and Profit, " given to Foreigners: We ſee our Confede- " rates in Conjunction with the *Scots*, to ruin " our *Engliſh* Trade: We ſee the Revenues of " the Crown daily given away to one or other, " who make Sale of them, and tranſmit their " Eſtates elſewhere: We do not find any of " them buy Lands or Eſtates among us; but " what they can get from us, they ſecure in " their own Country: How can we hope for " happy Days in *England*, when this great " Lord, and other Foreigners, (though na- " turalized) are in the *Engliſh*, and alſo in the " *Dutch* Councils? If theſe Strangers (though " Confederates) ſhould be in different Inte- " reſts, (as they evidently are, in Point of " Trade) to which Intereſt is it to be ſuppo- " ſed theſe great Foreign Counſellors and Fa- " vourites would adhere? So that I foreſee, " when we are reduced to extreme Poverty, " (as we are now very near it) *we are to be* " *ſupplanted by our Neighbours, and become a* " *Colony to the Dutch.* We ought to conſider " we are *Engliſhmen*; and, like good Patriots, " ſtand by our Country, and not ſuffer it to " become Tributary to Strangers. We have " re-

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"rejoiced, that we have beat out of this Country Popery and Slavery, and do now with as great Joy entertain Socinianism and Poverty; and yet we see our Properties daily given away, and our Liberties must follow". He desired, however, Redress rather than Punishment; and therefore neither moved for the Impeachment or Banishment of this Noble Lord; only begged, he might have no Power over them, nor they any Dependance upon him: But moved for an Address to his Majesty, to stop the Grant that was passing to the Earl of *Portland*, of the Lordships of *Denbigh*, *Broomfield*, and *Yale*, and other Lands in the Principality of *Wales*, and that the same be not granted, but by Consent of Parliament.

Whereupon an Address was immediately drawn up, by the unanimous Consent of the House, and presented to his Majesty the 22d of *January*, desiring he would put a Stop to his Grant to the Earl of *Portland*: To which his Majesty answered, *I have a Kindness for my Lord* Portland, *which he has deserved of me, by his long and faithful Services; but I should not have given him these Lands, if I had imagined the House of Commons could have been concerned. I will therefore recall the Grant, and find some other Way of shewing my Favour to him.*

And accordingly, in *May* 1696, the following Grant was made to the Lord *Portland*, in Recompence for the Revenues of the Principality of *Wales*.

1. A Grant of the Manor of *Grantham*, in *Com' Lincoln*.

2. Of the Honour of *Penrith*, in *Com' Cumberland*.

3. Of the Manor of *Drakelow*, in *Com' Derb'*.

4. Of the Manor of *Terrington*, in *Com' Norfolk*.

4. Of the Manors of *Partington*, *Bristol*, *Garth*, *Hornsey*, *Thwing*, *Burnesly*, and *Seven*, in *Com' Ebor'*.

All Parcel of the antient Revenue of the Crown of *England*: And of the Manor of *Pevensey*, in *Com' Sussex*.

Parcel of the Dutchy of *Lancaster*, and of the Lands and Hereditaments thereto belonging, *to the said Earl, and his Heirs*.

As of his Majesty's Manor of *East-Greenwich*, in *Com' Kent*, under the Rent of 4 *l.* 13 *s.* 4 *d.*

There was also granted to the said Earl all the little Remainder of the Fee-Farm Rents, worth, to be sold, 24,000 *l.* Given, out of mere Bounty, 23,000 *l.*

The Lord *Portland* had also a Grant out of the forfeited Estates in *Ireland*, of 135,820 Acres. To the Earl of *Albemarle* was granted, 108,633 Acres. To the Earl of *Athlone*, 26,480 Acres. To the Earl of *Galway*, 36,148 Acres. All these Noblemen being Foreigners.

And to the Lady *Elizabeth Villars*, a She-Favourite of King *William*'s, was granted 95,649 Acres, being the Private Estate of his Father King *James* II. and valued at 25,995 *l. per Ann.*

Such were the Grants that put the House of Commons out of Humour with the Court; and was one Occasion of the aboveSaid Impeachment, and of the Change of the Ministry.

1701. 13W.III. *Colonel Bayard's Trial.*

The Trial of Colonel NICHOLAS BAYARD, of the Province of *New York*, *America*, for *High-Treason*, committed there, before *William Atwood*, *Abraham de Peyster*, and *Robert Waters*, Esquires, constituted Commissioners for the Trial of the said NICHOLAS BAYARD, and others, for High-Treason, by *John Nanfan*, Esq; Lieutenant-Governor, and Commander in Chief, of the Province of *New York*, the 19th of *February*, 1701: 13 *W.* III.

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The Indictment.

THE Indictment charged, That the said Colonel *Nicholas Bayard*, on the 10th of *December*, in the 13th of his present Majesty, in the *Dock-Ward* of the said City and County of *New-York*, and divers other Days and Times, did compass, imagine, and contrive, to alter and subvert his Majesty's Government of *New-York*: And to that End did use many indirect Practices, to stir up a Mutiny, and procure a Desertion of his Majesty's Soldiers in the Garrison of *Fort-William-Henry*, near the said City of *New York*; and did draw in great Numbers of the said Soldiers, and others, to sign false and scandalous Libels against his said Majesty's Government, and signed the same himself: And, amongst other Things, reflecting on the Administration, had suggested in the said Libels, *That his Majesty's Subjects of that Province had been oppressed, and the Government rendered cheap and vile in the Eyes of the People; and that the present General Assembly of that Province was not a lawful Assembly*; by which malicious Slanders in the said Libels, he had incited his Majesty's Subjects of that Province to disown the present Authority, and cast off their Obedience to his Majesty; against the Duty of his Allegiance, *&c.*

Mr.

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Mr. Attorney General, being of Opinion there was no Treaſon in the Charge, refuſed to appear and proſecute the Priſoner: Whereupon Mr. Solicitor managed the Proſecution againſt the Colonel, who complained, that the Bill was found againſt him but by eleven of the Grand-Jury, and not one of them was of *Engliſh* Extraction, but all *Dutch:* But the Court ordered a Minute to be made, that the Indictment was found by more than Twelve.

Objections to the Grand Jury,

Then the Petty Jury was called and ſworn; of whom the Priſoner obſerved, one of them was an Alien; two others were not Freeholders; and all the reſt of *Dutch* Extraction, and ignorant of the *Engliſh* Language.

and Petty Jury.

The Evidence being called, *Samuel Clows* was ſworn, and teſtified, That Colonel *Bayard* ſhewed him three Addreſſes; the firſt to the Lord *Cornbury*, to congratulate his Arrival in that Government: The ſecond was to the King, and the third Addreſs to the Houſe of Commons, or the Parliament of *England*; and in one of the laſt, ſpeaking of the Lord *Bellamont*'s Adminiſtration, it was ſaid, that the hotteſt and moſt ignorant of the People were put into Places of Truſt: That the late General Aſſembly having choſen a Speaker they were informed was an Alien, It was moved, it might be enquired into; which Motion being rejected, ten, or one half, of the Repreſentatives, left the Houſe. However, the Reſidue proceeded to make Acts: By one of which, they gave a Sum of Money to the Lieutenant Governor, to tempt him to paſs their Acts; and another Sum to the Chief Juſtice of the Province, to find Law and Form for their Proceedings: And that theſe Practices tended to the rendering the Government vile and cheap in the Eyes of the People.

The Evidence.

Then ſeveral Soldiers, and others, teſtified, that they were deſired to ſign the ſaid Addreſſes; and ſome ſigned them, and others did not: The Addreſſes lay at the Coffee-Houſe, and there might be 200 Hands to them. One Witneſs depoſed, that it was Colonel *Bayard* left the ſaid Addreſſes at the Coffee-Houſe; and another ſaid, he ſaw the Colonel there; and he ſaid, it was for the Good of the Country: But none of them teſtified the Colonel deſired them to ſign the Addreſſes.

Upon this Evidence Mr. Solicitor obſerved, that the Libels ſet forth in the Indictment were proved; and thereby the Peace of the Government had been diſturbed.

The Priſoner's Defence by his Counſel.

Then the Priſoner's Counſel entered upon his Defence, and ſaid, that the Indictment did not charge him directly with any Fact, except his ſigning the ſaid Addreſſes, which they had denominated Libels: They had not ſo much as alledged, that the Peace of the Government was diſturbed; or that any Mutiny had been cauſed among the Soldiers; or that any of his Majeſty's Subjects had caſt off their Obedience to his Majeſty's Government: Only inſinuated, he had endeavoured to diſturb the Peace: And ſhould it be admitted, the ſigning of thoſe Addreſſes was any Crime, the Evidence was very lame; for it did not appear that the Addreſſes, ſigned at the Coffee-Houſe, were the ſame that Colonel *Bayard* promoted: But they inſiſted further, That the Subject had a Right to petition the King; and, if that was admitted, it could be no Crime to perſuade Men to ſign ſuch Petitions and Addreſſes. 1701. 13 W. III.

To which Judge *Atwood* anſwered for himſelf and his Brethren; If it was no Crime to petition the King, *It was a Crime for them to petition the Houſe of Commons*; for the King governed by his Prerogative in the Plantations.

The Priſoner's Counſel anſwered, That it was every Day's Practice, as appeared from the Votes, where they would find a Multitude of Addreſſes, Petitions, and Complaints, from the Plantations: That if the Subjects of the Plantations might not petition their King, or the Legiſlature, when they were grieved, their Condition was no better than that of Slaves: And the late Statute to check the exorbitant Actions of Governors in the Plantations, and make them accountable for their Adminiſtration in *England*, would be rendered ineffectual, if ever it ſhould be determined that the Subject had no Right to petition.

That the Act of Aſſembly, on which the Indictment was founded, could make no new Treaſons; and, indeed, that Act did no more than recognize the King and Queen, and declare, That whoever ſhould, by Force of Arms or otherwiſe, diſturb their Government, ſhould be deemed Rebels and Traitors; which they would have been, if that Act had never been made. Had theſe Addreſſes or Petitions been made to the *French* King, indeed, they might have been Treaſon; but, as it was, there was no Colour for conſtruing them to be treaſonable: That the Jury were not only to conſider, whether the Facts laid in the Indictment were proved, but whether there was any Treaſon in them? for otherwiſe, the moſt innocent Action might be called Treaſon in the Indictment, and made a Pretence for cutting off the Subject: But the Jury in theſe and other Capital Caſes, where Judges of the Law as well as of the Fact; as where one is indicted for Murder, and pleads Not Guilty generally, the Jury may bring him in guilty of Murder, Manſlaughter, or Miſadventure, according to the Nature of the Crime, and the Puniſhment the Law has appropriated to it; and are not to find a Fact Murder, or Treaſon, for being called ſo in the Indictment, if it does not come within the Deſcription the Law makes of thoſe Crimes reſpectively. Then the Priſoner having called the Miniſter of *New York*, and ſeveral other Perſons of Credit, to his Reputation, who teſtified, that he was a Gentleman of a good Character, and well-affected to the Government, Judge *Atwood* proceeded to direct the Jury, informing them, That the Priſoner was not indicted on the 25th of *Edw.* III. but upon an Act of Aſſembly of that Province, confirmed by his Majeſty, who might enact what Offences ſhould be adjudged High Treaſon, as well as the Parliament of *England*; and by this Act, it was made High Treaſon to diſturb the Peace and Quiet of the Government eſtabliſhed there: That the ſigning theſe Libels were Overt-Acts of ſuch a Diſturbance; and the drawing in Soldiers to ſign Complaints againſt their Officers and Superiors, was Treaſon at Common Law, and directed the Jury to find the Priſoner guilty.

Judge Atwood's Directions to the Jury.

Then

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Then the Jury withdrew, and the Court adjourned to the ninth of *March*, when the Jury came into Court again, and ſaid, They were divided about the Evidence that had been given; and therefore could give no Verdict: Whereupon Judge *Atwood* declared, he had received ſeveral Letters from the Jury during their Receſs, and anſwered them; and took this Opportunity to inform the Jury, If they doubted, whether the Facts which had been proved were Treaſon, they might, however, find the Priſoner guilty; for he could afterwards move in Arreſt of Judgment, and be relieved, as to Matter of Law.

His ſcandalous Practice with them,

and tyrannical Maxims.

The Priſoner's Counſel anſwered, That it ſeemed very hard, he ſhould thus give the Jury a Handle to find the Priſoner guilty, whether they believed him guilty of High Treaſon or not; and this only in Expectation of his being relieved upon a Motion in Arreſt of Judgment; and again inſiſted, that they were in this Caſe Judges of the Law as well as of the Fact; and, if they gave up this Point, they would enſlave themſelves and their Poſterity, and be for ever debarred of all Acceſs to their Prince, which would render their Condition worſe than that of the Negroes in their Service.

The Counſel's Reply to the Court.

Then the Court adjourning again till the Afternoon, the Jury brought in their Verdict upon this ſecond Receſs, that the Priſoner was *Guilty*.

The Colonel, by wicked Arts, convicted.

The next Day the Priſoner's Counſel moved in Arreſt of Judgment, That there was not any one Overt-Act, alledged in the Indictment, proved by two Witneſſes, as the Statute of 7 *W.* III. required: To which Judge *Atwood* anſwered, That the Jury were ſole Judges of the Evidence; and if there was any Defect in it, that was now ſupplied by the Verdict.

The Court over-ruled the Colonel's Exceptions.

Then the Colonel's Counſel objected, That the Facts laid in the Indictment were not Treaſon; for the Words in the Act of Aſſembly, on which it was founded, were, *If any Perſon ſhall endeavour by Force of Arms, or otherwiſe, to diſturb the Peace and Quiet of the Government, they ſhall be deemed Rebels and Traitors:* And, if the Word *otherwiſe*, as Mr. Solicitor inſinuated, would bring the Priſoner within the Danger of that Act, then every Breach of the Peace, every Quarrel, or trifling Battery, might be conſtrued High-Treaſon; but in Truth, *their Aſſemblies in the Plantations could not make or declare any new Species of Treaſon*, which was not comprehended in 25 *Edw.* III. or ſome ſubſequent Statute.

The Counſel alſo objecting, that two of the Jury were Aliens, the Court anſwered, this might have been a good Cauſe of Challenge before the Jurors were ſworn; but it was now too late to make that Exception: And, in ſhort, over-ruled every other Exception, how material ſoever; and declared that they were not ſufficient to arreſt Judgment upon. Whereupon Sentence was pronounced upon Colonel *Bayard*, as a Traitor; as it was alſo upon Alderman *Hutchins*, who had been tried and condemned for the like pretended Treaſon; but it ſeems they were afterwards reprieved; and I do not find that either of them were ever executed.

Remarks on Colonel Bayard's Trial.

From this Trial we may obſerve, what Tyrants ſome of our Plantation Governors are. They copy after, or rather improve upon, their Maſters: And if any Man dares to oppoſe their Avarice or Ambition, a Plot is frequently trumped up, and a Charge of High-Treaſon brought, to confound and deſtroy the beſt of the King's Subjects. They make or interpret the moſt innocent Actions to be Treaſon; and never want Judges and Lawyers to countenance their Oppreſſions, who ſhare the Plunder of the unhappy Sufferers with them: But this Proſecution, if it be fairly related, exceeds any Thing we ever met with on this Side the *Atlantick Ocean:* They do not only make petitioning the King or Parliament of *England* Treaſon, but they break through all the Rules of Right Reaſon, and Juſtice, to get Men convicted. Beſides many other arbitrary Stretches, we find their pious Chief Juſtice *Atwood* directing the Jury, That, whether the Facts were High-Treaſon or not, they might ſafely find the Priſoner guilty of High-Treaſon; and, by his own Confeſſion, he wrote to and tampered with the Petty Jury, when they were withdrawn to conſider of their Verdict. But, if this be Law in the *Weſt-Indies*, I am ſure it is not ſo in *England*; and the Priſoner's Counſel bravely maintained, that they could conſtitute no new Treaſons, or Methods of Trial, but what were agreeable to the Laws of *England*: If this be ſo, there is no doubt but Colonel *Bayard* had great Injuſtice done him; and it is amazing to me, that *Atwood* was not made an Example of in *England*, who gave it out for Law, *That it was High-Treaſon to prefer a Petition to the Parliament of* England, *when they found themſelves oppreſſed by their Governors.*

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But if the *Engliſh* in our Plantations have a Right to be governed by the Laws of *England*, and ſuch By-Laws as are made there that are not inconſiſtent with the Laws of *England*, and ſometimes meet with an honeſt Governor, who ſees the Laws duly executed, what is the Condition of our poor Negroe Slaves in that Part of the World, who muſt be looked upon however as Subjects, and ought to be under the Protection of the Laws and Government of *England?* How are theſe unfortunate Wretches, far from being the better for our admirable Laws and Conſtitution? No ſort of Cruelty or Oppreſſion, but what is exerciſed upon them without Controul. Though Racks and Tortures have long been baniſhed this happy Iſland, yet are the poor Negroes in our Dominions tortured without Mercy; and this under a Pretence, that they are of a Nature different from their Maſters, and are not to be governed by gentler Methods, which is certainly a falſe and barbarous Notion; for all Mankind in general are alike, and entitled to be treated with Humanity, though there are every where ſome froward Tempers: The Tyrants that exerciſe theſe Cruelties, deſerve the Name of Savages much more than the Negroe Servants that are unfortunately fallen into their Hands: But I ſhall have Occaſion to enlarge upon this Topick in my other Work, and therefore ſhall make no further Reflections on theſe Barbarities here; but conclude my Remarks on this Trial, with my Wiſhes, that either the Court, or Parliament of *Great Britain*, may one Day caſt a favourable Eye on our Plantations, and make

1701. 13W. III. some Provision, that the Subject there may have some Benefit from our excellent Laws and Constitution, and not be perpetually harrassed and oppressed by rapacious Governors, and necessitous Lawyers, sent thither to repair their shattered Fortunes, by fleecing and plundering our Colonies, since these are, at this Day, (or would be, if they were encouraged), the principal Foundations of our Wealth and Grandeur: And that our Negroe Servants there, if it is not thought fit to suffer them to be Christians, and to treat them as such, may, however, be treated with Humanity, and as if they were of the same Species, though they differ from us in Complexion.

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1702. 1 Annæ.

Fuller's Trial.

The Trial of WILLIAM FULLER, for *making and publishing certain false and scandalous Libels*, in the Court of *King's-Bench*, on the 20th of *May*, 1702. 1 *Annæ*.

1702. 1 Annæ.

The Information against him.

AN Information was preferred against the said *William Fuller*, by Mr. Attorney, which set forth, That the Defendant, being an Impostor, and Common Lyar, and maliciously intending the late King *William* and his Subjects to delude and deceive, and Discords between the said late King, the Peers, and other great Officers and Subjects of the King to excite, and to bring them into Hatred and Contempt of the said late King: And in order fraudulently to obtain great Sums of Money from the said late King, he, the said *William Fuller*, did maliciously write, print, and publish a certain scandalous and defamatory Libel, entitled, *Original Letters of the late King* James, *to his greatest Friends in* England, *with the Depositions of* Thomas Jones *and* Thomas Widdrington *Esquires, proving the the Corruption lately practised to ruin this Nation.* And the Information further sets forth, That the Defendant did frame and publish another false and scandalous Libel, entitled, *Twenty six Depositions of Persons of Quality and Worth*; wherein *Jones* is said to have made Oath, that he distributed 180000*l.* among King *William*'s Ministers, and Members of Parliament, in order to corrupt them.

Mr. Attorney opens the Evidence.

Mr. Attorney, Sir *Edward Northey*, in opening the Evidence against the Defendant, observed, That he had been some Time setting up for an Evidence, pretending to discover a secret Correspondence between the late King *James* and several Persons here in *England*. He made an Offer of some such Discovery about ten Years ago; and he then applied himself to the House of Commons, and they gave him Time to produce his Witnesses; but after all, he could produce none; and the House ordered him to be prosecuted as a Cheat and Impostor; and he was prosecuted accordingly, convicted, and set in the Pillory. Now, some Time last Winter, he did apply himself to some of the late King's Ministers, and pretended he would produce *Thomas Jones* and *Thomas Widdrington*, to make considerable Discoveries. They heard him; but he could never produce these Men before them; and afterwards, having no Encouragement from them, he took on him to publish these two Books, mentioned in the Information, whereof he stands now accused. He afterwards applied himself to the House of Lords; and they heard what he had to say, and gave him Time to produce his Witnesses; but he could not do it; and thereupon the Lords were pleased to direct this Prosecution. Then he applied himself to the House of Commons, and they gave him Time likewise to produce his Witnesses; but he could produce none; whereupon they voted him a Cheat, a false Accuser, and an incorrigible Rogue. My Lord, these Books were published with a very malicious Design; and not doubt he had other People, who do not now appear, to support him in it; and I doubt not but he would have set up Witnesses to have sworn whatever he would have them, if he had met with any Encouragement. He has the Impudence to put in the Frontispiece of his Books, *Published by Command*; but being asked in the House of Peers, By whose Command? He said, it was by his own Command: And he has published in the Books, that he would produce Witnesses to prove the distributing of 180,000*l.* to Persons in Places of Trust, and to produce Receipts for the same; and he hath an Opportunity now of doing it.

The King's Counsel also observed, That this was the Man that had applied himself to the Parliament, and to so many Ministers of State, pretending to make Discoveries in Relation to the Birth of the pretended Prince of *Wales*.

He confesses the Libels.

Then the Evidence being called, to prove that *Fuller* handed these Libels to the Press, he acknowledged, he caused both of them to be printed and published: And said, he could make it appear that what was related in those Books was true; and he would produce *Jones* to prove it, if his Lordship would give him his Warrant to indemnify him, without which he durst not appear.

The Court answered, He had made the same Pretence before the Lords and Commons, charging a great many Persons with corresponding with *France*, and affirming, that *Jones* would prove it by undeniable Demonstration, that he had distributed more than 180,000*l.* by the *French* King's Orders, to several Persons employed in the Government, but produced no Manner of Proof of this.

Fuller said, He had been summoned before the Lords and Commons, indeed, but they would

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would not grant him their Warrant to bring up *Jones*, and indemnify him; nor could he produce him here without his Lordſhip's Warrant.

Then the Chief Juſtice obſerved to the Jury, That he had acknowledged the printing theſe Books, and that he had no manner of Proof of what he advanced in them: And thereupon the Jury, without going from the Bar, found him GUILTY; and he was ſentenced to ſtand three Times in the Pillory; to be ſent to the Houſe of Correction, there to be whipped, and kept to hard Labour for five Months; to pay a Fine of one thouſand Marks, and remain in Priſon till it was paid: *And being ſet in the Pillory accordingly, he was ſeverely pelted by the Mob.*

He is convicted.

His Sentence.

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This Man equalled the celebrated *Titus Oates* in Impudence, and had as much Cunning and Knavery in his Conſtitution, but did not meet with equal Succeſs, wanting thoſe glorious Patriots his Brother in Iniquity met with, to ſupport his Evidence: He was, however, more fortunate than *Titus* in one Reſpect; namely, to be believed in his Narrative of the Warming-Pan Plot, by that Right Reverend and Illuſtrious Writer, *Biſhop Burnet.*

Remarks.

The Trial of Colonel RICHARD KIRBY, Captain JOHN CONSTABLE, Captain COOPER WADE, Captain SAMUEL VINCENT, and Captain CHRISTOPHER FOGG, for *Cowardice, and Breach of Orders*, at a Court-Martial, held on Board the *Bredah*, in *Port-Royal* Harbour in *Jamaica*, on the 8th, 9th, 10th, and 12th Days of *October*, 1702. 1 *Annæ*. The Honourable *William Whiſton*, Eſq; Rear-Admiral, Preſident.

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Trial of Colonel Kirby, &c.

A State of the Caſe.

ADMIRAL *Bembow* commanding a Squadron of Men of War in the *Weſt-Indies*, for the Protection of our Trade, and underſtanding that *Du Caſſe* was expected with a *French* Squadron at *Hiſpaniola*, placed himſelf off *St. Martha*, in a Station where it was moſt likely to intercept him; and, according to his Expectations, on the 19th of *Auguſt*, *Du Caſſe* appeared in View, with ten Sail of *French* and *Spaniards*, *viz.* four ſeventy-gun Ships, one of forty Guns, and the other five ſmall Ships: Admiral *Bembow* having ſeven Men of War under his Command, of pretty good Force, engaged the Enemy in the *Bredah*, and was pretty well ſeconded by Captain *Vincent* in *The Falmouth*, and Captain *Walton* in *The Ruſſel*: But the reſt of his Captains refuſing to Fight, and the Admiral being wounded, he was obliged to diſcontinue the Fight, and return to *Jamaica*, where he cauſed the Captains that abandoned him, to be tried at a Court-Martial, for Cowardice and Breach of Orders.

The Evidence.

The Witneſſes for the Queen againſt the ſaid Colonel *Richard Kirby*, were the Honourable *John Bembow*, Eſq; Admiral, two Captains, eight Lieutenants, five Maſters, and five inferior Officers, who teſtified, That the Signal of Battel being given on the the 15th of *Auguſt*, at Three in the Afternoon, and the ſaid Colonel *Kirby* having the Van, he appeared ſo backward to engage, that the Admiral was forced to ſend his Boat on Board him, and command him to make more Sail, and get abreaſt of the Enemy's Van: That the Fight began about Four, and that *Kirby* did not fire above three Broadſides, and then luffed up out of the Line, and out of Gun-ſhot, leaving the Admiral engaged with two *French* Ships till it was dark.

That the 20th, at Day-light, the Admiral, and *The Ruby*, *George Walton* Commander, were within Shot of all the Enemy's Ships, but Colonel *Kirby* was three or four Miles a-ſtern: Then the Admiral made a new Line, and took the Van himſelf, with a Command to the ſaid *Kirby*, to keep his Line, which he promiſed to do; but did not, keeping two or three Miles a-ſtern.

That the 21ſt, at Day-light, the Admiral was on the Quarter of the 2d Ship of the Enemy, and *The Ruby* on the Broad-ſide very near; and the *Ruby* was ſo much diſabled, that ſhe was forced to be towed off: That this Action laſted two Hours, during which Time *Kirby* lay a-broadſide of the ſtern-moſt Ship, and the Admiral commanded him twice to ply his Broadſides, but he fired not a Gun; and threatened to run the Boatſwain through with his Sword, when he repeated the Admiral's Orders to him: And that, had the ſaid *Kirby* and *Conſtable* done their Duty, they muſt have taken or deſtroyed the ſaid *French* Ships.

That the Admiral continued the Chaſe all Night; and that the 22d in the Morning, *Kirby*, with the reſt of the Ships (except *The Falmouth*) was three or four Miles a-ſtern, and never came up, as if they had a Deſign to ſacrifice the Admiral to the Enemy: That by this Means, a *Flemiſh* Ship, in Monſieur *Du Caſſe*'s Company, on Board which were all the *French* and *Spaniſh* new Governors, and other Officers, made her Eſcape.

That

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That the 23d, the Admiral and *The Falmouth* continued the Purſuit, but *Kirby* and the reſt were three or four Miles a-ſtern.

That the 24th, about Two in the Morning, the Admiral and *The Falmouth* came up with the Stern-moſt of the Enemy, but *Kirby* and the reſt were three or four Miles a-ſtern: That afterwards *Kirby*, being pretty near the ſaid ſtern-moſt Ship of the Enemy, fired above twelve Guns at her, but, fearing a Return from her, ran away, although ſhe was near diſabled, and the other Ships followed him: That the other three *French* Ships, ſeeing the Cowardice of the *Engliſh*, although they were three or four Miles Diſtance, bore down upon the Admiral, and reſcued the ſaid diſabled Ship: That this Day the Admiral's Leg was broke, who, notwithſtanding, commanded the Fight to be vigorouſly continued, and ſent to all the Captains to keep their Line, and behave themſelves like *Engliſhmen*: That upon this *Kirby* came on Board the Admiral, and diſſuaded him from fighting, and drew up a Paper of his Reaſons for not fighting, which he procured the reſt of the Captains to ſign; and that, during the Fight, he dodged behind the Mizen-Maſt, and diſcouraged his Men; and that he amended the Maſter's Journal of the Fight according to his own Inclinations.

Kirby's *Defence.*

Colonel *Kirby* denied the whole Charge, except his ſigning the aboveſaid Writing, and brought ſeveral Witneſſes to his Behaviour during the Action; but they ſaid little to the Purpoſe. And Colonel *Kirby* being aſked, Why he did not fire at the Enemy's ſtern-moſt Ship, which lay point-blank with him the 21ſt of *Auguſt?* he replied, Becauſe they did not fire at him, *for that they had a Reſpect for him:* Which Words he repeated three ſeveral Times during his Trial.

Upon due Conſideration of the Premiſes, and of the great Advantages the *Engliſh* had in Number of Ships, being ſeven to four, and of Guns 122 more than the Enemy; the Court was of Opinion, that he fell under the 11th, 12th, 14th, and 20th Articles of War; and adjudged accordingly, that he be ſhot to Death; but further decreed, that his Execution ſhould be reſpited till Her Majeſty's Pleaſure were known.

Condemned to be ſhot.

The Witneſſes againſt Captain *Conſtable* teſtified, that he never kept his firſt or ſecond Line of Battel, but acted in all Things as Colonel *Kirby* had done, to the Diſſervice of Her Majeſty, *&c.* and that he was drunk during the Fight.

Conſtable's *Defence.*

He called ſeveral Witneſſes to his Behaviour, who all declared, he kept the Quarter-Deck during the Engagement, and encouraged his Men to fight: That the Meſſage ſent him by the Admiral, was miſunderſtood by himſelf and ſeveral of his Men; and he prayed the Mercy of the Court.

The Court were of Opinion, that Captain *John Conſtable* fell under the 12th, 14th, and 20th Articles of War, and adjudged him to be immediately caſhiered, and rendered incapable of ſerving Her Majeſty, and be impriſoned during Her Majeſty's Pleaſure, and ſent to *England* in the firſt Ship. 1702. 1 Annæ.

The Witneſſes againſt Captain *Wade* depoſed, That he never kept the Line of Battel, fired all his Shot in vain, not reaching half Way to the Enemy; that his Officers telling him of it, he commanded them to fire, ſaying, the Admiral would not believe they fought, if they did not continue the Fire: That his Ship received but one Shot; and that he was drunk during the greateſt Part of the Action: That he ſigned the aforeſaid Paper, *&c.* and during the Fight, arraigned the Courage and Conduct of the Admiral.

He denied the Charge, called ſome Witneſſes, who ſaid little in his Behalf; and then begged the Mercy of the Court. Wade's *Defence.*

The Court was of Opinion, that the ſaid *Cooper Wade* fell under the 11th, 12th, 14th, and 20th Articles of War, and adjudged him to be ſhot to Death; but reſpited his Execution till Her Majeſty's Pleaſure was known. *Condemned to be ſhot.*

Captain *Samuel Vincent*, Commander of the *Falmouth*, and Captain *Chriſtopher Fogg*, Commander of *The Bredah* (the Admiral), were tried for ſigning the aboveſaid Paper againſt fighting; and ſaid, in their Defence, That being deſerted in each Day's Engagement by the reſt of the Fleet, they had Reaſon to apprehend their being taken by the Enemy: And Admiral *Bembow* coming into Court, declared, that during the ſix Days Fight, the ſaid Captain *Fogg* behaved himſelf with great Courage and Conduct; and that Captain *Vincent* behaved himſelf valiantly, and deſired Leave to come to the Admiral's Aſſiſtance, then engaged with the Enemy, and deſerted by all the reſt of the ſaid Ships; which he did to the Relief of the ſaid Admiral, who otherwiſe had fallen into the Hands of Monſieur *Du Caſſe*. *The Defence of* Vincent *and* Fogg.

The Court being of Opinion, that the ſigning of the aforeſaid Paper brought them under the Cenſure of the 20th Article of War, adjudged Captain *Samuel Vincent* and Captain *Chriſtopher Fogg* to be ſuſpended; but the Execution thereof was reſpited till his Royal Highneſs Prince *George* of *Denmark*, Lord High Admiral of *England*, &c. his Pleaſure be known.

Mr. Solicitor opens the Evidence.

Captain *Thomas Hudſon*, Commander of *The Pendennis*, died on Board his ſaid Ship, in the Harbour of *Port-Royal*, in *Jamaica*.

Admiral *Bembow* died of the Wounds he received in this Engagement at *Jamaica*, on the Fourth of *November*; and the Queen did him that Juſtice to order the Captains, *Kirby* and *Wade*, who ſacrificed him to the Enemy, to be ſhot to Death; and they were executed accordingly on Ship-board, in *Plymouth* Harbour, not being ſuffered to ſet their Feet on Shore in *England* again, after they had ſo ſhamefully deſerted their Admiral, and diſhonoured their Country: But thus it will ever be, where Men are preferred for Money and Friendſhip, and not for their Merit. *Admiral* Bembow *dies of his Wounds.* Kirby *and* Wade *executed.*

The

1702. 1 Annæ. Swendsen's Trial.

The Trial of HAAGEN SWENDSEN, SARAH BAYNTON, JOHN HARTWELL, and JOHN SPURR, for *Felony*, at the *Queen's-Bench* Bar, on the 25th of *November*, 1702. 1 *Annæ*.

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The Indictment.

THE Indictment charged, That Mrs. *Pleasant Rawlins*, being a Virgin, and Grandaughter and Heir of *William Rawlins*, Senior, deceased, and Daughter and Heir of *William Rawlins*, Junior, deceased; and being above the Age of sixteen Years, and under the Age of Eighteen; and having an Estate in Moveables, and in Lands and Tenements, *viz.* in Money, Goods, and Chattels, to the Value of 2000 *l.* and Lands and Tenements of the Value of 20 *l.* *per Annum*, to the Heirs of her Body, the Prisoners *Haagen Swendsen*, *&c.* (together with one *Thomas Holt*) did, on the 6th Day of *November*, 1702, at the Parish of St. *Giles*'s in the Fields, in the County of *Middlesex*, for the Lucre of the Estate and Substance of the said *Pleasant Rawlins*, unlawfully, feloniously, and violently, and against the Will of the said *Pleasant Rawlins*, take and carry her away, with an Intent to marry her to the said *Haagen Swendsen*; who being a Man of a dishoneſt Conversation, and of none, or a very little Estate or Substance, did then, and there, by the Help and Procurement of the said other Prisoners, feloniously marry the said *Pleasant Rawlins*, and carnally know her: And that the said *Thomas Holt*, the Day and Year aforesaid, did knowingly and feloniously receive the said *Pleasant Rawlins* and *Haagen Swendsen*, and did incite, aid, and abet the said *Haagen Swendsen* to lie with the said *Pleasant Rawlins*, and carnally know her, to the Displeasure of Almighty God, the Disparagement of the said *Pleasant Rawlins*, the Grief of her Friends, against the Queen's Peace, *&c.*

Swendsen *being a Foreigner, a Jury was sworn, one half whereof were Foreigners.*

Mr. Solicitor opens the Evidence.

Then Mr. Solicitor-General opened the Evidence, and said, That it was formerly reckoned a less Crime to steal a Fortune of ten thousand Pounds, than to steal the Value of a Shilling of her Money or Goods; but, in the third Year of *Henry* VII. to cure this Defect in the Law, a Statute was made, whereby the taking away a Woman, having Lands or Goods, or being an Heir apparent, contrary to her Will, and afterwards marrying her, was made Felony; and upon this Law the present Indictment is grounded.

Pleasant Rawlins was the Daughter of Mr. *William Rawlins*, who having left her a considerable Estate, appointed *George Bright* and *William Busby* her Guardians. Mr. *Bright* being dead, the other Guardian, Mr. *Busby*, for the better Education of Mrs. *Rawlins*, placed her under the Care of his Sister, *Sabina Busby*: Mrs. *Busby* and Mrs. *Rawlins* have lodged, about three Years last past, at the House of the Widow *Nightingale*. *Haagen Swendsen*, with Mrs. *Baynton*, lodged at Mrs. *Blake*'s in *Holbourn*, and there they first projected and contrived how they might make a Prey of this young Gentlewoman. The first Step they took towards executing this Design, was, to get Lodgings at Mrs. *Nightingale*'s House for Mrs. *Baynton*; for which Purpose she was to pass for a Country Gentlewoman, of a plentiful Fortune: One Mrs. *St. John* was sent to Mrs. *Nightingale* to take Lodgings for Mrs. *Baynton*, commending her to be a very good Woman, and that having the Misfortune of a Law-Suit, and being obliged for that Reason to attend it in Town, 'twas her greatest Care to lodge in so reputable a House as Mrs. *Nightingale*'s was: Under this Pretence Lodgings were there taken for her. At her first coming, she was forced to put on a Disguise; she seemed to live a virtuous Life, that she might ingratiate herself into the Favour of the Family, as often as she had an Opportunity of conversing with any of them: She pretended she had a Brother of a good Estate, one of the best Men in the World; and she hoped he would shortly come to Town, that she might see him. In a little Time after, came this *Swendsen* (being nothing related to her), and appeared as her Brother, and frequently visited her under Pretence of that Relation. But Mrs. *Baynton* was too well known in Town to continue long undiscovered: Notice was soon given to Mrs. *Busby*, of the vicious Life Mrs. *Baynton* had led, and that she was not fit to be in the same House with her. Mrs. *Baynton* having discovered this, and finding she had no Time to bring about her Designs by Frauds and Wiles, and that no other Way was left but open Force, the Prisoner at the Bar and she took Measures accordingly; and, in Order thereto, 'twas agreed, that a Writ should be taken out against Mrs. *Rawlins*: Mrs. *Baynton* contrives to get Mrs. *Rawlins*, and Mrs. *Busby* into a Coach, and, at a Place appointed, a Signal was given, and the Writ executed; and Mrs. *Busby*, Mrs. *Rawlins*, and Mrs. *Baynton* were all carried in a Coach to the *Star and Garter* Tavern in *Drury-Lane*, where particular Care was taken to separate Mrs. *Busby* and Mrs. *Rawlins*, because, unless they did that, they could not hope to accomplish their Designs: Mrs. *Busby* was by Force kept at that Tavern, without any Process against her, till the Marriage was over; but Mrs. *Rawlins* was forcibly carried to *Hartwell*'s, the Bailiff's, House. Mrs. *Baynton* pretended to be much concerned for Mrs. *Rawlins*, and went in all Haste to call some of her Friends to be Bail for her. Some Time after Mrs. *Rawlins* had got to *Hartwell*'s, in comes Mrs. *Baynton*, pretending that, by mere Accident, she had discovered her being there, hearing her Name as she was passing by the Door; that she had been in Search, but could find no Help, and that her last Hopes was her dear Brother *Swendsen*, and she doubted not but he would bail her. He, by Agreement,

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had been placed near the Bailiffs, and ſo was ſoon found, and brought thither, and was very ready to aſſiſt her. In order to her Diſcharge, the Priſoner, the Bailiff, and Mrs. *Baynton*, carry Mrs. *Rawlins* to another Tavern, where they had a Parſon ready for their Purpoſe; and there this young Gentlewoman, through divers Artifices, was conſtrained to marry him.

The Evidence.

The Evidence for the King, being called, Mr. *William Busby*, Guardian to Mrs. *Rawlins*, was ſworn, and teſtified, That ſhe was the Daughter of *William Rawlins*, deceaſed; who left his Eſtate to Dr. *Bright* and this Witneſs, to be ſold for the Payment of his Debts and Legacies, and gave the Surpluſage to his Daughter, which amounted to about 2000 Pounds; and ſhe had alſo an Eſtate in Lands, of the Value of twenty Pounds a Year; and that ſhe was at this Time near eighteen Years of Age, and unmarried.

Mrs. *Nightingale* depoſed, That Mrs. *Pleaſant Rawlins*, and Mrs. *Busby*, had lodged at her Houſe three Years; and that Mrs. *St. John* came to inquire for Lodgings at her Houſe, for a Country Lady, (which afterwards proved to be Mrs. *Baynton*, the Priſoner): That ſhe (the Witneſs) enquired of her Character, and was informed, Mrs. *Baynton* was of a very good Family; whereupon ſhe conſented ſhe ſhould come and board at her Houſe, with her Maid, who happened to be a Neighbour's Daughter: That Mrs. *Baynton* afterwards introduced Mr. *Swendſen*, as her Brother; and deſired he might dine at her Houſe, which ſhe agreed he ſhould, at the Rate of Twelve-pence a Meal: But it was not long before they perceived an extraordinary Familiarity between Mrs. *Baynton* and Mr. *Swendſen*, more than was uſual between Brother and Siſter, and ſhe gave Notice of it to the Family, deſigning to have given Mrs. *Baynton* Warning; but ſhe prevented her, by ſaying, her Affairs permitted her going into the Country, and ſhe deſigned to return thither when her Month was up: She did not go however, pretending a Fellow was come to Town, that intended to put a Cheat upon her, and ſhe muſt ſtay a Week longer, to take out a Statute againſt him.

Mrs. *Busby* teſtified, That her Brother *Busby*, being one of Mrs. *Rawlins*'s Guardians, put her under the Care of her Husband; who dying about three Years ago, ſhe and Mrs. *Rawlins* went and boarded with Mrs. *Nightingale*, where they had continued ever ſince: And that Mrs. *Baynton*, coming to lodge there lately, introduced Mr. *Swendſen* into their Company, who went for her Siſter's Husband: And Mrs. *Nightingale* agreed, that he might dine there at Twelve-pence a Meal, and he dined there accordingly, nine or ten Times; but at length, obſerving an extraordinary Familiarity between Mrs. *Baynton* and *Swendſen*, they began to ſuſpect her Virtue.——That Mrs. *Baynton* knowing it was their Cuſtom to go to *Oxenden* Chapel every *Friday* Morning, ſaid, ſhe was going to *Golden-Square*, and would take them in her Coach, and ſet them down near the Chapel; and accordingly they accepted of her Offer, and went with her in the Coach; but being come to *Dartmouth-Street*, they heard ſome body bid the Coach ſtop; and immediately *Hartwell*, the Bailiff, crowded into the Coach, and laying hold of Mrs. *Rawlins*, ſaid, his Concern was with that Lady and the Witneſs, and carried them all to the *Star and Garter* Tavern in *Drury-Lane*: That ſhe intreated him to carry them to *Fleet-Street*, where ſhe had Friends; but he was angry, and would not hear of it; and Mrs. *Baynton* left them, and pretended ſhe would go ſee for her Friends: Whereupon ſhe and Mrs. *Rawlins* were in a great Conſternation; and ſhe (the Witneſs) took Mrs. *Rawlins* by the Arm, and ſaid, She would live and die with her; but the Bailiffs forced them aſunder, and carried her (the Witneſs) to another Room; and as ſhe was going, ſhe put her Head out of a Window, and cried, Murder! which brought ſome of the Neighbours in; but the Bailiffs telling them, it was an Arreſt, they would not meddle in it; however, a little Boy offering to go of an Errand for her, ſhe ſent for two Gentlemen, who came to her; and after a little Time, the Bailiffs left her (the Witneſs) with the Gentlemen, without taking any Bail; and ſhe never ſaw Mrs. *Rawlins* again, till the next Day at Noon.

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Mrs. *Berkley* teſtified, That ſhe demanding of Mr. *Swendſen*, when he was apprehended, If that wicked Woman, Mrs. *Baynton*, was his Siſter? He anſwered, No; but he had gained his End, in making her a Tool to his dear Wife: He would gratify her for what ſhe had done, and put her away on *Monday*, and ſee her no more.

Blake depoſed, That Mr. *Swendſen* and Mrs. *Baynton* lodged at his Houſe in *Red-Lion-Street*, ſix or ſeven Months: That he had known Mrs. *Baynton* theſe twelve Years; ſhe was no Country Lady, but worked for her Living, and went from his Houſe five or ſix Weeks before this Matter happened, and he never ſaw any Harm by her.

Wakeman, the Bailiff's Follower being ſworn, teſtified, That *Hartwell* took him and *Spurr* to *Stretton-Grounds*, where they ſtopped a Coach, and *Hartwell* went into the Coach, and arreſted the Lady; and then they drove to the *Star and Garter* in *Drury-Lane*, and from thence ſhe was carried to *Hartwell*'s Houſe: That one Mr. *Holt* took this Witneſs from *Hartwell*'s Houſe to the *Five Bells* in *Witch-Street*, where he ſaw Mr. *Swendſen*, the Priſoner; and *Holt* made him drink, and enquired after the Lady they had arreſted: That returning to *Hartwell*'s Houſe again, he was told, the Lady was carried to the *Vine-Tavern* in *Holbourn*, whither he went, and ſaw Mr. *Swendſen* there; and the Lady was looking out of a Window over-againſt the Tavern; he did not ſee her at that Tavern: And, it being demanded, If they had any Proceſs againſt Mrs. *Busby*, he anſwered, None at all.

Swendſen's Defence.

Mrs. Rawlins's Evidence.

Then Mrs. *Pleaſant Rawlins* was ſworn, and gave the following Evidence.

I was in a Coach, going to *Oxenden* Chapel with Mrs. *Busby* and Mrs. *Baynton*, and three Bailiffs came about the Coach, and carried us to the *Star and Garter* Tavern in *Drury-Lane*; they forced me up Stairs into a back Room, but we got into a forward Room; we had not been

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been there long, before they pretended Mrs. *Busby* and me; Mrs. *Baynton* was gone for our Friends, as ſhe pretended: I was in a very great Fright; and Mrs. *Busby* ſaying, We will die together, they took me by Force from her; *Hartwell* ſwore a great Oath, and thruſt me down Stairs, and forced me out of a back Door into an Alley. When he went to put me into a Coach, I cried out Murder! then he threatened to put me into *Newgate*. He carried me to his own Houſe, where Mrs. *Baynton* came in, pretending, ſhe heard my Name as ſhe was going by; ſhe ſaid, ſhe would ſend for her Brother, who ſhould bail me. He came, and we went to the *Vine*-Tavern in *Holbourn*, where I was an Hour or two before I heard any thing of Marrying; but after we had dined, ſhe begged of me to have her Brother; and ſaid, If I did not marry him, I ſhould be ruined: I deſired my Friends might be ſent for; but they would not admit of it. She asked me to let her ſee the Ring off my Finger; which I refuſing, ſhe forced it from me, and ſaid, ſhe would go and get a Wedding Ring made by it. When they brought the Ring, they ſaid to me, Will you be married or no? I ſaid, I would not, without the Conſent of my Friends: They ſaid, if I did not, I ſhould be ruined for ever; and they brought a Parſon and a Clark up Stairs: The Parſon ſaying, I hear there is a Couple to be married, asked no Queſtions, but told me, If I did not marry this Gentleman, I ſhould be ſent to *Newgate*: So, with many Threats and Perſwaſions, they at laſt prevailed with me to marry; I was forced to marry him out of Fear, not of going to *Newgate*, but of being murdered. It was about Three in the Afternoon when I was married, and, about Candle-Light, they carried me to *Blake*'s Houſe, in *Red-Lion-Fields*: They thruſt me up Stairs, and ordered to have a Bed ſheeted. Mrs. *Baynton* bid me undreſs, and go to Bed: I ſaid, I would not: Then ſhe ſaid, ſhe would pluck the Clothes off my Back; and, at length, ſhe forced me to go to Bed: It was *Saturday* Morning before I was releaſed; then ſome of my Friends came to the Place where I was.

The Lord Chief Juſtice demanding of *Swendſen*, What Anſwer he gave to this Evidence? He ſaid, He was very much unprepared, having had ſo little Time allowed him, and deſired Counſel: The Court anſwered, He could not have Counſel; and as for Time, he had been told, If he could have ſhewn any Cauſe, his Trial ſhould have been put off: Then he begged very importunately, that his Wife (Mrs. *Rawlins*) might ſtand by herſelf; intimating, ſhe would be prompted what to ſay by the Company about her: The Counſel anſwered, He did this on Purpoſe to frighten her; however, the Court at length conſented ſhe ſhould remove to another Place: After which,

Swendſen's Defence.

Swendſen ſaid, The firſt Time he was at Mrs. *Nightingale*'s, he was deſired by Mrs. *Busby* and Mrs. *Baynton* to make a Bowl of Punch; which he did; and they were very merry over it: Then he invited them to go on Board a Ship; which they all did, and, in a ſhort Time, became very well acquainted, inſomuch, that they invited him the Week following to partake of a Treat; accordingly he went, and met one Mr. *Pugh* there, who, at that Time, courted Mrs. *Rawlins*; but the little Time he (the Priſoner) was acquainted with her, he diſcerned ſhe had a Kindneſs for him, as he had for her: That he thereupon told her, he could not be eaſy while ſhe ſuffered *Pugh* to kiſs her; ſhe bid him be eaſy, and ſaid, it ſhould be remedied.

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Here Mrs. *Rawlins* denied ſhe ever ſaid any ſuch Words: Then *Swendſen* demanded, If ſhe did not ſay, ſhe would not eat a Bit, if he did not ſit by her? This ſhe alſo denied; whereupon he demanded, If ſhe did not give him ſome Encouragement? She anſwered, She knew of no ſuch Thing.

Then the Chief Juſtice told her, She ought to ſpeak the Truth, becauſe his Life depended on it; and asked her, If ſhe ever did admit his Courtſhip in order to marry him: She anſwered, She remembered no ſuch Thing, ſhe did not know ſhe ſhewed him any more Kindneſs than the reſt of the Family did; nor was ever in his Company alone.

Then the Priſoner ſaid, That once after Dinner, ſhe heaped peeled Walnuts upon his Plate, till the Company took Notice of it: That at other Times ſhe kiſſed him, and ſqueezed him by the Hand; and when he talked of marrying her, ſeemed very well pleaſed: But ſhe denied all this, and ſaid, ſhe never was with him alone: And Mrs. *Busby* declared, She ſaw nothing of all this. Then he called a Picture-Drawer, to give an Account of ſome amorous Converſation between them, when they came to his Houſe to ſee Mrs. *Baynton*'s Picture that was drawing; but the Painter could teſtify nothing of that Nature: Whereupon the Chief Juſtice told him, He was in a great deal of Danger, if he could produce no better Witneſſes.

The Priſoner proteſted, he knew nothing of the Arreſt, directly or indirectly, till he ſaw her in the Bailiff's Houſe: And, that ſhe married him with as much Freedom as a Woman could.

Then the Chief Juſtice bid her give an Account, how ſhe was carried from the Bailiff's Houſe.

Mrs. *Rawlins* anſwered, When I was at *Hartwell*'s, the Bailiff's Houſe, Mrs. *Baynton* pretended to come by accidentally, and that ſhe heard my Voice; and came in, and ſaid, How do you do, Mrs. *Rawlins*? You know how I do, ſaid I. She pretended to help me, and propoſed to go to her Brother to bail me; and he came, and I was carried from thence in a Coach to the *Vine*-Tavern, and *Swendſen* went in the Coach with her.

The Priſoner's Witneſſes.

The Priſoner then called the Parſon that married them, for a Witneſs, who depoſed, That a Gentleman fetched him and his Clark from the *Fleet*, to the *Vine*-Tavern in *Holbourn*; and being introduced to the Priſoner, he asked him, What he was to do? And he anſwered, to marry him to that young Gentlewoman: That he read the Licenſe, and found it a true Licenſe; and asking the Lady her Name, found it to be the ſame with that in the Licenſe: Then he asked her, If ſhe was willing to be married? and ſhe ſaid, ſhe was willing; and another Gentlewoman was with her, that ſaid ſhe was her Siſter: Whereupon he ſaid, If you conſent, and your Siſter is willing, here is a Licenſe,

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Licenſe, and I believe there is no Danger in marrying you. The Chief Juſtice demanded, If the Licenſe directed the Marriage ſhould be performed in a Tavern? and if he took the Queen's Duty? He anſwered, No; but he returned their Names to the Superviſors; he never married any in a Tavern before, and would never do it again; and acknowledged, he ſtaid and dined with the new-married Couple.

Then he called Mr. *Cotchet* and Mrs. *Cotchet* of the *Vine*-Tavern, as Witneſſes; and being aſked by the Chief Juſtice, If they heard any Noiſe, or ſaw any Violence uſed to the young Woman, they ſaid, they obſerved none: That they were ſhewn a lower Room when they came in, but choſe to go up Stairs; and ſoon after Mr. *Holt*, the Vintner, came down and went out; and that *Hartwell*, the Bailiff, told them, it was an Arreſt, and that the Parſon was to be Bail for the Lady; but afterwards they ſaid, there was a Wedding above, and they admired at it, that there ſhould be a Wedding and Bailiffs there: And after all was over, the Gentleman and the Lady went out at the Back-door, and took Coach, and the Lady did not ſeem diſcontented.

Sarah Walker, the Cook at the *Vine*, depoſed, That when the young Gentlewoman came in, ſhe heard there was to be a Wedding, and ſhe went up Stairs to receive Directions for the Supper, and the young Lady ſat at one End of the Room, and ſeemed very melancholy; and when ſhe aſked her what Sauce ſhe would have, ſhe ſaid, ſhe would eat nothing at all; but when ſhe went away, ſhe did not ſeem melancholy.

Blake, the Man's Daughter where ſhe was put to Bed, depoſed, That they came to their Houſe about three or four o'Clock in the Afternoon, and went to Bed about two Hours after, and roſe again at ſeven in the Evening, and went away; and that ſhe helped to undreſs her when ſhe went to Bed, the Lady deſiring ſhe might wait on her; and that Mr. *Swendſen* told her, the young Lady was his Wife.

Blake himſelf being called as a Witneſs, and aſked what he knew of Mrs. *Baynton*, anſwered, that he had known her twelve Years, and it was reported ſhe was married to Mr. *Baynton*, who died about four Years ſince; but confeſſed ſhe lay in at his Houſe about four Months ago. And being aſked, Why, when he knew ſhe was ſuch a Woman, and brought a Gentlewoman to his Houſe, and ordered a Bed to be made, he would admit of it? *Blake* anſwered, he did not know it was a clandeſtine Thing.

The Conſtable, who apprehended *Swendſen*, teſtified, That he had a Warrant to take up the Men that ran away with the young Gentlewoman, and he went with ſome Gentlemen to Mr. *Blake*'s Houſe, in *Red-Lion-Street*, where he found Mr. *Swendſen* and the Lady; and one of the Gentlemen (her Friend) aſked her, If ſhe was married? She anſwered, Yes, there is my Huſband, and ſeemed very much ſatisfied: Whereupon he wiſhed her Joy, and ſaid, if ſhe pleaſed to go with him to the Recorder's, there was her Guardian to approve what ſhe had done; but ſhe would go to the next Juſtice of Peace.

Here the Priſoner obſerved, that ſhe ſaid to the Conſtable, *I am very well content with the Marriage, and this is the Ring that married us.* Mrs. *Rawlins* anſwered, ſhe did not know but ſhe might ſay ſo, for ſhe was not in her Senſes, and did not know what ſhe ſaid: And the Court demanding, If ſhe had been in Bed then? ſhe anſwered, Yes, they had been in Bed about an Hour; that Mrs. *Baynton* threatened her, and ſaid, ſhe muſt own him for her Husband, or they were all ruined. 1702. 1 Annæ.

Then Juſtice *Baber* teſtified, That on *Friday*, the 6th Inſtant, the Priſoner, the Lady, and another came to his Houſe, in *York-Buildings*, and the Priſoner in particular deſired he would adminiſter a voluntary Oath to her, whether ſhe was married to him; but he did not think he had any Thing to do to give ſuch an Oath, and therefore did not tender it, and perceived ſhe was in great Diſorder; that they came to him in a Coach, and had then no Officer with them; and that ſhe did ſay, voluntarily, *ſhe was married with her own Conſent.*

Bulkley, the Priſoner's Barber, depoſed, That he and the young Lady called at his Door, in *York-Buildings*, in a Coach, on the the 7th of *November*, and the Priſoner told him he was married, and that was his Wife; and he wiſhing them much Joy and Happineſs: She anſwered, ſhe did not queſtion it, ſince what ſhe had done was with her own voluntary Conſent.

Hudſon, *Blake*'s Man, teſtified, That Mr. *Swendſen* came with the Lady to their Houſe on *Saturday* Morning; and Mr. *Swendſen* ſaid, That was his dear Wife; and ſhe ſaid, This is my dear Husband; and took him about the Neck and kiſſed him.

Mr. *Green* depoſed, That he was with them before the Recorder, and the Lady owned, ſhe was married to the Gentleman by her own Conſent, without Force or Compulſion; and the Recorder anſwered, he was afraid ſhe was drawn in by that Spark, a Bully of the Town; and Mr. *Swendſen* and the Witneſs being ſent out, he did not know what ſhe ſaid afterwards.

Then the Priſoner called ſeveral to his Reputation. One ſaid, he had dealt with him for 3000 *l.* Another ſaid, he had a good Character in *Norway*, and ſeveral Ships were conſigned to him; and a third ſaid, he knew him, and he was eſteemed worth 10,000 Dollars in *Norway*, and held to be a very honeſt Man. *See the Conviction, Sentence, and Execution, after Mrs.* Baynton's *Trial.*

Here Mr. Solicitor General obſerved, That the Priſoner had given no Anſwer to the principal Part of their Evidence, namely, the Force; for if the taking and detaining Mrs. *Rawlins* was by Force, as the Witneſſes teſtified, and if ſhe was married while ſhe was under that Force, no ſubſequent Act or Conſent of hers could leſſen the Offence, if the Jury ſhould give Credit to the Priſoner's Evidence, and believe her Conſent was real.

She had confeſſed, indeed, that after ſhe had been hurried from Tavern to Tavern, ſhe did declare he was her Husband, and that ſhe conſented to the Marriage; but what afterwards happened plainly ſhewed it was through Fear, and nothing elſe: Had ſhe really conſented to the Marriage, why was ſhe carried to the Juſtice of Peace, to take an Oath, that ſhe was married by her own voluntary Conſent? While the Priſoner held

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held her by the Hand before the Recorder, ſhe confeſſed ſhe married with her free Conſent; but as ſoon as the Priſoner was withdrawn ſhe burſt out into a Flood of Tears, and declared ſhe was married by Conſtraint: He obſerved alſo from the Licenſe, that the whole Matter was of the Priſoner's contriving, for the Licenſe bore Date three Weeks before the Time of the Marriage, which ſhewed how long they had waited for an Opportunity to accompliſh this Deſign; and when he took out the Licenſe he made Oath her Age was Twenty-five, and his own Thirty-five. Then the Queen's Counſel called a Witneſs, to teſtify what the Lady ſaid before the Recorder; who depoſed, That while Mr. *Swendſen* held her by the Hand ſhe owned the Marriage, but when he was withdrawn ſhe threw herſelf upon him (the Witneſs), and deſired him to ſtand by her, for ſhe was undone; and giving much the ſame Evidence ſhe had done in Court, ſhe ſaid what ſhe had done was all by Force, and out of Fear.

Then Mr. *Taylor* teſtified, That when the Priſoner took out the Licenſe, he made Oath the Lady was Twenty-five; and that the Licenſe was dated the Day he took it out.

The Chief Juſtice then ſummed up the Evidence, and gave the following Directions to the Jury.

1. You are to know, that if ſhe was taken away by Force, and afterwards married, though by her Conſent, yet is he guilty of Felony: For it is the Taking away by Force that makes the Crime, if there be a Marriage, though by her Conſent.

2. In the next Place it is to be obſerved, that ſhe was taken away by Force, and a Stratagem was uſed to give an Opportunity thereunto, and the Arreſt was but a Colour.

3. You may conſider upon the Evidence, how far the Priſoner was concerned in the firſt Force. It is true, he was not at the Arreſt, and did not appear until ſhe was brought to *Hartwell*'s Houſe; and under that Pretence of Bailing her, ſhe was carried to the *Vine*-Tavern, where there was a Parſon ready, and the Marriage was had in ſuch a Manner as you have heard: Now it is left to you to determine, whether the Marriage was not the End of the Arreſt? And if ſo, how it could be poſſible for ſuch a Force to be committed to effect the Priſoner's Deſign, and he not be privy to it?

4. If it can be imagined he was not privy to the colourable Arreſt, yet ſhe was under a Force when he came to her at *Hartwell*'s Houſe, and from thence ſhe was carried by Force into the *Vine*-Tavern, where ſhe was married: That is a forcible Taking by him at *Hartwell*'s Houſe: And though, when ſhe was at the *Vine*-Tavern, ſhe did expreſs her Conſent to be married; yet it appears, even then, ſhe was under a Force, and had no Power to help herſelf: She was alſo under a Force when ſhe was carried to *Blake*'s, and put to Bed: Nay, when ſhe was carried to the Juſtice of Peace, even then ſhe was under a Force; and all that ſhe ſaid was not freely, but out of Fear: Such a Force would avoid any Bond, for ſhe was under Impriſonment. But, however, if the firſt Taking was by Force, and ſhe had conſented to the Marriage, the Offence is the ſame; it is Felony.

After the Charge Mr. *Swendſen* deſired his Wife might be aſked, Whether ſhe did not, upon her Knees, ſwear ſhe went away from him as good a Maid as ſhe came to him.

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The Chief Juſtice anſwered, That was a Queſtion need not be aſked, ſince the Marriage was ſo plainly proved: This was ſufficient to bring him within the Statute, though the Marriage was never conſummated.

Baynton's Trial.

After the Trial of Haagen Swendſen, Sarah Baynton, John Hartwell, *and* John Spurr, *were ſet to the Bar, and a Jury charged with them; being indicted for aiding and aſſiſting the ſaid* Haagen Swendſen, *to bring about and accompliſh the ſaid forcible Marriage with Mrs.* PleaſantRawlins. (The Indictment will be found in the preceeding Trial.)

In opening the Indictment and the Evidence, Mr. Solicitor obſerved, That the Law, to ſhew how odious ſuch Offences were, and to deter all Perſons whatever from committing them, had made no Difference between the Principals and Acceſſaries; the Abetters, Procurers, and Contrivers were declared and adjudged Principal Felons.

The Evidence.

The Evidence being called, Mrs. *Busby* depoſed, as ſhe had done at the former Trial, That Mrs. *Rawlins*'s Father left her about 2000*l.* and her Grandfather 20*l. per Annum* in Lands.

Mrs. *Nightingale* teſtified, That Mrs. *Busby* and Mrs. *Rawlins* had lodged at her Houſe three Years, when Mrs. *Baynton* came under the Character of a Country Gentlewoman, and took Lodgings at her Houſe, and introduced *Swendſen* as her Brother. (*As in* Swendſen's *Trial*).

Mrs. *Busby* alſo teſtified, That ſhe and Mrs. *Rawlins* were arreſted in a Coach, and carried to the *Star and Garter* in *Drury-Lane*, (*as at the former Trial*): And the Court demanding, if Mrs. *Baynton* and *Hartwell* were at the Tavern with them, ſhe anſwered, Mrs. *Baynton* was there, and pretended to go for Friends to bail them; but did not come again while ſhe was there. That *Hartwell* forced the young Lady from her at the Tavern; and when ſhe put her Head out of the Window, and cried after her, *Spurr* ſaid, What have you got by your Bawling? We are better known here than you are. This was the firſt Notice ſhe took of *Spurr*, but ſhe underſtood he rode behind the Coach that brought them thither, and that he was left to keep her, when Mrs. *Rawlins* was forced away from her.

Wakeman, the Bailiff's Follower, depoſed, That *Hartwell* employed him in this Arreſt, and told him the Writ was againſt Mrs. *Rawlins*: That *Spurr* ſtopped the Coach, and *Hartwell* ordered it to drive to the *Star and Garter* Tavern; and when they were there, *Hartwell* came to the young Lady, and ſaid, You muſt go to my Houſe; and ſhe ſaid, O Lord, don't part us: But he forced her away, put her into a Coach, and carried her thither; and from *Hartwell*'s Houſe ſhe was carried to the *Vine*-Tavern in *Holbourn*. The Court demanding, if they had any Writ againſt Mrs. *Busby*, *Wakeman* anſwered, No; and That againſt Mrs. *Rawlins* was but for 20*l.* though *Hartwell* ſaid, it was for 200*l.* And that when he went away, he left *Spurr* and *Hartwell* at the *Vine*-Tavern.

Then Mrs. *Rawlins* teſtified, That ſhe was arreſted on the 6th of *November*, as ſhe was going in a Coach to *Oxenden* Chapel, and carried to the *Star and Garter* Tavern; where *Hartwell* forced her from Mrs. *Busby*, carried her to his own Houſe,

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and from thence to the *Vine*-Tavern in *Holbourn*, as ſhe had done at the Trial of *Swendſen*.

Hartwell demanding of Mrs. *Rawlins*, which of them was *Hartwell*; ſhe anſwered, that his Name was *Hartwell*; and that he took her about the Middle, forced her away, and drove her down Stairs; and when ſhe cried out Murder, he ſaid, if ſhe did not hold her Tongue he would ſend her to *Newgate* that Minute: And having her at his Houſe in *Witch-Street*, Mrs. *Baynton* came in, pretending ſhe heard her Name as ſhe paſſed by, and ſaid ſhe would ſend for her Brother to bail her; whereupon ſhe went out, and returned with her Brother *Swendſen* in half a Quarter of an Hour: After which, Mrs. *Baynton*, her Brother, and *Hartwell*, carried her in a Coach to the *Vine*-Tavern in *Holbourn*, and *Holt* was there for the other Bail: They were willing to take him, but were very ſcrupulous about *Swendſen*'s being Bail; and told her, in ſhort, ſhe muſt marry *Swendſen*, and that would put an End to it. Mrs. *Baynton* ſaid, if ſhe did not marry her Brother, ſhe muſt go to *Newgate*: That ſhe deſired her Friends might be ſent for, but they would not permit it; and when ſhe refuſed to let Mrs. *Baynton* have her Ring off her Finger, ſhe forced it from her, and ſaid, ſhe would go and get a Wedding-Ring made by it. That *Holt* brought in the Parſon and Clerk, and the Parſon asked no Queſtions, but told her, if ſhe did not marry that Gentleman ſhe ſhould be ſent to *Newgate*; and with many Threats ſhe was at length prevailed on to marry *Swendſen*; but ſhe did it not out of Fear of going to *Newgate*, but of being murdered. That ſhe did not ſtay at the *Vine* a quarter of an Hour after ſhe was married, but *Swendſen* and Mrs. *Baynton* carried her to *Blake*'s Houſe in *Holbourn*, where *Baynton* and *Blake*'s Daughter undreſſed her, and ſhe was in Bed there an Hour or two. The Court demanding, if ſhe ſaw *Hartwell* at the *Vine*-Tavern before ſhe was married; ſhe ſaid, Yes; *Hartwell* ſaid, he would conſider with Mrs. *Baynton* about the Bail, and they all went out and left her alone, and Mrs. *Baynton* returned, and told here they refuſed the Bail.

Baynton's *Defence.*

Mrs. *Baynton*, being directed to enter upon her Defence, demanded of Mrs. *Rawlins*, If ſhe did not ſay, when the Family was at Church, ſhe wiſhed Mr. *Swendſen* was there? and Mrs. *Rawlins* anſwering, ſhe did not remember ſhe ſaid ſo; Mrs. *Baynton* aſked her, If ſhe did not come to her Bed-ſide, and kiſs and hug her, and talk with Pleaſure of Mr. *Swendſen*? Mrs. *Rawlins* anſwered, may-be ſhe might do ſo; but ſhe did not ſpeak it with a Deſign to have him.

Mrs. *Baynton* demanded, If ſhe did not ſay, ſhe had a great deal of ill Uſage, and that ſhe lived more like a Servant than any thing elſe? Mrs. *Rawlins* anſwered, ſhe did not know but ſhe might: And the Chief Juſtice demanding, Why ſhe did ſo? ſhe anſwered, ſhe could give no Account of it.

The Chief Juſtice then aſked her, If ſhe bid Mrs. *Baynton* tell *Swendſen*, that ſhe knew a Gentlewoman at her own Diſpoſal, that would make him a very good Wife? Mrs. *Rawlins* anſwered, ſhe might ſay ſhe wiſhed her Brother a very good Wife, but ſhe did not ſpeak it with a Deſign to marry her Brother; but was reſolved to take Advice of her Friends.

The Court then demanded, If ſhe ever told Mrs. *Baynton* ſhe wiſhed herſelf Mr. *Swendſen*'s Wife? She anſwered, ſhe could not tell whether ſhe did or not: But being aſked, if ſhe told Mrs. *Baynton* that, notwithſtanding what ſhe ſaid of Mr. *Swendſen*, ſhe would never marry without the Conſent of her Friends? She anſwered, ſhe often ſaid, ſhe would never marry without their Conſent.

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It being demanded, If there had been any Courtſhip carried on between Mr. *Swendſen* and her? She ſaid, no more Courtſhip to her than to all the Family: Being aſked, if ſhe did not ſay ſhe would have no body but *Swendſen*? She denied ſhe ever ſaid ſo. Then Mrs. *Baynton* deſired ſhe might be asked, Whether ſhe conſented to be taken away, directly or indirectly? Mrs. *Rawlins* replied, it was all without her Knowledge; ſhe never conſented to it.

Being asked, if ſhe did not ſend back Mr. *Pugh*'s Letter, and deſire him to come no more, for ſhe would have nothing to ſay to him? She anſwered, ſhe did ſend back his Letters, but did not remember ſhe ſaid any thing to Mrs. *Baynton* about it.

The Court asking, Why ſhe ſent his Letters back? She ſaid, It was not upon Mr. *Swendſen*'s Account; but upon ſome unhandſome Things they had heard of him: And Mrs. *Busby* ſaid, They were ſent back by their Advice.

The Chief Juſtice again ſolemnly demanded of her, by the Oath ſhe had taken, If ſhe conſented to her being taken away after the Manner ſhe was, or gave any Encouragement to Mr. *Swendſen*? She anſwered, No; ſhe did not know ſhe gave him any Manner of Encouragement.

Then Mrs. *Baynton* called her Maid *Betty*, for a Witneſs, if Mrs. *Rawlins* did not ask her ſeveral Times of Mr. *Swendſen*, and wiſh he would come and dine with them? And *Betty* anſwered, She never heard her but once.

Swendſen's *Jury come into Court, and propoſe ſome Doubts,*

Here *Swendſen*'s Jury returned into Court, and *Johnſon*, a *Dane*, who was one of the Jury, ſaid, they did not find any Evidence, that Mr. *Swendſen* was privy to the Arreſt. The Chief Juſtice anſwered, Did not he go to *Hartwell*'s Houſe, and from thence, while ſhe was under a Force, went with her to the *Vine*-Tavern, where he married her? Did not he take Advantage of the Force, and was that Force to any other Purpoſe but to compel her to marry him? There was no Cauſe of Action, either againſt Mrs. *Rawlins* or Mrs. *Busby*. And *Johnſon* ſtill objecting, there was no Violence uſed by *Swendſen*; the Court anſwered, if he was preſent when Violence was uſed, then was Violence uſed by him: It appeared very evident ſhe was under a Force before ſhe was married, when ſhe was married, all Night after, and the next Day, when ſhe was at the Recorder's.

Johnſon replied, He did not believe Mr. *Swenſden* employed the Bailiffs: To which the Court anſwered, If he did not ſet them to work, yet his Act afterwards made it as bad as if he had actually imployed the Bailiffs: Whereupon *Johnſon* ſaid, he agreed with the reſt; and the Foreman ſaid, They were now all agreed in their Verdict, that *Swendſen* was GUILTY.

Swendſen *convicted.*

Then Mrs. *Baynton* proceeded in her Defence, and ſaid to Mrs. *Rawlins*, Did not you undreſs

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undreſs yourſelf at Mrs. *Blake*'s? She anſwered, You undreſſed me: And being asked, If ſhe did not ſay to Mr. *Swendſen*, when ſhe was in Bed, Come to Bed, my dear Husband, you muſt love no body in the World but me; and that ſhe loved him above all Men in the World? She anſwered, *No, Mrs.* Baynton, *I did not; I have taken an Oath this Day, and I ſaid no ſuch Things.*

Mrs. *Baynton* ſaid, That Mrs. *Rawlins* would have written Letters to Mr. *Swendſen*; but ſhe would not let her, and always acted as a Friend to her.

The Chief Juſtice anſwered, If ſhe had no Deſign but for her Good, why did ſhe go to lodge at Mrs. *Nightingale*'s, under Pretence ſhe had a Law-Suit? and why did ſhe carry her out in the Coach in order to be arreſted? Mrs. *Baynton* replied, She had carried her out in a Coach, and ſet her down ſeveral Times. And then ſhe demanded of Mrs. *Rawlins*, If ſhe did not ſeveral Times deſire to ſit next to *Swendſen* when they were at Cards, and ſent for Walnuts and Apples to treat him? To which ſhe ſaid, She did indeed ſend for Walnuts and Apples; but not to pleaſure Mr. *Swendſen*.

The Court demanding of *Baynton*, Why ſhe ſaid Mr. *Swendſon* was her Brother? She ſaid, He was her Brother by Adoption: And asked Mrs. *Rawlins*, if ſhe did not give Mr. *Swendſen* ſo much Encouragement as to kiſs him, and go between his Legs? Mrs. *Rawlins* thereupon ſaid, She took it upon her Oath, ſhe never did ſo: And being asked, If ſhe did not love him? She ſaid, No; not well enough to make him her Husband.

Then the Court asked Mrs. *Baynton*, How ſhe lived, and if ſhe had not a Child about four Months ago? She anſwered, She was married, and could prove it; but ſhe did not think it proper, for ſome Reaſons: And as to getting her Living, ſhe had a Siſter in *Barbadoes* that was very kind to her.

Then the Chief Juſtice demanded of *Hartwell*, Who ordered him to take out the Writ againſt Mrs. *Rawlins*, at the Suit of *Jones? Hartwell* anſwered, It was Mr. *Holt*, who kept the *Mitre* Tavern at *Weſtminſter*; and being at Mr. *Holt*'s Houſe, Mrs. *Baynton* came in, and gave him Money for the Writ; and he ſent *Spurr*, his Follower, for it: That when he carried them to the *Star and Garter* Tavern, Mrs. *Baynton* bid him take Care of his Priſoner, Mrs. *Rawlins*, and take her with him to his Houſe, or he would loſe his Money; and thereupon he carried her to his Houſe, and having Buſineſs elſewhere, he left her with his Wife; and when he came Home again, he found Mr. *Swendſen* and Mrs. *Baynton* there, drinking a Pint of Sack: And they told him, if he would go to the Tavern, the Buſineſs ſhould be made up; and they went in a Coach to the *Vine*-Tavern, where the Matter was made an End of; but he knew of no Writ againſt Mrs. *Busby*. Then he called a Witneſs, who teſtified, That Mrs. *Baynton* confeſſed before the Recorder, ſhe imployed *Hartwell* to ſue out the Writ againſt Mrs. *Rawlins*, and gave him Money; but *Hartwell* ſaid, His principal Witneſs, Mr. *Holt*, was fled: And asking Mrs. *Rawlins*, if ſhe was not free to go to the *Vine*-Tavern? She anſwered, She did not deny, but ſhe went freely thither; nor was there any Rudeneſs offered her then.

Hartwell's *Defence.*

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It being demanded of *Spurr*, What he had to ſay? He anſwered, He knew nothing more of the Matter, than that *Hartwell* gave him the Money to take out the *Marſhal's-Court* Writ, and he was imployed by him.

Spurr's *Defence.*

Then the Chief Juſtice having ſummed up the Evidence, ſaid, If *Hartwell* was imployed in this Deſign, in order to take Mrs. *Rawlins* into Cuſtody, to carry on this Marriage, and was privy to it, then he was equally guilty; but if he did only act as a Bailiff, and did not know the Deſign, then he was not guilty. But his arreſting Mrs. *Busby*, againſt whom he had no Proceſs, and taking Mrs. *Rawlins* from Mrs. *Busby* to his own Houſe, and from thence carrying her to the *Vine*-Tavern; his pretending that the Warrant was for 120*l.* when as in Truth it was but for twenty Pounds; and his pretending that the Parſon was to be the Bail, though he was not preſent in the Room where the Marriage was, but hard by; yet he was in the ſame Houſe, which is all one, if he knew what Deſign was on Foot: Theſe are the Things you are to conſider of. As for Mrs. *Baynton*, ſhe pretended ſhe was a Widow, and you hear how ſhe proves it; and when ſhe is taxed with having a Child, then ſhe ſaith ſhe has a Huſband; and when ſhe is asked about him, ſhe will give no Account, nor how ſhe ſupports herſelf. She ſaid indeed, ſhe paid every body their own; and that ſhe has no Difference with any body whatſoever. She pretended ſhe was Mrs. *Rawlins*'s Friend in what ſhe did; but it is plain, by what ſhe owns herſelf, that ſhe imployed *Hartwell*, and paid him for the Writ: And her pretending to ſet them down at *Oxenden* Chapel, there it was her Deſign to bring them under that Force to effect this Marriage. I muſt leave it to you to conſider, whether from the Beginning to the End, ſhe was not an Actreſs and a Manager of this whole Buſineſs. She hath been asked, how Mr. *Swendſen* came to be her Brother? 1ſt. ſhe ſays, he was her deceaſed Siſter's Husband: Then being asked, who was that Siſter? She ſaid, He was an Adopted Siſter's Husband. It was very extraordinary for her to go to Mr. *Hartwell*'s Houſe to the young Gentlewoman, and pretend ſhe came by Chance, and heard her Name. I muſt leave it to you, Gentlemen of the Jury, to conſider of the whole Matter: And as for *Spurr*, he was an Under-Officer, a Bailiff's Follower, and might be ignorant of the Buſineſs. You have not Evidence enough to make it appear, that he was privy to this Deſign, and therefore you are to acquit him: But as to Mrs. *Baynton* and *Hartwell*, if they were privy to this Deſign of forcibly taking away of Mrs. *Rawlins* with an Intent to marry her to Mr. *Swendſen*, as it is plain he was an Actor, and ſhe an Abettor in the Force; then, Gentlemen, you are to find them guilty: If you are not ſatisfied, you are to acquit them.

The Jury being withdrawn, after half an Hour's Receſs, returned into Court with their Verdict, That *Sarah Baynton* was GUILTY; but *Hartwell* and *Spurr* were *Not Guilty*. Whereupon the Chief Juſtice told *Hartwell*, he had met

Baynton *convicted:* Hartwell *and* Spurr *acquitted.*

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met with a very merciful Jury, and adviſed him to take care for the future.

The Priſoners, *Haagen Swendſen*, and *Sarah Baynton*, were called to Judgment on the 28th of *November*; and it being demanded of *Swendſen*, What he had to ſay, why Sentence of Death ſhould not paſs upon him? He inſiſted, That Mrs. *Rawlins* had varied in her Evidence, and confeſſed ſeveral Things in Mrs. *Baynton*'s Trial, that ſhe denied in his. Mrs. *Baynton* made the like Obſervation; and added, That ſhe was with Child: To which my Lord Chief Juſtice replied, That was no Plea againſt Judgment.

Then Mr. Juſtice *Powell* obſerved, How great a Crime this Fortune-ſtealing was; how much worſe than any other Kind of Robbery: And that though *Swendſen* was not at the firſt taking, yet there were ſtrong Preſumptions to conclude him privy, and conſenting to it; and particularly his having a Licenſe prepared for the Marriage: That ſuppoſing he was not privy to the Arreſt at firſt, yet knowing of the Force, and being preſent afterwards, when ſhe was threatened to be ſent to *Newgate*, if ſhe did not marry him, and taking Advantage of her being under theſe Menaces; this was, in Law, a forcible Taking. Then he paſſed Sentence of Death on Mr. *Swendſen* and Mrs. *Baynton*: After which *Swendſen* acknowledged the Arreſt to be all his own Contrivance, and not Mrs. *Baynton*'s: And Mrs. *Baynton* declaring ſhe was with Child, a Jury of Matrons were impannelled, and brought her in quick with Child; whereupon Execution was reſpited till after her Delivery: And her Friends afterwards obtained her Pardon; but *Swendſen* was executed at *Tyburn* in Purſuance of his Sentence.

Swendſen and Baynton condemned.

Baynton pardoned.

Swendſen's Execution and dying Words.

The Execution of Haagen Swendſen, *on the* 9th *of* December, 1702.

Haagen Swendſen, being brought to the Place of Execution, referred himſelf to the following Paper; which he left with the two Divines who attended him.

" I Do believe the World will expect I ſhould " ſay ſomething for their Satisfaction. " That I had a Deſign to have Mrs. *Rawlins* " for my Wife, is moſt true. I was told of her " by a Neighbour and Friend of hers; and then " made a further Enquiry, and found her Qua- " lity ſuch, as I might, without any Excep- " tions, preſume to, her Father being the Son " of a Tradeſman: The next was, how to get " into her Acquaintance; and not knowing " how to be introduced, I prevailed with, and " perſuaded Mrs. *Baynton* to take a Lodging in " the ſame Houſe with Mrs. *Rawlins*; by " which Means, I found eaſy Acceſs to my " Wiſhes, and was as welcome to the Family " as if I had been one of themſelves. I had " their Company on Board a Ship, where I " gave them an Entertainment; and was invit- " ed to dine with them; and, by Degrees, I " poſſeſſed myſelf of Mrs. *Rawlins*'s Affection " ſo far, that ſhe ſeemed uneaſy without me, " and frequently importuned for my ſpeedy " Return, and obliged me to ſit next to her at " Table, ſaying, That if I did not, ſhe would " not eat; and treated me with many private " Careſſes; by which Lovers, who have not " frequent Opportunity of ſpeaking, do, by " Signs and Tokens, expreſs themſelves.

" I do declare, I had as good Reception as " a Lover could wiſh for, and all the Encour- " agement imaginable; inſomuch, that nothing " ſeemed diſagreeable to my Intentions, but all " Things did promiſe to facilitate my Deſign " with Succeſs, ſhe herſelf having told me, " that ſhe was at her own Diſpoſal, and would " marry to pleaſe herſelf.

" My Familiarity with Mrs. *Rawlins*, before " my Marriage, was ſo great, that there was " no Room left for me to practiſe Violence " upon her; though I muſt ſay, I was impa- " tient of Delays, and wiſhed for an Oppor- " tunity to accompliſh my Deſire.

" But as for the unhappy Contrivance of the " arreſting Mrs. *Rawlins*, I had no Share in it, " but was perſuaded to conſent to it, by Mr. " *Holt* and his Wife; and when the Intrigue " was brought to Perfection, I complied, and " laid hold of the Opportunity, in order to " marry Mrs. *Rawlins*, which, with little Dif- " ficulty, and leſs Perſuaſion, I accompliſhed; " ſo having, without any Force or Violence, " declared to the Miniſter, that ſhe was at her " own Diſpoſal, and free to marry me, which " the Miniſter declared in open Court at my " Trial.

" After we had been in Bed, comes in one Mr. " *Bennet*, a Conſtable, with ſome of Mrs. *Raw- " lins*'s Relations, who required me to go with " them before a Juſtice of Peace: Finding they " had no Warrant, I refuſed to give Obedience " to their Commands, which created ſome Diſ- " pute; and my Wife, hearing the Noiſe, " came out of the Bed-Chamber, deſiring me " to be quiet, and let her ſpeak to them; which " accordingly ſhe did, in theſe expreſs Words " following; *viz.* Couſin, I have married this " Gentleman with my own free Conſent; he is " my Husband, and this is my Wedding-Ring, " ſhewing the Ring on her Finger: As for Mr. " *Busby*, I will give him under my Hand, he " ſhall come into no Trouble; and what would " you have more?

" Then ſaid they, If it be ſo, then God bleſs " you both together, and drank a Flask of Wine " or two with me, and then departed: They " were no ſooner gone, but I asked her, Whe- " ther ſhe would be willing to appear, and de- " clare what ſhe had ſaid to her Friends to a Juſ- " tice of Peace? and ſhe ſaid, ſhe would, with all " her Heart. Then we went to Mr. Juſtice " *Baber*, in *York-Buildings*, and ſhe declared " the ſame to him; he told her he would take " Notice of her Face, and bid her ſtick to that.

" The next Day, about eleven of the Clock, " there came a Conſtable with a Warrant, and " carried us before the Recorder, unto whom ſhe " ſaid the ſame Thing over and over. Then ſaid " the Recorder, Alas! Child, they made you " drunk, and you did not know what you did: " To which ſhe anſwered, That there were a great " many there preſent, that knew her Life and " Converſation, that ſhe did not uſe to be " drunk: And when the Recorder could not " prevail with her, he conceived that my being

" perſonally

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perſonally with her, obliged her to ſtand ſo firm to her Marriage: He then ordered me to be pulled away by Force from her, at which ſhe fell a weeping; how ſhe afterwards was lectured by her Friends, was ſufficiently atteſted by my Proſecution, Trial, and Sentence; and after I was committed to *Newgate*, I was removed by a *Habeas Corpus* to the *Queen's-Bench* Bar, there to be arraigned, and pleaded Not guilty to the Indictment. I pleaded for longer Time to prepare for my Trial, but was allowed but four Days; when I was brought to my Trial, I moved for a Counſel to plead my Cauſe, as being a Stranger, and not acquainted with the Laws of *England*. My Life being thus at Stake, a powerful Intereſt againſt me, and the Court not for me, rendered my Caſe both deſpicable and deplorable: And as for ſome of my Evidence, I do verily believe they were bribed by the adverſe Party, others taken off by ſiniſter Art, and ſome hindered by Force from appearing in Court for me; as for Mr. Juſtice *Baber*, he ſhewed himſelf but coldly in giving his Teſtimony, and ſaid, That my Wife did confeſs before him, that ſhe was married by her own free Conſent; but at the ſame Time added, That ſhe ſeemed very much diſordered. As for that Gentleman I forgive him, and ſhall leave God to be Judge between him and me.

It is to be noted, That my Wife did not deny in open Court, that ſhe had made the Declaration aforeſaid of her Marriage to Mr. *Bennet*, the Conſtable, and others, that Night we were married, but ſaid, She did not know what ſhe did when ſhe ſaid ſo; and many other Things ſhe poſitively upon Oath denied at my Trial, which makes me have Pity upon her poor Soul, conſidering ſhe confeſſed many Things at Mrs. *Baynton*'s Trial, which ſhe denied upon Oath at mine. The World may ſee what it is to be a Stranger and unacquainted with the Laws; nay, I myſelf heard my Wife openly confeſs in Court, in Mrs. *Baynton*'s Trial, That there was a young Lady in the World, who was at her own Diſpoſal that wiſhed me a good Wife; and at laſt confeſſed She herſelf was the Perſon.

Among my many Misfortunes, I was repreſented by my Wife's Friends, to the Court, to be a Sharper and a Bully; but I called in and produced ſeveral Gentlemen of Repute, to give an Account of my Life and Converſation, who have accordingly atteſted the Honeſty of my Principles by my Practice.

It is further obſervable, how my Jury diſagreed about my Verdict: There was one of them, Mr. *Eraſmus Johnſon*, a Perſon to me altogether a Stranger; for I declare in the Preſence of Almighty God, that I do not remember to have been in his Company three Times in my Life, except in Church: This Mr. *Johnſon* alledged, That none of the Evidence did prove, or ſwear, that I had any Hand in the Arreſt, nor uſed any Force or Violence to the Gentlewoman, but ſhe confeſſed the Marriage, which was proved by ſeveral Witneſſes; which rendered my Caſe ſo hard, that the ſaid Mr. *Johnſon* inſiſted upon it to have me diſcharged, according to the Dictates of his Conſcience; but at laſt he was over-ruled.

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Since my Conviction, I have uſed all the Means I could to procure my Pardon; but finding little or no Probability of it, I am now going to beg for Entrance at the Gate of Mercy in Heaven, which I beſeech God to open for me.

I expected my Trial ſhould be publiſhed, that the World might ſee my Treatment, what I have done, and what I have left undone in my Caſe; but I am informed it may not be printed. I have ſaid this, only to do myſelf Juſtice, although I could ſay a great deal more of Moment to the Purpoſe; but my Time being ſo very ſhort and precious, I muſt employ that little Time to the ſaving of my moſt precious Part, my Soul.

I humbly beſeech Mankind to believe me, and that what I have ſaid or ſhall ſay, are the Words of a dying Man: This is not the Time for me to equivocate, nor to go out of the World with a Lie in my Mouth. I do therefore declare, and call the Great Omnipotent God of Heaven to my Witneſs, That I have aſſerted nothing, to the beſt of my Knowledge, but the whole Truth, nor uttered a Syllable out of Malice or Bitterneſs of Heart, againſt any Perſon whatſoever; but ſo far from it, I do frankly forgive all my Enemies, and beſeech God to put it into their Hearts to repent of their Sins.

As for my Wife, I am ſo much in Charity with her, that I cannot believe the Severity extended to me, did altogether proceed from herſelf; but her conſenting to ſpill my Blood, makes the Guilt her own: God of his great Mercy give her a true Senſe of her Crimes, that the heavy Judgment, hanging over her Head, may not deſcend upon her.

As for Mrs. *Baynton*, who is likewiſe under Sentence of Death for the ſame Account with myſelf, as I have in the Court, ſo do I now again poſitively declare, She had no Hand in the Intrigue of my Marriage, any more than what ſhe did by my ſpecial Direction and Perſuaſion; for Mrs. *Baynton* was wholly a Stranger to Mrs. *Rawlins*, until the unhappy Contrivance of my Marriage made them acquainted: Neither did I know Mrs. *Baynton* till *June* laſt paſt, though ſome have been pleaſed to ſay, I kept her company for three Years, and have had two Children by her; all which I declare is a wrong Notion, and nothing of Truth in it. The only Load I have on my Conſcience, is her Death, of which I am the unhappy Inſtrument; I beſeech God in his Mercy to move the Queen's Clemency to ſpare her Life, that her Blood may not riſe in Judgment againſt me.

As for myſelf, I am now going to ſuffer an ignominious Death, for a Crime which my own Conſcience doth not accuſe me of, but the Rigour of the Law have made it my unpardonable Crime; and as I forgive all Mankind, ſo I beg Forgiveneſs of thoſe, whom, through Inadvertency or otherwiſe, I have injured or offended, beſeeching God of his great Mercy, to vouchſafe them Forgiveneſs whenſoever they ſhall ask it.

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My great Comfort is, that I have reconciled my ſelf with my God, and that I die in my natural Senſes; and that ſhort Time I have had ſince my Trial, I truſt in my Saviour I have not miſpent.

And now, O Lord God, of thy infinite Goodneſs, hear my Petition, pardon my Offences, and forgive me my Sins: Forgive mine Enemies, and lay not my Blood to their Charge; but grant that a ſincere Repentance may waſh away their Guilt.

I am now going out of this Vale of Calamity and Sin to my eternal Repoſe, where, through the Merits of my Saviour Jeſus Chriſt, I hope to ſee God in his Glory: And ſo I conclude, O Lord, receive my Soul into thy boundleſs Mercy, for the Merits of my Saviour Jeſus Chriſt. *Amen.*

Remarks on Swendſen's *Trial.*

As to the Points of Law relating to Fortune-ſtealing, theſe were ſo fully diſcuſſed by the Court and the Counſel at the Trial, that there is no Room to add any Thing upon that Head: I ſhall therefore only make ſome Obſervations on the Fact. And, in the firſt Place, it appears evident to me, that both Mrs. *Rawlins* and Mrs. *Busby*, who had the Care of her, did approve of Mr. *Swendſen*'s Courtſhip, or, at leaſt, were not at all averſe to it, in the Light they viewed him. Had he been a Gentleman of an Eſtate, as Mrs. *Baynton* repreſented him to them, he would have found no Difficulty in obtaining her for his Wife. This, Mrs. *Rawlins* ſeems to have acknowledged at the Trial; but added (I believe very truly), that ſhe never deſired to marry him without the Conſent of her Friends (and conſequently ſuch a Settlement as was anſwerable to her Fortune). Neither ſhe nor they had any Thoughts of her matching with a Bankrupt: This he was fully convinced of; and this put him upon the Stratagem of an Arreſt: And he preſumed he had ſuch a Share in her Affections, that, when the Thing was once done, ſhe would have been ſatisfied, and never have proſecuted him for the Violence: And I am very ready to believe, ſhe never would have made any Stir about it, but have ſubmitted to remain his Wife, if her Friends had not incited her to proſecute him; for ſhe told them, when they found her at *Blake*'s, that ſhe was married by her own Conſent, and was ſatisfied and pleaſed with her Husband, and thereupon they wiſhed them Joy, and went about their Buſineſs, leaving them together all Night. 1702. 1 Annæ.

Very probably the Lady reflected that this was the moſt prudent Courſe ſhe could take, now the Buſineſs was done; eſpecially ſince ſhe was married to a Man ſhe had no Averſion to. However, it is plain, he was the Author of the Force put upon her, and married her while ſhe was under that Force, by his own Confeſſion; and conſequently her ſubſequent Conſent could not wipe of his Guilt, or render him innocent in the Eye of the Law.

Some may obſerve, perhaps, that Mr. *Swendſen*, when he received Sentence, acknowledged the Arreſt to be *his own Contrivance*, but in his Dying Speech ſays, *It was the Contrivance of* Holt *and his Wife*; which ſeems to be a Contradiction: But it is evident he meant no more in his Dying Speech but that his Friend *Holt*, and his Wife, firſt mentioned the Project, which he afterwards came into, and conſented to put it in Execution: For he adds, in his Speech, I complied, and laid hold of the Opportunity, when the Intrigue was brought to Perfection.

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The Trial of RICHARD HATHAWAY, as a *Cheat* and *Impoſtor*, at *Surry* Aſſizes, on the 24th of *March* 1702. 2 *Annæ.* 1702. 2 Annæ.

The Information.

THE Information charged that the Defendant, *Richard Hathaway*, of *Southwark*, in the County of *Surry*, Labourer, being a Perſon of evil Fame, and an Impoſtor, and maliciouſly contriving to take away the Life of *Sarah Morduck* (the Wife of *Edward Morduck*, of *Southwark* aforeſaid, Waterman) an honeſt pious Woman, and not a Witch, or uſing Witchcraft, Inchantment, Charm or Sorcery; did, on the 11th Day of *February*, in the 12th Year of the late King *William*, at *Southwark* aforeſaid, in the Preſence and Hearing of divers Perſons, falſely, deviliſhly, and knowingly, and, as a falſe Impoſtor, pretend and affirm, that he was bewitched by the ſaid *Sarah*, and that by Reaſon thereof he could not eat, but had faſted ten Weeks ſucceſſively; and pretended alſo that he was affected with divers Diſeaſes, and that by drawing Blood from the ſaid *Sarah*, by ſcratching, he ſhould be freed from his ſaid pretended Bewitching: And that the Defendant did thereupon ſcratch the ſaid *Sarah*, and draw Blood from her; and thereupon falſely affirm, That by drawing the ſaid Blood, he was freed from the ſaid Diſeaſes: Whereas, in Truth and Fact, he never was bewitched, nor had faſted as aforeſaid, and knew himſelf not to be bewitched by the ſaid *Sarah*; in Contempt of the ſaid late King and his Laws, and againſt the Peace, *&c.*

The Evidence opened by Mr. Broderick.

In opening the Evidence, Mr. *Broderick*, of Counſel for the Queen, ſaid, The diſcovering and puniſhing ſuch a Cheat as this, is highly neceſſary, not only for the vindicating the Publick Juſtice of the Nation, but for the Sake of Religion it ſelf, which ſuffers by nothing more than by the countenancing of indirect Practices made uſe of upon a Pretence of

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of maintaining and ſupporting it's Credit. Religion has in itſelf ſuch Genuine and Native Truth, as muſt work Conviction upon the Underſtanding of all Perſons who allow themſelves Leiſure to conſider it without Prejudice: But when Tricks and little Arts are carried on for a Time, and attain a general Credit, and appear afterwards to be what are called *pious Frauds*, they do far more Miſchief than all the Good propoſed by ſuch Practices can make Amends for. For when Men, who are Sceptically inclined, find that the Generality of Mankind run away with Stories of this Nature, and thoſe Facts afterwards prove undeniably falſe, they carry their Doubts on much too far and are apt to conclude, that they cannot ſecurely rely upon the Relation of others, and even on the general Conſent of Mankind, for the Certainty of any Fact whatſoever. It is therefore the Duty of all Perſons that are concerned for Religion in general, to endeavour to detect ſuch Practices, which weaken one of its moſt ſolid Foundations.

And my Lord, we conceive this Proſecution very neceſſary, in order to the vindicating the Juſtice of the Nation. Here was a Woman that underwent a ſolemn Trial, and upon a full Hearing was acquitted; yet afterwards, notwithſtanding the thorough Examination of the Fact, and ſuch an Evidence given, as convinced every unprejudiced Hearer, of the Innocence of the Defendant, and the Malice and Hypocriſy of the Accuſer; ſuch a Spirit did reign, that it was repreſented, that the Defendant had hard Meaſure; and not only the Jury, but the Court too, were reflected on: Nay, it went ſo far, that after the Innocence of the Woman appeared by her Acquittal, a Magiſtrate (whoſe Name the Witneſſes will diſcloſe in their Evidence) gave publick Countenance to this Impoſtor (for by that Name I will venture to call him), and ſo far gave Credit to him, that when the poor Woman was abuſed by the Rabble, and, her Life being in Danger, ſhe made Application to that Magiſtrate for Protection; he, inſtead of affording it to her, encouraged her Proſecutors, as if ſhe had really been guilty of the Witchcraft laid to her Charge; and conſiderable Collections were made for this Man, to ſupport his Spirits under the Diſappointment he met with, in her being acquitted.

This Proſecution was neceſſary too, upon the Account of the poor Woman, who, unleſs ſome Check be put to the unruly Proceedings of unthinking People, is not yet ſafe in her Houſe, but in Danger to be torn in Pieces: And it was thought moſt proper, that this Matter ſhould be thoroughly examined in this Place, where the Scene of his counterfeiting, for the moſt part, did lie; that prepoſſeſſed People might be Ear Witneſſes of the Fairneſs of the Proceeding, and that all Perſons might have an Opportunity, if they thought fit, of offering any Thing, fit to be offered, in his Defence.

My Lord, we need not trouble the Court with Evidence tending to prove, that the accuſed Perſon is not guilty of Witchcraft: She is acquitted of that, and it ought not to be ſuffered to be made a Diſpute. But our Evidence will go beyond that, not only that there was no Colour or Foundation for the Charge on her of being a Witch; but that the Defendant did maliciouſly, without any Ground, and contrary to his own Knowledge, charge her with the having bewitched him: And I think, our Evidence, all through, will prove this Matter fully upon him, that he was not bewitched, nay, that he did not believe himſelf to be ſo, yet charged and proſecuted her.

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The firſt Part of his pretended Witchcraft ſhewed it ſelf, by his vomiting Pins: How that Buſineſs was managed, and how he was detected in it, the Witneſſes will declare. And though we are not obliged to endeavour the giving an Account of what it was that induced him firſt to undertake this Impoſture, I think it will appear by the Evidence, that he had ſome Aim and Proſpect of Gain to himſelf; for upon his firſt pretending to vomit Pins, we ſhall prove he had prepared, *a Narrative of his own being bewitched*, and he *himſelf carried it to a Printer*, that ſo he might bring a Concourſe of People to him: But the Printer being a Man of ſome Underſtanding, looked on him to be a Cheat, and would not meddle with the Copy. He practiſed this Trick of vomiting Pins ſeveral Times; but pretending to it once, before one who did not take every Thing upon Truſt, but was curious enough to obſerve nicely and ſearch him; *after ſome Reſiſtance ſeveral Rows of Pins were found in his Pocket.*

The next Diſcovery of this Impoſture, was, the Affair wherein Dr. *Martin* was concerned; who brought two Women to him: The Doctor put an innocent Deceit upon him, but it was in order to diſcloſe a vile Impoſtor. When the Woman was brought to him to be ſcratched, being conſcious to himſelf how little real Effect the barbarous Experiment would have upon him, the whole Company obſerved, that he felt three or four Times from her Hand to her Elbow before he ſcratched, that he might be ſure it was a Woman's Hand; and when he had ſcratched and felt Blood, his Eyes were opened, though it was the wrong Woman.

Another Inſtance of his acting a Part, with a Deſign to impoſe upon the World, was, when he was carried from the *King's-Bench* to Mr. *Kenſey's*. It was neceſſarily to be imagined, that, if he eat or drank nothing, nothing would come from him, either by Stool or Urine: He conſidered this, and for fear it ſhould be taken Notice of, that he diſcharged himſelf after ſo long a Faſt as he pretended, having Occaſion to make Water, he found the Lid of a Box, and making Water in it, put it out of Sight, on the Bed's Teſter; and the firſt Diſcovery of his counterfeiting at Mr. *Kenſey's* was, by the dropping of that Water on the Cloaths of the Bed. After he had been two Days there (during which Time he really did not eat) Mr. *Kenſey*, not knowing but that his Complexion might incline him to ſuch a Sullenneſs, as to ſtarve himſelf rather than directly confeſs his Cheat, having firſt examined his Mouth and Throat, and finding nothing there but as it was in all other Men, and that he had not only all other Organs, but

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that of ſwallowing, without any Obſtruction, as other People had, thereupon he framed this Deſign: He took Occaſion to pretend a Quarrel with the Maid-Servant who lived in his Houſe, within the Hearing of the Defendant, and told her ſhe was as very a Hypocrite as this Fellow; and after warm Words on both Sides, and a ſeeming Reſolution by her, that ſhe would quit her Service, the Maſter went away leaving the Maid and the Defendant together: She, to inſinuate herſelf into the Defendant, ſaid, Her Maſter was an odd Kind of a Man, a dangerous Man, therefore ſhe would not have the Defendant take any thing from him; and ſaid, She would take Care to ſupply him whilſt he ſtaid in the Houſe. Then his Stomach came to him very readily, and he was ſo far from being unable to drink, that he drank Brandy and other Liquors to Exceſs, and this for ſeveral Days: But ſtill thoſe in the Houſe being wary, thought it might be pretended by People, who were very willing to believe him, that this happened by the Charm's being diſſolved, and that he was unable to eat before; and therefore it was thought adviſeable to bring in ſeveral Perſons of Reputation, who ſhould obſerve him through a Hole fit for the Purpoſe; who, after they had ſeen him eat, examined how long he had been a Faſter? And he made Signs, *That he had faſted twelve Weeks, and clung up his Belly as a Proof of his Emptineſs, according to his common Practice, though he had in their Sight, juſt before, eaten a plentiful Meal.* So that, Gentlemen, it it evident, that what he did, was done maliciouſly, and with a Deſign to deceive and impoſe upon the World. After this, there being ſufficient Proof of the Impoſture, it was thought fit to bring him before a Court of Juſtice, thereupon this Information was exhibited againſt him; and if we prove it, I doubt not but you, Gentlemen of the Jury, will do that Right to the Government and to Religion, as to find him guilty of it, that he may be brought to the Puniſhment that ſuch a Crime deſerves.

Dr. Martin's *Evidence.*

Then the King's Witneſſes were called, and firſt Dr. *Martin*, the Miniſter of the Pariſh, was ſworn, and teſtified, That on *Sunday* the 9th of *February*, 1701, there was ſuch a Tumult in the Church, that his Curate, who read Prayers, could not be heard; and upon his enquiring into the Matter, the Sexton informed him, There was a Witch in the Church, and brought one *Sarah Morduck* to him into the Veſtry. The Woman cried, and ſaid, She had given no Occaſion for this Scandal; however, he adviſed her to remain in the Veſtry; becauſe the Congregation were ſo diſturbed, that they would all go out of Church if ſhe ſtaid in it: That, after Sermon, he (the Witneſs), returning to the Veſtry, found the Sexton had let the Woman out, for Fear ſhe ſhould have been torn in Pieces: That after Church-time many of the Pariſhioners applied themſelves to him (the Doctor), to attend *Richard Hathaway*, whom they ſuppoſed to be bewitched; and going accordingly the next Day, *Hathaway*'s Maſter (a *Blackſmith*) told him his Servant was blind and ſpeechleſs, but was, however, ſenſible, and knew the Voices of his Friends: Whereupon he (the Doctor) went into the Room, and deſired *Hathaway*, if he knew him, to hold up his Hand; and he did ſo, and took the Doctor's Hand and kiſſed it; and asking him, If he ſhould pray by him in the Prayers of the Church? He held up his Hand again, and prayed with him, and *Hathaway* ſeemed much affected with it: Then he (the Doctor) went out, and diſcourſed his Maſter concerning the Occaſion of his Illneſs; and he ſaid, He thought *Sarah Morduck* had bewitched him, for he ſcratched her and found Good by it: Whereupon he (the Doctor) went thither again the next Day, taking *Sarah Morduck* and *Herne* her Brother, with him; and he told *Hathaway* he heard he had received Benefit by ſcratching *Sarach Morduck*, and deſired him to hold up his Hand, if he thought he ſhould be the better for ſcratching her again; and he held up his Hand, whereupon he (the Doctor) introduced another Woman, named *Johnſon*, and *Hathaway* ſcratched her, taking her for *Sarah Morduck*; and immediately his Eyes were opened; but being told of his Miſtake, *Hathaway* was much caſt down, and ſeveral People preſent were ſatisfied he was a Counterfeit. That he (the Doctor) going to the Houſe again ſome Hours after, found a great Mob there; and *Hathaway*'s Maſter and Miſtreſs met him, and ſaid, What have you done? You have ruined me and my Family: You have given it out to be a Cheat; and now he is in a worſe Condition than before. And he (the Doctor) was informed the next Day, That *Sarah Morduck* had been dragged to the Houſe after he went away, and *Hathaway* had ſcratched her; after which, he pretended he had recovered his Sight perfectly, and eat and drank, and walked about: Whereupon he (the Doctor) ſent for him to his Houſe, and talking with him, *Hathaway* demanded, If he did not think he was bewitched? and he anſwering He believed he was not, *Hathaway* replied, He might as well not believe what he ſaid in the Pulpit; and that he might ſay to the Doctor, as our Saviour ſaid to the *Jews*, *Though you ſee Miracles, you will not believe.* Whereupon, the Doctor bid him go about his Buſineſs.

That laſt *Eaſter* he (the Doctor) was ſent for to Sir *Thomas Lane*'s, where he found *Hathaway* eating very heartily, and was told, He had drawn Blood of *Sarah Morduck*, before Sir *Thomas Lane*, which had brought him to himſelf: That going into the Room, where Sir *Thomas* was, he found Sir *Owen Buckingham*, and Dr. *Hamilton*, to whom he related what had happened on his going to ſee *Hathaway*; but *Hathaway* pretended he did not remember he was with him: And when *Welling*, his Maſter, acknowledged he was there, and that *Hathaway* was in his Senſes at that Time, Sir *Thomas Lane* ſaid, He had a violent Fit afterwards, which made him forget the Doctor's being there: And Sir *Owen Buckingham* ſeemed to be of Opinion alſo, That *Hathaway* was really bewitched.

That a little afterwards he (the Doctor) was *ſubpœna*'d to the Aſſizes, to be a Witneſs at the Trial of *Sarah Morduck*, who was indicted

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dicted for a Witch; and, before the Aſſizes, Bills were put up in ſeveral Churches of the following Tenour, *A poor Man, being afflicted by an evil Woman, deſires the Prayers of this Congregation.* That the Woman being acquitted, at *Guilford* Aſſizes, he imagined all People had been ſatisfied with the Juſtice done there; but when he came home, he was abuſed by many People, who told him, *The Blood of that innocent Man lay at his Door: The Woman had been hanged, if he had not ſaved her: The Judgments of God would fall on him.*

Here the Counſel for *Hathaway* objecting, That what other People did was not Evidence againſt him, the Chief Juſtice anſwered, If there was Evidence that *Hathaway* had been guilty of Deceit, and a Deſign to deceive the People, would they not allow it to be given in Evidence, that the People had been deceived?

Then Dr. *Martin* went on and ſaid, It was reported he had been bribed; that he had received ſeveral Guineas; that the Judge was bribed, and the Jury bribed; and that the Judge was ſo biaſſed, he would not ſuffer the Woman to be ſearched.

Johnſon's Evidence.

Mrs. *Johnſon* being ſworn, teſtified, That *Hathaway* ſcratched her inſtead of *Sarah Morduck*; and he pretended to have received his Sight thereupon, as Dr. *Martin* teſtified.

Bateman's Evidence.

Mr. *William Bateman* depoſed, That he went to ſee *Hathaway* ſpew Pins: That they gave him ſomething in a Cup, which it was pretended would make him vomit; but the Witneſs could not perceive he ſwallowed any thing: However, he reached to vomit fourteen or fifteen Times, ſeeming to be in a great Agony; and there were ſome hundreds of Pins upon the Ground; but the Witneſs thought they were dropped by other People, for he took ſome of them up, and found they were dry, and ſome of them were in Chains; whereupon he ſaid, He believed they were the ſame that had been ſhewn at his Houſe; but his Maſter affirmed they were not the ſame, and endeavoured to ſatisfy him his Man did vomit them: Then the Witneſs deſired he might have a clean Pot to vomit in, and, having ſearched his Mouth, held the Pot cloſe to his Head: That *Hathaway* often endeavoured to lift up his Hands to the Pot, but the Witneſs would not ſuffer him; and though he vomited ſeveral Times, there were no Pins in the Pot, but ſeveral upon the Ground; and the Witneſs obſerving that the Pins on the Ground did not come out of his Mouth, the People were very preſſing he ſhould believe that they did. Then the Witneſs, with a great deal of Difficulty, forced his Hand into *Hathaway*'s Pocket, where he found ſeveral Parcels of crooked Pins, like thoſe on the Floor.

The Printer's Evidence.

Richard Ball, a Printer's Man, teſtified, That *Hathaway* brought him a Narrative, giving an Account of his vomiting Pins, and deſired him to print it; and, at the ſame Time, ſhewed him a Diſh-full of crooked Pins, which he ſaid he had vomited, and declared he had eat nothing for a great many Days: But his Maſter, the Printer, being preſent, ſaid, *Hathaway* looked very well: He believed he was a Cheat, and would have nothing to do with it: And thereupon *Hathaway* went away.

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Mr. *Hern* depoſed, That he was preſent when *Hathaway* ſcratched Mrs. *Johnſon* inſtead of *Sarah Morduck*, and pretended to recover his Sight thereupon, as Dr. *Martin* had teſtified: And that they afterwards dragged *Sarah Morduck* to the Houſe, and he ſcratched her, and the Rabble aſſaulted and abuſed her, leaving the poor Woman in a wretched Condition: Whereupon the Witneſs procured Juſtice *Rich*'s Warrant, and apprehended one *Osborn*; but the Juſtice diſcharged him for Want of Evidence: However, *Sarah Morduck* was ſo mobbed and inſulted, that ſhe was forced to remove from *Southwark* to St. *Paul*'s Wharf in *London*; and thither *Hathaway*, with one *Jones* and the Rabble, followed her: Whereupon the Witneſs got Sir *Thomas Lane*'s Warrant, and took up *Hathaway* *Jones*; but Sir *Thomas* believing the Story of *Hathaway*'s ſpewing of Pins, ſaid, There was Provocation enough for the Inſult, and compelled the Woman to let *Hathaway* ſcratch her again, which he did; and then he appeared very brisk, and calling for Bread and Cheeſe, eat it greedily, though he pretended he could not ſwallow any thing before. That Sir *Thomas*, afterwards, ordered the Woman to be ſtripped and ſearched by Dr. *Hamilton*; but the Doctor could find nothing extraordinary about her: However, Sir *Thomas Lane* committed her to Priſon, and would not accept of an Hundred Pound Bail at that Time; but afterwards, when Dr. *Martin* had been with him, he permitted her to be bailed.

Hern's Evidence.

Kenſey the Surgeon's Evidence.

Kenſey, the Surgeon, depoſed, That *Hathaway*, being in the *King's-Bench* Priſon, was committed to his Care in *November* laſt; and, going to that Priſon for him, the Turnkeys told him, His Tongue was ſwelled; but, upon ſearching his Mouth, he found nothing amiſs, and brought him to his Houſe, where he offered him Meat and Drink ſeveral Times, and he refuſed it: That the next Morning he was ſurly, and refuſed to riſe, and they found the Rug wet with his Urine, which dropped from the Teſter of the Bed, where he had endeavoured to conceal it in the Lid of a Box: That he entreated *Hathaway* to diſcover who ſet him to work, for he looked upon him as a poor innocent Fellow; but he would diſcover nothing, and ſtill refuſed to eat. That finding neither Perſuaſions nor Threats could move him (for he threatened to ſtarve him, if he would not confeſs) he (the Witneſs) feigned a Quarrel with his Maid, ſaying, in *Hathaway*'s Hearing, he would be troubled no more with her: And when he was gone, the Maid, by his Directions, railed at him (*Kenſey*) and bid *Hathaway* have a Care how he took any thing from her Maſter, or his Brother, and ſhe would bring him Meat, and what he wanted: And ſhe accordingly carried him Victuals and Drink from Time to Time, and ſhe, and ſeveral of the Neighbours, (through ſome Crevices in the Boards) ſaw him eat and drink plentifully two or three Times a Day; and one Day, in particular, he eat ſo freely, and drank ſtrong Beer and Brandy

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after it, that he brought his Dinner up again, and he (the Surgeon) coming in, *Hathaway* raked the Aſhes over it, to hide it: That the next Day he offered him Meat, but he pretended he was ſo weak he could not get off his Chair, though they had ſeen him eat and drink ſeveral Days before, dance about, and play upon the Tongs. On the 8th Day after he came to his Houſe, he endeavoured to make his Eſcape; and on the 10th in the Morning, as he was putting on his Cloaths, he ſeized on him (the Surgeon); but ſtruggling with him, *Hathaway* pretended Feebleneſs, and fell down upon the Bed: Being told afterwards, that his Friends had betrayed the Secret, he offered to go before the Lord Chief Juſtice and diſcover the whole Truth; but his Lordſhip not being in the way, then he returned to the old Story, and ſaid he was bewitched

That at his firſt coming to his Houſe, he asked him how many Weeks he had faſted, and he counted his ten Fingers, for he pretended to be dumb.

The Evidence of the Surgeon's Maid.

Elizabeth Baker, *Kenſey*'s Maid, teſtified, That after *Hathaway* was brought to their Houſe, her Maſter feigned a Quarrel with her, and ſhe ſupplied him with Meat and Drink by her Maſter's Directions; and that fetching him a Glaſs of Brandy, once, when a Child was by, he refuſed to drink it, pointing to the Child, whereupon ſhe ſtood before the Child, and then he drank it: That at another Time ſhe gave him ſo much ſtrong Beer, that he pointed to his Head, intimating his Head ached, and about two Hours after, he was very merry, danced about, and played upon the Tongs: That on the 11th of *November*, her Maſter ordering her to carry him ſeveral Slices of roaſt Veal, ſome of the Neighbours ſaw him eat it through the Chinks of the Walls.

To this his Counſel objected, That ſuch Evidence ought not to be given; becauſe this was done after the Record bore Date: But the Chief Juſtice anſwered, It was Evidence to prove, his pretended Faſting before was a meer Deceit; for if his Faſting the laſt two Weeks appeared to be a Fraud, it was ſtrongly to be inferred, that his pretended Faſting ten Weeks before was ſo too.

Evidence of the Neighbours who ſaw him eat.

Mr. *Stanton* depoſed, That being deſired by Mr. *Kenſey* to come and ſee *Hathaway* eat and drink, he went thither, and ſaw the Meat, before it was carried to him, being five ſlices of Veal, with Bread and Beer; and that *Hathaway* looked about at firſt, to obſerve if any one could ſee him, and then fell too, and eat as heartily as any Man could; but hearing a Noiſe, he ran away with the Meat, and ſet it on a Dreſſer, and the Maid telling him there was no Body coming, he went to it again, and eat it up, after which he drank and ſat down by the Fire: That afterwards, he (this Witneſs) and the reſt of the Company went into *Hathaway*'s Room, and carried a Bottle of Beer and drank to him, but he made Signs that he could not drink, and ſhewed them that his Belly clung to his Back.

Hunt's *Evidence.*

John Hunt depoſed, That he pretended to ſpew Pins, but they were bright and clean, and only came out of his Mouth he thought: That the Company thought they heard ſtrange Noiſes the ſame Night, but he found *Hathaway* made the Noiſe with his Feet; and that *Welling* his Miſtreſs ſewed three little Bags to his Shirt, in which ſhe ſaid were Charms, and he uſed to be much better for them.

Brand's *Evidence.*

Elizabeth Brand teſtified, That ſeveral Sums of Money were gathered for *Hathaway*, particularly againſt *Guilford* Aſſizes, ſhe and others went about, and gathered between Six and Seven Pounds, which they paid to Mrs. *Welling* towards his Charges.

Ship's *Evidence.*

Matthew Shipps depoſed, That *Hathaway* being brought from *Guildford* Aſſizes to the *Marſhalſea*, was in his Cuſtody four Days; and that he eat and drank, and ſlept well during that Time.

Hatha-way's *Defence by his Counſel.*

The King's Counſel having cloſed their Evidence, Mr. Serjeant *Fenour* the Priſoner's Counſel entered upon his Defence, and ſaid,

My Lord, and you Gentlemen of the Jury, I am Counſel for the Defendant *Richard Hathaway*, who is indicted for a Cheat and Impoſtor; and it is for pretending himſelf to be bewitched, and that he has uſed indirect Arts and Means to make People believe he was ſo bewitched; and that this *Sarah Morduck* was the Perſon that had bewitched him; and that this was contrived by him, in order to bring Miſchief and Damage on this *Sarah Morduck*, and to the evil Example of the Queen's Subjects. You have heard the Evidence that hath been given, and therefore I ſhall not repeat it, but only obſerve ſome few Things to you: The Doctor has taken a great deal of Pains in this Cauſe; but that which he does tell you by Hear-ſay, what other Perſons have told him, is not ſuch Evidence as you are to take any Notice of, that is, what *Johnſon* told him, and likewiſe what other Perſons told him, concerning this Man; for what they have ſaid to him of this Man, though it may be true, is not to come under your Conſideration. There are ſeveral others that have given Evidence of what other Perſons have ſaid, and they have given it as their Opinions, that what this Man did, was the Cauſe of their doings; of which you are to take no Notice. But, my Lord, that which ſeems to bear moſt hard upon us is, That becauſe the Doctor and ſeveral others have been abuſed, both before and after the Trial, for what they endeavoured to do; therefore they would inſinuate as if my Client had had a Hand in it: But if a Man be doing any Thing, and another takes the Advantage of it, to do another a Miſchief, I hope that Miſchief ſhall not be laid to his Charge. My Lord, there is one Man that has given a great deal of Evidence as to his vomiting of Pins, and ſays, that he was by, and he ſwept the Ground, and when he had a Chamber-pot to vomit in, he could not find any Pins there; but there was ſome upon the Ground again. So likewiſe for his Faſting, you have had Evidence to prove that a Cheat: And this ſeems to affect him moſt, that all this Pretence to be bewitched, and vomiting of Pins, and Faſting, was a Cheat. This is the Matter that they accuſe him of; of which, if he be really guilty, I come not here to defend him; but I am to defend him as far as Witneſs will do. And

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now,

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now, my Lord, if my Brief be true, we ſhall ſatisfy you that my Client was in a very lamentable Condition, ſuch as one would think no Man could be in and live; and I will lead you by theſe Steps. When he was thus diſabled, could neither ſpeak nor take Suſtenance, his Maſter, after he had ſerved him two Years, and he had lived very civilly, and behaved himſelf well in his Maſter's Service, till he fell thus ill; then he was ſo ill, that after the Maſter had ſpent a great deal of Money with Doctors and Apothecaries, he could get no Cure for him; then he got him into the Hoſpital, and there he continued a long Time, and at laſt they gave it in, That he was incurable, and they turned him out: But his Maſter made Intereſt, and got him in again, and he continued ſometime there again; and there it was that he was firſt thought to be bewitched, for they had him twice, and could do no good with him; and the Tenders told him, He muſt lye under ſome evil Tongue; and thereupon he was turned out as incurable, and with that Inſtruction, that it was an incurable Diſeaſe. So he came home again, and his Maſter and Miſtreſs was acquainted with it; and they conſider what Perſon it ſhould be, that ſhould have any evil Deſign againſt him; and at laſt they recollect, that his Maſter had taken a Room over the Head of this *Sarah Morduck*; and ſhe had gone to the Shop often, and had given them very ill Words, and ſhe ſhould be even with him one Time or other; and therefore they concluded, this Woman was the Perſon. Upon this there were many Things contrived, what Courſe they ſhould take to do him good; and there was one Thing concluded upon, in order to his Eaſe (which I think none ſhould adviſe), that is, the Buſineſs of Scratching: But this Woman, when ſhe was accuſed by them of bewitching him, ſhe offered herſelf to be ſcratched, and ſhe was ſcratched; and from thence this Man found Eaſe: But afterwards he fell ill again, and he went into *London*, and was examined at Sir *Thomas Lane*'s; and, upon Examination, they thought that this Man did lie under ſuch an Affliction. I cannot ſay it is an irreligious thing to ſay, there are Witches in the World; but this Man lay under ſuch a Diſtemper, that no Doctor could know what to do with it; and they could not imagine who ſhould do it, but this Woman; and ſhe was there ſcratched by him, and he did find Relief by it. My Lord, this being the Matter of Fact, we ſhall call very ſubſtantial Witneſſes to prove it. As to his Faſting, we ſhall prove that he was put under the Care of very ſubſtantial Perſons, and that he did not eat or drink for three Weeks or a Month; ſo that it will appear we had no Contrivance in the World, but only would get Eaſe if we could. We have twenty Witneſſes to call.

The Priſoner's Witneſſes.

Then the Priſoner's Witneſſes were called, and *Anne Eaton* depoſed, That ſhe looked after *Hathaway* nine Weeks: That ſhe was with him four or five Days and Nights together without ſtirring from him, and ſhe did not ſee him eat or drink during that Time: That he was at ſome Times dumb and blind, and loſt his Senſes.

Gibſon teſtified, That he had ſtrange Motions, foamed at the Mouth, and his Face was diſtorted, and he was blind and dumb.

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Ann Pearſe, a Nurſe of the Hoſpital, depoſed, That he lay ſeven or eight Days in a very weak Condition there, without Eating or Drinking, and complained he could not go to Stool; whereupon the Doctor gave him Quickſilver.

Smith, an Apothecary, depoſed, That when he came Firſt to his Maſter, he was troubled with Convulſion Fits, ſometimes lay like a Man that was dead: But being asked, If this might not be counterfeited? he anſwered, No doubt, it might.

Some Women depoſed, They had heard him bark like a Dog; and believed he was bewitched.

Keeling depoſed, He watched with *Hathaway* nine Nights, and he neither eat nor drank while he was with him: And *Bridges* depoſed, He watched with him in the Day-time, when *Keeling* watched with him in the Night, and he never ſaw him eat or drink all that Time, though he never went from him till *Keeling* came to relieve him; and they both teſtified, That no Company came to him, nor did he ever go out, but on *Sunday* to Church.

Webb, one of the Officers of the Pariſh, teſtified, That they put him into an empty Houſe, with the two former Witneſſes to watch him; and that he vomited ruſty Pins; and they could not diſcover he eat or drank any thing all the Time he was there; and that he went out only once on a *Sunday* to Church.

Dell depoſed, That he watched with him one Night, and he went to Stool, and they found in his Excrements a Lump of Hair, looſe Pins, a Stump of a Nail, and two or three Pieces of Stone; and he lay in a ſad Condition as if he was dumb.

Two others confirmed the Teſtimony of this Witneſs. Mrs. *Davenport* teſtified, That Dr. *Hamilton* committed *Hathaway* to her Care, to diſcover, Whether he faſted as he pretended; and he was in her Houſe ſeventeen Days: That ſhe herſelf, her Son, or ſome others of her appointing, watched him diligently all the Time, and he nither eat nor drank; and to prevent any Deceit, they ſearched his Cloaths, and bought a Bed on purpoſe for him to lye on.

Then ſeveral of the Witneſſes Mrs. *Davenport* had employed to watch him, depoſed, That he neither eat nor drank in all the ſeventeen Days while they were with him reſpectively: But the Chief Juſtice demanding, Where her Son was, that watched with him Part of the Time? ſhe anſwered, He had been gone to Sea about a Week.

Dr Hamilton's Evidence for the Defendant.

Dr. *Hamilton* depoſed, That being at Sir *Thomas Lane*'s when *Hathaway* was examined, he ſearched his Mouth and Throat, and found nothing amiſs, and obſerved, There was nothing to be depended on but his Faſting: As for vomitting Pins, and the reſt, it might be performed by Legerdemain; and he ſuſpected him to be an Impoſtor: That he told *Hathaway*'s Maſter, If he thought fit, he would lock

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lock him in a Room a Fortnight, and ſee if he counterfeited; that the Maſter afterwards came to him, and deſired him to make the Experiment: Whereupon, he committed him to the Care of Mrs. *Davenport*, and deſired her to ſtrip him, and ſee he had no Bread about him, and to ſend to *Long-Lane* and buy new Things for him to lie on, *&c.* That he ordered her to let no Body come to him, and that one or two of the Family ſhould ſet up with him every Night; and ſhe promiſed ſhe would. They ſent him Word he had ſtrange kind of Motions; but he depended on nothing but his Faſting. That he had heard of many that had faſted ſeveral Weeks, but they had taken Water, or ſome ſuch thing, which, though they are very weak things, yet may keep one alive; but none can live without taking ſomething: That he ſaw this Man ſeveral Times while he was at Mrs. *Davenport's*, and he could not believe but that he had eat, becauſe his Pulſe was ſtrong.

The Chief Juſtice demanding of the Doctor, If he thought it poſſible in Nature, or if all the Devils in Hell could enable a Man, to faſt a Fortnight? The Doctor anſwered, He thought not; and that made him ſuſpect *Hathaway:* And being asked, If he thought the Pulſe of a Man could be very ſtrong who had faſted eight Days? he ſaid, He thought not.

Sir Thomas Lane's *Evidence for the Defendant.*

Sir *Thomas Lane* being ſworn, depoſed, That *Hathaway's* Maſter brought a Woman before him about a Twelvemonth ago, upon Suſpicion ſhe had bewitched his Man, affirming, he had faſted above eight Weeks, and voided and vomited Pins; and two Witneſſes ſwore to Chains of an hundred Pins each, that came from him in his Excrements; and the People imagining, that ſcratching the Woman might give Relief, were very earneſt with him, that he would command the Woman to be ſcratched; he anſwered, That would be an Aſſault; but if ſhe would conſent, he might do it; and the Woman thereupon ſaid, If ſhe might be ſecured from ſuch Inſults from the future, ſhe would let him, and conſented to it: And *Hathaway* no ſooner ſcratched her, but he grew better, had Bread and Cheeſe brought him, eat prodigiouſly, and drank up a Quart of Drink without gulping. That he (Sir *Thomas*) asked Mrs. *Morduck*, and her Friends, If ever they knew the Fellow got Money by theſe Tricks? but they could not ſay he had. And it appearing to him that there was neither Profit or Revenge in the Caſe, he thought the Man could not counterfeit all this for no End, and run the Hazard of being whipped.

The Chief Juſtice ſaid, The Queſtion was not Whether he ſhould be puniſhed for a Fool, but whether he was a Knave? And whatever Puniſhment he was to ſuffer, did not belong to him to determine.

The Chief Juſtice directs the Jury.

Then his Lordſhip ſummed up the Evidence, and obſerved, As to *Hathaway's* being relieved by ſcratching the Woman, he pretended had bewitched him; there was no Rule either in Philoſophy or Divinity, that could induce a Man to believe this would effect his Cure if his Diſtemper had been real, as to his having faſted ſo long a Time. That of our Saviour's faſting forty Days, is mentioned in Scripture as miraculous, and an Effect of Divine Power, being one Evidence of the Truth of the Chriſtian Religion: And that none could imagine, without ſuch Aſſiſtance a Man could faſt forty Days or above, and yet continue in Health: That all the Witneſſes in the World, or all the Devils in Hell, could not invert the Order of Nature, and enable a Man to faſt beyond the uſual Time that Nature will allow; and that if the Thing be impoſſible, and this Man had endeavoured to make the World believe he had faſted ſo long a Time, it was moſt evident, he was a Cheat, and muſt contrive to have Victuals one Way or other ſecretly conveyed to him, of which the impoſſibility of his being able to faſt ſo long was a Demonſtration: That it was plain the Man had counterfeited, during the Time he was at Mr. *Kenſey's*; and though that particular Time be not laid in the Information, yet it is a Continuance of the Time that is laid therein; and if he was an Impoſtor, by pretending to have faſted while he was at Mr. *Kenſey's* Houſe, he left them to conſider, whether he was not ſo all the Time before: He remembered that his ſcratching and drawing Blood of a ſtrange Woman inſtead of *Sarah Morduck*, did ſeem to avail him as much as if he had ſcratched her, until he underſtood he was impoſed upon: And upon the whole, if they did not believe he was *non compos mentis*, or under any Deluſion, but had endeavoured to impoſe upon the Magiſtrate, and on the World, by counterfeiting theſe Infirmities; then there was all the Reaſon in the World to find him Guilty.

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And the Jury, without going from the Bar, found the Defendant GUILTY.

Hathaway *and others tried for an Aſſault on* Sarah Morduck.

Richard Hathaway, Thomas Welling *his Maſter, and* Elizabeth *his Wife, and* Elizabeth Willoughby, *were afterwards tried upon another Information, for a Riot and Aſſault on the ſaid* Sarah Morduck.

At which Trial it was proved, That the ſaid *Richard Hathaway*, on the 25th of *September* 1701, came to the Houſe of the ſaid *Sarah Morduck*, and ſcratched her Face in a cruel Manner, forced out one of her Teeth, and carried away part of her Cloaths: And that on the 11th of *February* following, one *Thomas Osborn*, *Thomas Hatton*, with four other Perſons, came in Diſguiſe to the ſaid *Morduck's* Houſe, and forced her out, and carried her to the Houſe of *Thomas Welling*, one of the Defendants; and that there the ſaid *Richard Hathaway*, by the Encouragement of the ſaid *Osborn* and *Hatton*, and the reſt of the Company, did again ſcratch her in a moſt barbarous manner: That afterwards, *Elizabeth* Wife of the ſaid *Thomas Welling*, fell upon her, and ſcratched her Face, and tore off her Head-cloaths, and Hair; and then the ſaid *Thomas Welling* gave her two or three Kicks on her Belly, and threw her on the Ground, and ſtamped upon her, and caſt her into the Street, and ſhe was ſo much bruiſed, that ſhe was forced to keep her Bed for

1702. 2 Annæ. for a Fortnight: That *Elizabeth Willoughby*, another of the Defendants, came with a great many Perſons to the ſaid *Morduck*'s Houſe; and that the ſaid *Elizabeth* gave her ſeveral Blows with her Fiſt, and would have pulled her out of her Houſe, for the Defendant *Hathaway* to ſcratch her, he ſtanding at a Corner hard by; but was prevented by one *Sarah Hall*: And that in the Month of *September* aforeſaid, as the ſaid *Sarah Morduck* was going into *Newgate* Market, one *Hopkins* crying out, *There goes the old Witch*, a great Company of People, in a riotous Manner, flocked about her, and threatned to throw her into a Horſe-pond; and that if ſhe had not got into an Ale-houſe, by the Aſſiſtance of ſome Women there, ſhe had been Murdered: And that in *Eaſter* or *Whitſon* Week laſt, one *Jones* was apprehended for a Riot, by him, and others, committed, in one *Burrell*'s Houſe in *London*, endeavouring to force themſelves into the ſaid *Sarah Morduck's* Chamber, that the Defendant *Hathaway* might ſcratch her; and that the ſaid *Jones* was carried before Sir *Thomas Lane*, who diſcharged him, ſaying, There was Cauſe enough for the Riot. The Evidence for the King being concluded, the Jury withdrew; and ſoon after returned, and brought all the Defendants in GUILTY.

Remarks on Hathaway's Trials.

It is impoſſible to read *Hathaway*'s Trials, without bluſhing for the Credulity and Superſtition of our Country-men, who will not be convinced of ſuch Cheats and Impoſtures upon the ſtrongeſt Evidence that can be given; but tenaciouſly perſiſt in every idle Tale they have been told of this kind in the Nurſery, and contribute to delude themſelves, as well as their Neighbours, by encouraging and propagating ſuch Stories, how ridiculous ſoever, upon the weakeſt Suggeſtions and Surmiſes.

There ſeems to be a Series of Facts and Circumſtances, in which moſt of theſe Relations agree, and are made in a manner the Teſt of a Perſon's being bewitched; as a kind of Convulſion Fits, Diſtortions of the Countenance, Barking like a Dog, unaccountable Noiſes, and the voiding of crooked Pins upwards and downwards. They ſeem to confine the Devil to this beaten Road of Action, and do not often ſuffer him to omit theſe Methods of Torture and Deluſion; and ſome have ſuperadded that of long Faſting of late, which has unluckily diſcovered the Falacy of all the reſt, to all ſuch as are capable of Conviction: For there are a Set of People amongſt us, eſpecially the Sectaries, that ſeem determined never to be undeceived; that look upon every Piece of pretended Witchcraft, as ſtrong a Proof of their Religion and another World, and call all Men Atheiſts and Infidels that won't believe them.

We ſee here two wiſe City Magiſtrates, Sir *Thomas Lane*, and Sir *Owen Buckingham*, giving entire Credit to every Thing that was reported of *Hathaway*, and the Woman he pretended had bewitched him, and even encouraging the Mob to pull her in Pieces, by refuſing to take any Notice of thoſe that aſſaulted and wounded her. The credulous Sir *Thomas Lane* even cauſed the Woman to be ſtripped, to ſee if there were any Teats or Excreſcencies about her to ſuckle her Imps, and the *Scotch* Doctor *Hamilton* was weak enough to be employed in this Office: But this, I muſt confeſs, is not to be much wondered at in the Doctor, who was born and bred in a Country where every Story of this kind is believed to be as true as Goſpel, and where they hang up half a ſcore decrepit old Women every Year, whoſe unhappy Circumſtances and Countenances render them the Objects of the People's Fury; though they are in Reality the greateſt Objects of Compaſſion.

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It is evident, *Hathaway* had two Inducements to counterfeit his Fits and Faſting; the firſt, his Expectation of living upon the Charity and Contribution of his Neighbours without working; and his Maſter and Miſtreſs, 'tis evident, expected to ſhare in the Profit, by telling Doctor *Martin* he had undone them, when he diſcovered the Cheat: And in the next Place, both the Maſter and Man had the Vanity to deſire they might be talked off, and diſtinguiſhed, for having Miracles wrought in their Favour; for *Hathaway* ſaid to Doctor *Martin*, in the Words of Scripture, *Though you ſee Miracles, you will not believe*: The Pariſh, and the whole Neighbourhood alſo, we find very zealous in encouraging all People to believe, that Signs and Wonders were wrought among them, and putting up Bills in ſeveral Churches, *to pray for a poor Man afflicted by an evil Woman*; and I don't doubt, but many of the People that were ſet to watch whether *Hathaway* eat or drank, were prepoſſeſſed in his Favour, and contributed to carry on the Cheat, or at leaſt connived at it; and ſome of them poſſibly were bribed to ſay what they did: And had a Man of leſs Judgment and Diſcretion than Doctor *Martin* been Miniſter of the Pariſh, the Credit of this Cheat had infallibly been as well eſtabliſhed, as many others of the ſame kind have been, from leſs ſpecious Circumſtances.

What Species of Dæmons and Animals thoſe Imps were, which our ſagacious Alderman expected to find about the old Woman, or how they were nouriſhed by her, would puzzle any Man to deſcribe, I believe; and he muſt have been confounded, if the Court had required his Worſhip to declare, what he meant by ordering the Doctor to ſearch her. In the Days of *Hudibras*, it ſeems, it was no uncommon thing to find a Calf an Alderman, a Gooſe a Juſtice; but, in our Days, I preſume, the Government takes Care to exclude all ſuch weak and credulous Creatures from the Magiſtracy, and puts Gentlemen into Commiſſion that will protect the old, the decrepit, and deformed Females in their Pariſhes, from being torn in Pieces by the Rabble, as well as the young and beautiful, from the Rapes of Giants and diſcourteous Knights, the Employment of the celebrated *Don Quixot*, who ſeems to have been touched alſo with the Alderman's Foible, and to have had great Faith in Magick and Necromancy.

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Resolutions of the House of Peers, in Relation to some Papers, Books, and Sermons, published in the Years 1701 and 1702. 2 and 3 *Annæ*.

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Fuller ordered to be prosecuted.

IT was Ordered by the Lords, on the 19th of *January*, 1701, That the Attorney General prosecute *William Fuller* for certain Libels (*The Tenor whereof the Reader has seen in* Fuller's *Trial*).

Dr. Drake *ordered to be prosecuted.*

It was Resolved by the Lords, on the 9th of *May*, 1702, That in the Preface of a Book, intitled, *The History of the last Parliament, begun at* Westminster *the* 10*th of* Feb. 1702, written by Dr. *Drake*, as he confessed at the Bar, there were several Expressions that were groundless, false, and scandalous, tending to create Jealousies in Her Majesty of her People, *&c.* and that the Attorney General do prosecute the said Dr. *Drake* for the same.

The Passages in the said Preface, were as follow: And, perhaps, there was a third Thing in Prospect, of deeper Reach than all these; which was, That should it have pleased God, for our Sins, to have snatched from us the King on the sudden, by Chance of War, or other fatal Accident, during the Tumult of Arms abroad, and the civil Disorders they had raised among us at home, and a numerous, corrupt, licentious Party throughout the Nation, from which the House of Commons was sometimes not free, they might entertain Hopes from the Advantage of being at the Helm, and the Assistance of their Rabble, to have put in Practice their own Schemes, and have given us a new Model of Government of their own Projection, and so to have procured to themselves a lasting Impunity, and to have mounted their own Beast, the Rabble, and driven the sober Part of the Nation like Cattle before them.

That this is no groundless Conjecture, will readily appear to any considering Persons, from the Treatment her Royal Highness the Princess of *Denmark*, the Heiress Apparent to the Crown, met with all along from them and all their Party: They were not contented to shew her a constant Neglect and Slight themselves, but their whole Party were instructed to treat her not only with Disrespect, but Spight: They were busy to traduce her with false and scandalous Aspersions; and so far they carried the Affront, as to make her at one Time almost the common Subject of the Tittle-Tattle of almost every Coffee-House and Drawing-Room; which they promoted with as much Zeal, Application, and Venom, as if a Bill of Exclusion had been then on the Anvil: And these were the Introductory Ceremonies.

Resolution against Tom Double.

On *Tuesday* the 12th of *May*, 1702, it was Resolved by the Lords, That the following Paragraphs in the 89th and 90th Pages of a Book, intitled, Tom Double *returned out of the Country: Or, The true Picture of a Modern Whig*, &c. there are several Expressions which are groundless, false, and scandalous, tending to create Jealousies in Her Majesty of her People, and to cause great Misunderstandings, Fears, and Disputes, among the Queen's Subjects, *&c.*

The obnoxious Passages were these, *viz.*

Whiglove. I find we have miscarried in one great Design: The Train would not take: We were very hot upon it, just before the Parliament met: All the Whig Coffee-Houses rung, how necessary it was to break into the Acts of Settlement, and to exclude ———.

Double. Mum, Whiglove. Talk no more upon that Subject, I beseech you: Fresh Orders are issued; and since we are not strong enough to make it go, and that on the contrary it has alarmed and provoked all Sorts of Men, we are now directed to say, That never any such Thing was intended by our Party; though, God knows, it was the whole Discourse of all our Clubs. Under the Rose, this was one of those Embrio's that proved abortive upon the 30th of *December* last; but, though it be not seasonable to stir in it now, never fear our abandoning a wicked Design; we never quite lay aside any Mischief: However, since it has really opened the Eyes of a great many, and weakned our Interest among several of our own Side, whom (with Grief of Mind I speak it), we cannot work up to be guilty of so much Injustice; let us take all Occasions of declaring, That we will not violate these Acts upon any Account whatsoever; which we may the more safely do, because, you know, 'tis our Principle, Not to think that we are bound by any Protestations we make, either in private or in publick; and it is one of the great Advantages we have over the rest of our Fellow-Subjects, That we can fetter the Consciences of others, while our own are at perfect Liberty.

A Resolution against Doctor Bincks's Sermon of the 30th of January, 1701-2.

On *Saturday* the 16th of *May*, 1702, it was Resolved by the Lords, That in a Sermon preached the 30th of *January*, 1701-2, in King *Henry* the Seventh's Chapel, before the Lower House of Convocation, by *W. Bincks*, D. D. and Proctor for the Diocese of *Litchfield* and *Coventry*, there were several Expressions that gave just Scandal and Offence to all Christian People; and that the said Resolution should be communicated to the Lord Bishop of *Litchfield* and *Coventry*.

The obnoxious Passages were these, *viz.*

And first, As to the near Resemblance between the Parties concerned, as well the Actors as the Sufferers, comparing those in the Text with those of the Day.

And

1702. 2 Annæ. Resolutions against Dr Lloyd bishop of Worcester.

1702. 2 Annæ.

And here one would imagine the latter were resolved to take St. *Paul's* Expreſſion in the moſt literal Senſe the Words will bear, *And crucify to themſelves the Lord afreſh*, and, in the neareſt Likeneſs that could be, put him to an *Open Shame*. If, with Reſpect to the Dignity of the Perſon, to have been born King of the *Jews*, was what ought to have ſkreened our Saviour from Violence; here is alſo one, not only born to a Crown, but actually poſſeſſed of it. He was not only called King by ſome, and, at the ſame Time, derided by others for being ſo called, but he was acknowledged by all to be a King: He was not juſt dreſſed up, for an Hour or two, in Purple Robes, and ſaluted with a HAIL KING! but the uſual Ornaments of Majeſty were his cuſtomary Apparel: His Subjects owned him to be their King, and yet they brought him before a Tribunal; they judged him; they condemned him; and, that they might not be wanting in any thing to ſet him at naught, they ſpit upon him, and treated him with the utmoſt Contempt. Our Saviour's declaring, That *his Kingdom was not of this World*, might look like a ſort of Renunciation of his Temporal Sovereignty for the preſent, deſiring only to reign in the Hearts of Men; but here was nothing of this in the Caſe before us: Here was an indiſputable, unrenounced Right of Sovereignty, both by the Laws of God and Man: He was the reigning Prince, and the Lord's Anointed; and yet, in Diſpite of all Law, both Human and Divine, he was by direct Force of Arms, and the moſt daring Methods of a flagrant Rebellion and Violence, deprived at once of his Imperial Crown and Life.

The Fact of this Day was ſuch a vying with the firſt Arch-Rebel, the Apoſtate Angel, *Lucifer*; it was ſuch a going beyond the Old Serpent in his own Way of Inſolence and Pride, that it is no Wonder if he then began to raiſe his Head, and ſet up for Dominion in this World, when thus warmed and enlivened by a fiery Zeal in ſome, and Rage in others, to the Degree of Drunkenneſs, thirſting after, and ſatiating themſelves in Royal Blood; and in which Reſpect only, heated to the Degree of Frenzy and Madneſs, the Plea in my Text may ſeem to have ſome Hold of them, FATHER FORGIVE THEM, FOR THEY KNOW NOT WHAT THEY DO.

1702. 2 Annæ.

It was Reſolved alſo, on the ſame 16th of *May*, That there are, in the Pamphlet intitled *Reaſons ſo Arddreſſing his Majeſty, to invite into* England *their Hagineſſes the Electreſs Dowager, and the Electoral Prince of* Hanover, *&c.* Aſſertions and Inſinuations, ſcandalous and dangerous, tending to alienate the Affections of the Subject from Her Majeſty, *&c.*

Reſolution againſt Toland's Book for the Encouragement of Rebelion.

The obnoxious Paſſages were theſe, *viz.*

It appears from Hiſtory, That all free People have ſet aſide the Children of Tyrants, for Reaſons of eternal and univerſal Force, as inheriting the Principles and Deſigns of their Parents, bearing an Affection to their Friends, and owing a Revenge to their Enemies, as more likely to graſp at a greater Power than even their Parents, the better to ſecure themſelves from their Diſgrace; and being under extraordinary Obligations to thoſe Foreign Potentates who protected or reſtored them.

In fine, whether the Abjuration be penal or voluntary (for I cannot doubt of one or the other), I hope Care will be taken that it be tendered, as I ſaid before, to all Manner of Perſons, not excepting the King's Majeſty, or Her Royal Highneſs the Princeſs of *Denmark*. For all the Securities we give to them, they owe this Security to us. Not that I doubt either of them, from which, I am the fartheſt of any Man in the World: But they both of them very well know what Stories and Surmiſes our Enemies have been actively ſpreading to amuſe and intimidate the People. They have whiſpered horrible Things of blind and clancular Bargains. But *Cæſar's* Wife ought to be unſuſpected as well as innocent.

1702. 2 Annæ.

Reſolutions againſt Dr Lloyd Biſhop of Worceſter.

Proceedings of the Houſe of Commons againſt Dr. WILLIAM LLOYD, Lord Biſhop of *Worceſter*, and Mr. LLOYD his Son, on the Complaint of Sir JOHN PAKINGTON, in *November* 1702. 2 *Annæ*.

1702. 2 Annæ.

ON the 2d of *November* 1702, a Complaint was made to the Houſe of Commons by Sir *John Pakington*, againſt the Lord Biſhop of *Worceſter*, and Mr. *Lloyd* his Son, for Treſpaſſing on the Rights and Privileges of the Houſe of Commons; and, on the 18th of the ſame Month, Sir *John* reduced the Charge againſt the Biſhop and his Son to the following Heads, which he preſented to the Houſe *(viz.)*

1. That, ſoon after the laſt Parliament roſe, the Biſhop of *Worceſter* took upon him to ſend to me to deſiſt from ſtanding to be elected Knight for that County, and to threaten me, That if I would not deſiſt, he ſhould think himſelf obliged to ſpeak againſt me to the Clergy.

2. He ſent ſome Letters himſelf, and his Secretary ſent others, to ſeveral of his Clergy, with Directions to make what Intereſt they could

1702. 2 Annæ.

could againſt me in their ſeveral Pariſhes; and where they could not prevail with ſuch who voted ſingly for me in the laſt Election, to give a Vote for one or both the other Candidates, they ſhould deſire them to ſtay at home; and in order to this, his Lordſhip ſent them Copies of the Poll of their reſpective Pariſhes.

3. He aſperſed me to his Clergy, branding me and my Anceſtors with ſeveral Vices; and at his Confirmations and Viſitations, ſollicited his Clergy to vote againſt me, repreſenting me as very unfit to ſerve in Parliament; and threatning them with his Diſpleaſure, if they did not vote againſt me.

4. He aſperſed me and my Anceſtors to ſeveral of the Laity, who were his Tenants; and threatned them, That if they would not vote againſt me, they ſhould never renew any Eſtate under him; and that he would ſet ſuch Marks upon them, that his Succeſſors ſhould not ſuffer them, nor their Children, to renew any more.

5. Mr. *Lloyd*, the Biſhop's Son, aſperſed me, and gave ſcandalous Characters of me to ſeveral Freeholders, whom he ſollicited to vote againſt me, and told them, I voted for bringing in a *French* Government.

6. The Biſhop's Secrerary aſperſed me to ſeveral Freeholders in the like Manner, repreſenting me as unfit to ſit in the Houſe; threatning them with the Biſhop's Diſpleaſure; and ſaid, They might as well vote for the Prince of *Wales*, as for me.

The Houſe, having taken the ſaid Complaint and Articles into their Conſideration, and heard the Witneſſes to every Part of the Charge,

Reſolved, *nemine contradicente*, That Sir *John Pakington* had, by Evidence, fully made out the Charge which he exhibited againſt the Lord Biſhop of *Worceſter*, and againſt Mr. *Lloyd* his Son: And

Reſolved, That it appeared to that Houſe, That the Proceedings of *William* Lord Biſhop of *Worceſter*, his Son, and Agents, in order to the hindering of the Election of a Member for the County of *Worceſter*, has been Malicious, Unchriſtian, and Arbitrary, in high Violation of the Liberties and Privileges of the Commons of *England*.

Then they proceeded to addreſs Her Majeſty to remove the ſaid Biſhop from the Poſt of Lord Almoner to her Majeſty; to whom ſhe gave the following Anſwer:

"I am very ſorry that there is Occaſion for "this Addreſs, againſt the Biſhop of *Wor-* "*ceſter*: I ſhall order and direct, that he ſhall "no longer continue to ſupply the Place of "Almoner, but I will put another in his Room "to perform that Office.

The Commons alſo Ordered Mr. Attorney to proſecute Mr. *Lloyd* for his ſaid Offences, after his Privilege as a Member of the Lower Houſe of Convocation was out.

But in the mean while, between the Time the Commons had Reſolved on the Addreſs to the Queen againſt the Biſhopof *Worceſter*, and their preſenting it, the Lords addreſſed her Majeſty in the Biſhop's Favour, repreſenting, That it was the undoubted Right of every Lord of Parliament, and of every other Subject of *England*, to have an Opportunity of making his Defence, before he ſuffer any Sort of Puniſhment; and therefore humbly deſired Her Majeſty, that ſhe would be pleaſed not to remove the Lord Biſhop of *Worceſter*, from the Place of Lord Almoner, nor to ſhew any Mark of her Diſpleaſure towards him, till he be found guilty of ſome Crime by due Courſe of Law. To which the Queen made the following Anſwer, (*viz*)

1702. 2 Annæ.

"I agree, That every Peer and Lord of "Parliament, and indeed every other Perſon, "ought to have an Opportunity of being "heard to any Matters objected againſt him, "before he be puniſhed. I have not yet re- "ceived any Complaint of the Biſhop of *Wor-* "*ceſter*; but I look upon it as my undoubted "Right, to continue or diſplace any Servant, "attending upon my own Perſon, when I "ſhall think proper."——And the Biſhop of *Worceſter* was immediately after diſmiſſed from the Place of Almoner.

Remarks on the Reſolution of the Lords and Commons.

As to *Fuller*, he was very juſtly cenſured by the Lords, and ordered to be proſecuted, being one of the moſt notorious Cheats and Impoſtors of the Age, having more than once endeavoured to impoſe upon both Houſes of Parliament and the Miniſtry, as appears by his Trial above.

Nor was their Cenſure of Dr. *Drake* at all ſevere: For it is very evident, that King *William* was far from uſing any Endeavours to ſet the Princeſs of *Denmark* aſide; on the contrary, he lived in perfect Friendſhip with her a little before his Death, whatever Miſunderſtandings there might have been before, and even put the Adminiſtration of the Government into the Hands of her neareſt Relations and Friends: The Queen's Uncle, the Earl of *Rocheſter*, was his Prime Miniſter, and the Earl of *Marlborough*, whom that Princeſs chiefly relied on, was made Ambaſſador and Plenipotentiary to negotiate and form a Confederacy with our Allies againſt *France*: Indeed there was a Presbyterian and Republican Faction, that did not ſcruple to declare openly, That they would gladly ſet the Princeſs *Anne* aſide, if it was in their Power; but theſe Men were not at all in King *William*'s Favour at that Time. It was a Juſtice due to the Memory of that Prince, therefore, to declare, That the Report, that the late King intended to exclude her Majeſty from ſucceeding to the Crown, was falſe and groundleſs.

But I don't think there was the like Reaſon to be ſevere upon the Author of *Tom Double*; for he only charges the Republicans with ſuch a Deſign, and not King *William*: And their Lordſhips themſelves were very ſenſible, that *Toland* and *The Obſervator*, the then Scribblers for the Faction, had dared to make a Propoſal of that Nature in Print; and actually cenſured *Toland*'s Libel on that Account.

As to their Reſolution againſt Doctor *Bincks*'s 30th of *Jan.* Sermon, I leave every Man to judge of it as he is enclined: They fairly left the Doctor to the Cenſure of his Dioceſan; but I never heard he ſuffered for his zealous Declamation on this Occaſion.

The

1702. 2 Annæ. *Remarks.*

The Complaint of Sir *John Pakington* againſt the Biſhop of *Worceſter*, and the Reſolution of the Commons thereupon were exceeding juſt: Never was a more ſcandalous Charge, or more fully proved: Never did a Spiritual Lord interpoſe ſo violently in the Election of a Commoner, by Calumny, Detraction, Threats, and every vile Art, proſtituting his Authority and Character, to gratifie his Revenge on a Gentleman of Quality and Fortune, that ſtood Candidate to repreſent his County: Every one, who has any Veneration for the Fathers of the Church, muſt, in the Queen's Words, be ſorry there was ſuch Occaſion to complain of a Right Reverend Prelate, who once appeared a glorious Confeſſor of the Church.

1702 2 Annæ.

1703. 2 Annæ. *Boucher's Arraignment.*

The Arraignment of JAMES BOUCHER, Gent. for *High-Treaſon*, on the 28th of *February*, 1703-4. 2 *Annæ.*

1703. 2 Annæ.

The Indictment.

THE Indictment charged him with High-Treaſon, in going to *France* and returning to *England* again without Licence, contrary to the Statute of 9 *W.* III.

His Confeſſion.

The Priſoner confeſſed the Fact, pleaded Guilty, and threw himſelf upon the Queen's Mercy; but was told, he muſt apply himſelf elſewhere for Her Majeſty's Pardon: And the Chief Juſtice proceeded to pronounce Sentence of Death upon him as a Traitor, after he had made the following Speech upon the Occaſion, *viz.*

His Sentence, with the Speech of the Chief Juſtice thereupon.

Mr. *Boucher*, You are, by your own Confeſſion, convicted of High-Treaſon; for which, Judgment of Death is to be pronounced upon you, and which you are to ſuffer under thoſe Circumſtances which the Law hath appointed.

The Fact of which you were accuſed, and have now confeſſed, is, That ſince the 11th Day of *December* 1688, you went into *France* without Licence either from the late King or Queen, and have returned ſince the 14th of *January* 1697. without any Licence under the Privy-Seal, either from the late King or Her Majeſty that now is; which Fact is made High-Treaſon by the Statute of the Ninth Year of the late King.

The Wiſdom and Juſtice in making that Law, will be very evident to any one that will but reflect upon the Poſture of our Affairs at that Time: For in the Year preceeding to that of the making thereof, there was an horrid Conſpiracy, formed from among that Party of Men who had ſo left the Kingdom, to aſſaſſinate the late King; to introduce a Popiſh and *French* Power, for the Subverſion of the Proteſtant Religion, and the Liberties and Properties of the People of *England*; which was managed with that Privacy, and carried on with that Secrecy, that it was not diſcovered, nay, not ſo much as ſuſpected, untill it arrived to that Maturity, that it was come to the very Point of being put in Execution.

The Truth of which is very clear, as well by the Proofs produced at the Trials of ſeveral of the Malefactors, as even by their own Confeſſion.

In the following Year the Peace of *Ryſwick* was made, whereby the Intercourſe was reſtored between *England* and *France*. From thence it was evident, that divers of that Party of Men would return into the Realm, thereby to have an Opportunity to revive and carry on that horrid Deſign, in the Succeſs whereof they had been ſo diſappointed; for which, no doubt, they were not a little enraged, and it could not be otherwiſe expected but they would make uſe of it: For thoſe of the ſaid Principles will be guilty of the ſame Practices.

Therefore it was neceſſary to make a Returning into *England*, by any of thoſe who were under theſe Circumſtances, to be ſo very Penal, unleſs they ſhould firſt give Satisfaction to the Government, either of their Innocence or Repentance, and obtain a Licence and Approbation for their Return under the Privy-Seal: For their returning in any other manner, is a Danger to the Queen's Perſon, and her Kingdom.

This Treaſon, though it ſeems, and is, new in the Form, yet it is compounded of an old Treaſon, known in the ancient Law of the Kingdom, which is, that of adhering to the King's Enemies: For what can be thought of thoſe who, in Time of War, ſhall abandon their own Country, and be harboured and protected in an Enemy's Country, for being of an Intereſt inconſiſtent with, and even repugnant to that of their own.

What your Deſign might be in returning in this manner, whether to revive and purſue thoſe wicked Practices, your own Conſcience is your Witneſs, and will be your Judge; and if that ſhall acquit you, it will be for your Advantage in the World to come. But you are an Offender againſt the Law of the Land, which has made this your Offence to be High-Treaſon, and therefore that Judgment appointed for one guilty thereof muſt be pronounced: And it was pronounced accordingly; but *Boucher* was reprieved, and afterwards pardoned, as I apprehend; for I never heard he was executed, though I was at *London* about the Time he was condemned.

1703-4. 2 & 3 An.

Ayles-bury *Election.*

Proceedings at Law, and in both Houſes of Parliament, in the Caſe of *Aſhby* and *White*, &c. relating to the Right of Electors, to bring Actions againſt the Return-Officers, in the Years 1703, and 1704. 2 & 3 *Annæ.*

1703-4. 2 & 3 An.

Aſhby's *Declaration againſt* White, *&c.*

THE Plaintiff *Matthew Aſhby*, brought his Action againſt *William White*, *Richard Talboys*, *William Bell*, and *Richard Heydon*, Defendants, Conſtables of the Borough of *Aylesbury*, and declared, That on the 26th of *December*, in the 12th Year of King *William* III. a Writ iſſued out of *Chancery*, directed to the Sheriff of the County of *Bucks*, reciting that the King had ordered a Parliament to be held at *Weſtminſter*, on the 6th of *February* then next following, and commanded the Sheriff to cauſe two Knights to be elected for the County, two Citizens for every City, and two Burgeſſes for every Borough: Which Writ was declared to the Sheriff, who made a Precept in Writing under the Seal of his Office, directed to the ſaid Conſtables of the Borough of *Aylesbury*, commanding them to cauſe two Burgeſſes of the ſaid Borough to be elected, *&c.* which Precept was delivered to the Defendants, to whom it belonged to execute the ſame: By Virtue of which Writ and Precept, the Burgeſſes of that Borough being ſummoned, did aſſemble before the Defendants to elect two Burgeſſes; and they being aſſembled in order to make ſuch Election, the Plaintiff *Matthew Aſhby*, then a Burgeſs and Inhabitant of the ſaid Borough, and duely qualified to give his Vote at that Election, was there ready, and offered his Vote to the Defendants for the Choice of Sir *Thomas Lee*, Bart. and *Simon Mayne*, Eſq; and the Defendants were then required to receive and admit of his Vote: That the Defendants, not being ignorant of the Premiſſes, but contriving, and fraudulently, and maliciouſly intending to damnify the Plaintiff, and to defeat him of that his Privilege, did hinder him from giving his Vote, and did refuſe to permit him to give his Vote; ſo that the two Burgeſſes were elected without any Vote given by the Plaintiff, to his Damage of 200 *l.* Upon Not Guilty pleaded, Iſſue was joined, and the Cauſe was tried at the Aſſizes for the County of *Bucks*; and the Plaintiff obtained a Verdict, and 5 *l.* Damages beſides Coſts.

Aſhby *recovers.*

Judgment arreſted in the King's-Bench.

The Defendants thereupon moved the Court of *King's-Bench* in Arreſt of Judgment, inſiſting, That the Action did not lie, and this Point being argued by Counſel, and afterwards by the Court, three of the Judges, (*viz.*) *Powel*, *Gould*, and *Powys*, were of Opinion the Action would not lie; for that the Judging of Elections belonged *ſolely* to the Houſe of Commons; adding, That this was the firſt Action of the Kind that had been brought; and, if theſe Suits were encouraged, it would make the Return-Officers liable to an infinite Number of Suits. The Lord Chief Juſtice *Holt*, however, differed from his Brethren, being of Opinion, That every Man had a Right to ſue the Return-Officer (if he had a legal Vote), where his Vote was refuſed: But, there being three Judges againſt one, the Conſtables carried their Point; and it was adjudged, That the Plaintiff had no Cauſe of Action.

This Matter being brought before the Houſe of Lords afterwards, by a Writ of Error, the Judges were ordered to deliver their Opinions: Whereupon Sir *Tho. Trevor*, Lord Chief Juſtice of the Common Pleas, and ſeveral other Judges, declared it was their Opinion, That the Houſe of Commons *only* had a Right to judge of Elections, and conſequently *who were the Electors*; and obſerved, That Petitions to that Houſe were frequently founded on Allegations; that ſome of the Voters had no Right, and that others were refuſed that had a Right: Nor had it ever been diſputed but *the Commons were the only proper Judges of this Matter*; adding, That if two independent Juriſdictions ſhould be allowed in the ſame Caſe, this muſt frequently occaſion contrary Judgments, and create great Confuſion in the Execution of ſuch Judgments.

Reſolutions of the Lords contra.

To this it was anſwered, That a Voter had no other Remedy but in a Court of Law: For, ſuppoſing the Perſon was returned he would have voted for, he had no Pretence to complain to the Houſe of Commons; and if they could admit of ſuch a Complaint, they could give him no Damages to make him Satisfaction for the Officer's denying his Vote. And ſince this was a Right inherent to every Voter, it was reaſonable an Action ſhould be brought for it in the Courts of Law, where all other Rights were tried. That, if this Determination of the *King's-Bench* was allowed, it would amount to an Indemnity for the Return-Officers, how partial or unjuſt ſoever they ſhould prove, and exceedingly multiply theſe Diſorders: And to this latter Opinion their Lordſhips agreeing, confirmed the Verdict given for *Aſhby* the Plaintiff at the Aſſizes, over-ruled the Determination of the Court of *King's-Bench*, and gave Judgment for *Aſhby* the Plaintiff.

Judgment for Aſhby *in the Houſe of Peers.*

Reſolutions of the Commons thereupon.

The Commons, upon this Deciſion of the Houſe of Lords, Reſolved,

1. That, according to the known Laws and Uſage of Parliament, it was the ſole Right of the Commons (except in Caſes otherwiſe provided for by Act of Parliament) to examine and determine all Matters relating to the Right of Election of their own Members.

2. That

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2. That neither the Qualification of an Elector, or the Right of any Perſon elected, is cognizable or determinable elſewhere than before the Commons, except as aforeſaid.

3. That the examining and determining the Qualification or Right of any Elector, or any Perſon elected in any Court of Law, or elſewhere than before the Commons, except as aforeſaid, will expoſe all Mayors, and other Return-Officers, to Multiplicity of Actions and Vexatious Suits, and ſubject them to different and independent Juriſdictions, and inconſiſtent Determinations

4. That *Matthew Aſhby* having brought his Action againſt *White* and the reſt of the Conſtables of *Aylesbury*, for not receiving his Vote, was guilty of a Breach of Privilege.

5. That whoever ſhall commence or proſecute any Action, Indictment, or Information, which ſhall bring the Right of the Electors or Elected to the Determination of any other Juriſdiction than the Houſe of Commons, except as aforeſaid, ſuch Perſons, and all Attorneys, Sollicitors, Counſellors, and Serjeants at Law, ſolliciting, pleading, or proſecuting in any ſuch Caſe, are guilty of a high Breach of the Privilege of this Houſe. And theſe Reſolutions were ordered to be fixed on *Weſtminſter-Hall* Gate, ſigned by the Clerk.

Reſolutions of the Lords contra.

On the other hand the Lords Reſolved,

1. That, by the known Laws of this Kingdom, every Freeholder, or other Perſon, having a Right to vote at the Election of Members to ſerve in Parliament, and being willfully denied or hindered ſo to do by the Officer who ought to receive the ſame, may maintain his Action againſt ſuch Officer, and recover Damages for the Injury.

2. That the aſſerting that a Perſon, having Right to give his Vote at any Election, and being hindered ſo to do by the Officer, who ought to take the ſame, is without Remedy for ſuch Wrong, by the ordinary Courſe of Law, is deſtructive of the Property of the Subject, againſt the Freedom of Elections, and manifeſtly tends to encourage Corruption and Partiality in Officers, who are to make Returns in Parliament, and to ſubject the Freeholders, and other Electors, to their arbitrary Will and Pleaſure.

3. That the declaring *Matthew Aſhby* guilty of a Breach of Privilege of the Houſe of Commons for proſecuting his Action againſt the Conſtables of *Aylesbury*, after he had obtained a Judgment in Parliament for Recovery of his Damages, is an unprecedented Attempt upon the Judicature in Parliament; and is, in Effect, to ſubject the Law of *England* to the Votes of the Houſe of Commons.

4. That the deterring Electors from proſecuting Actions in the ordinary Courſe of Law, where they are deprived of their Right of voting; and the terrifying Attorneys, Sollicitors, Counſellors, and Serjeants at Law, from ſolliciting, proſecuting, and pleading in ſuch Caſes, by voting their ſo doing to be a Breach of Privilege of the Houſe of Commons, is a manifeſt aſſuming a Power to controul the Law, to hinder the Courſe of Juſtice, and ſubject the Property of *Engliſhmen* to the arbitrary Votes of the Houſe of Commons.

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But notwithſtanding the Commons had Reſolved that *Aſhby* was guilty of a Breach of Privilege in commencing an Action againſt *White*, and the reſt of the Conſtables of *Aylesbury*, they did not proceed to take *Aſhby*, or his Counſel, Attorney or Agents, into Cuſtody for it; and the Parliament was no ſooner up, but *Aſhby*'s Attorney, *Robert Mead*, executed the Judgment againſt the Conſtables of *Aylesbury*; and brought Actions of the like Nature for *John Paty*, *John Oviat*, *John Paton*, jun. *Henry Baſſe*, and *Daniel Horne*, five more *Aylesbury* Men, againſt the ſaid Conſtables, for refuſing them Votes at the Election of Members to ſerve in Parliament for the ſaid Borough of *Aylesbury*.

The Judgment executed againſt the Conſtables.

Five Actions brought againſt them.

Whereupon, the Parliament meeting again in the Month of *October* 1704, Complaint was made to the Houſe of Commons, of the Execution of the ſaid Judgment againſt the Conſtables of *Aylesbury*, at the Suit of *Aſhby*; and of the five new Actions brought by *Mead* the Attorney, in the Name of the other five *Aylesbury* Men: And the Serjeant at Arms was ordered to take the ſaid Attorney, and the five *Aylesbury* Men, into Cuſtody; but the Attorney was ſo wiſe as to keep out of the Way, though his Clients were brought before the Houſe by the Serjeant, on *Tueſday* the 5th of *December*, when Mr. *Crabb*, the Attorney for the Conſtables (the Defendants) produced five Declarations, which *Mead*, the Plaintiff's Attorney, had delivered him, againſt the ſaid Conſtables, being all of the ſame Tenour with that of *Aſhby*'s againſt the Conſtables, for refuſing their reſpective Votes. And one of the Declarations being read, and the Plaintiffs examined thereupon, the Houſe Reſolved, That *John Paty*, and the reſt of Plaintiffs, had been guilty of commencing and proſecuting Actions at Common Law, againſt *William White*, and others, late Conſtables of *Aylesbury*, for not allowing their reſpective Votes in the Election of Members to ſerve in Parliament, contrary to the Declaration, in High Contempt of the Juriſdiction, and in Breach of the known Privileges of that Houſe: And ordered them all to be committed to *Newgate* by the Speaker's Warrant, which was done accordingly.

The five Aylesbury Men taken into Cuſtody by the Commons.

The Houſe, being informed on the 24th of *February*, that there had been Endeavours to bring a Writ of Error on the Proceedings in the Court of *King's-Bench*, upon a *Habeas Corpus* granted there for the Perſons committed by that Houſe to *Newgate*, for Breach of their Privilege, thereby to bring the Commitments of that Houſe under the Examination of the Houſe of Peers, addreſſed Her Majeſty, laying before her, the undoubted Right of the Commons of *England* to commit for Breach of Privilege; and that the Commitments of the Houſe were not examinable in any other Court whatever, and that no ſuch Writ of Error was ever brought, nor did any Writ of Error lie in that Caſe. And as that Houſe had expreſſed their Duty to Her Majeſty,

An Habeas Corpus brought by the Aylesbury Men, and a Writ of Error petitioned.

The Commons Addreſs againſt the Writ of Error.

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Majeſty, in giving Diſpatch to all the Supplies; ſo they had an entire Confidence in Her Majeſty's Goodneſs and Juſtice, That ſhe would not give Leave for the bringing any Writ of Error in this Caſe, which would tend to the overthrowing the Rights and Privileges of the Commons of *England*.

The Queen's Anſwer.

To which Addreſs Her Majeſty anſwered, She was much troubled to find the Houſe of Commons of Opinion, That her granting the Writs of Error, mentioned in their Addreſs, was againſt their Privileges, of which her Majeſty would always be as tender as of her own Prerogative; and therefore the Houſe of Commons might depend on it, Her Majeſty would not do any Thing to give them any juſt Occaſion of Complaint: But this Matter, relating to the Courſe of Judicial Proceedings, being of the higheſt Importance, Her Majeſty thought it neceſſary to weigh and conſider very carefully, what might be proper for her to do in a Thing of ſo great a Concern.

The Counſel and Attorneys for the Priſoners ordered into Cuſtody.

The ſame Day the Commons Reſolved, That Mr. *Francis Page*, Mr. *James Montague*, Mr. *Nicholas Lechmere*, and Mr. *Alexander Denton*, who had been concerned in pleading upon the Return of the *Habeas Corpus*, on behalf of the Priſoners committed by that Houſe, were guilty of a Breach of Privilege; and Ordered them to be taken into Cuſtody of the Serjeant at Arms.

They alſo Ordered the five *Aylesbury* Men to be removed from *Newgate*, and delivered into the Cuſtody of their Serjeant at Arms; which was done accordingly.

But examining the Serjeant the next Day, as to the Counſellors at Law he was ordered to take into Cuſtody, he anſwered, That he had taken Mr. *James Montague* into Cuſtody, who ſhewed him a Protection from the Houſe of Lords (granted at the Petition of the five *Aylesbury* Men) by which, the ſaid Mr. *Montague*, Mr. *Page*, Mr. *Lechmere*, and Mr. *Denton*, as alſo Mr. *Lee* and Mr. *Harris*, the Attorneys in the Cauſe, were aſſigned Counſel and Attorneys for the ſaid Perſons impriſoned, and protected by the Houſe of Lords: And all Officers, Serjeants at Arms, and other Perſons, were thereby forbid to meddle with them.

That he had like to have taken Mr. *Nicholas Lechmere*, but he got out of his Chamber in the *Temple*, two pair of Stairs, at the back Window, by the Help of his Sheets and a Rope; and that the ſaid *Harris* was alſo taken into Cuſtody, but that Mr. *Page*, Mr. *Denton*, and Mr. *Lee*, were not to be found.

An Abſtract of the Proceedings in the Court of King's-Bench.

I ſhall, in the next Place, look back to the Proceedings in the King's-Bench, *which gave Birth to theſe extraordinary Reſolutions of the Commons, in relation to the Five* Aylesbury *Men, and their Counſel, and Attorneys.*

The Five *Aylesbury* Men above-mentioned, having been committed to Newgate by the Commons, as related above, in *Michaelmas* Vacation, 1704, prayed Writs of *Habeas Corpus* in order to be admitted to Bail: Whereupon all the Judges aſſembled, and reſolved unanimouſly, That they were not bailable; and thereupon the Priſoners were remanded to *Newgate*.

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In *Hillary* Term following, the Priſoner's Counſel moved the Court of *Queen's-Bench* for Writs of *Habeas Corpus*, which were granted, and upon the Return thereof, that Court deſiring the Aſſiſtance of all the Judges, they were all of Opinion, except the Lord Chief Juſtice *Holt*, That they ought to be remanded to *Newgate*.

The Priſoners Counſel on this Occaſion, were, Mr. *Page*, Mr. *Montague*, Mr. *Lechmere*, and Mr. *Denton*, who inſiſted, That there was no Breach of Privilege returned: That it did not appear the Priſoners were any ways related to the Houſe of Commons, either as Members or Officers. They agreed, every Court had Power to keep Order among themſelves; but to take a Man out of the Houſe, who was not of the Houſe, or guilty of any Breach of Privilege, for ought appeared by the Return, they knew no Law for it: That the bringing an Action was no Crime by any known Law: That there was a Judgment at Law againſt the Conſtables of *Aylesbury*, which could not be got over till ſome Act of Parliament interpoſed; and the Law being ſo, they did not know any Crime in bringing this Action, while the former Judgment remained on Record.

That as to the bringing an Action againſt the Commons' Declaration, they muſt oppoſe the Declaration of the Lords to it; and that Privileges againſt the known Laws of the Land, were void in themſelves: That though both Houſes were proper Judges of their own Privileges, yet that Court had formerly judged of their Privileges: That in the Caſe of the Lord *Banbury*, though the Houſe of Peers declared he was no Peer, yet, when he was proſecuted for Murder in that Court, and inſiſted on his Peerage, the Court allowed his Plea, and refuſed to try him.

That, had it been a general Commitment, without ſhewing the Offence, and ſaid to be for a Breach of Privilege only, it might have been a good Commitment; but here the Cauſe being ſet forth, and it appearing by the Judgment of the Lords, in the Caſe of *Aſhby* and *White*, That this was no Cauſe for a Commitment, they ought to be bailed: That the Queen Herſelf could not, by a Commitment, exclude the Subject from the Benefit of the Law, and prevent his being bailed by this Court upon Cauſe ſhewn, much leſs the Houſe of Commons.

The Caſe was afterwards argued by the Judges, who were all (except the Lord Chief Juſtice *Holt*) of Opinion, They ought to be remanded.

The Judges remand the Priſoners.

They held, That, as the Priſoners were committed by a ſuperior Authority, they had nothing to do to intermeddle with it: That there had been no Caſe or Opinion cited, where the Courts of *Weſtminſter-Hall* undertook to judge of the Authority of the Houſe of Commons; or, that the Orders and Commitments of the Houſe of Commons, were diſcharged in *Weſtminſter-Hall*; which was a good Argument, they had no Power to do it: The Reſolution of the Commons upon a Breach of Privilege, was a Judgment; and the Commitment, an Execution; which could not

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not be controuled. The Houſes of Parliament reſpectively were ſole Judges of their ſeveral Privileges; and where there was a Diſpute between the two Houſes about them, the only Method that had ever been taken to adjuſt them, had been by Conferences: That the Reſolution of the Lords, in the Caſe of *Aſhby* and *White*, did not bind the Commons, or determine their Privileges; and it would be a ſtrange Thing, if the Houſe of Commons ſhould have Power to examine and judge of a Breach of Privilege, and have no Power to puniſh the Breach of it.

Lord Chief Juſtice Holt's Reaſons for bailing them.

The Lord Chief Juſtice *Holt*, on the other Hand, gave the following Reaſons, why he did not think this a legal Commitment: He ſaid, This Caſe depended on the Vote that was recited in the Speaker's Warrant, (*viz.*) *That it did appear to that Honourable Houſe, that* John Paty, *&c. had been guilty of commencing and proſecuting an Action at Common Law, againſt* W. White, *and others, late Conſtables of* Aylesbury, *for not allowing his Vote in an Election of Members of Parliament, contrary to the Declaration, in high Contempt of the Juriſdiction, and in Breach of the known Privileges of this Houſe.*

That he owned himſelf to lie under two Diſadvantages; one, That all the reſt of the Judges do agree with his three Brethren, from whom he had the Misfortune to diſſent; the other, That he oppoſed the Votes of the Houſe of Commons, and did begin to think, he might juſtify himſelf in reſigning his Opinion to the reſt; but that he valued more the Dictates of his own Conſcience, than any thing he could ſuffer in this World; and by that and his Judgment (though it were but weak) he would be guided.

That this was not ſuch an Impriſonment as the Freemen of *England* ought to be bound by; and that it did highly concern the People of *England*, not to be bound by a Declaration of the Houſe of Commons, in a Matter that before was lawful.

That neither Houſe of Parliament has a Power ſeparately to diſpoſe of the Liberty or Property of the People, for that cannot be done, but by the Queen, Lords, and Commons; and this is the Security of our *Engliſh* Conſtitution, which cannot be altered, but by Act of Parliament.

That there is a Crime charged by the Vote for commencing an Action; but ſure, that cannot be a Breach of Privilege: For an Original may be filed againſt a Member of Parliament, during the Time of Privilege, ſo that you don't moleſt him, and it is no Breach of Privilege; as it was reſolved in Sir *George Benion's* Caſe, 14 *Char.* II. for otherwiſe, by Lapſe of Time in ſeveral Actions, he may be barred by the Statute of Limitations: So that, if it be not a Breach of Privilege to commence an Action againſt a Member of Parliament, then how can it be ſo, to commence an Action againſt the Conſtables of *Aylesbury*?

But then the Vote goes further, and ſays, For commencing and proſecuting an Action: But Proſecuting may not be a Breach of Privilege neither; for Entering and Continuing, is Proſecuting, which may be done without a Breach of Privilege.

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That it does not appear that the Conſtable of *Aylesbury* has any Privilege above another Perſon; for no Man is preſumed to be privileged, unleſs it be ſhewn; and he has no Privilege as Conſtable.

That the Vote goes yet further, and ſays, For not allowing his Vote in an Election of Members to ſerve in this preſent Parliament: But this can be no Crime.

That he admitted they were Judges of their own Privileges; but the Law muſt alſo be obſerved. By 2 *Ric.* III. *Fol.* 9. it appears, it was no Crime by the Common Law, to bring an Action, though never ſo malicious, falſe, or groundleſs, where it is adjudged, that there was no Puniſhment for it; becauſe it was in a Method of Juſtice: But when Buſineſs began to increaſe, Coſts were given againſt the Plaintiff by 23 *Hen.* VIII. for bringing an Action cauſeleſsly. A Peer cannot have an Action of *Scandalum Magnatum*, where there is no Cauſe for the Action wherein he is charged with Scandal: So much the Law regarded the Right of bringing Actions.

That when Subjects have ſuch a Right to bring Actions, it cannot be ſtopped by Privilege of Parliament; for no Privilege of Parliament can extend ſo far as to deſtroy a Man's Right.

That it has been adjudged a good Action by the Law of the Land; and that Damages may be recovered for the Injury, in not allowing his Vote; and this Action is the ſame as *Aſhby* and *White*, which lies before us; and if we conſult the Records, we ſhall find it to be the ſame.

That the latter Part of this Vote, is, That the proſecuting this Action is contrary to the Declaration, in high Contempt of the Juriſdiction, and in Breach of the known Privileges of this Houſe.

That the Privileges of the Houſe of Commons are limited; for there is no Privilege in Caſe of Treaſon, or Felony, or Breach of the Peace: For a Juſtice of Peace may commit a Member for Breach of the Peace; and if he ſhould be indicted for it, his Plea of Privilege would not be allowed.

That nothing can make a Privilege, that was not ſo before (for the Breach of which a Man ſhall looſe his Life), but an Act of Parliament.

That each Houſe is judge of their own Privileges, becauſe they are more converſant with the Privileges of their own Houſe; ſo the Judges decline it: But if they come incidently before the Courts of Law, they muſt determine it there.

That ſuppoſe the Houſe of Commons had not meddled in this Matter, but the Defendants in this Action had pleaded to the Juriſdiction of this Court, That this was a Matter examinable only in the Parliament, and the Plaintiff had demurred; we muſt then have determined it, and be Judges then of their Privileges.

Coke's 1 Inſt. *Lex & Conſuetudo Parliamenti ab omnibus querenda, a multis ignorata, a paucis cognita*; and the Reaſon 'tis known by ſo

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few is, because they do not seek for it. We are bound to take Notice of the Customs of Parliament, for they are Part of the Law of the Land; and there are the same Methods of knowing it, as the Law in *Westminster-Hall.*

In *Clarendon*'s History, *Part* I. *Fol.* 310. He was Lord Chancellor of *England*, a Man of great Probity and Learning: His Observations touching Privileges of Parliament are these.

It is not to be believed, how many sober, well-minded Men, who were real Lovers of the Peace of the Kingdom, and had a full Submission and Reverence to the known Laws, were imposed upon, and had their Understandings confounded, and so their Wills perverted, by the meer Mention of Privilege of Parliament; which, instead of the plain and intelligible Notion of it, was, by the Dexterity of those Bouteseus, *and their Agents, and the Sottishness of the People, rendered such a Mystery, as could be only explained by themselves, and intended as far as they found necessary for their Occasions, and was to be acknowledged a good Reason for any Thing that no other Reason could be given for. We are, say they, and have been always confessed, the only Judges of our own Privileges, and whatsoever we declare to be our Privileges, are such; otherwise, whosoever determines that it is not so, makes himself Judge of that whereof the Cognizance belongs only to us. And this Sophistical Riddle perplexed many, who, notwithstanding the desperate Consequence they saw must result from such Logick, taking the first Proposition for true, which being rightly understood is so, have not been able to wind themselves out of the Labyrinth of the Conclusion: I say, the Proposition rightly understood, they are the only Judges of their own Privileges; that is, upon the Breach of those Privileges which the Law hath declared to be their own, and what Punishment is to be inflicted upon such Breach; but there can be no Privilege, of which the Law doth not take Notice, and which is not pleadable by and at Law.*

The same Part, Page 312. *But that their being Judges of their Privileges should qualify them to make new Privileges, or that their Judgment should create them such, as it was a Doctrine never before heard of, so it could not but produce all those monstrous Effects we have seen: When they have attempted to swallow all the Rights and Prerogatives of the Crown, the Liberties and Lands of the Church, the Power and Jurisdiction of the Peers; in a Word, the Religion, Laws, and Liberties of* England, *in the bottomless, and insatiable Gulph of their own Privileges.*

That he had yet a greater Authority than this, the Opinion of King *Charles* I. in his Answer to the 19 Propositions from both Houses of Parliament, in Lord *Clarendon*'s History, *Part* I. *Page* 498. which Answer is in the King's own Words, in *Rushworth*'s Collections, 3 *Vol. Part* I. *Page* 725, 730, 731.

That though the bringing this Action be contrary to the Declaration, it does not follow, therefore, that it must be a Breach of Privilege; for this Vote has not obtained the Authority of a Law, and they have no more Power to declare the Law, than they have to make a Law.

That if bringing an Action is a Breach of Privilege, why was not *Ashby* laid hold on? He prosecuted to Judgment and Execution; but these Persons are committed for commencing an Action. 1703-4. 2 & 3 An.

How can the bringing an Action in one Court be a Contempt to another?

If a Man that has a Privilege in one Court, is sued in another, he shall have his Privilege: But it is no Contempt in the Plaintiff that he sues in another Court, and there is no Punishment for it; much less can it be a Contempt to the House of Commons, where no Action can be brought.

That he admitted, the House of Commons may commit any Person, and for any Crime, because they may impeach any Person for any Crime whatsoever; but that Course is seldom taken, unless where the Crime requires a strict Persecution, and very much concerns the Publick.

That the Lord *Shaftesbury*'s Case is not like this; for he was a Member of the House, and it was for a Contempt in the House.

The House may, at any Time, commit a Man for a Contempt in the Face of the House; whereas the Prisoners are committed, not for a Breach of Privilege, or Contempt, but because they have brought their Actions, which are legal, and so adjudged by the Lords in the Writ of Error.

That he did not question but that the Warrant was a good Warrant.

That *lex & consuetudo Parliamenti*, is as much the Law of the Land, as any other Law. 'Tis the Law gives the Queen her Prerogative: 'Tis the Law gives Jurisdiction to the House of Lords; and 'tis the Law limits the Jurisdiction of the House of Commons.

That if the Ecclesiastical Court exceed their Jurisdiction, a Prohibition will lie; and even the King's Acts, if contrary to Law, are void.

He insisted, That the Lord *Banbury*'s Case was a great Authority for him.

He petitioned the House of Lords to sit, and also to have the King's Leave: The Lords determined he was not a Lord; yet, when he was brought before the Court of *King's-Bench* upon an Indictment, by the Name of *Charles Knollys*, Esq; he here pleaded, and insisted, That he was a Peer; which Plea was allowed, and he was not tried.

I proceed in the next Place, to give some select Speeches that were made in the House of Commons on this Occasion.

A Speech of Sir Simon Harcourt's, against the Action.

Sir *Simon Harcourt*. It hath been said, That the Question now before you is, Whether Judgment being given in the Court of *Queen's-Bench*, a Writ of Error does not lie in the House of Lords to reverse that Judgment? I cannot, by any Means, agree that to be the Question.

But that which I take to be the proper Question before you is, Whether or no it be the sole Right of the Commons of *England* to determine their own Elections? If you are of that Opinion, never let your Disease grow to such a Head as to put you upon the Necessity of complaining of a Judgment of the Lords, but rather check it in its Infancy.

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It may, perhaps, ſound harſh, That a Man ſhall not be admitted to make Uſe and have the Benefit of the Law; and yet, when that Law is thoroughly digeſted, I believe no Gentleman in this Houſe, but will agree, That there may be many ſuch Inſtances, where you will not endure any Suit at Law. I cannot give you any better Inſtances than what have been mentioned to you by a learned Gentleman on the other Side, who approves of this Proceeding by Writ of Error; the Proſecution againſt Sir *William Williams*, for publiſhing a Libel (as it was called) by Direction of this Houſe, and an Action againſt the Serjeant for obeying your Commands. If ſuch an Action ſhould be brought againſt the Speaker or Serjeant, ſhould we ſit ſtill here to ſee what they would do in the Courts below, and afterwards wait for the Event in the Houſe of Lords by Writ of Error?

'Tis very true, theſe Judgments that are mentioned by that Gentleman continue ſtill unreverſed. As to that given againſt the Speaker, he mentioned it as a Precedent not fit to be followed: Indeed, 'tis a Reproach to the Houſe to mention it, ſince no Parliament has reverſed it. As to the other Action, againſt the Serjeant, he ſays, Judgment was given againſt him, and that ſtands in full Force; as I remember that Caſe, it went off upon the Form of Pleading.

But nothing of that Kind being the Queſtion now, I beg Leave to ſtate what this Action is that is now before us: For Gentlemen in the Country, who have frequently met with Actions proſecuted without Cenſure, for Matters relating to the Elections, may perhaps be ſurprized, till they come to conſider what the Point is. This is not an Action grounded upon any Statute whatſoever. 'Tis agreed, an Action may be maintained, where a Statute gives a particular Remedy; but this is an Action founded upon the Common Law. Whatever your Privileges are, if you will conſent to an Act of Parliament to make other Perſons Judges of thoſe Privileges, ſo far as you conſent, if they purſue the Power given them by Act of Parliament, there is no Wrong done you: But an Action brought at Common Law, is that which, I think, interferes with the inherent Right of this Houſe.

We have, I think, attained to one Piece of Knowledge upon this Debate, That this was the firſt Action that was ever brought of this Kind; and Gentlemen will not much wonder why this is brought now, when they conſider what Endeavours have been uſed to make this Houſe contemptible. I believe this may be thought the moſt probable Method to attain that End.

I would not repeat the Precedents that have been quoted; yet I cannot but take Notice of that of *Barnardiſton* and *Soame*: Thoſe Arguments that were made uſe of for this Judgment in that Caſe were rejected; and the Judgment of the Lords was then directly contrary. I ſhould be very glad to hear how the Lords Judgment of Reverſal, in that Caſe and in this, are reconcilable. The Commons, at that Time, would ſcarce have ſuffered ſuch an Attempt upon their Privileges; and I hope we ſhall be as careful and as zealous to preſerve ours: We have as much Power as our Predeceſſors; we ſhall never ſuffer for Want of Power, if we do not ſuffer for Want of Will to exert it.

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I expect to hear of the great Authority of one learned Judge, that differed from the reſt: I have the utmoſt Eſteem for his Judgment; but am ſorry to hear any Inſinuation, that thoſe Judges who have given their Opinion otherwiſe, are guilty of a Breach of their Oaths. It hath been touched upon, That, whenever any Queſtion has been asked the Judges concerning the Privileges of the Lords, or the Privileges of the Commons, their Anſwer is recorded for the Inſtruction of all their Succeſſors, and to the Honour of both Houſes of Parliament, That it was a Matter above their Knowledge: The Law of Parliament is above the Judges of the Common Law, and is not to be ſubject to their Judgment; 'tis *alieni fori*.

And, Sir, as I have been informed, this was the Anſwer given in the Houſe of Lords by one of the preſent Judges; and, by what I have heard, it was well he eſcaped their Cenſure; ſhewing too much Reſpect to this Houſe, gave very great Offence.

I beg, Gentlemen, to conſider (I ſhall not enter into Particulars that have been mentioned), Whether any thing of this Kind would not make you deſpicable to the loweſt Degree in the World, and expoſe Electors to ſuch Miſchiefs that none could endure? Upon every Election that comes before you, 'tis impoſſible to judge the Right of Election, but by the Right of the Electors. If you will endure any Perſon, after you have ſaid he has no Right, to go into *Weſtminſter-Hall*, and bring an Action in the Courts there, a Jury may find a Verdict, That the Houſe of Commons are miſtaken, and that this Perſon hath a Right; and Judgment ſhall be given accordingly. Will not this Proceeding, that very Moment, ſubmit your Reſolutions to the Examination and Cenſure of the inferior Courts? May not they ſay, They vote for one another? we have detected them all? That they are a Parcel of People packed together, and not one of them elected as they ſhould be?

What Condition the Magiſtrate will be in, hath been mentioned already: When a Multitude hath a Right, and every body may bring his Action, can any Magiſtrate (a Conſtable, as in this Caſe) bear the Expences of 100 or 1000 Actions at Law? There will not be wanting ſome to proſecute a Magiſtrate with all the Violence poſſible.

Though I can by no Means agree, That this Matter is to be determined according to the common Rules and Methods of Law, but according to the Courſe of Parliament; yet I ſhall compare it with ſome other Caſes in the Law.

That which maketh theſe Perſons Hardſhips the greater is, Theſe Magiſtrates are not People that officiouſly interpoſe to take a Poll at Elections, and make a Return; but theſe are Men, who, by the Duty of their Office, are obliged to do it; and, if they do not execute their Office, you puniſh them; and, if they do execute their Office, and give you Satisfaction,

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faction, yet, if you let this be examined in another Place, after you have ſaid they have done well, they may be puniſhed for doing ſo.

I will compare this with one or two common Caſes that have not been mentioned. Suppoſe a Perſon ſhould exhibit an Indictment againſt another maliciouſly, he does this wilfully, and an Action does lie againſt him; but, if a Grand Juryman find a Bill againſt a Man, the Law will not admit an Averment that it was done maliciouſly, becauſe he was obliged by his Office to do it. So it is in the Caſe of a Witneſs, becauſe he is brought in by the Proceſs of the Court: So it is in the Caſe of Judges. And is it not equally the Duty of a Magiſtrate to determine upon the Poll, and afterwards to make a Return? And is not that examinable before you?

A great deal might be ſaid further upon this, but I hope it is pretty unneceſſary; and that nobody can have any Doubt, but that our Privileges are very much concerned in this Queſtion, and what the Conſequences would be; therefore I would humbly propoſe for the Queſtion, what another Gentleman hath hinted at, which may reduce this Debate to a particular Point.

We certainly have ſuch a Thing as the Law and Cuſtom of Parliament, and that is very well known; and upon that Foot I deſire you would put a Queſtion to this Effect.

"That the ſole Right of examining and "determining all Matters relating to the E-"lection of Members to ſerve in Parliament, "except in ſuch Caſes as are otherwiſe provi-"ded for by Act of Parliament, is in the "Houſe of Commons; and that neither the "Qualifications of the Electors, or the Right "of the Perſons elected, is elſewhere cogni-"zable or determinable.

A Speech of Mr. Dormer's, *for the Action.*

Mr. *Dormer* (afterwards a Judge). Mr. *Freeman*, you have now a Queſtion upon your Paper; but that which I take to be the Queſtion, is, "Whether a Freeholder, or a Free-"man, who hath a Right to give his Vote "for his Repreſentatives in Parliament, may "arbitrarily and maliciouſly be deprived of "that Privilege, without any Redreſs in any "Court whatſoever.

This I take to the Caſe before you: It is ſaid to be of great Conſequence, and I do take it to be of as great Conſequence as any thing that ever came before either Houſe; and I don't look upon it only to concern the Juriſdiction of the Lords and Commons, but to affect every Part of the Conſtitution, and the Queen, the Head thereof, in the higheſt Degree: For it comes to this, If the Lords have not a Right to determine in this Matter, which by Writ of Error is regularly brought before them, we ſhall be turned into a State of Villenage, and the People will be deprived of chuſing their own Repreſentatives without Relief, and ſhall not have Relief by Her Majeſty in the Court of *Queen's-Bench*, nor before Her in the Court of Parliament, where, in Conſideration of Law, She is alway preſent, and where by our Law is the laſt Appeal; and there will be a Failure and an Interruption of Juſtice; and our Conſtitution, in relation to ourſelves, will be ſo far changed, that it will be impoſſible there ſhould be any right Repreſentatives of the People; for it will not be the People then that will chuſe, but the Officer may arbitrarily refuſe, and return whom he thinks fit, and the particular Perſon will be without Remedy. For, whatever Gentlemen apprehend, if the Right of Return be not controverted, which way can any particular Man bring his Caſe before you? and what Remedy ſhall he have, if not by Action? I will not ſay there has not (but I will turn the Argument, and put it upon them to ſhew there has), but I believe there was never any particular Application to the Committee of Privileges, where the Injury has been done to a particular Man, which is the preſent Caſe; and this Matter is found by a Jury that was ſtruck, and not one Man of the Jury but of Quality, and approved on both Sides: And I think, though it never came before the Parliament, nor the Committee of Privileges, they might conſider of a particular Injury.

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And as for the Notion that has been taken up, That where the Houſe of Commons have a Juriſdiction, there the Party is, in all Caſes, without Remedy in any other Court: Sure, that is not according to Truth; for in the Caſe of a falſe Return, there is a publick Injury; that does not hinder the Party from obtaining Satisfaction as to his particular Injury; and if no Action lies, there can be no Satisfaction; for this Houſe hath not awarded Damages in any Caſe, notwithſtanding the Caſe cited; for that was only Coſts for the Man's Trouble, in coming up to be examined before this Houſe; and if they ſhould award Damages, there is no Way of levying thoſe Damages; what Writ can we iſſue out? And if this Perſon be without Remedy at Law, he muſt ſit down without any Redreſs whatſoever.

There may be a Multitude of Caſes where this Houſe hath a Juriſdiction, as far as concerns the Publick and themſelves, and the Party ſhall have his Action alſo.

If I receive a Blow in this Houſe, it is a Violation of the Privilege of this Houſe, and this Houſe can take Cognizance of it, and cenſure the Perſon that hath done the Injury; but will any Man ſay, That an Action of Battery will not lie at the Common Law in that Caſe?

There was the Caſe of Sir *Thomas Clarges*: At the Time of his Election, there was one *Roe* ſpoke Words to his Prejudice; he might certainly have complained to this Houſe of it, (you had an Inſtance, I think, laſt Seſſion, of one that complained for ſome ſuch Injury againſt the Lord Biſhop of *Worceſter*, and the Houſe took it into Conſideration, which Sir *Thomas Clarges* might have done); but he brought his Action, and recovered conſiderable Damages; and afterwards a Writ of Error was brought in the *King's-Bench*, and Judgment was affirmed.

There is a Caſe, not within any Proviſion of your Law, and that is, where a Sheriff made a

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a Return, and he delivered this to a private Meſſenger, to bring up to the *Crown-Office*: The Meſſenger by the Way thought fit to vitiate the Return, and make another Return than what he received from the Sheriff: For this an Action was brought, and he recovered at Law againſt this Meſſenger, for the private Damage he had done him. Certainly, otherwiſe, the Law would be defective.

In another Caſe, the Sheriff adjourned, in Prejudice to a Candidate, to a Corn-Field; an Action was brought againſt this Sheriff at Law, for the Damages he had done this Gentleman, and it was maintained; and I dare ſay, more Caſes may be put: Which ſhews, that your having a Juriſdiction, as to what concerns the Publick, does not exclude the Party, but he may have an Action for his private Injury.

A great many Poſitions I have heard, which I take not to be true; particularly this, "That "there is no Remedy at Law, but in Caſes "provided for by the Statutes:" That is not ſo; theſe Statutes imply the contrary: The firſt ſays, Whereas there was not a ſufficient Remedy, therefore that gives a more compleat Remedy; and ſo the Judges declared in the Caſe of *Barnardiſton* and *Soame*.

Sir, They have told us of the Caſes of *Barnardiſton* and *Soame*, and of *Nevil* and *Strode*; with humble Submiſſion to you, thoſe Caſes go ſo far as to prove the Juriſdiction of the Lords, and the inferior Courts: That of *Barnardiſton* and *Soame*, was an Action tried before the Court of *King's-Bench*, and a Set of as learned Judges as ever were, before or ſince, and three of them were of Opinion for the Action, and my Lord Chief Juſtice *Hale* was one of them; who, the Term before he ſurrendered his Character, did thus expreſs himſelf, *He gave Thanks to God, that he had ſpared him to that Time; that he was able to keep his Cuſhion, and declare his Conſcience in that Place.* But afterwards it had it's Fate, a Writ of Error was brought in the *Exchequer*-Chamber; Mr. Juſtice *Levinz*, that reports it, ſays, It appears, that thoſe who argued againſt the Judgment in the *King's-Bench* were made Judges; and they themſelves afterwards determined the Caſe: And every Body knows how valuable it was at that Time to know the Price of an Houſe of Commons, and an *Engliſh* Parliament. Three Judges were then made in the *Exchequer*, and I think, two in the *Common-Pleas*. Afterwards it came into the Houſe of Lords, and there the Reverſal in the *Exchequer* was affirmed, for Reaſons different to what are urged now, and I believe for ſeveral good Reaſons. The Sheriff in that Caſe had made a double Return, and the Sheriff might do it for his own Indemnity, for it was no more than finding a Special Verdict; and therefore the Saying *falſo & malitioſe*, being put to a Thing that was in it ſelf right, it would not alter the Nature of the Thing. Another Reaſon they went upon, was, They ſaid this double Return was a void Return, and for that Reaſon the Action did not lie; and upon theſe Reaſons depended that Judgment. That Gentleman, who ſaid that only four or five Lords diſſented, is under a great Miſtake: Four or five Lords only, I believe entered this Diſſent; but there was a great Number, and near an Equality againſt that Judgment, that did not enter their Diſſent.

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Then, Sir, there is the Caſe of *Nevil* and *Strode*; and that was firſt a Judgment in the *Common-Pleas*, and when it had taken it's Progreſs in *Weſtminſter-Hall*, it came before the Houſe of Lords; and the Lords returned it back again to *Weſtminſter-Hall*, and ordered all the Judges of *England* to deliver their Opinion in it. That was founded upon an Ordinance of thoſe Times; *Berkſhire* was to ſend five Knights, and *Nevill* was one of them that were elected, but not returned: There they ſaid, in that Caſe, that Ordinance was entirely new, and that Caſe did not recommend itſelf by the known Laws of the Land; and for that Reaſon they would not give Judgment, for Wages could not be levied for five ſuch Knights: And when afterwards they were to give Judgment, the right Conſtitution had recovered it ſelf.

Now, as to the Lords Right to receive a Writ of Error in this Caſe: You have addreſſed to them, that they would receive a Writ of Error, at a Time when your Privileges were invaded. That was the Caſe of my Lord *Holles*, who, with others, was informed againſt, 5 *Car.* for having ſpoke Words in this Houſe that did affect the Government; and he pleaded to the Juriſdiction of the Court, (Is there any ſuch Thing here! No, they have ſubmitted to it), and the Court over-ruled their Plea to the Juriſdiction, and that Judgment continued in Force (as ſome others, which have been ſince, do now, which it were well if they were reverſed), 'till this Houſe took Notice of it; and in 1667, they deſired a Conference with the Houſe of Lords, the Chairman was my Lord Chief Juſtice *Vaughan*; and this Houſe there complained how they were grieved by that Judgment: And after repeated Conferences, both Houſes did conſent to this Expedient, That my Lord *Holles*, being the only Survivor, ſhould be deſired to bring a Writ of Error in the Houſe of Lords, and he did ſo; and the Lords in that Caſe did you Juſtice, and reverſed the Judgment.

As to your paſſing this Vote, what it will ſignify I can't tell: What ſignified a Vote you paſſed before, about the Year 80, That the putting the Laws in Execution againſt Proteſtant Diſſenters, was an Injury to the Publick, and a Subverſion of the Government; and that thoſe that put them in Execution, ſhould be looked upon as Enemies to the King and Kingdom? The Conſequence was, That all the Laws againſt Popery were put in Execution againſt the Proteſtants, more than they were before: The Judges in *Weſtminſter-Hall* ſaid, This Vote had not paſſed into a Law, and they could not take Notice of it. I hope we ſhall do nothing that will leſſen our ſelves, nor any Thing but what will be effectual, for the Ends of which 'tis propoſed.

The Speech of Mr Harley, againſt the Action.

Mr *Harley*, (Speaker). Sir, I ſhall trouble you but with a few Words, after this long Debate; and rather to underſtand the Terms you are debating on, than to think any Thing

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I can offer to be of any great Weight. But I take the Queſtion not to be as ſome have repreſented it, but to be ſingly this in general, Whether an Action does lie at Common Law in the Caſe before you?

There is do need to mention the particular Circumſtances of *Aylesbury* Election; for, if that was the ſingle Caſe, you might have taken another Method. I will not inſiſt, That in this very Election a great Number of thoſe Inhabitants petitioned this Houſe upon this Point, that their Votes were denied; and, after this Petition had lain in the Houſe for ſome Time, it was withdrawn by their own Conſent. I do not trouble my ſelf whether this particular Man was amongſt them, nor will I trouble you with what may reaſonably be urged from this, but leave that to other Gentlemen.

But I deſire we may underſtand the Terms upon which we are debating: We have had Maxims of the Common Law, and the Rights of Parliament, mentioned. The Common Law is the Common Uſage of the Realm: I take the Laws of Parliament to be the Common Law of the Land, and the Uſage of Parliament to be the Law of Parliament; and the Law of Parliament is to be known by Uſage, as the Common Law is.

Then how ſhall we know whether this belongs to the Common Law? If there be any other Way, I ſhould be glad to be informed; but I think there is no other Way of knowing whether an Action will lie at Common Law, but by Reaſon or Uſage, and Precedents. Now, if by Reaſon, it is to be made out by what neceſſarily attends this Caſe, or ſome other Caſes like it. And pray what do they offer, that lies at Common Law? Do they give you any Precedent? What Reaſon do they offer? I ſuppoſe that which was read laſt is no Precedent in this Caſe, for that was an Action upon the Statute; or that the Courts below take upon them a Legiſlature inſtead of a Judicature, which muſt be, if there be no Rule for them to go by. I take the Queſtion you have read to conſiſt of two Parts; one aſſerting your own Right, the other is Negative, That no other Courts have any Right, but in Caſes particularly directed by the Statute.

I can't think this of Electors and Elected a Privilege: I take it to be a Service, both in the Electors and Elected; and, formerly, it was reckoned an hard Service: I know not how they find it now. 'Tis a Service, I take it, becauſe all who are Electors are liable to pay the Wages; and I take that to be a Burden: And not only from that, but the very Towns that were Boroughs, and elected, when one paid Fifteenths, the other paid Tenths; ſo that I take it to be a Service: And if a Franchiſe, ſee the Conſequence; it will be in the Power of the Crown to create as many Boroughs as they pleaſe.

Then conſider, this Houſe is in Poſſeſſion of this Power, as of Right; and I do not find the Common Law in Poſſeſſion of any ſuch Right. Then, what do they offer, to bring it in, but that there would be ſome Failure of Juſtice? Now I took it, That the Judges are *Jus dicere*, and not *Jus dare*. If any thing want a Proviſion to be made for it, it muſt be done by the Legiſlative Power; and, if the Electors want it, Proviſion muſt be made for them, that they ſhall have an Action. And thoſe Gentlemen, who think that neceſſary, may bring in a Bill to that Purpoſe, and take the Senſe of the Legiſlature upon it in a regular Way.

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The Queſtion before you now is, Whether the Examination, Hearing, and Determination of all Matters relating to Elections, where ſome Statutes have not particularly directed otherwiſe, does not belong to this Houſe? There was a famous Caſe of *Goodwin*; that was a Caſe conteſted by the Crown, and the Crown pretended to ſend out another Writ; and there they ſay, That as to Members of Parliament, their Attendance, *&c.* they are the ſole Judge. And this they lay before King *James* in the Firſt Year of his Reign, and claim it as their ſole Right; and the King's ſecond Writ was determined to be void.

But a Gentleman makes an Argument, If one ſhould ſtrike another in the Houſe, what Remedy? Why there is an Act made for that Caſe in *Henry* VI's Time.

I think now the Matter will turn upon this: Say they, 'Tis true, you can try Elections, and who are the Electors; but here is one thing remains, that is, to give Satisfaction. Have they any Precedent for this? I believe the Precedents are without: They have a Power for what is neceſſary; nothing leſs than a Law can give the other.

Gentlemen ſay, There may be a Difference in Judgment in Courts below, but they are ſubordinate, and there lies an Appeal: But, in this Caſe, all Courts will be co-ordinate with you; and therefore, if that be a Grievance, nay a Solæciſm in Government, prevent it now.

'Tis ſaid, What will your Vote do? That is pretty odd: If they would have an Act of Parliament, your Vote muſt be the Ground of it.

You are Judges of the Whole; but, ſay ſome, You cannot give the pecuniary Satisfaction. Well, ſuppoſe ſo; but you can reſtore all to their Right. But let me ſay this, If you would not ſet up a co-ordinate Power with you in Matters of Elections, and which will be too hard for you at laſt, I hope it will be a Warning to you, to take more Care in the judging of your Elections for the Time to come.

If the Judgment belongs to you, and you are poſſeſſed of it for ſo long a Tract of Time, that no body can offer any thing againſt it ſince *Henry* IV's Time; till Gentlemen ſhew me ſome Reaſon, why the Common Law ſhould lay hold of it, I muſt be of Opinion, that it does belong to you; and no Court can take Cognizance of it but you, except where 'tis otherwiſe provided for by Statute.

The Speech of Mr. Cowper, for the Action.

Mr. *Cowper* (afterwards Earl *Cowper*). I perfectly agree with that honourable and learned Gentleman that ſpoke laſt but one in this Debate, in what he laid down as an undoubted Maxim, or Ground-Work, for the Opinion he delivered, That the Law and Cuſtom

1703-4. 2 & 3 An. Cuſtom of Parliament is Part of the Law of the Land, and as ſuch, ought to be taken Notice of by all Perſons: And I think 'tis the exact Standard by which we ought to walk; and the Deduction my poor Judgment is apt to make from that Principle, is this, That we ought not, out of Zeal to our own Juriſdiction, to go one Step farther than that known Law and Cuſtom of Parliament will warrant us to do.

Now I take it upon this Debate, That this Law and Cuſtom of Parliament doth not give the Subject, who is injured by his Vote being denied him, any Satisfaction or Recompence for that Damage; and am the rather confirmed in that Opinion, becauſe that very learned and honourable Gentleman, who is particularly knowing in the Laws and Precedents of Parliament, has not pleaſed to repreſent to you any one Precedent, where the Subject ſo injured hath complained to the Parliament, and had Redreſs in that Particular; but all Petitions have been either from the Candidates, or Electors, complaining of an undue Return: So that it cannot be ſhewed, That it hath been the Law and Cuſtom of Parliament, to give that Remedy or Relief in Parliament, which is the Subject Matter or End of the Action now in Queſtion.

I go likewiſe along with him, and every Gentleman that hath ſpoke it in this Debate, That by the Law and Cuſtom of Parliament, none but your ſelves can determine, who are rightly elected, in order to diſplace or place them here; and incident to that End, you have the ſole Right of conſidering the Right of the Electors; I ſay ſo far forth, as it is neceſſarily incident to determine who ſhall, and who ſhall not ſit here; and no other Court can conſider the Right of the Electors, in order to determine the Right of any to ſit in this Place, further than you by ſome Act of Parliament have given them Leave. But this Matter having been now diſputed a great while, you have had it fully repreſented to you, how they came to hold the Scales in this Action in *Weſtminſter-Hall*, not as in a Caſe where the Right of Election, or the Privileges of this Houſe was the Subject Matter of the Queſtion; the Queſtion was brought there only to intitle the injured Subject to Damages: And this Matter ought to be conſidered, as it relates to different Ends and Purpoſes, and upon that it turned in the Caſe of *Soame* and *Barnardiſton*. They who thought that Action lay, thought the Courts below might try the Merits of the Election to repair in Damages, not to determine who ſhould be admitted to ſit in Parliament.

And I will venture to ſay, That the Judgment of the Houſe of Lords, that confirmed that Reverſal, was in no wiſe at that Time ſatisfactory to the Commons of *England*.

But the Act of Parliament that hath been mentioned, was built upon this, That the Reverſal of the Judgment between *Barnardiſton* and *Soame* was not right; and ſo that Act was procured to ſet up the Right of the Commons of *England*, that was thought to be invaded by that Reverſal, or Judgment, that the Action upon the Caſe did not lie.

1703 4. 2 & 3 An. I will go a Step farther, That as you have the ſole Power to try the Election, and conſider the Right of the Electors, to the End I mentioned, to determine who ſhall be admitted here; ſo I grant it hath been the Law and Cuſtom of Parliaments (how antient I will not enquire) to puniſh the Offenders, particularly the Officers and Magiſtrates preſiding at the Election, for doing any Wrong or Injury in their Office on that Occaſion, in order to make him an Example, as an Offender againſt the Publick, and the Conſtitution of Parliament: So far I grant you have juſt Right to go, and no Body ought to interfere with you.

But now we are carrying the Matter yet further: The Queſtion now is not, Whether we have the ſole Right to puniſh the Officer as a publick Offender? This Action is not brought to that End, nor is there a Word in the Declaration, who was, or who was not duly elected, or that the Conſtitution or Privilege of Parliament was violated: But the Plaintiff only ſays, he had a Right to vote, and that he was injuriouſly denied it (whether the right or wrong Member was returned, he meddles not with it), and he ſubmits it to the Court and the Law, Whether he ought not to have Damages for that Wrong? And the Queſtion now is, Whether that Demand of Damages was not well founded? Or, Whether there is any Thing in this, contrary to the Law and Conſtitution of Parliament? Law depending on Cuſtom, certainly conſiſts not in, and is not to be made out by one Act, but by often reiterated Acts; and that muſt be very far from being the Law and Cuſtom of Parliament, which is ſo far from being a frequent Repetition of Acts, or Precedents, that in this Caſe, there is not one Inſtance where an Elector hath brought his Petition without Regard to the Return made, and deſired his particular Right to vote might be tried and aſſerted, he having been obſtructed and injured in giving his Vote; nor was ever ſuch Elector repaired in Damages here, nor ever had his particular Right to vote reſolved, or aſſerted by any Judgment or Declaration of this Houſe.

The learned and honourable Perſon, upon whoſe Reaſoning I am humbly offering my Thoughts with great Deference, was pleaſed to inſtance in the Caſe of five Perſons in the Town of *Aylesbury*, who exhibited a Petition, and complained of an Injury done them at an Election for that Town, at which their Votes were refuſed: And, if they complained of nothing further, and did not conclude to the Right of the Return, and complain, That they were unduly repreſented, I admit it had been ſo far an Inſtance to his Purpoſe. But if they had ſo complained only of the Injury done the Petitioners in denying their Votes, yet he is pleaſed to tell you, this Petition was withdrawn, and by the Conſent of the Perſons who preſented it, and ſo came to nothing. I ſuppoſe this is the ſingle Precedent to prove the Law and Cuſtom of Parliament, becauſe there is no other Inſtance given. It does not appear upon what Ground or Reaſons it was withdrawn; and I have no particular Memory

1703-4. 2 & 3 An. mory of that Paſſage; you will pardon me if I am miſtaken in my Conjecture. I believe no Man, that ſeeks a Remedy, would deſiſt, if he expected to ſucceed: So I take the moſt probable Reaſon (till another appear) to be, that they were hopeleſs of doing any Good with it: And one Petition, not proſecuted, will hardly ſhew that Parliaments uſe to give Redreſs in ſuch Caſes. Now, if that Precedent had been ſucceſsful, if the Petition had been referred to a Committee, if Damages had been given upon the Complaint, and a declarative Vote had paſſed to aſſert the Petitioners Right (but I did not obſerve there were any ſuch Proceedings); then, indeed, I muſt admit that it was one Precedent in Point, and a very material one; and it would have proved, That we had once held Plea of this Matter; and, by Conſequence, if we had often done ſo, that no body elſe had to do with it. But, if that Precedent be defective, and none can ſhew that ever any Petition was exhibited by any Elector for a Perſonal Injury done him in rejecting his Vote, though the Perſon he would have voted for was returned, this Action may lie for ſuch an Injury done to an Elector, without interfereing with any Law, or Uſage of Parliament, that hath yet been made evident: And that brings me to another Matter of that honourable Perſon's Diſcourſe; and I acknowledge he entered into it with a great deal of Candour and Fairneſs.

He was pleaſed to ſay, He thought it was admitted in this Debate, That the like Action is not to be found in all the Reports, or Books of Law. I would allow his Objection its due Weight, and admit what I take his Meaning to be, That this Action, in the particular Species of it, may be new, though it's old in its Genus, or the principal Materials on which it is built: And I take it, if by the general Rule or Reaſon of Law for ſuch an Action it be warranted, this Action (as a thouſand other Actions on the Caſe may) will lie, though in all the Parts 'tis not to be exactly parallel'd; for it is the very Nature of, and implied in the Name of an Action upon the Caſe, that every Man may maintain it on his particular Caſe, provided it carry in it the general Reaſon, or Ingredients required by Law to ſupport ſuch an Action, though in many Circumſtances it may be perfectly new. I ſee that honourable Perſon underſtands clearly the neceſſary Incidents of that Action; that is, there are to be *damnum & injuria*, which I take to mean a Damage to the Subject not ariſing from a lawful, but, which is the Conſequence, of an unlawful Act. Now, ſays he, firſt here is no Damage, becauſe anciently the Attendance was thought a Service and a Burden, and the Right of Electing was a Service too; and, in being deprived of a Service, there can be no Damage; and therefore one of the main Ingredients of an Action of the Caſe is wanting. This is clear Reaſoning, and either to be anſwered or ſubmitted to.

It is ſaid, The Right of Electing was a Service; how true, I doubt upon the Reaſon of the Thing: A Service was often a Part of the Tenure by which a Man held his Land till it came up to the Crown; and the Service was originally created by Grant and Reſervation. Now, can any one imagine, that, where one holds a ſmall Freehold, any ſuch Tenure was created between him and his immediate Lord originally by Reſervation, as that he ſhou'd vote to ſend Members to Parliament? 1703-4. 2 & 3 An.

But if it might be conſidered as a Service ſo created, it will not do the Buſineſs of the Argument, unleſs you conſider it alſo as a Service, without Advantage or Privilege; for, if it be a Privilege too (though in its Creation it might be a Service), then the depriving a Man of it is an Injury. Now no body can think but that the Right to elect a Parliament-Man, which is a diſtinguiſhing Character from the Vulgar, and hath its Weight in the Legiſlature, is a Privilege; and therefore, to be deprived of it, is to be deprived not only of a Service and Burden, but of a very valuable Privilege: And, I believe, any *Engliſhman* would think we dealt hardly by him to deprive him of it, though we ſhould tell him, at the ſame Time, we deprived him only of a Service or Burden, and not of a Valuable Privilege.

There is another Thing occurs on this Head: We have been ſo far from thinking the being elected a Service or Burden only, that, in the Nature of a Repeal of thoſe Judgments of *Soame* and *Barnardiſton*, by a poſitive Law, we have given the Elected double Damages, if he be deprived of that Service. Therefore, by our own Notion, and in our own Caſe, 'tis a Privilege that ought to be recompenced even with double Damages, that is to ſay, when it concerns our ſelves: And ſhall we declare it a mere Service in the Caſe of our Electors, not to be recompenced even by ſingle Damages, and that after the undoubted Methods of the Common Law have adjudged it their Due? For I do not find any body doubts, whether this Man has proceeded in the legal Method throughout, even in the laſt Reſort. The Lords have not judged the Fact; they are bound, as to the Fact, by the Verdict, and they are unqueſtionably the Judges of the Law on a Writ of Error: And therefore, as to what hath been ſaid, That any Fact of an Election might come to be determined before the Lords, it is a great Miſtake; for they judge purely of the Law on Writs of Error, as every one knows, that knows any thing of our Conſtitution. Give me Leave to ſay, We, upon this Occaſion, judge of this Matter only as a Matter of Law, which may affect our Privileges; and though we have Authority to conſider what is Law, as it relates to, or may intrench upon, our Privileges, no body that ſits here can think that there lies an Appeal in this Place, or a ſecond Conſideration of this Matter after the Lords Judgment, as 'tis a Point of Law only, and as it regards the Right of the Subject. So that an Objection in Point of Law here, to the Judgment of the Lords, will not hold otherwiſe, than as it relates to our own Privileges; for no body will ſay, That we are the *Dernier Reſort* in any other Reſpect. And tho' that is the only Point that brings it properly under our Conſideration, yet I fear we are taking

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taking from the Subject, in Effect, what the Law hath adjudged his Right, and reverſing a legal Judgment given in the Subjects Favour. There are other Arguments flung in, to make up the Weight only, as that which compares the preſent to the Caſe of a Dove-houſe: In which Caſe, in Regard of the Multitude of Actions that would follow, an Action will not lie for every one that is injured by the erecting of it: It is true, where a Multitude is injured by one and the ſame Fact, it ſhall not be puniſhed by a Multitude of Actions; but the Publick is to take Care of it, becauſe the Injury is of a publick Nature. But by the ſame Standard and known Laws of *England*, if one Man is ſo raſh as to commit a Multitude of Injuries, which ſeverally affect ſeveral Perſons, it was never ſaid, that he became unpuniſhable by the Multitude of his Offences; but every one injured, has his Action againſt him. I have heard it ſaid, *defendit numerus*, but that is ſpoken to the Number of Offenders, not the Number of the Offences committed by the ſame Man: And theſe Injuries, which conſiſt in the denying the Subject to vote, when of Right he ought, will not be multiplied (as is objected) by letting the Subject know, that as they may come into Parliament to puniſh the Officer as a publick Offender againſt the Conſtitution; ſo the particular Perſon injured, by being denied his Vote, may alſo have an Action for the private and particular Injury done to him only.

I would mention one Thing more: They who have ſpoke for the other Opinion, ſeem to take it for granted, (which I do not take to be a true Way of reaſoning) that, becauſe in determining who have a Right to ſit here, we do incidently, and only can, in order to that End, determine who have a Right to vote, therefore no other Judicature can try the ſame Matter or Right to vote, though it be to different Ends and Purpoſes.

Now, if you will conſider the different Juriſdictions in the Conſtitution of this Kingdom, there is nothing more common; and many Inſtances may be given of it. There are Variety of Juriſdictions that try the ſame Fact, and yet each hath a ſole and ſeparate Juriſdiction in that Matter, to different Ends; and theſe Juriſdictions are not in that Reſpect ſubordinate to one another: Take the Spiritual and Temporal, the Spiritual is not ſubordinate, but only reſtrainable by the Temporal, where they intrench upon the Temporal; as in the common Inſtance of Matrimony, which directly, and abſtracted from other Purpoſes, is triable in the Spiritual Court, and no where elſe: But yet, if that comes to be a Queſtion of Fact, in relation to a Title at Law, or to make out a Deſcent, why the Temporal Courts every Day try it, though *per ſe*, and taken by itſelf, it belongs to the Juriſdiction of the Spiritual Court; and yet theſe Courts are not in that Reſpect ſubordinate one to another.

So in the Caſe touched upon of a Battery, 'tis not triable in the Common-Pleas, as it is an Offence againſt the publick Peace, by Indictment, in order to a Fine, but triable in thoſe Courts only, that have a Criminal Juriſdiction; but as 'tis a private Injury, and in order to recompence the injured in Damages, that is triable in the Court of Common-Pleas, and other Places, which have Cognizance of Civil Actions only: And this is not in Reſpect that one Court is ſubordinate to the other, but only holds Plea of the ſame Fact, in order to one End; and the other, in order to another End; and there is no claſhing of Juriſdictions in ſuch Caſes.

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For what hath been objected, That this may create Variety of Judgments concerning the ſame Right: This does weigh, it ſeems, in our own Caſes, for we may bring our Actions for double Damages, for a falſe Return, and yet that may produce the ſame Variety of Judgments. So was the Opinion of the Houſe in the Caſe by me cited; and the Law is plain, That though the laſt Determination of this Houſe, where there hath been any, ſhall determine the Right of Election, and there the Judges and Jury ſhall be bound by the laſt Determination, and to act by the ſame Rule; yet in Towns where there has been no Diſpute of the Right ſettled here, one way or other, the Candidate may, notwithſtanding, bring his Action, and he, or the People of the Place, may alſo petition the Houſe of Commons: And then, there is the ſame Objection; for there may be Variety of Judgments touching the Right of Election, one in the Houſe of Commons, and another in the Courts below. And upon the Trial, in order to obtain Damages, a Jury, in ſuch Caſes, where the Right had never been ſettled in Parliament before the Election in Queſtion, are not directed by the Judgment of your Houſe on the ſame diſputed Election; nor is any Jury bound to follow ſuch Judgment. And if you will go upon a Suppoſition that a Judge and Jury may go contrary to Law and Right, or the Determinations of this Houſe in the Caſe before you, 'tis an Objection which you have over-looked in your own Caſes; and therefore, why ſhould it be an Objection to hinder the Perſon, whom you repreſent, of his Remedy for the Injury done him?

Upon the whole, I am for ſo much of your Queſtion as ſerves only to declare, That you have the ſole Power of determining the Right of all Elections, and even the Electors Right to vote, to the End to try who is your Member, or to puniſh the Officer, as an Offender againſt the Conſtitution: So far is agreeable to the conſtant Law and Practice of Parliament. But for that Part of the Queſtion which relates to the reſtraining the Electors from bringing their Actions for the Perſonal or Private Damage done to them, I think it is not agreeable to the Law or Conſtitution of Parliament.

The Speech of Sir Humphry Mackworth, againſt the Action.

Sir *Humphry Mackworth.* Mr. *Freeman*, we are much obliged to the Gentlemen that have argued on both Sides, who have brought the Matter of this Debate into a narrow Compaſs: The Queſtion is this, "Whether an "Elector be entitled to an Action at Com-"mon Law againſt the Officer, for Recovery "of Damages, in Caſe his Vote, which he "offered, be not taken down in Writing, "and entered on the Poll? Or, Whether the "Houſe

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"House of Commons have the sole Privilege "of examining and determining the Right or "Qualification of every Elector to give his "Vote, and to judge of the Behaviour of "every Sheriff, and other Officer, in taking "the Poll on the Election of Members to "serve in Parliament?

I am of Opinion, with great Submission to better Judgments, that the House of Commons have a sole Right of Judicature in these Cases, and that the Elector is not entitled to an Action at Common Law. I shall endeavour to support this Opinion, by answering the Arguments that have been made use of to prove the contrary: And first, I crave Leave to observe, That the Gentlemen who have argued on the other Side, have not taken Notice of a Distinction, which seems to be very material in this Case; and that is, between an actual Force or Violence done by the Officer, and a bare Omission in Point of Duty. It is agreed, That in case the Officer does, by Force or Violence, obstruct or hinder an Elector from offering or pronouncing his Vote at an Election, for which of the Candidates he pleases, the Elector will be entituled to an Action at Common Law, for Recovery of Damages; for that is a Personal Wrong, and does not concern the Right or Qualification of an Elector to vote in Elections: But in case the Officer does permit the Elector quietly to offer, or pronounce his Vote, (as he did in the Case of *Ashby*, who pronounced his Vote for Sir *Thomas Lee*, and *Simon Mayne*, Esq;) but does not think fit to enter his Vote upon the Poll, the Elector in this Case, is not entitled to an Action at Common Law for Recovery of Damages; because he hath neither suffered any Force or Violence, nor is by such Omission deprived of his Vote: For a Vote being once pronounced, the Law takes it for the Benefit of the Publick, though the Officer be wanting in his Duty; and none have Power to determine, whether the Elector had a legal Vote, and whether the Officer had sufficient Reason to refuse to enter the said Vote on the Poll, but the House of Commons: If any others should have Authority in this Case, they will be able to destroy the Freedom of Elections, and the Constitution of Parliament.

It is insisted by some Gentlemen, That the Electors have no proper Remedy in this Case in the House of Commons; and therefore they must have the Remedy at Common Law: But with great Deference to their Judgments, the Electors have a very proper Remedy in this House in every Respect; for here their Votes will be allowed, the legal Representatives restored, and the Officer will be punished for any wilful Default in the Execution of his Office: This is the Remedy that answers the End for which every Elector is entitled to give his Vote, which is not for a private Advantage to himself, but for the general Advantage of the whole Kingdom: But the Action at Law is no proper Remedy in any Respect; for since a Vote that is offered and refused, is as good by the Law of Parliament as a Vote that is offered and received, and is so adjudged on the Trial of every Election in the House of Commons, or else they could not fill their House with legal Representatives; it is not proper or reasonable, that an Officer should pay Damages to an Elector that has not suffered any, nor that a publick Offence should be punished by a private Satisfaction; which is not likely to prevent the Evil, preserve the Vote, and restore the Representative; nor is the same consistent with the Constitution, or the publick Safety.

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The Qualification of Electors, and the Behaviour of Officers in all Elections, are Matters of Parliament, and such Matters are not cognizable elsewhere, as hath been often declared by all the Judges of *England*: A Parliamentary Case requires a Parliamentary Remedy; and since Votes have been refused in all Elections, if Electors in this Case had been entitled to an Action at Law, it must be presumed, that some Time or other, such an Action would have been brought, which yet was never once attempted in any former Reign; and all those Acts of Parliament that were made to give Damages, in Cases relating to Elections, do demonstrate that no such Damages could be recovered at Common Law; for if they could, there had been no Occasion for making any of those Statutes.

It is insisted, That every Right must have a Remedy; but then the Subject must first be deprived of that Right, which in this Case he was not; and even when he is, he must have his Remedy in a proper Manner, and in a proper Court. There are several Sorts of Rights, and several Sorts of Laws in *England*, and there are several Courts of Justice, for the Administration of those Laws: A Man that has a Right to a Legacy, can't bring an Action at Common Law, but he has a proper Remedy in the Spiritual Court. The like may be observed of Cases that belong to the Courts of *Chancery*, *Admiralty*, *Stanneries*, and of the Forrest Laws. The Subject cannot bring Actions at Common Law, in Cases that belong to the Jurisdiction of other Courts: And when my Lord Chief Justice *Coke* enumerates the several Laws in this Kingdom, he gives the Precedence to the Law and Custom of Parliament, which, he tells us, is superior to the Common Law in *Westminster-Hall*: And as every Court at Law has it's Customs and Privileges peculiar to it self, and is sole Judge of them; so also the High Court of Parliament *suis propriis legibus & consuetudinibus subsistit*, hath it's own proper Laws and Customs, and is sole Judge thereof. And if an Action at Common Law will not lie for a Legacy, where the Spiritual Court has a Jurisdiction, though the Temporal Courts have, in many Respects, a superior Authority; such an Action will much less lie in a Case concerning the Parliament, which is the highest Court of the Kingdom, and who are sole Judges in all Cases relating to themselves. But some carry this further, and say, that every Right must have a Remedy with Damages: This may be true in most Cases, where a Man is deprived of Rights of Property and Possession; but there are many Instances to be given, where a Right of Franchise or Privilege is not entitled to any Damage; as a Person

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ſon elected Mayor of a Corporation, if the proper Officer refuſes to ſwear him, has no Action at Law for Damages, but his Remedy is by a *Mandamus* out of the *Queen's-Bench*: There is a Remedy by *Quare impedit*, but not to recover Damages. In a Writ of Right, you ſhall recover the Land, but no Damages: So in this Caſe, the proper Remedy is to have the Vote allowed, which can only be done by the Houſe of Commons. Some Gentlemen have found out a new Diſtinction, which I never heard before, That the Houſe of Commons have the ſole Privilege to judge of the Rights of Electors, and of the Behaviour of Officers, to one Intent, but not to another; that is, in order to determine who are the legal Repreſentatives, but not to give Damages to the Party injured. But, with great Submiſſion, there is no Weight at all in this Diſtinction; for as it is plain, that the Elector is not, in this Caſe, deprived of his Vote, and therefore ſuffers no Damage; ſo it is alſo evident, that the Judgment of the Houſe of Commons, in Matters properly cognizable before them, cannot be contradicted by any other Judicature; and therefore their Judgment of the Qualification of the Elector, and of the Behaviour of the Officer, muſt be concluſive to all Intents and Purpoſes whatſoever. It is contrary to the Reaſon of all Laws, that the Behaviour of an Officer ſhould be ſubject to the Determination of two independent Juriſdictions; or that he ſhould be innocent by the Judgment of a ſuperior Court, and guilty by the Judgment of an inferior; or that he ſhould be twice puniſhed for the ſame Offence. No Man can ſerve two Maſters: The Officer, at this Rate, will be every way enſnared, and made liable to Puniſhment, whether he does his Duty or not: If he accepts illegal Votes on the Poll, he will forfeit 500 *l.* by the Statute, for a falſe Return; if he refuſes them, he may be ruined by a Multitude of Actions; for if one may bring an Action, then 500 may, ſince every Man at this Rate, may offer a Vote, and bring an Action for not entering it upon the Poll. How is this conſiſtent with the Freedom of Elections, in which there ought to be no Terror, neither on the Electors, nor on the Officers? But as the Electors ſhould be free to offer their Votes, ſo the Officers ſhould be free to judge, whether they ought to be entered on the Poll or not; and they ought not to be accountable to any but the Houſe of Commons, whoſe Servants they are in all Matters relating to Elections, and who are entruſted with the Determination of all Matters and Caſes relating thereto; and they may as well puniſh them for taking illegal Votes on the Poll, as for not taking thoſe that are legal: In neither of which Caſes have the Judges of the Common Law any Juriſdiction, though there is the ſame Reaſon in both, to take Care that every the meaneſt Subject may have Relief for any Injury done him; but we are not to take more Care of the meaneſt Subject, than of the whole Houſe of Commons. The greateſt Subject in *England* ought to have no Relief, but what is conſiſtent with the Law of Parliament, and the Safety of the Conſtitution. If an Action lies, and upon a Judgment on that Action a Writ of Error lies in the Houſe of Peers, the Lords will be the ſole Judges at laſt, who have Votes to chuſe a Houſe of Commons; which is directly contrary to the fundamental Maxim of the Law and Cuſtom of Parliament, that the two Houſes are mutual Checks to each other, and ſole Judges of their own Privileges.

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This is an excellent Conſtitution, and admirably well contrived for the common Safety: But how can this Conſtitution be preſerved, if the Lords can puniſh our Officers, and govern our Elections? This will be the Way to deſtroy all Checks, and to make the Houſe of Commons dependent on the Lords; and then I cannot ſee upon what Foundation you can be ſaid to ſit here to do any Service for your Country.

Others inſiſt, That this is a Right that is incident to the Freehold and Freedom of Electors; therefore, as their Freeholds are cognizable at Common Law, ſo is every Incident belonging to it. This Argument is plauſible at firſt Sight, but, in Reality, there is nothing in it: For though the Commons of *England* have ſubmitted their private Differences to Arbitrators, or Judges, indifferently choſen and appointed by the Prince, the common Parent of the People, yet they have never ſubmitted their fundamental Rights and Privileges which they hold in their publick and politick Capacities, as a free Branch of the High Court of Parliament, to any other but their own Repreſentatives, who are choſen and appointed by themſelves. This is not a Caſe, properly ſpeaking, between Party and Party, but between the Lords and Commons; becauſe the Determination of this Caſe brings the whole Right in Queſtion, Who have a Privilege to judge of the Qualification of Electors to give their Votes in Election of Members to ſerve in Parliament, Whether the Lords or the Commons? It is not now the Queſtion, Who hath the beſt Right to Freehold, or Freedom, or to any thing that is incident to it? But, Whether the Commons of *England* ſhall have any Freeholds, or Freedoms at all? Or, which is the ſame thing in Effect, Whether they ſhall have any Security for thoſe Rights or not? For, if the Lords are Judges of your Privileges, you can hold no Right but during their Pleaſure.

The Lords ſeem to contend for the Right of the Subject; but I wiſh it is not for a Power to enable themſelves to judge and determine, as they think fit, of all our Rights and Liberties: For this is the neceſſary Conſequence of allowing an Elector to have a Remedy in any other Place but within theſe Walls.

This is my humble Opinion; and, if I am miſtaken, other Gentlemen will ſet me right. This is certainly a Matter of the higheſt Importance to the Welfare of the Subject, and I doubt not but they will very well conſider it, before they give Way to the eſtabliſhing a Precedent that tends to deſtroy the Privileges of this Houſe, or the Liberties of their Country.

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A great Tenderneſs is expreſſed for this poor Man, whoſe Vote has been refuſed; but whether he had a Right to give his Vote, is very much queſtioned, and never yet determined by this Houſe, who has the proper Judicature thereof. But admitting he had a Vote, Whether ought to be preferred, a private Intereſt, or the Publick Safety? Whether will be moſt for the Honour of this Houſe, and the Intereſt of our Electors, The Care of a private Perſon by a new-invented Action, neither warranted by Reaſon or Precedent, or any eſtabliſhed Law; or the Care of the Parliament, and the Conſtitution, on which depend the Rights and Liberties of all the Commons of *England*?

Sir, I beg Pardon for taking up ſo much of your Time, but I muſt confeſs it ſeems to me, That our ALL depends upon a right Determination of this Matter; for I cannot ſee any other Reaſon why this new Device is ſupported by the Lords, but only to render you precarious and uſeleſs.

The Speech of Mr. King, againſt the Action.

Mr. *King* (afterwards Lord *King*, and Lord Chancellor). That which calls me up in the firſt Place is, what that Honourable Gentleman, juſt againſt me, was pleaſed to intimate, as if the Right of Electing was only a Service, and not a Liberty, or Privilege; and I find a worthy Member, that ſpoke laſt, is of the ſame Opinion. Truly, I am loth to tell you my own, without deſiring the Act 25 *Car.* II. *cap.* 9. may be read. ——

Members. No, no.

Mr. *King*. 'Tis an Act to enable the County Palatine of *Durham* to ſend Members to Parliament, and it recites, That they had not, before that Time, had the Liberty and Privilege of electing and ſending any Members to Parliament: Where you ſee the Legiſlature call it a Liberty and Privilege; and, if the Legiſlature call it ſo, I think I may venture to call it ſo too. And if it be a Liberty and Privilege, then the Queſtion will be, Whether it does not ſtand on the ſame Bottom with our Liberties and Privileges? In caſe of any other Franchiſe or Liberty, an Action lies at Common Law for the Breach thereof; and why an Action ſhould not lie at Common Law for the Breach of this Franchiſe, as well as for the Breach of every other Franchiſe, is to me very ſtrange. Gentlemen take it for granted, this is purely an Action at Common Law, and no Statute hath any Influence on it. Now there is a Statute which hath not been mentioned (only I muſt premiſe that which, I think, no Body will deny, *viz.* That wherever an Act of Parliament does forbid any Thing, if any Body be injured by the doing of the Thing ſo prohibited by that Act, in Conſequence of Law, the Perſon injured hath an Action); I ſay, There is a Statute that forbids Diſturbances and Hindrances in Matters of Elections; and, by Conſequence of Law, that Statute gives an Action to the Party injured, againſt the Perſon diſturbing or hindering him in his Election. The Statute I mean, is 3 *Edw.* I. *cap.* 5. that is a poſitive Law, whereby all Diſturbances in Elections are forbid: Every Man is forbid to hinder or diſturb by Force or Arms, by Malice, or menacing any Man, to make a free Election. 1703-4. 2 & 3 An.

I ſhall only inſtance in one parallel Caſe, though I could in many more: The Statute in *Richard* II's Time, *de ſcandalis Magnatum*, only forbids the ſpeaking Evil of great Men: There is not one Word of an Action; yet, by Operation of Law, it was always held, that an Action would lie upon that Statute for a Scandal of a great Man, becauſe it was prohibited by that Statute. So here, the Statute forbids the diſturbing of any Man by Force or Malice to make free Election; the Jury have found, that the Defendants did, in this Cauſe, maliciouſly diſturb and hinder the Plaintiff from voting at the Election; and by a like Conſequence and Operation of Law, this Action is maintainable.

Gentlemen ſay, This is a new Action, never heard of before: It is true, this particular Action was never brought before; but Actions of the ſame Kind and Nature, and grounded on the ſame Principles and Reaſons of Law, have been brought before. *Et ubi eadem eſt ratio, idem jus.* I could give you many Inſtances of this Kind. Was it ever heard, till the 20th or 21ſt of *Car.* II. that an Action lay againſt an Officer for denying a Poll to one that ſtood Candidate for a Bridge-Maſter? The Mayor denied the Poll, and ſaid, He was Judge of the Election: And upon this, the Perſon injured brought his Action and recovered. At the ſame Time it was ſaid, There was no ſuch Action ever heard of before; 'tis true, not that Species, but the Genus was heard of. Another Action was brought 30 *Car.* II (which was never heard of before) againſt a Mayor, for refuſing the Plaintiff's Vote for a ſucceeding Mayor.

I believe every body knows, that all the Law-books for 400 Years ſay, That the Reverſioner had Liberty to go into an Eſtate of a Tenant for Life, to ſee if he commit Waſte. And no Action was brought till 10 *Jac.* I. by a Reverſioner againſt a Tenant for Life, for refuſing to let him in to ſee whether Waſte was committed. No Action was ever brought againſt a Maſter of a Ship for the negligent keeping and Loſs of Goods on board his Ship, till about 24 *Car.* II. and yet the Action lay.

There was another Action, in K. *Charles* I's Time, brought, for a falſe and malicious Proſecution of an Indictment of a Man for Treaſon. There was the ſame Objection; and it was ſaid, That this would deter People from proſecuting. And no body ever dreamt of it before, 'tis true, but it ſtood upon the general Reaſon of the Law; if you do me a Wrong, I muſt have a Remedy. And as to what a worthy Gentleman has ſaid, That there are Inſtances at Common Law, where a Man ſhall recover, and yet have no Damages; 'tis true in real Actions; but let him give me an Inſtance of that in an Action of the Caſe. He recovers nothing there: If he does not recover Damages in real Actions, he recovers the Land itſelf. ——

Members. The Queſtion, the Queſtion.

Mr.

1703-4. 2 & 3 An.

Mr. *King*. I find Gentlemen are very uneaſy, I will trouble you no further.

Members. Go on, go on.

Mr. *King*. I agree the determining the Right of Election belongs to the Houſe of Commons; and they ought to apply to the Houſe of Commons in that Caſe. And I ſhall not depart from that; I think I can't, without ruining the Conſtitution: But that which I ſay is, That this Action does not at all relate to the Right of Election. This Action is brought by a Man that hath an undoubted Right of voting, againſt an Officer for maliciouſly refuſing his Vote. Put the Caſe this had happened in a County (for the Law would have been the ſame), that a Freeholder, who had a Right to vote, had tendered his Vote to the Sheriff; and though he knew he was a Freeholder, yet the Sheriff ſhould maliciouſly refuſe his Vote: Hath the Sheriff done this Man an Injury or not? This Man does not bring his Action becauſe the Perſon he would have voted for is not returned, but 'tis becauſe there is an Injury done to his Franchiſe. If I thought the Right of Election was concerned in this Caſe, I would go as far as any, for I think that does belong to the Houſe; but I don't think this is concerned in the preſent Caſe.

Mr. Walpole's ſpeech, againſt the Action.

Mr. *Walpole* (afterwards Sir *Robert*, and Chancellor of the *Exchequer*). I will trouble you very little at this Time: I think the Point of Learning and Law hath been ſo well ſpoken to by thoſe learned Gentlemen that have been againſt the Queſtion, that, if I was able, I ſhould ſay nothing more to that. But I think the Queſtion, as it is going to be put, is not right; for, as the Queſtion ſtands, though I can't give my Negative to one Part, I think 'tis impoſſible to give my Affirmative to the other. The Matter before you comes to this ſingle Queſtion, Whether you will encourage and give a Power to an Officer, be he whom he will, to act arbitrarily, or rather chuſe, in ſuch a Caſe, to do ſomething in Favour of the Electors? I am ſure, if I deſire to be elected by thoſe that had the Right, I would never give the Officer an Authority to the Prejudice of the Electors. Where you come to ſay, That the ſole judging of the Qualification of the Electors belongs to the Houſe of Commons only, thoſe, I apprehend, are Words of too large Extent and ill Conſequence. Suppoſe there was an Action brought upon the laſt Act of Parliament for a falſe or double Return.——

Mr. *Freeman*. There is an Exception in the Queſtion as to that.

Mr. *Walpole*. I know there is: But ſuppoſe an Action is brought upon that Statute, the Officer may have proceeded with the greateſt Impartiality, may have taken the Poll with the greateſt Exactneſs and Juſtice, and there may appear to be an equal Number of Votes for each Candidate; whereupon he makes a Double Return; and this brings it to be determined by the Committee of Elections, and they vote one of them duly elected. This Gentleman, that had the Favour of the Committee, (though afterwards poſſibly it might be made appear, that, by Bribery or Corruption, and at great Expence, he procured himſelf to be elected) after you have voted him duly elected, he hath nothing to do but to try his Action, and ſee if he can make his double Damages amount to his Expences. The firſt Thing he is to do, is to produce the Vote of the Houſe of Commons that declared him duly elected, contrary, perhaps, to the laſt Determination in Parliament, which in every Place is to be the Guide to the Returning Officer. But ſhall there then be given in Evidence no Qualification of the Electors? Nothing to prove that the Perſons admitted to vote were qualified according to ſuch laſt Determination? Or ſhall that Vote of the Houſe of Commons, that was intended only to bring him into this Houſe, recover him 5 or 600 Damages? I take it to be ſo, as the Law ſtands. Now it ought to be ſeen who hath the greater Number of legal Votes, and whether duly qualified; and, in that Caſe, you muſt ſuffer the Matter again to be tried by the Court; and you do, in ſome Meaſure, make them Judges of the Qualifications of the Electors; if it were otherwiſe, they could not enquire into the Majority of legal Votes.

What happens in the Caſe of a Mayor, may be in the Caſe of a Sheriff. If a Mayor, or a Conſtable, may deny a Man his Vote, that hath an uncontroverted Right in a Corporation, a Sheriff may refuſe a Freeholder, and ſtrike off enough to make a Majority for whom he pleaſes. You had once the Caſe before you, Whether a Sheriff could refuſe a Scrutiny? and one or two Gentlemen would have given that Power to a Sheriff; but a learned Gentleman thought it a dangerous Queſtion, and he deſired to come to the Merits of the Election; and that was determined, and you voted the worthy Member duly elected, and thought it a dangerous Thing to determine, Whether the Officer had that Power one Way or another? I think that Part of the Queſtion, which concerns the Qualification of the Electors, ought to be left out.

The Marquis of *Hartington* ſaid, He thought it was a conſtant Rule, where a Queſtion was complicated, if a Member deſired to have it divided, to divide it; and therefore he ſeconded the Gentlemen who ſpoke laſt, That thoſe Words in the Queſtion, relating to the Qualification of Electors, ſhould be left out.

Whereupon the Queſtion was put, Whether the Words, relating to the Qualification of Electors, ſhould ſtand? And it was carried, That thoſe Words ſhould ſtand Part of the Queſtion. *Ayes* 215, *Noes* 97. And the Commons proceeded to make the reſt of the Reſolutions above-mentioned, *viz. That, according to the known Law and Uſage of Parliament, neither the Qualification of any Elector, or the Right of any Perſon elected, is cognizable or determinable elſewhere than before the Commons*, &c.

There were ſeveral Conferences afterwards between the Lords and Commons, for adjuſting their reſpective Privileges, which broke off at length very abruptly; and as the Commons had addreſſed Her Majeſty, not to grant a Writ of Error, the Lords on the other

1703-4 2 & 3 An. Hand, drew up an Addreſs and Repreſentation of the Caſe, in which they ſay, Whatever the Commons may inſinuate on this Occaſion, we deſire not to meddle with the Choice of their Repreſentatives: We willingly leave that Matter where it is; and in what manner it is exerciſed there, how impartially and ſteadily, is ſo well known by Experience, and ſo univerſally underſtood, that the People will be extremely deſirous their Eſtates and Properties ſhould be ſubject to ſuch Determinations: It is not ſtrange, the free Conference ended without Succeſs, when the Commons came to it with ſuch a Temper, as appears by the Votes of the 8th of *March*, made after they themſelves had conſented to the free Conference: If thoſe Votes had been publiſhed ſoon enough, it would have fully convinced the Lords, how vain a Thing it was to confer with them further upon the Matters in Debate at the former Conferences; for not content with what they had done before, upon Information that their Serjeant had been ſerved with two Writs of *Habeas Corpus*, returnable before the Lord Keeper, in Behalf of Mr. *Montague* and Mr. *Denton*, two of the Gentlemen that had been of Counſel with the five Priſoners, they came to a Reſolution, That no Commoner, committed by them for Breach of Privilege, or Contempt of the Houſe, ought to be by *Habeas Corpus* made to appear before any other Judicature, and required their Serjeant to make no Return, or yield any Obedience to thoſe Writs; and that for ſuch Refuſal, he had the Protection of the Houſe of Commons.

It hath been always held the undoubted Prerogative of the Crown, to have an Account of the Reaſon, why any Subject is deprived of Liberty? and it has ever been allowed, That by the known common Law, it is the Right of every Subject under Reſtraint upon Demand to have his Writ of *Habeas Corpus*, and thereupon to be brought before ſome proper Court, where it may be examined, Whether he be detained for a lawful Cauſe? And the Statutes made in the Reign of Your Royal Grandfather, and Your Royal Uncle have enacted, That in all Caſes, Writs of *Habeas Corpus* be granted and obeyed by the reſpective Officers, upon great Penalties.

But theſe Votes import a direct Repeal of thoſe Laws, as to all Perſons committed by the Houſe of Commons.

It is no longer worth diſputing, Whether a Perſon committed by them, though for a Fact which appears to be both lawful and neceſſary, may be delivered by any Court; for by this new Law, he ſhall never be brought thither; and the Serjeant is not only warranted, but commanded openly to contemn your Majeſty's Royal Writs of *Habeas Corpus*, brought upon the Act of the 31ſt of King *Charles* II. which is an Invaſion of your Prerogative, never before heard of in *England*.

Your Majeſty does not claim an Authority to protect any of your Officers for diſobeying a known Law. The *Habeas Corpus* Act in Times of imminent and viſible Danger, was in the late Reign ſuſpended by Acts of Parliament for ſome ſhort Time, and yet (ſo Sacred was that Law held) that thoſe Acts paſſed with great Reluctancy; and one of the Arguments that prevailed moſt for agreeing to that Temporary Suſpenſion was, That it ſhould be an unanſwerable Evidence to all future Times, that this Act could never be ſuſpended afterwards, by any leſs Authority than that of the whole Legiſlature: But we live to ſee a Houſe of Commons take upon them to ſuſpend this Law by a Vote. 1703-4 2 & 3 An.

They Ordered, That the Lord Keeper of Your Great Seal, ſhould be acquainted with their Reſolutions, to the End the Writs of *Habeas Corpus* may be ſuperſeded, as contrary to Law, and the Privileges of their Houſe. They are contrary to no Law, but that of theſe Votes, which ſurely are none of the Laws the Lord Keeper was ſworn to obſerve; but yet he is to act at his Peril: They have ordered this Law to be publiſhed to him by their Clerk.

The Lord Keeper is a Commoner, and if he diſobeys, 'tis a Breach of Privilege; and if they ſhould carry it ſo far, as to order him into Cuſtody, he may ſeek, but is not to have, Relief from any *Habeas Corpus*.

We humbly beg Pardon of Your Majeſty, for this long and melancholy Repreſentation, which we could not avoid, without being guilty of Treachery to Your Majeſty, and to our Native Country. The five Perſons immediately concerned, are but poor Men; but we well know Your Majeſty's Juſtice and Compaſſion extends itſelf to the meaneſt of your Subjects.

The Matters in Diſpute are of the higheſt Conſequence: Your Majeſty's Prerogative, the Reverence due to Laws, and the Liberties and Properties of all the People of *England* are concerned and at Stake, if theſe Encroachments prevail.

We do not pretend to ſollicit Your Majeſty to put a Stop to theſe Innovations; Your own Wiſdom will ſuggeſt the moſt proper Methods: We have endeavoured to do our Duty, in laying the whole Matter before You.

We humbly beg Leave ſo far to reſume what has been ſaid, as to preſent to Your Majeſty a ſhort View of the unhappy Condition of ſuch of Your Subjects as have a Right of giving Votes for chooſing Members to ſerve in Parliament, which has been hitherto thought a great and valuable Privilege; but by the late Proceedings of the Houſe of Commons, is likely to be made only a dangerous Snare to them, in caſe they who may be hereafter choſen to ſerve in Parliament, ſhall think fit to purſue the Methods of this preſent Houſe of Commons.

If they refrain from making uſe of their Right in giving their Votes, they are wanting in their Duty to their Country, by not doing their Parts towards the chooſing ſuch Repreſentatives as will uſe their Truſt for the Good of the Kingdom, and not for the Oppreſſion of their Fellow Subjects.

If the Officer, who has the Right of taking the Suffrages, refuſe to admit them to give their Votes, they muſt either ſit down by it, and ſubmit to be wrongfully and maliciouſly deprived of their Rights; or, if they bring their

1703-4. 2 & 3 An.

their Actions at Law, in order to assert their Rights, and recover Damages for the Injury (as all other injured Men may do, in like Cases) they become liable to indefinite Imprisonment, by incurring the Displeasure of those who are elected.

If being thus imprisoned, they seek their Liberty by *Habeas Corpus* (the known Remedy of all other Subjects), they do not only tie their own Chains faster, but bring all their Friends and Agents, their Sollicitors and Counsel into the same Misfortune with themselves.

If they think themselves to have received Injury by the Judgment upon the *Habeas Corpus*, and seek Relief by Writ of Error (the known Refuge of those who suffer by any wrong Judgment) all that assist them in that Matter, are likewise to lose their Liberties for it, and they themselves will be removed to new Prisons, in order to avoid the Justice of the Law.

We humbly conclude, with acquainting Your Majesty, That we have been informed by the Petition of two of the Prisoners, that they have been long delayed, though they have made their Applications in due Manner for Writs of Error.

We are under a necessary Obligation for the Sake of Justice, and asserting the Judicature of Parliaments to make this humble Address to Your Majesty, That no Importunity of the House of Commons, nor any other Consideration whatsoever may prevail with Your Majesty to suffer a Stop to be put to the known Course of Justice, but that You will be pleased to give effectual Orders for the immediate issuing of the Writs of Error.

To which Address Her Majesty answered,

" My Lords, I should have granted the " Writ of Error desired in this Address; but " finding an absolute Necessity of putting an " immediate End to this Session, I am sensible " there could have been no further Proceed- " ing upon that Matter.

And the same Day the Parliament was prorogued, which prevented Matters being brought to Extremity, and both Parties were in some Measure obliged; or at least, neither House had Reason to censure Her Majesty's Conduct on this Occasion.

For the five Prisoners obtained their Liberty by the Prorogation, which was one End of their bringing Writs of *Habeas Corpus*, and Writs of Error; and the Commons were satisfied, because no Writs of Error were granted.

Nor did the five *Ailesbury* Men think fit to continue or prosecute their Actions against the Constables afterwards; and so the Matter has slept ever since.

1705-4. 2 & 3 An.

Remarks.

What seems to have been insisted on by the Commons in these Debates, with the greatest shew of Reason, is, That the two Houses of Parliament are independent of each other, and sole Judges of their own Rights and Privileges; but if the Right of Electors to vote may be determined in the Courts of Law, and from thence such Causes removed by Writ of Error into the House of Lords; then the Lords would become Judges of the Right of Electors to chuse, and consequently who were duly elected Members of the Commons House; whereby the Commons would lose their Independency, and become subject to the Lords, as to their very Being; for though they allowed the Commons to determine the Right of the Members to sit in the House; yet if the Lords could, notwithstanding, upon a Writ of Error, give Damages against the Return-Officer, for not allowing the Vote of a Person whom they adjudged to have a Right; this must necessarily have such an Influence upon the Officer, as to induce him to return such Persons as would be most acceptable to their Lordships, and consequently their Lordships might in time chuse the House of Commons themselves: And further, should the House of Commons determine the Right of Election to be in one, and the Courts of Law, and their Lordships adjudge it to be in another, this would produce contradictory Judgments, and must create Confusion. There is indeed nothing of human Institution, but is liable to some Objection, and it was possible, the Commons might err in their Determinations: But they thought the Rights and Privileges of the Commons of *England*, much safer in the Hands of their own Representatives, than if they were but Tenants at Will to the House of Lords.

The sole Question, therefore, in the Debate seems to be, Whether, if the Lords should have it in their Power to punish the Return-Officer, when he does not allow of such Votes as they approve, This would not make the Lords entirely Masters of the Election of the Commons, and in Time exclude them from their Share in the Legislature? For if it would, every Man's private or particular Right must submit to this Consideration, Better a single Man suffer some trifling Wrong, than the Constitution be destroyed. Whatever Laws may countenance Actions on the Case, Writs of Error, or other Process, in ordinary Cases, must be waved here, when the Safety of the Whole comes in Competition with such private Rights; and the bringing such Actions would destroy the very Being of the Constitution.

Pro-

1703. 2 Annæ.

Proceedings in the Houſe of Lords and Commons in the Caſe of CHARLES BATHURST, Eſq; in *January*, 1703. 2 *Annæ.*

THE Court of *Exchequer*, on the 15th of *July* 1701, made an Order *ex officio*, for the Preſervation of a Record in that Court; and the Lord *Wharton*, finding it was made Uſe of, as Evidence againſt him, in a Trial at the *Queen's-Bench* Bar, of an Iſſue directed out of *Chancery*, wherein the Lord *Wharton* was Plaintiff, and the ſaid *Bathurſt*, *Squire*, and others, were Defendants, concerning ſome Lead-Mines, petitioned the Houſe of Lords, praying the ſaid Order might be diſcharged, and the Record taken off the File, ſuggeſting, that the ſaid Record was forged. *Bathurſt* and *Squire* thereupon petitioned the Houſe of Lords, ſetting forth, That no Suit was depending in the Court of *Exchequer* between his Lordſhip and them; and therefore the Lord *Wharton*'s Petition was not an Appeal (as he called it), but an original Complaint, and therefore ought to be determined by ſome inferior Court: But the Lords proceeding, however, to hear and determine the Cauſe, Mr. *Bathurſt* complained to the Houſe of Commons; and that Houſe, thereupon, came to the following Reſolution, on the 28th of *January* 1703, *(viz.)*

That the Houſe of Lords taking Cognizance of, and proceeding upon the Petition of *Thomas* Lord *Wharton*, complaining of an Order of the Court of *Exchequer* of the 15th of *July* 1701, for filing the Record of a Survey of the Honour of *Richmond* and Lordſhip of *Middleham* in the County of *York*, is without Precedent, and unwarrantable, and tends to the ſubjecting the Rights and Properties of all the Commons of *England* to an illegal and arbitrary Power.

The Lords, on the other hand, Reſolved, on the 27th of *March* 1704, That the Houſe of Commons taking upon them, by their Votes, to condemn a Judgment in the Houſe of Lords, upon the Petition of *Thomas* Lord *Wharton*, and to declare what the Law is, in Contradiction to the Proceedings of the Houſe of Lords, is without Precedent, and an Uſurpation of a Judicature, to which they have no Sort of Pretence.

1702-3. 2 Annæ. Baillie's Caſe.

The

1703-4. 2 & 3 An.

The Trial of Nathaniel Denew, *&c.*

The Trial of NATHANIEL DENEW, JOHN MERRIAM, and RICHARD BRITTON, Gent. for *An Assault and Conspiracy, and for challenging the Defendant,* William Colepeper, *to fight,* at the *Queen's-Bench* Bar, on the 14th of *February,* $170\frac{3}{4}$. 2 & 3 *Annæ.*

1703-4. 2 & 3 An.

The Case.

THIS being no State-Trial, and partially related by the Prosecutor himself, I shall only give a short State of the Case, that I may have the more Room for what are properly State-Trials, and published by Authority.

Mr. *Colepeper* had, in Conversation, reflected on Admiral *Rook*, whereupon the Admiral sent him a Challenge by the Defendant *Denew*; but *Colepeper* avoided answering it as much as he could, under Pretence that he should engage the Admiral with great Disadvantage; because the Admiral was sure of a Pardon, in Case he wanted it, whereas he was sure to be hanged if the Admiral fell; and giving *Denew*, who brought the Challenge, some ill Language, *Denew* challenged him himself: Mr. *Britton* also insulted him, and urged him to fight; and *Denew* meeting Mr. *Colepeper* afterwards near St. *Clement's* Church in the *Strand*, a Rencounter happened between them; they both drew their Swords, and made several Passes at each other, Mr. *Merriam* being present; but People coming in prevented Mischief.

After which Mr. *Colepeper* indicted the Defendants for an Assault and Conspiracy, and for challenging him; pretending, they designed to way-lay and assassinate him: But the Lords *Winchelsea* and *Thanet* giving them a great Character in Court, and testifying they were Men of Estates and great Worth, the Jury gave the following Verdict, That

Mr. *Merriam* was *Not guilty.*

Richard Britton Not guilty of the Conspiracy, or the Assault; but guilty of the rest of the Matter charged in the Indictment.

Nathaniel Denew Not guilty of the Conspiracy, but guilty of the rest of the Indictment.

Whereupon Mr. *Denew* was fined 200 Marks, and Mr. *Britton* 100 *l.*

Mr. Colepeper *himself was the principal Witness against these Gentlemen; and some Ladies, his Relations, supported his Testimony: The Persons who took the Trial in Short-Hand were employed by him, and the Trial was published in the Manner he directed it.*

1702-3. 2 Annæ.

Baillie's Case.

Proceedings against DAVID BAILLIE, for *Defaming the Duke of* Queensberry *and the Marquis of* Anandale, in *February,* $170\frac{2}{3}$. 2 *Annæ.*

1702-3. 2 Annæ.

THE Government of *Scotland* having intercepted a Letter from Mr. *Baillie* to Duke *Hamilton*, wherein he told the Duke, that the Duke of *Queensberry* and the Marquis of *Anandale* would have suborned him to swear, That Duke *Hamilton*, the Duke of *Athol*, and his Brother the Earl of *Cromarty*, and others, were engaged in a Plot to bring in the Pretender; the Council examined *Baillie* upon Interrogatories, but could get nothing out of him: Whereupon they ordered him to be prosecuted for Leasing-making, and creating Differences between the Queen and her Subjects, (which was Treason in *Scotland* before the Union, but then only a Misdemeanor.)

Baillie being tried before the Lords of the Council, confessed he was the Author of the Letter to Duke *Hamilton:* Whereupon he was sentenced to stand in the Pillory, and to be banished the Kingdom for Life; there being thirty one Members present, and not one dissenting Voice.

But remaining a Prisoner in the *Tolbooth* at *Edinburgh*, when the next Parliament met, they set him at Liberty on his Petition; requiring him only to find Bail, to appear before the Parliament when called.

1704. 3 Annæ. Quelch's Case.

The Trial of JOHN QUELCH, and his Accomplices, for *Piracy, Robbery, and Murder*, at *Boſton* in *New-England*, on the 13th, 16th, and 19th of *June*, 1704. 3 *Annæ*.

1704. 3 Annæ.

THE Articles preferred againſt them, charged, That the Brigantine *Charles* being fitted out as a Privateer at *Boſton*, to cruiſe on the *French* and *Spaniards*, under the Command of Captain *Plowman*, who died ſoon after they ſailed out of the Harbour of *Boſton*, in the Year 1703; the ſaid *John Quelch*, his Lieutenant, and the reſt of the Crew, turned Pirates, and took and plundered ſeveral Ships and Veſſels of the *Portugueſe*, (then in Amity with *Great Britain*) on the Coaſt of *Braſil* in *America*, and murdered the Captain of one of thoſe Ships.

The moſt remarkable Thing in this Trial is, that they were tried upon a Statute made in the 11th and 12th Years of *William* III. which impowers Commiſſioners to try Pirates in the Plantations, according to the Courſe of the Admiralty, and to condemn and execute them without impaneling a Jury; the Sentence being according to the Determination of the Majority of the Commiſſioners.

The Facts being proved beyond Contradiction againſt *Quelch*, and five of his Accomplices who were moſt active in the Captures, they were condemned and executed; but ſome Servants and others, who did not appear to have concurred with them voluntarily, were acquitted.

There being ſeveral Trials for Piracy inſerted already, and this being properly no State-Matter, I chuſe to give only an Abſtract of it, to make Room for what are properly State-Trials.

1704. 3 Annæ. Lindſay's Trial.

The Trial of DAVID LINDSAY, Gent. for *High-Treaſon*, on the 24th of *April*, 1704. 3 *Annæ*.

1704. 3 Annæ.

The Indictment.

THE Indictment reciting, That the Priſoner, *David Lindſay*, was a Subject of the late King *William*, and now of her preſent Majeſty, charges him, That after the 11th Day of *December*, 1688, *viz.* on the 26th Day of *March*, 1689, he was in this Kingdom of *England*, *viz.* in the Pariſh of *St. Martin's in the Fields*, in the County of *Middleſex*; and that afterwards, and before the 3d of *December* 1697, *viz.* on the 1ſt of *October*, 1696, he did voluntarily go into *France* without Licenſe, either from the late King *William*, or the late Queen *Mary*; and that, on the 3d Day of *December*, 1697, he was not within the Dominions of the late King *William*: And that, as a falſe Traitor, after the 14th Day of *January*, 1697, *viz.* on the 10th of *December*, in the ſecond Year of her preſent Majeſty, he did traitorouſly return and come into the Kingdom of *England*, *viz.* into the Pariſh of *St. Martin's in the Fields*, in the County of *Middleſex*, without a Licenſe, either from the late King *William*, or from her preſent Majeſty, under the Privy Seal; againſt the Duty of his Allegiance, and againſt the Form of the Statute in that Caſe made and provided.

The Priſoner being arraigned, on the 19th of *April*, deſired he might have Counſel, and thereupon Mr. *Raymond* and Mr. *Williams* were aſſigned to be of his Counſel; and, having pleaded Not Guilty, *Monday*, the 24th of *April*, was appointed for his Trial.

The Priſoner being brought to his Trial accordingly, on the 24th of *April*, a Jury was ſworn, to whom he made no Objections or Challenges.

After which the Priſoner ſaid, He ſhould give the Court as little Trouble as might be; he only begged leave to ſtate his Caſe truly, and ſhould then ſubmit it to their Judgment.

The Lord Chief Juſtice *Holt* told him, If he had a Mind to confeſs, he ſhould have done it before; for now the Jury were to enquire whether he was guilty or not; and directed the Queen's Council to ſtate the Evidence firſt.

Whereupon the Attorney-General ſaid, They charged him with going into *France* without Licenſe, and returning without Licenſe; and if he did not admit thoſe Facts, they would call their Witneſſes to prove them upon him.

Lindſay anſwered, He did confeſs, that being a Native of *Scotland*, and never having had any Office in *England*, he did go into *France* without his Majeſty's Licenſe, and did continue beyond Sea, 'till he was informed her preſent Majeſty, by her Proclamation in 1702, granted a General Pardon to all her Subjects; whereupon he came into *Scotland*, and preſented himſelf to the Government there, and had the Benefit of the Queen's Proclamation allowed him; and he was adviſed, by ſome eminent Counſel there, that he was as free to come into *England* as any other Subject; and, having his Wife and Children here, he came to *London* by Way of *Berwick*; and conceived he was not guilty of Treaſon within the Intent of the Act, deſiring his Counſel might be heard to that Point.

Then the Proclamation was read, containing a general Indemnity for *Scotland*; and Proof was made that the Priſoner was a Native of *Scotland*, and a Proteſtant, and had been allowed the

1704. 3 Annæ. *The Priſoner's Defence, by his Counſel.*

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The Priſoner's Defence, by his Counſel.

the Benefit of the Queen's Pardon there. After which Mr. *Williams*, of Counſel for the Priſoner, ſaid,

My Lord, We do humbly inſiſt, that the Words in the Proclamation do amount to a Licenſe to us to come to *Scotland*; and if ſo, then we are not guilty within this Act of Parliament, of coming into the Queen's Dominions without Licenſe. And we likewiſe further inſiſt, That one that has the Queen's Licenſe to come into *Scotland*, may, without any further Licenſe, come into *England*. The Proclamation pardons all Treaſons, and all correſponding and intercommuning with Rebels, or declared Enemies of the Queen, and all other Crimes of what Nature ſoever; and it is declared to be as available as if the particular Crime was named, and as if Remiſſions under the Great Seal were paſſed: And Her Majeſty alſo declares, That it ſhall be taken in the moſt favourable and comprehenſive Senſe that may be, for the Security of the Subject. I admit the Words of this Act are, If any return into *England*, or any other of her Majeſty's Dominions, without Licenſe under the Privy Seal, it ſhall be High-Treaſon; now, we humbly hope, if the Queen is pleaſed to beſtow her Licenſe by any Act, or in any Manner equally notorious with her Privy Seal, 'tis ſufficient, and within the Meaning and Equity of the Statute; and this Proclamation, made by all the Heralds at Arms, at the moſt publick Place at *Edinburgh*, is much more notorious and publick than a Licenſe under the Privy Seal only: Beſides, the very Words of the Proclamation are, That it ſhall be, in every Reſpect, as valid and effectual as if it were under the Great Seal; then, ſurely, it muſt be at leaſt as ſtrong as if under the Privy Seal: Beſides, the Statute does not ſay, that the Licenſe muſt be under the Privy Seal of *England*; and it not being ſaid what Privy Seal, or of what Kingdom, it muſt be intended according to the ſubject Matter, the Seal of that Kingdom or Dominion where the Licenſe is granted; and that being *Scotland*, the Licenſe under the Great Seal of *Scotland* is ſufficient; for it ſeems improper that the Seal of one Kingdom ſhould be made uſe of to licenſe an Act in another Kingdom. But it will be ſaid, that, taking this to be a Licenſe, it is only a Licenſe to come into *Scotland*; but the Priſoner is indicted for coming into *England* without Licenſe: Now this Act, with Submiſſion, muſt operate and take its Effect upon the firſt Step made from *France* into any of the Queen's Dominions; ſo that if the Priſoner be guilty of Treaſon within this Act, it muſt be when he made his firſt Step from *France* into *Scotland*; but that being made lawful by the Proclamation, amounting (as we ſay) to a Licenſe, it cannot be afterwards Treaſon for the Priſoner to come into *England*; and this Proclamation amounts to a Pardon of the Treaſon, though it were before the Priſoner returned to any of the Queen's Dominions: For both the going into *France* without Licenſe, and returning home without Licenſe, muſt be joined together to make it Treaſon; ſo that the Priſoner, from the Time he went into *France* without Licenſe, was an Offender, and conſequently capable of a Pardon; and if the original Offence be pardoned, all that enſues upon that Offence is at the ſame Time pardoned. This ſeems to be proved by *Cole*'s Caſe, *Plowd.* 401. where, after one had felonioufly murdered another, there came a Pardon of all Crimes and Miſdemeanors, and afterwards the Party wounded died. The original Miſdemeanor being pardoned, all that enſued upon it was pardoned; and conſequently the Murder, by the Pardon only of all Miſdemeanors.

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Beſides, I would beg leave to offer to your Conſideration, whether a *Scotchman*, that was not in *England* at the Time of making this Act, be within the Meaning of this Act? The Act ſays, That if any of his Majeſty's Subjects ſhall go into *France* without Licenſe: This, according to a reaſonable Conſtruction, ſhall be intended only of *Engliſh* Subjects, ſtrictly ſpeaking, who were repreſented by the Parliament that made this Law, and who only can reaſonably be ſuppoſed to have Notice of it.

There is another Objection, (*viz*). That this Indictment, or Trial, cannot be in *Middleſex*; but in the County whither the Priſoner firſt came, after his leaving *France*, which was *Northumberland*. It is a known Rule, That all Indictments, or Trials for Treaſons, and other Crimes, muſt be in the County where the Treaſon, &c. was committed: It is true indeed, if I ſteal Goods in one County, and carry them into another, it is Felony, (though not Robbery), in every County whither I carry them: And the Reaſon given in *Dyer* 40, and 7 *Coke* 2, is, That the Robbery or Felony does not alter the Property of the Goods: But this depends upon a different Reaſon, no Way affecting the principal Caſe; for if coming into every County, would make a freſh Treaſon, a Man might be brought to ſuffer as a Traitor, with many Pardons about him.

Mr. *Raymond*, the Priſoner's other Counſel, alſo ſaid, I beg the Liberty to offer a Word or two on the ſame Side, for the Priſoner, and ſhall take Leave to inſiſt upon it, That Mr. *Lindſay* cannot be called one of his late Majeſty's Subjects within this Act: I do agree, he was the late King's Subject, as King of *Scotland*, but not as King of *England*. This Act being made in *England*, by the *Engliſh* Parliament, and uſing the Word Subjects, muſt mean ſuch Subjects as that Parliament were able to oblige, which are only the Subjects of *England*, or the Dominions depending on the Crown of *England*; but not the Subjects of *Scotland*, which is a different Dominion from *England*.

I am very ſenſible, with what Solemnity *Calvin*'s Caſe, in 7 *Rep.* is ſaid by my Lord *Coke* to have been adjudged; but muſt beg Leave to conſider the Foundation upon which this Reſolution is built: According to my Lord *Coke* himſelf, in *Calvin*'s Caſe, Legiance is a true and faithful Obedience of the Subject due to the Sovereign; for which the Sovereign is obliged to protect his Subjects: But this is not a blind Obedience to every arbitrary Command of the Sovereign; but is only ſuch an Obedience, as the Law of the Kingdom, or Principality, has reſpectively preſcribed, for the Subject to pay to his Sovereign: Conſequently, the Legiance due to the King, as King of *England*, and the Legiance due to him as King of *Scotland*, (ſince the Laws of both Nations are diſtinct) muſt be ſeparate and diſtinguiſhable.

And

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And that the Parliament did not intend to concern themſelves with *Scotland*, or the Natives thereof, appears by the Preamble of the Act; the Words are, That upon the Concluſion of the Peace, it was become neceſſary, for the carrying on a Trade between *England* and *France*, that the Subjects of each Kingdom ſhould have &c. Now if a *Scotchman* ſhould be taken to be a Subject of the Kingdom of *England*, I conceive he was never taken to be a Subject of the Kingdom of *England*.

But taking it, that Mr. *Lindſay*, though a Native of *Scotland*, might be within both the Words and Meaning of the Act; yet I will ſubmit it to your Lordſhip, whether this Act will bind him, he being beyond Sea, (*viz*). in *France*, at the Time when it was made. I agree, that every *Scotchman* reſident here, is bound by all the Laws of the Land, and ſo are all Foreigners whatſoever, who live here under the King's Protection: But as ſoon as they are gone out of the Kingdom, their Allegiance, which was but local, ceaſes, and they are no longer obliged by the Laws of *England*: It muſt be agreed, that no *Engliſh* Act of Parliament can bind *Scotland*; nor, as I humbly apprehend, the *Scotch*, while out of *England*: And, if ſo, then how could the Priſoner be bound by this Act, being a *Scotchman*, and out of this Kingdom when the Act was made. Suppoſe it was enacted, That if a *Dane* ſhould land in *England* without Licenſe, he ſhould be a Traitor; and a *Dane*, notwithſtanding, ſhould come into *England* without ſuch Licenſe, ſuch an Act might amount to a Prohibition of his coming, and he might be uſed as an Alien Enemy, 7*Co.* 6 *B.* as *Perkin Warbeck* was in *Henry* the VIIth's Time; but could not make him a Traitor, becauſe he owed no Allegiance to the Act, or Subjection to the Law, at the Time when the Act was made. As to the Priſoner's having been in *England*, and reſided here, that, I think, will make no Difference, becauſe his Subjection to the *Engliſh* Law ceaſed, as ſoon as he ſtepped off from the *Engliſh* Shore.

I beg Leave further to inſiſt, That this Evidence don't maintain the Indictment. The Indictment is for returning from *France* into *England*, and the Evidence is, That he returned out of *France* into *Scotland*, and from thence into *England*. The Act ſays, "That if any of his "Majeſty's Subjects, &c. return into the King-"dom of *England*, or other his Majeſty's Domi-"nions:" The Meaning of which we take to be, That the firſt coming of any ſuch Perſon into any of his Majeſty's Dominions, ſhall be the Treaſon: And that the Act did not intend to make every ſeveral coming into every diſtinct Dominion, a new Treaſon; for if he has a Licenſe to come into one, it is to be believed, with a great Deal of Reaſon, he may be truſted in any other of her Majeſty's Dominions: And if the coming into *Scotland*, was the firſt and only Treaſon puniſhable by this Act, then we muſt offer the general Pardon of *Scotland* in the Priſoner's Excuſe: For though generally ſpeaking, when an *Engliſh* Act mentions the Great Seal or Privy Seal, it muſt be taken to be the Great Seal, or Privy Seal of *England*: Yet in this *Engliſh* Act, if your Lordſhip will conſtrue the Words, *His Majeſty's Subjects*, not only to be his Subjects as King of *England*, but as King of *England*, or any other Nation; by Parity of Reaſon, the Words Privy Seal ought to be extended to all the Privy Seals the King has, as King of *England*, or King of *Scotland*: And, if ſo, then ſince the Queen in her Proclamation, has declared, That Her Pardon ſhall be taken as beneficially as if it had been under the Great Seal, (and the Great Seal includes the Privy Seal, and is of greater Efficacy); we humbly hope it will be as beneficial to the Priſoner; nay, rather more, becauſe as to *Scotland*, it pardons the Offence: For though the Return is after the Pardon, yet it pardons the going into *France*, which is the Foundation of the Crime; and without which, the returning into *Scotland*, or any of his Majeſty's Dominions, was no Offence: This is the Uſe the Priſoner would make of this Pardon. I cannot preſs it as a Pardon of an *Engliſh* Crime, though it ſeems ſomething ſtrange, that Mr. *Lindſay* ſhould, by Virtue of this Pardon, be a very good Subject of the Queen's in *Scotland*, and have all the ſame Liberties other of his Countrymen have there, and yet ſhould be a Traitor againſt the Queen here in *England*: That he ſhould be within the Queen's Protection there, and out of her Protection here; and yet at the ſame Time that his Allegiance to her cannot be ſevered (according to my Lord *Coke* in *Calvin*'s Caſe); nor he conſidered as a Subject to her as Queen of *Scotland*, and not as Queen of *England*.

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The Reply of the Queen's Counſel to his Defence.

To this Defence, Sir *Thomas Powis*, the Queen's Serjeant replied, It muſt be owned, that a great Deal of that which has been ſaid, might have carried Weight with it, if it had been pleaded in *Scotland*, where the Proclamation was made; but to make uſe of it here in *England*, as having any Force in this Caſe, is not agreeable to Law or Reaſon: For 1ſt it is a Pardon of another Kingdom, for Offences committed againſt the Crown of *Scotland*; whereas this Indictment is for an Offence committed againſt the Crown of *England*: And, 2*dly*, It was granted at a Time precedent to the Time of this Offence committed. As for the Words of the Act not extending to a Native of *Scotland*, we need do no more than read them, to make it appear otherwiſe: It ſays not, Any of the Subjects of the Kingdom of *England*, but if any of his Majeſty's Subjects; ſo that whoever was a Subject of the late King's, is within the Act: And they would do little Service to the Subjects of *Scotland* to overthrow *Calvin*'s Caſe, which was ſo ſolemnly determined near 100 Years ago; which enables them of *Scotland* to come into *England*, and enjoy the ſame Privileges here as the Subjects of *England* do. Certainly, as they are let into all theſe Benefits by the Reſolution of that Caſe, ſo they are, at the ſame Time, the Subjects of the King or Queen of *England*: And ſince the Miſchief of a *Scotchman*'s returning, be equal with that of an *Engliſhman*'s, conſequently, they are not only within the Words, but the Meaning of that Act. It is true, we cannot, by an Act here, bind them in *Scotland*; but we are not now putting in Execution this Act in *Scotland*, but putting it in Execution here in *England*, upon a *Scotchman*, that had been long

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an Inhabitant here before. As to the Indictment being laid in a wrong Place, if this Objection would hold, it would render it impracticable to profecute any one for this Offence; it being impoſſible to know where a Man firſt privately arrived: But we ſay, wherever he is found in *England*, there the Indictment may be laid againſt him; and the Caſe of the Felony comes Home to this Point: The Man that ſteals Goods in one County, may be indicted in any other County where he carries them. Upon the whole Matter, the Fact being confeſſed, we inſiſt he is within the Words, and the Meaning of the Act, and within the miſchievous Conſequences which are intended to be prevented by it.

Mr. Attorney alſo replied to the Priſoner's Counſel, and ſaid, My Lord, we are not to conſider this Gentleman, in this Caſe, as a *Scotchman* abſolutely, but as a *Scotchman* here in *England*. The Queſtion is, Whether an Act of Parliament made in *England* will not bind every Perſon that is reſident here in *England?* Now the Priſoner was reſident here in *England*, and went hence into *France:* And by the Law every *Scotchman*, reſiding in *England*, is an *Engliſhman*, and hath a Right to enjoy the Privileges of an *Engliſhman*. This is the Reſolution in *Calvin*'s Caſe: I will give but one Inſtance of this: The Act of Navigation, made 12 *Car.* II. requires, That the Maſter, and three fourths of the Mariners, ſhall be *Engliſh:* The Act of 14 *Car.* II. *cap.* 11. declares, That any of Her Majeſty's Subjects of *England*, *Ireland*, and the Plantations, ſhall be accounted *Engliſh*, and no others. Now the Natives of *Scotland* inhabiting in *England* or *Ireland*, have always been allowed to be *Engliſh* or *Iriſh*, within that Act; and have enjoyed the Privileges ever ſince, of being Maſters of Ships: So that to all Intents and Purpoſes, a *Scotchman* being in *England*, enjoys the Privileges of an *Engliſhman*, and is a Subject of the Crown of *England*. And as to what they ſay, That his Offence was going into *France*, that is but the Deſcription of the Perſon; it is his returning from *France* to *England*, that is the Offence; and it is not his returning to *Scotland*, but returning to *England*, or any other of her Majeſty's Dominions, bound by the Acts of Parliament of *England*.

As to that Objection, That this Act cannot bind the *Scots* here, becauſe they have no Repreſentatives in Parliament here; that is not ſo, for they may be, and many of them are, Freemen of Corporations, and Freeholders, and, as ſuch, may be repreſented in Parliament. And as to that Objection, That *Middleſex* is not the firſt County he came into; the Queen may proceed againſt him in any County, as in an Eſcape: It is an Eſcape in every County where the Party comes; and the Party eſcaping, or the Sheriff, may be proceeded againſt in any County where the Party eſcaped is found, as well as in that from whence he firſt eſcaped; and if this were otherwiſe, the Act could ſcarce ever be put in Execution.

Mr. *Lindſay* ſtill inſiſting, That the Pardon reinſtated him in all the Privileges he had before; the Chief Juſtice replied, I tell you, No: It only reſtores you to thoſe Privileges you had as a *Scotchman*; but exempts you not from any Puniſhment, to which you were obnoxious by the Laws of *England:* You ought to conſider, that as you are a Subject of *Scotland*, ſo you are a Subject to the Crown of *England*, by being a Native of *Scotland* ſince the Acceſſion of *Scotland* to *England:* And an Act of Parliament in *England*, may ſubject a *Scotchman* to any Penalty, for any Act that he ſhall do in *England*; and the Priſoner being a *Scotchman* born, and having been in *England* for a long Time, and departing from *England* into *France*, within the Time mentioned in the Act, and afterwards returning into *England*, is, to all Purpoſes, within the Letter and Deſign of the Act. Another Point that your Counſel have urged, is, That this Pardon is a Licenſe for you to return into *Scotland*; which, in Truth, it is not; and if it were a Licenſe to return into *Scotland*, it will not be a Licenſe to return into *England*. As to what you ſay of the Offence of going into *France* being pardoned, and therefore the Return cannot be High-Treaſon; to this a plain Anſwer hath been given you, That going into *France* ſince the 11th of *December*, 1688, is no Offence originally; but only the Return of ſuch Perſon is made High-Treaſon: Therefore ſuch a Pardon, even under the Great Seal of *England*, could not have diſcharged him if he had returned afterwards.

If you object, That this Pardon has made you a free *Scotchman*, to all Intents and Purpoſes, as if you had never offended; and conſequently you had the ſame Liberty as any other *Scotchman*, to come to *England:* It is true, this Pardon puts you in the ſame Condition as other *Scotchmen* are by the Law of *Scotland*; but it puts you not in the ſame Condition that other *Scotchmen* are by the Law of *England*.

They who are born in *Scotland*, may inherit Lands in *England*; but if an Alien be naturalized in *Scotland*; though he is, to all Purpoſes, a natural-born Subject of *Scotland*, by the Law of that Realm; yet he is not therefore inheritable to Lands in *England*, becauſe he is not a natural-born Subject by the Law of *England*.

The Chief Juſtice then proceeding to direct the Jury, acquainted them, That the Priſoner was a Subject of the Queen of *England:* That it appeared he had departed from *England* ſince the 11th of *December*, 1688, and had returned thither without Licenſe under the Privy Seal; which if they believed, they muſt find him guilty.

The Jury then withdrew; and after a Receſs of half an Hour, brought the Priſoner in GUILTY; and Sentence was pronounced on him as a Traitor; but he was reprived, and afterwards pardoned, as I remember: And, indeed, it would have been very hard, if the Queen had pardoned him as a Subject of *Scotland*, and cauſed him to be executed as a Subject of *England*, admitting he did come within the Letter of the Law.

1704. 3 Annæ. Tutchin's *Trial.*

The Trial of JOHN TUTCHIN, for *A ſeditious Libel, called,* The Obſervator, at *Guildhall, London,* on the 4th of *November,* 1704. 3 Annæ.

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The Information.

THE Information charged, That the Defendant, *John Tutchin*, being a ſeditious Perſon, and a daily Inventer and Publiſher of falſe News and ſeditious Libels, to traduce the Government, did, on the 30th of *May*, in the firſt Year of Her Majeſty's Reign, compoſe and publiſh a certain falſe, malicious, ſeditious, and ſcandalous Libel, entitled, THE OBSERVATOR; wherein, among other Things, were the following Paſſages, No. 11. *Saturday*, the 30th of *May*, 1702. "At the ſame Time we "conſider the *French* King's Succeſs in his "Bribery and Corruption, we ought to lament "the ſad State of our own Country, which af-"fords ſo many Inſtances of Treachery. If we "may judge, by our own National Miſcarri-"ages, perhaps no Nation in *Europe* has felt "the Influences of *French* Gold more than *Eng-"land:* And worthy it is our greateſt Lamen-"tation, that our dear Country ſhould be "weakened by Men of mercenary Principles, "when Countries inferior to us in Strength and "Riches, are ſecured from Attempts of this "Nature, only by the Fidelity of their Peo-"ple. What is the Reaſon that *French* Gold "has not affected *Holland* as well as *England*; "but that their Miniſtry is ſuch as is intirely in "the Intereſt of their Country, and altogether "incorruptible? They prefer Men that are "knowing in their Poſts, and are active in "Buſineſs; when in *England* we find Offices "for Men, not Men for Offices; and a Title "of Honour gives a Man a Title to a great "Employment, he is altogether ignorant of. "By this, and by preferring of Men by In-"tereſt and Favour, has the Exciſe, the Cuſ-"toms, and other Branches of the Revenue, "intolerably ſunk; and, by this Means, has "the Navy of *England*, our chief Support, "been hitherto perfectly bewitched: And "can *Lewis* ſpend his Money better, than in "getting Men into Offices in *England*, who "are either falſe or ignorant of the Buſineſs, or "are his Friends?

That on the 11*th of* July *following, he publiſhed another* Obſervator; *wherein are theſe Words:* "And this is a Prerogative of ſingular Advan-"tage to the People of *England*, in that their "Repreſentatives are the Judges of the Male-"Adminiſtration of their Governors: That "they can call them in Queſtion for the ſame, "and can appoint ſuch to wear the Crown "who are fitteſt for Government; which they "have often done, and, indeed, which is the "Privilege of all free People, who are autho-"rized by the Laws of God and Nature, to "chuſe their own Governors.

That on the 12th *of* June, *in the ſecond Year of the Queen, he publiſhed another; wherein are theſe Words:* Take one Time with another, the Miſ-"managements of the Navy have been a great-"er Tax on the Merchants, than the Duties "raiſed by Parliament: We never had a better "Navy; but the Wiſdom of the Managers "thereof is like a bottomleſs Pit, paſt finding "out.

That on the 16*th of the ſame* June, *he publiſhed another; wherein are theſe Words:* "What a-"vails it a Man of Learning and Parts, to qua-"lify himſelf for the Service of his Country on "the Ocean? If he has Knowledge enough to "adviſe *Neptune* himſelf; if he has no Intereſt, "he ſhall have no Preferment. How much "does it look to our Nation's Diſadvantage, "to have Men in eminent Stations in the Navy, "who have not ſo much as an Idea, a Notion, "a Thought, of Naval Affairs? To have Men "ſuperintend the building of our floating Caſ-"tles, who know not the Nature of any Part "of the Management? To have Men employ-"ed in the Victualling, who qualify them-"ſelves for that Poſt, by Learning to write "their Names; which is, indeed, a Poſt for a "Philoſopher bred to the Sea?

That the 10*th of* July *following, he publiſhed another* Obſervator; *wherein are theſe Words:* "COUNTRYMAN. Truly, Maſter *Obſervator*, "I have no very good News for you: Mr. "*Daniel de Foe* has pleaded guilty to the In-"dictment againſt him, for writing and Pub-"liſhing, *The ſhorteſt Way with the Diſſenters*; "and he is ſentenced to ſtand three Times in "the Pillory, to pay a Fine of 200 Marks, "and to find Security for his good Behaviour for "ſeven Years. OBSERV. The Court could do "no otherwiſe than convict him upon his plead-"ing guilty: *Habemus confitentem reum* is very "often the Voice of Courts of Judicature; 'tis "the Eaſe of Judge and Juries. If *Daniel de "Foe* was in Expectation of *Coleman*'s Black "Box, he has found a Pillory inſtead of it. *I "don't trouble my Head about the Cuſtom of giving "the Pillory to Authors, which is the Puniſhment "of Bakers.* You talk'd juſt now of turning "Author; have a Care of your Candle; you "ſee which is *the ſhorteſt Way with Authors:* "You muſt all enter yourſelves in the Regi-"ment of Colonel *Foe*. The Law of *England* "directs, that no Man ſhall be fined *ultra "Tenementum*; and, I make no Queſtion, but "the Juſtice of the Court has fined Mr. *Foe* "anſwerable to his Eſtate: His Security for his "good Behaviour for ſeven Years, without "Doubt, was rationally conſidered, as to the "Legality thereof. For my Part, I am only "acquainted with the Old Laws of *England*, "the antient Birthrights and Immunities of "*Engliſhmen:* This I take to be the Foundation "of New Laws.

A Challenge to the Favour.

The Jury ſworn.

Mr. Attorney opens the Evidence.

That on the 20*th of* May, 1704, *he publiſhed another ſcandalous and ſeditious Libel*; *entitled,* The Obſervator; *in which are contained theſe Words.* COUNTRYM. "Maſter *Obſervator*, "There is another Plot againſt you. OBSERV. "Prithee Man, there is a Plot againſt the Queen, "and the whole Nation; is it any Wonder then, that

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" that there are Plots againſt me? The High-Flyers are now plotting againſt every honeſt " Man in *England*: I'll tell you more of it the " next Time we meet. COUNTRYM. I fancy " ſome Sort of People plot againſt you, becauſe " you endeavour to countermine their Plots a- " gainſt the Queen and Nation. OBSERV. You " are right enough; but that ſhan't hinder me " from detecting their Deſigns, and from opening " the People's Eyes. But prithee, what Plot is " this? COUNTRYM. Why, Sir, it is a Plot pre- " paratory to your Trial; and, if they can't affect " this Plot, I ſuppoſe you'll never be tried: They " inſinuate into the Citizens of *London*, that you " have lately written very ſcandalouſly, malici- " ouſly, and treaſonably, and I do not know how " many other Lies, againſt them the ſaid Citi- " zens; and, by this Means, they are minded to " ſet your Jurors againſt you. OBSERV. This " is likely enough, they'll leave no Stone un- " turn'd to ſuppreſs the Truth: I underſtand I " ſhould have been proſecuted by Bill the laſt " Seſſions; but the High-Flyers did not like " the Jury: Nay, they ſay, they don't like " the two Sheriffs, becauſe they on't pack " Juries, to find innocent Men guilty". To the great Scandal of the Queen and her Government, and againſt the Peace, *&c.*

A Challenge to the Favour.

Then the Jury were called over; and the Defendant's Counſel challenged Mr. *Pinfold*, becauſe he had diſapproved of *The Obſervator*, and therefore might be thought prejudiced againſt the Defendant: But the Court held, that they could not challenge to the Favour, in a Caſe of the Crown: However, Mr. *Pinfold* deſiring to be excuſed, the Queen's Counſel conſented he ſhould be ſet aſide; and no other Challenge being made to the reſt of the Panel, a Jury was ſworn: After which Mr. Attorney, in opening the Evidence, ſaid,

The Jury ſworn.

Mr. Attorney opens the Evidence.

My Lord, the Information is laid againſt Mr. *Tutchin* for a few of his *Obſervators* of the many he has writ; ſometimes two, ſometimes three in a Week. It is a great while that he has done it; and it has been the great Indulgence of the Government, that he has not been proſecuted before. He has been taken notice of by the Houſe, and been before the Secretary of State, where he has been admoniſhed to take care of what he ſhould write; but he would not take Warning: And now he is to be tried for ſome of his Papers; wherein it will appear, that he has taken the greateſt Liberty, I believe, that ever Man took. Libels uſed to come out by Stealth, and in the Dark; but theſe have been publiſhed openly, with all the Defiance imaginable. You may ſee how mild the Proſecution hath been, by what he has done ſince the Beginning of it: He has been writing in ſuch a Manner to prepare for the Trial, as, I think, never was done before. A Proſecution of this Nature is of the greateſt Conſequence; and, it may be, I may be blamed, being in the Office wherein I am, that there have not been more ſuch made. Here is the higheſt Reflection on the Government imaginable: There can be no Reflection on them that are in Office under Her Majeſty, but it muſt caſt ſome Reflections on the Queen, who employs them. I believe, there is hardly one, in any conſiderable Poſt under the Government, but has been criminated by him: Nothing eſcapes him. He cenſures all Mankind; writes magiſterially, and defies all Authority, and caſts the vileſt Reflections on the Government; as if we, who are in the Queen's Service, made it our Buſineſs to corrupt Juries; and makes Reflections on Sheriffs and Juries. Theſe are of the greateſt Conſequence in the World to the Government, and to every body: For if ſuch mercenary Writers may have the Liberty to reflect on whom they pleaſe, no Man's Reputation can be ſafe.

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Gentlemen of the Jury, the Matter you are to enquire into, is, Whether the Defendant be the Author or Publiſher of theſe Libels? That is the Matter you are to try: What the Puniſhment muſt be, if you find him guilty, is in the Judgment of the Court. We will produce our Witneſſes, and doubt not, but you will do the Queen Juſtice.

The Evidence of How, the Printer.

The Evidence being called, Mr. *How* the Printer was ſworn, and teſtified, That the latter End of *March*, 1702, he treated with Mr. *Tutchin* about writing an *Obſervator*, to be publiſhed weekly: That the firſt was publiſhed in *April*, 1702, and all that had been publiſhed ſince, to that Time, he had from Mr. *Tutchin*: He was to give him half a Guinea for every *Obſervator* at firſt, and afterwards a Guinea; and had printed in all about 266, which he had paid him for.

That *Tutchin* bid him (the Printer) fear nothing; if any Danger happened, he would be a Rogue to himſelf and his Family if he did not diſcover him.

The Queen's Counſel then produced one of the *Obſervators* mentioned in the Information, and demanded of *How*, If he remembered the printing of it? and *How* anſwering, it was printed at his Houſe, the Defendant's Counſel asked, if he kept exactly to his Copy, or took the Liberty of inſerting and leaving out Words? *How* anſwered, ſometimes he had altered them himſelf, when he ſaw a Miſtake, and did not know where to find *Tutchin*; and he was not ſure that Paper was printed without ſome ſuch Alteration.

The Queen's Counſel demanding, If he had not publiſhed them in Volumes, ſince the firſt publiſhing of them? *How* anſwered, *Tutchin* ordered him to bind them up in three Volumes, and he made a Preface and Index to them, which he paid him for; and *Tutchin* ſet his Name to the Preface.

Then one of the Volumes being produced, the Defendant's Counſel demanded of *How*, Where that Book was delivered to him to be bound up? *How* anſwered, He could not ſay whether it was in *London*, *Middleſex*, or *Surry*.

Then the Priſoner's Counſel inſiſted, That they could not read the Paper produced as *Tutchin*'s Paper; for whatever Papers *How* received from him were in Writing, and they muſt produce that very Writing, or a true Copy of it; and Mr. *How* declared he had often altered the Papers; and that might be made a Libel, by a very ſmall Alteration, that was not ſo before.

The Court demanding of *How*, If he had not the original Papers? he anſwered, Very few of them.

Whereupon Sir *Thomas Powis* obſerved, That thus, if the Author could get the Copy deſtroyed,

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ed, there could be no Evidence againſt him; for the Printer could never ſay, it agreed with the Copy to a Letter: He thought, however, they had given a fair Evidence that this was the ſame Paper that was brought to *How*, nor had they ſhewn that any thing was added to it, or diminiſhed from it: That the Printer teſtified, the Defendant avowed and juſtified *all* he had printed, ordered him to collect all thoſe Obſervations into Volumes, and owned them afterwards: It was obſerved alſo, that they were printed and publiſhed in *London*; and wherever the Agreement was made between the Author and Printer, they might charge the Defendant where the Papers were printed, purſuant to his Agreement; for this made the Compoſing and Printing his Act, eſpecially after he had made an Index and Preface to the Volume, and ſet his Name to it: This was, no doubt, a Publication and owning of them.

The Defendant's Counſel ſtill inſiſted, That the Papers ought not to be read, if they had not been examined with the written Copies ſent to the Printers: That it was true, every Copy of a Libel was a Libel; but whoſe Libel was it? And demanded of *How*, If *Tutchin* looked over all the Papers in the Book, and owned them? *How* anſwered, *Tutchin* ordered him to deliver them to the Lord *Nottingham*, about a Week after they were publiſhed, which was in *April*, 1703, and he delivered them to his Lordſhip accordingly.

Then two of the *Obſervators* in the Book were ordered to be read, namely, that of the 30th of *May*, 1702, were he ſays, *At the ſame Time we conſider the* French *King's Succeſs, in his Bribery*, &c. (as in the Information); and that of the 11th of *July*, 1702, where he ſays, *And this is a Prerogative of ſingular Advantage*, &c. (which ſee in the Information.)

How being asked who was the Author of theſe two Papers, anſwered, He had ſhewn Mr. *Tutchin* the ſame Numbers, and he had owned them an hundred Times.

Then it was demanded, If he carried all the Original Papers he had to Mr. *Borret?* and he anſwering he did, Mr. *Borret* was ſworn, and depoſed, That *How* brought the Original Paper of the 12th of *June*, 1703, to him, where he ſays, *Take one Time with another*, &c. (as in the Information): Then the Paſſage in *The Obſervator* of the 10th of *July*, 1703, was read, where he ſays, COUNTRYMAN, *Truly Mr.* Obſervator, *I have no very good News for you*, &c.

Mr. *Borret* alſo produced the Original *Obſervator* of the 20th of *May*, 1704, and teſtified he had it of Mr. *How*, and *How* teſtified he had it from *Tutchin*; wherein he ſays, COUNTRYMAN. *Maſter* Obſervator, *there is another Plot againſt you*, (as in the Information).

Here the Defendant's Counſel objected, That It was not yet proved theſe Papers were *written* in *London*, as laid in the Information; obſerving, that at the Biſhops Trial, though the Petition was proved to be under all their Hands, it was required they ſhould make it appear, that the Paper was written in the County of *Middleſex*.

The Queen's Counſel anſwered, they had proved his owning himſelf to be the Author, and his cauſing them to be printed in *London*.

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The Court ſaid, that was not an Evidence of his writing them in *London*; and if he was guilty of a Fact in one County, they could not charge it in another; but *if he cauſed it to be printed in* London, *no doubt but that was a Publication there.*

The Queen's Counſel replied, If his owning himſelf to be the Author, and their proving the Copy to be received in *London*, was not Evidence that they were written there, they could hardly ever prove the Charge of Writing; for the Libeller was uſually alone when he wrote the Libel.

The Court demanding of *How*, If *Tutchin* wrote any of his *Obſervators* at his Houſe, in *Gracechurch-Street? How* anſwered, None that he knew of.

Tutchin's *Defence by his Counſel*

Then Mr. *Montague*, the Defendant's Counſel, made his Obſervations on the Evidence, and ſaid,

I can hardly ſay I am of Counſel for Mr. *Tutchin*, becauſe I have never ſeen him, but upon recording his Appearance in open Court; and he has not thought fit to ſend us any Inſtructions till this Morning: But, I ſuppoſe, this Remiſsneſs in his Temper proceeds from his Innocency of the Accuſation againſt him; and he has a Mind to let the World ſee how eaſy it is to make his Defence, ſince he has pitched upon me for his Advocate, and given me ſo little Time to prepare myſelf for it. But, as ſhort Notice as I have had of this Information againſt him, thus much I will beg leave to ſay of it in general; That it does by no Means come up to what the Gentemen on the other Side call it, *A Charge of Writing and Publiſhing a falſe and ſcandalous Libel.* My Lord *Coke* has given us a Definition, or rather a Deſcription of a Libel: Says he, *Famoſus Libellus, ſeu in famatoria ſcriptura, is made either againſt a private Man, or a Magiſtrate. If it be a private Man it does deſerve to be puniſhed; becauſe it is likely to incite all the Family or Kindred of ſuch a Perſon to revenge the Injury, which tends to the Breach of the public Peace. If it be againſt a publick Perſon, as a Magiſtrate, it is a greater Offence; becauſe it concerns not only the Breach of the Peace, but it is a Scandal to the Government: And it matters not whether ſuch private Man, or Magiſtrate, be dead or alive at the making of ſuch Libel, becauſe the Friends and Relations of ſuch Perſons are incited thereby to diſturb the Peace of the Kingdom.* By all which Sayings of my Lord *Coke*, I do humbly ſuppoſe, that there can be no Libel, where no Perſon certain is reflected upon, or ſcandalized. A Libel that points at no body in particular, is like a Shot at Random, that ſeldom does any Miſchief: And therefore I do take it, with great Submiſſion, that in this Caſe Mr. Attorney ſhould have ſhewed us what Perſon (either publick or private) theſe *Obſervators* have aſperſed. My Lord *Coke*, in another Place, does liken Libelling to Poiſon, which ſecretly deſtroys a Man's Reputation, as the other does his Life: But certainly it would be thought a ſtrange Sort of Indictment, to charge a Man with being guilty of Murder, and not mention ſome one in particular, that has loſt his Life through the Defendant's Means or Procurement. Now, pray my Lord, how much does this Information differ from ſuch an Indictment? Here it is ſaid, that the

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Defendant has wrote and publiſhed a falſe and ſcandalous Libel, of and concerning this Kingdom of *England*, and the Officers and Miniſters of the Queen; but a National Reflection, that equally concerns every individual Perſon in the Kingdom with the Reflector himſelf, cannot excite and ſtir up the People to quarrel one with the other: And to tell me the Miniſters and Officers of the Queen are particularly concerned, does but give me Occaſion to ask, what Officers and Miniſters Mr. Attorney is taking care of? For I do not find any Miniſter of State, or other great Officer, ſo much as mentioned throughout this Record. A Bailiff or Conſtable is one of the Queen's Officers; and yet very few will think a Man ought to be puniſhed for Scandal, that ſhall ſay of ſuch Officers and Miniſters, they commit frequent Miſdemeanors, and are of mercenary Principles. Would it not have been eaſy for Mr. Attorney to have aſſigned the Particulars, if he knows of any Body that has been defamed by theſe *Obſervators*? But ſince the Information ſets forth no Particulars, I hope the Jury will take it for granted, that nothing in theſe Papers can be affixed to any Man's Door; but whatever has been writ is ſpent in the Air; and I hope this Accuſation will vaniſh there likewiſe.

In the next Place, my Lord, I would beg leave to take Notice of the particular Papers, which have been ſeverally read in Evidence. And the firſt that has been produced, is one of the printed *Obſervators*, agreed on all Hands to have been publiſhed ſo long ago as the 30th of *May*, which was in the firſt Year of Her preſent Majeſty's Reign: And as to this, the Charge is, That the Defendant has written, compoſed, and publiſhed it; but how many of theſe three Particulars have been made out, muſt be obſerved: And as to the writing of it, Mr. *How* has ſworn, that there was an Agreement made betwixt him and the Defendant, (but where he cannot ſay) that Mr. *Tutchin* ſhould write a Paper, ſometimes once, ſometimes twice a Week, of the Publick Tranſactions; and ſuch a Paper has been writ by Mr. *Tutchin*; but where this Paper was wrote by Mr. *Tutchin*, or delivered, Mr. *How* cannot ſwear. However, ſo far he goes, that from theſe Papers of Mr. *Tutchin* he has printed, at his Houſe in *London*, theſe Papers that are now produced: But on this Evidence I muſt, with your Lordſhip's Favour, obſerve, That there are two different Sorts of Libels ſpoken of: The one is in writing, ſuppoſed to be written by Mr. *Tutchin*, but God knows where: The other in Print, owned by Mr. *How*, to be printed and publiſhed from the written Paper; which does not appear, and of which no true Copy has been proved. Now we hope, therefore, my Lord, that the Gentlemen of the Jury will rightly diſtinguiſh betwixt this firſt and ſecond Libel, and make a Difference betwixt the Act of Mr. *How* and that of Mr. *Tutchin*. The printed Papers here produced, are ſtiled *The Obſervator*; ſo were not the written ones, if Mr. *How* be to be believed: The printed *Obſervators* are ſold about for the ſole Benefit of Mr. *How*, and Mr. *Tutchin* receives only a ſmall *Præmium* for the writing once or twice in a Week. Mr. *Tutchin* only earns his weekly Subſiſtence, by making Obſervations in the Country; and it does not appear that he concerns himſelf further about the Printing or Publiſhing of them: If he gets his Money, Mr. *How* may do with his Papers as he thinks fit. So that I muſt humbly inſiſt upon it, that what Mr. *How* has done within this City of *London*, can never reach Mr. *Tutchin* into *Surry* or *Eſſex*. It has been ſaid, indeed, and I ſhall not contradict it, That the bare tranſcribing of a Libel will make a Man guilty of libelling: But for this Reaſon I do ſay, that Mr. *How* only has been guilty of making and publiſhing theſe printed *Obſervators* in *London*; and Mr. *Tutchin*, if he be guilty, muſt be convicted of the making and publiſhing that which can be ſworn to be his written Obſervations; eſpecially ſince it has plainly appeared, that the Papers written by Mr. *Tutchin* have been frequently altered by Mr. *How*, before they were printed off.

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And if we conſider the Paſſages that have been produced, the Gentlemen of the Jury will perceive, a very little Alteration will make theſe Papers quite different from what they are: However, as they be, I hope there is no great Matter in any of them. The firſt *Obſervator* ſays, *At the ſame Time, if we conſider the* French *King's Succeſs, in his Bribery and Corruption, we ought to lament the ſad State of our Country, which affords ſo many Inſtances of Treachery*, &c. Now, pray who is *We* in this Caſe? Says Mr. Attorney, in his Innuendo, the People of *England*; but I hope an Innuendo ſhall not make a Man guilty of a Crime which otherwiſe cannot be affixed upon him. But ſuppoſing this ſame Paper were in Truth written with Relation to *England*; will any one ſay, that (no Times whatſoever) this Country has afforded any Inſtances of Treachery? And what Part of this Information does ſo much as fix the Time to which *The Obſervator* alludes? If all that is here ſet forth were written of a former Miniſtry, I do ſuppoſe there would not be ſo much Blame laid on the Author, as if he comes nearer the preſent Times: So the Time to which theſe Papers do refer, muſt certainly be material, and fit to be conſidered of, before any one can rightly judge of this Caſe; and for want of its being aſcertained and determined whither theſe Reflections may extend, I hope the Jury will not very much regard them.

The next Charge does ſet forth a wicked Aſſertion to have been made, *de & concernen' poteſtat. Populi Anglicani.* But we muſt be in your Lordſhip's Judgment, whether the Paper that is produced does make out the Aſſertion to be juſt as it's laid: I take it with Submiſſion, that there is a manifeſt Variance betwixt the Charge and the Libel. The Charge makes him ſpeak of the Power of the People at large; when the Paper comes to be read, that ſpeaks of our Repreſentatives in Parliament: And ſurely there is a Difference, to ſay, The People at large can do ſo and ſo; and to ſay, Our Repreſentatives in Parliament can do it. For Inſtance; The making of Laws is not in the People diſperſed over *England*; but in their Repreſentatives in Parliament, in Concurrence with the Houſe of Lords, when the Royal Aſſent does likewiſe concur with them; therefore, I think, this

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Charge cannot affect us, upon Account of this Variance. The next Article then to be taken Notice of, is, that concerning the Navy.——

Mr. Solicitor interrupts him.

Here Mr. Solicitor obſerved, That Mr. *Montague* ſaid nothing of the Prerogative the People have; that their Repreſentatives were Judges of the Mal-Adminiſtration of their Governors; that they can call them in Queſtion for the ſame, *and can appoint ſuch to wear the Crown who are fitteſt for Government; which they have often done:* All this ſcandalous Matter he paſſed by.

Mr. *Montague* anſwered, I did ſo; and I did it on purpoſe, becauſe I looked upon it as a Matter not proper for you and I to talk of, as Advocates, in this Place: And I am apt to think, my Diſcretion, in paſſing it by, will be more eaſily juſtified than theirs that ſhall bring ſuch Points as theſe upon the Stage, to be talked on before this Aſſembly. I muſt declare, for my own Part, that I think the Rights of Princes, and the Power of the People, too high Topicks for me to meddle with; let others do as they think beſt. I ſhall paſs over to the next Article, concerning the Navy: *Take one Time with another, the Miſmanagements of the Navy have been a greater Tax on the Merchants, than the Duties raiſed by Parliament:* Now how does this relate only to the Navy Royal; it is no where ſaid, the Miſmanagement of the King's Navy, or the Queen's Navy; and the Word Navy does, in my poor Underſtanding, ſignify no more than a Number of Ships got together; and therefore, I do humbly conceive, there may be a Navy of Merchant Ships, as well as a Navy of Men of War; 'tis altogether uncertain what Navy the Author does allude to.

Here the Chief Juſtice obſerving, That by the Navy muſt be meant the Royal Navy; Mr. *Montague* anſwered, If it muſt, yet no body can ſay we never had any Miſmanagements in the Royal Navy; and whenever that has happened, the Merchants of *England* in all Probability have ſuffered by it.

Mr. Attorney replied, Such Diſcourſe was not to be allowed; and Mr. Solicitor added, *When a Man complains of the Miſmanagement of the Government; and afterwards ſays, the People have a Power, inherent in them, to call their Governors to Account: What is this? Does it want an Expoſition, thus to poſſeſs the People with an Opinion of the Power they have, to call the King or Queen to an Account? What do ſuch Things tend to, but to raiſe in the People an Indignation againſt the Government?*

Then Mr. *Montague* went on, and ſaid, The Thing I was inſiſting upon, was, that whatever is here ſet forth, is not brought within any Compaſs of Time, and there is no particular Reflection upon any Perſon whatever: Though Mention is made of divers Miſmanagements, and of ſeveral Miſcarriages; yet all thoſe Things may be ſaid of other Times long ſince: And, therefore, ſince this Exception goes to all the reſt of the Charges in the Information, I ſhall paſs by the other Particulars; *and thereupon concluded*; That they had done nothing as to the *Printing* of this Paper; that was done by *How*; they had nothing to do with it. The Chief Juſtice anſwered, It appeared that *Tutchin* delivered them to *How*, in *London*, to be printed; and *How* agreed to give him half a Guinea a Paper at firſt, and afterwards twenty Shillings; and this muſt be with a Deſign to have them printed. Mr. *Montague* replied, *Tutchin* did not care what *How* did with the Papers; he was only to have ſo much Money for them.

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Then Mr. Attorney made his Obſervations on the Evidence for the Queen, and ſaid,

Mr. Attorney's Reply to this Defence.

My Lord, They are ſetting up a Doctrine that will make Libelling ſafe, ſo that no Man can ever be puniſhed for it. We have charged the Defendant with writing, compoſing, and publiſhing a Libel; we have proved the Agreement made with the Printer, be it in *London*, or out of *London*, is not very material. Now, if there be an Agreement made out of *London* for printing and publiſhing a Libel, wherever the Libel is printed and publiſhed, he is guilty; for whatever is done by his Agreement, he is guilty of it. As to the next Thing, I am much concerned to hear them ſay, that which I never before heard urged in any Court, That a Libel is not a Libel, unleſs they aſſign ſome particular Perſon: But I look upon it as the higheſt kind of Libels to reflect on publick Officers in general; on the Adminiſtration of Juſtice in general. I believe every one knows a Libel is a Libel, though particular Perſons are not named, if it reflect on Officers in general, as Miniſters of State, or Judges, or the like. Mr *Montague* would have it, that Reflections on the Miniſters of the Crown is not a Reflection on the Queen; and he would have it, that we ſhould have averred who thoſe Miniſters are, that were meant in the Libels. As to the firſt, certainly they that reflect on the publick Adminiſtration of Juſtice by the Queen's Officers, do reflect on Her Majeſty, who places and continues them in their Offices. And to the ſecond Reflection, being in general on the Miniſtry, we ought not, nor could, aver who, in particular, he meant in theſe Libels: The whole Adminiſtration under the Queen is reflected on, in placing in Officers in general; in the Management of the Navy, and placing in the Officers thereof; and in the Adminiſtration of Juſtice in the Courts of Juſtice; and what can be more ſcandalous? There needs no Averment to explain theſe; in themſelves they appear to be Libels; and I hope ſuch Diſcourſes as have been made on this Occaſion, for the Defendant, will not meet with any Countenance: But I am ſurprized to hear it juſtified here, by a Counſel, *That the People have Power to call their Governors to Account.*

Mr. *Montague* anſwering, He did not ſay ſo; Mr. Attorney replied, Certainly what you did ſay, (*viz.*) *That you ſhewed more Diſcretion, in paſſing it by, than we did, in queſtioning the Defendant for it; and that we wanted Diſcretion, in bringing this Matter on the Stage*; could have no other Meaning, but that the Matter was juſtifiable, but you would not in Prudence do it; which, I muſt ſay, is the greateſt Liberty I have known taken by a Counſel.

The Chief Juſtice ſaid, He did not hear him ſay ſo: And Mr. *Montague* added, I did not ſay ſo; I ſaid it was more diſcreet to paſs it by, than to take Notice of it.

Mr. Attorney replied, I will always proſe-

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cute any Man that ſhall aſſert ſuch Doctrine; I think it my Duty, in the Station I am, always to take Notice of ſuch Diſcourſes as theſe, which no Counſel ought to preſume to make.

The Chief Juſtice directs the Jury.

Then the Lord Chief Juſtice *Holt* proceeded to direct the Jury; and ſaid, This is an Information that is preferred by the Queen's Attorney-General againſt Mr. *Tutchin*, for writing, compoſing, and publiſhing, or cauſing to be written, compoſed, and publiſhed, ſeveral Libels againſt the Queen and Her Government, being ſix in Number; and entitled *The Obſervator*: The firſt of which was publiſhed on the 30th of *May*, 1702. Wherein he is charged with defaming the Government; and ſaying, "*That corrupt and ignorant Officers were employed, that were not fit for their Places.*

In the ſecond, with ſaying, That "*This is a "Prerogative of ſingular Advantage to the People "That their Repreſentatives are the Judges of the "Mal-Adminiſtration of their Governors: That "they can call them in Queſtion for the ſame; "and can appoint ſuch to wear the Crown who are "fitteſt for the Government; which they have "often done; and, indeed, which is the Privi-"lege of all free People, who are authorized by the "Laws of God and Nature, to chuſe their own "Governors*".

This, ſays the Chief Juſtice, is to poſſeſs the People, that they may, at their Will and Pleaſure, when they take a Fancy to it, diſſeiſe the Queen, and ſet up what Government they pleaſe. Now, it is moſt plain, that a Contract was made between Mr. *Tutchin* and Mr. *How*, for Mr. *Tutchin* to write and frame, and Mr. *How* to print theſe Papers: And no body can imagine, that Mr. *How*, the Printer, would give him Money for the written Copy, unleſs it was to be printed: Beſides, Mr. *Tutchin* afterwards owned theſe two, and divers others; ordered him to bind them up in a Volume, and wrote a Preface to them, and ſet his Name to it: *So that here is full Proof that theſe were compoſed by Mr.* Tutchin, *in order to be printed; and they were printed afterwards, and he received Money for them.*

The Chief Juſtice obſerved further, That the other four *Obſervators* in the Information, were of the ſame Nature as theſe two; and then goes on, and ſays, You have heard the Evidence, and are to conſider, whether you are ſatisfied Mr. *Tutchin* is guilty of writing, compoſing, or publiſhing theſe Libels: They ſay, they are innocent Papers, and no Libels; and they ſay, nothing is a Libel, but what reflects upon ſome particular Perſon: But this is a very ſtrange Doctrine, to ſay, it is not a Libel reflecting on the Government, endeavouring to poſſeſs the People, that the Government is mal-adminiſtered, by corrupt Perſons, that are employed in ſuch and ſuch Stations, either in the Navy or Army.

To ſay, that corrupt Officers are appointed to adminiſter Affairs, is certainly a Reflection on the Government. If Men ſhould not be called to Account, for poſſeſſing the People with an ill Opinion of the Government, no Government can ſubſiſt; for it is very neceſſary for every Government, that the People ſhould have a good Opinion of it: And nothing can be worſe to any Government, than to endeavour to procure Animoſities, as to the Management of it: This has been always looked upon as a Crime; and no Government can be ſafe without it be puniſhed.

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Now, you are to conſider, whether theſe Paſſages in theſe *Obſervators*, do not tend to beget an ill Opinion of the Adminiſtration of the Government? To tell us, That thoſe that are employed, know nothing of the Matter, and thoſe that do know, are not employed: Men are not adapted to Offices, but Offices to Men, out of a particular Regard to their Intereſt, and not to their Fitneſs for the Places: This is the Purport of theſe Papers.

Now they, on his Behalf, inſiſt on theſe Things: Firſt, They ſay, You do not prove any Crime againſt him in *London*: Indeed, it is not proved, that he *wrote* them in *London*; but the Queſtion is, if there be not Proof of the compoſing and *Publication in* London? There is Proof that they were ſent to Mr. *How* in Order to print them in *London*. Now whether he received them in *London*, or no, (but ſuppoſe out of *London*) yet, if he received them to print them in *London*, that is a Publication in *London*. If they ſcruple that Matter, it ſhall be ſpecially found. If they were delivered to be printed in *London*, I muſt leave it to your Conſideration, whether you will not find him guilty of publiſhing them in *London*. They were ſome of them printed in *Fenchurch-Street*, and others in *Gracechurch-Street*: He knew where the Printer lived, the Contract was made, and he was paid for them. Gentlemen, I muſt leave it to you: If you are ſatisfied that he is guilty of compoſing and publiſhing theſe Papers at *London*, you are to find him guilty.

Then the Jury withdrew; and after a quarter of an Hour's Receſs, brought the Defendant in GUILTY of compoſing and publiſhing, but not of writing the Libel. *Tutchin convicted.*

Mr. *Tutchin* appearing in Court on the 13th of *November*, Mr. Attorney ſaid, Mr. *Tutchin* had given him Notice, that he would bring an Appeal in Arreſt of Judgment; and, indeed, he had given publick Notice of it, for it was put into the News-Papers.

Mr. *Montague*, the Defendant's Counſel, then moved in Arreſt of Judgment: For that the *Venire facias* was awarded the laſt *Trinity*-Term, returnable, *Die Lunæ prox' poſt tres ſeptimanas ſancti Michaelis*; which was *October* the 23d, the firſt Day of *Michaelmas*-Term; and the *Diſtringas*, which ſhould have iſſued the ſame Day, was ſued out the 24th of *October*, being the Day after the Return of the *Venire*; ſo that there was a Diſcontinuance of the Proceſs. *His Counſel move in Arreſt of Judgment, and aſſign a fatal Error in the Pleadings.*

The Queen's Counſel ſaid, They believed this had been done on Purpoſe, and admitted it was an Error; but held, it was amendable; about which the Court were divided. Mr. Juſtice *Gould* and Mr. Juſtice *Powis* were of Opinion, it was amendable; but the Chief Juſtice, and Mr. Juſtice *Powel*, held, it could not be amended: Whereupon Mr. Attorney ſaid, The Court being divided, he knew no Rule to ſtop Judgment: But Mr. Juſtice *Powis* afterwards coming over to the Chief Juſtice *which the Court held could not be amended.* *The Trial quaſhed.*

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Tutchin *escapes.*

tice and Mr. Juſtice *Powel*, it was agreed there muſt be a new Trial, and the former Trial was quaſhed: But I do not find the Suit was ever revived, and *Tutchin* continued to write his *Obſervators*, with uncommon Impudence, ſeveral Years afterwards.

Remarks on Tutchin's *Trial.*

Never did ſeditious Libeller meet with better Fortune, or rather better Supporters, than Mr. *Tutchin*, who had arraigned the Adminiſtration of the Government, for Months and Years together, in a Daily Paper, and yet never was puniſhed for it: Nay, he did not only tell the People, that there were Miſmanagements, but that they had a Right to call their Governors to Account for them; to diſplace the Miniſters, and even dethrone their Prince, and transfer their Allegiance to whom they pleaſed, when they did not approve the Adminiſtration: For this he had been reproved by the Parliament, and by the Secretaries of State, and admoniſhed to have a Care how he publiſhed ſuch treaſonable Papers: But ſtill he went on, and it was near two Years before he was proſecuted at all for them, and then only charged with a Miſdemeanor, though he was certainly guilty of Treaſon, if conſpiring the Deſtruction of his Sovereign, and inciting the People to depoſe Her, and ſet up another if ſhe did not alter her Miniſtry, was Treaſon. This was the perpetual Driſt of his Papers; which he durſt not have publiſhed, if he had not been, in a Manner, aſſured of Indemnity, from thoſe who put him upon writing them, furniſhed him with Materials, and, probably, were the real Authors of many of them.

For it was about this Time, that the Lords *Marlborough* and *Godolphin* thought fit to forſake their old Friends, and go over to the Whigs: And ſuch was their Influence at Court, that they procured moſt of thoſe that were well affected to the Church and the Monarchy, to be diſplaced, in the Fleet, the Army, and the Civil Government; and introduced ſcarce any in their Room, but thoſe that had ſhewed their Diſſaffection to the Conſtitution, both in Church and State; or thoſe who were ready to follow the Example their Leaders ſet them, and betray both: For which Conduct, I could never aſſign any other Cauſe, than the Ambition and Avarice of ſome Noble Peers.

The Whigs had expreſſed ſuch an Averſion to the Perſon, as well as the Succeſſion of Queen *Anne*, in the laſt Reign, that they were generally laid aſide when ſhe came to the Throne; and, I am confident, deſpaired of ever being imployed again, till they ſhould merit the Queen's Favour by their Submiſſion: But a certain Triumvirate of Lords, propoſing to engroſs the Adminiſtration to themſelves, during this Reign; and apprehending the Tories would never go their Lengths, to the Surprize of the Malcontents themſelves, offered to bring them into Play again, on Condition they would implicitly obey their Dictates; which was too advantageous an Offer not to be readily embraced. 1704. 3 Annæ.

Two great Difficulties however ſeemed to ſtand in their Way, and oppoſe their Views; (*viz*). The Queen's Affection for the Church, and the general Inclinations of the People to the preſent Adminiſtration: But both theſe Difficulties they found Means to ſurmount, or obviate: For the Lords above-mentioned, having the Queen's Ear entirely at this Time, and unſuſpected by her of any Deſigns in Favour of her Enemies, ſhe too eaſily reſigned herſelf to their Advice, conſented to diſplace her beſt Friends, and put thoſe that hated both Her and the Conſtitution, into the moſt conſiderable Poſts: And having proceeded thus far, procured the Parliament to be diſſolved, and another choſen by the Influence of the Treaſury, and the Officers and Magiſtrates they had brought in to ſerve their Deſigns, in every Part of the Kingdom: The Nobility alſo being at mortal Enmity with the laſt Houſe of Commons, did not a little promote the Choice of another Set of Men: And thus, in the Reign of a Queen, the beſt affected to the Church, of any Prince that ever ſat upon the Throne, were the Friends of the Eſtabliſhment oppreſſed, and their Enemies put in a Capacity of riding over their Heads. Towards which Change, *The Obſervator*, *Defoe*, and a numerous Tribe of Libellers, the Tools of the Faction, did not a little contribute; and their Maſters, in Gratitude for the Service they had done, ſkreened them from the Puniſhment they deſerved.

For it is amazing, when *The Obſervator* had plainly threatened, that the People would depoſe her Majeſty; and told her in Print, That they had a Right to do it, if ſhe did not change Hands, that he ſhould eſcape unpuniſhed. As to that Flaw in the Pleadings, of a Diſcontinuance of Proceſs, which brought him off at his Trial; I verily believe, as the Attorney-General ſaid in Court, That it was done by the Direction of ſome of his Great Friends on Purpoſe. However, this could not have ſaved him long; the Proſecution would have been revived, and he would infallibly have been puniſhed, had not his Friends ſoon after come into Play, the Attorney-General, and all his Proſecutors been diſplaced, and he ſecured by the Countenance and Protection of the Miniſters he ſerved.

The

1705. 4 Annæ. Green's Trial.

The Trial of Captain THOMAS GREEN, and his Crew, for *Piracy*, before the Court of *Admiralty*, in *Scotland*, on the 5th of *March*, 1705. 4 *Annæ*.

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The Indictment.

THERE were two Indictments preferred against them, the one against the Captain, by the Name of Captain *Thomas Green*, Commander of the Ship called *The Worceſter*, Captain *John Madder* chief Mate of the ſaid Ship, *John Reynolds* ſecond Mate, *Thomas Linſteed* Aſſiſtant to the Super-cargoe, *James Burn*, Boatſwain, *James Sympſon* Gunner, *Andrew Robertſon* Gunner's Mate, and *John Brucklie* and *George Kitchen* Seamen: The other Indictment was preferred againſt *Henry Keigle* Carpenter of the ſaid Ship, and *Samuel Urline* his Mate, *George Haines* Steward, *Daniel Stringman* Cook, *Samuel Wilcocks* Surgeon's Mate, and *George Glen*, *Henry Barnes*, *Alexander Taylor*, and *John Bannantine*, Seamen, (Foremaſt-Men) of the ſaid Ship *The Worceſter*, then lying in the Harbour of *Bruntiſland*.

Theſe Indictments were of the ſame Tenour; ſetting forth, That notwithſtanding, by the Law of God, and of this, and all other well-governed Nations, the Crimes of Piracy, Robbery, and Murder, were prohibited under the higheſt Pains; the ſame Captain *Green* and his Crew, had, nevertheleſs, dared to commit the ſame, in the following Manner, (*viz*). That having ſailed in the ſaid Ship from *England* to the *Eaſt-Indies*, under Pretence of Merchandizing; they did, in the Month of *February*, *March*, *April*, or *May*, in the Year 1703, encounter or meet with a Ship upon the Coaſt of *Malabar*, in the *Eaſt-Indies*, the ſaid Ship carrying a red Flag, and having *Engliſh* or *Scotchmen* on Board; and after having had ſome Diſcourſe with them, did, without any lawful Warrant, or juſt Cauſe, attack the ſaid Ship, firſt by their Sloop, which they had manned and furniſhed with Guns and other Arms, for that Purpoſe; and after they had engaged her ſome Time by their Sloop, the Ship *The Worceſter* boarded her; and having overcome the ſaid Ship, ſeized her Men, killed them, and threw them over-Board; and having plundered her afterwards, made Sale of the Ship and Goods: For which the Priſoners ought to be puniſhed with the Pains of Death, and Confiſcation of Moveables.

The Evidence of Antonio Ferdinando.

The Witneſſes for the Crown being called, *Antonio Ferdinando*, a Black, the Cook's Mate of the Ship *The Worceſter*, was ſworn, and teſtified, That he entered himſelf at *Callicoiloan*, on the Coaſt of *Malabar*, in the Service of Mr. *Loveday*, the Purſer of the Ship *The Worceſter*, about two Years and a half ſince, and was put on Board the Sloop belonging to *The Worceſter*: That about a Month after he came on Board, the ſaid Sloop and the Ship *The Worceſter* attacked another Ship, ſailed by white Men, carrying *Engliſh* Colours, and the Men on Board her ſpeaking *Engliſh*: That before the Fight, Captain *Green*, Mr. *Loveday*, and *Coge Commodo* an *Indian* Merchant, went on Board the ſaid Stranger's Ship, and ſtaid there the Space of a Glaſs, and then returned on Board *The Worceſter*: Immediately after which, the ſaid Sloop was manned with about twenty Men; among whom were Captain *Green*, Mr. *Loveday*, the Super-cargoe, the Gunner, and the Carpenter, and they took with them four great Guns and two Patereroes on Board the ſaid Sloop: That afterwards, Captain *Madder*, Chief Mate of *The Worceſter*, came on Board the Sloop, and they engaged the Stranger Ship in a running Fight two Days, and the third Day they boarded her with the Sloop, killed the Men in her with their Hatchets, and threw them over-Board: That during the Engagement between the Sloop and the ſaid Stranger Ship, the Ship *The Worceſter* came up, and fired at the Stranger Ship, but did not board her: That there were ten or twelve Men on Board the Ship that was taken, and but few Goods; and what Goods were found in her were carried on Board *The Worceſter*: That he (the Witneſs) was wounded in the Arm in the Fight, (*he ſhewed the Scar in Court*); and the Captain threatened to kill him, if ever he ſpoke of the Engagement, either to white or black Men: Adding, that the upper Coat he wore at the Trial, was taken on Board the ſaid Stranger Ship, and the ſaid Ship was carried into *Callicoiloan*, and ſold to *Coge Commodo*, who bought her for his Maſter, one of the *Malabar* Kings; and he thought the ſaid Ship might carry about twenty Guns.

That eight of the Priſoners at the Bar; *viz. Haines*, *Bannantine*, *Bruckley*, *Wilcocks*, *Burn*, *Robinſon*, *Glen*, and *Taylor*, were on Board *The Worceſter* during the Engagement, and Captain *Green*, *Madder*, *Simpſon*, *Keigle*, *Kitchen*, *Linſteed*, and the Witneſs, were on Board the Sloop; and he thought *Reynolds* was then on Shore at *Callicoiloan*, the Engagement being between *Tillicherry* and *Callecut*. This Witneſs declared he was born of Chriſtian Parents, and was a Chriſtian himſelf.

May the Surgeon's Evidence.

Charles May, Surgeon of the ſaid Ship *The Worceſter*, teſtified, That they ſailed from *England*, and arrived on the Coaſt of *Malabar* in the *Eaſt-Indies*, in *January*, 1703, having thirty-five or thirty-ſix Seamen on Board: And that he was ſet on Shore at the Ibeck (or Port) of *Callicoiloan*; from whence he went up to that Town, being ſome Miles diſtant from the Port: That about a Fortnight after he had been at *Callicoiloan*, he heard firing of Guns as at Sea: That meeting the ſame Day with *Coge Commodo* the Ship's Merchant, and *Franciſco de Olivera*, the Interpreter of *The Worceſter*, who were juſt come from the Ibeck (or Port); and asking, What that ſhooting meant? They anſwered, *The Worceſter* had an Engagement with another Ship: And that the Witneſs walking on the Shore next Morning, ſaw *The Worceſter* riding in her Birth, (or Station) where ſhe uſed to lie, and another Veſſel riding

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at her Stern, about four Miles diſtant from the Shore.

That ſeeing the Long-Boat of *The Worceſter* coming on Shore the ſame Morning, he aſked the Men the Reaſon of it, (for it was not uſual for Ship's Boats to come over the Bar, becauſe of the Surf, or great ſwelling Sea). They anſwered, Captain *Madder* ſent them for a *Pinguetta* (or Country-Boat) of freſh Water; for they had ſtaved, and ſpilt all their Water on Board, and there had been Buſking all Night: By which he underſtood, they had been hard at Work; ſuppoſing the Ship had been driven from her Anchor, and they had been getting it up again: They alſo told him, they had brought a Ship in with them; but ſaid nothing of a Fight. That the Witneſs going on Board for Medicines for the ſick Men he had on Shore, four or five Days afterwards, and ſeeing the Deck encumbered with Cheſts and Goods, he demanded of Captain *Madder*, What they had got there? Whereupon *Madder* curſed him, and bid him mind his Plaiſter-Box: That he afterwards underſtood, that the Ship which rode at the Stern of *The Worceſter*, was ſold to *Coge Commodo*, the Ship's Merchant at *Keilon* River, and Part of *The Worceſter*'s Crew carried her thither, and left her here; and the Interpreter told him (the Witneſs) That *Coge Commodo* complained, he had bought the Ship too dear: That ſome Time after, *Antonio Ferdinando*, the laſt Witneſs, was ſent on Shore to the Deponent, being wounded in the Arm; and he found it to be a Fracture, and ſuppoſed it to be a Gun-ſhot: That *Antonio* told him, he had been ſet on Shore at *Cochin*, and a *Dutch* Surgeon ſet his Arm there: That he (the Witneſs) afterwards coming on Board *The Worceſter*, found two more of the Men wounded; and demanding, How they came by their Wounds? *Madder* bid him aſk no Queſtions, and would not ſuffer the Men to anſwer any; and ordered this Witneſs to go on Shore again immediately, and he never heard any of the Ship's Crew mention the taking of a Ship afterwards: That *The Worceſter* ſpringing a Leak on the Coaſt of *Malabar*, they carried her to *Bengal* to refit, though it was five or ſix Weeks Sail diſtant from thence; and they might have had her refitted at ſeveral Ports on the Coaſt of *Malabar*: That during theſe Tranſactions, Mr. *Linſteed* and Mr. *Hammond* were left on Shore at *Keilon*, about ſeven Leagues from *Callicoiloan*, to take Care of ſome of their Cargoe.

Antonio Franciſco's *Evidence.*

Antonio Franciſco, Captain *Green*'s Black, being ſworn, teſtified, That his Miſtreſs he ſerved in *Pegu* cauſed him to be baptized, and he profeſſed himſelf a Chriſtian: That he wat taken into the Captain's Service at *Delagoa* in the *Eaſt-Indies*; and while they were upon the Coaſt of *Malabar*, he was chained down to the Deck two Months, in the Forecaſtle of the ſaid Ship, from whence ſix Guns were fired; but he heard no firing from any other Ship: That two Days after, he ſaw ſome Goods brought on Board *The Worceſter*; and asking *Ferdinando*, the other Black, about them, he ſaid, they were brought from on Board a Ship they had taken; and there were ten Men killed on Board the ſaid Ship that was taken; and ſhewed this Witneſs a Wound he received while he was in the Engagement on Board the Sloop; but charged the Witneſs not to mention the Fight to any Man: But that he (the Witneſs) did not ſee any other Men wounded beſides *Ferdinando*.

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Wilkie's *Evidence.*

James Wilkie a Taylor in *Edinburgh*, teſtified, That going to *Bruntiſland*, after Captain *Green*'s Ship arrived there, to enquire after his Brother *Andrew Wilkie*, who went with Captain *Drummond* to the *Eaſt-Indies*, he fell into the Company of *George Haines*, one of the Priſoners, at Mrs. *Seaton*'s Houſe; whereupon he (the Witneſs) aſked him, If he had not ſeen Captain *Drummond* in that Voyage? And *Haines* anſwered him in a Paſſion, Damn you, what have I to do with Captain *Drummond?* But after they had drank together ſome Time, asking *Haines* again, Whether he had not heard of a *Scotch* Ship in his Paſſage to the *Indies? Haines* replied, That being upon the Coaſt of *Malabar*, where they took in the Black that was then with him, a *Dutch* Ship informed them, that one Captain *Drummond*, who commanded a *Scotch* Ship, was turned Pirate; whereupon they manned their Sloop, and made themſelves ready in caſe they ſhould be attacked; but they did not ſee the ſaid *Scotch* Ship: That *Haines* alſo acknowledged, when the Ship was ſeized in *Leith* Road, he had that in his Cuſtody, which he would not have had fallen into the Seizer's Hands for twice the Value of the Ship; and that he threw it over-board, ſaying, Let them ſeek it now at the Bottom of the Sea: He added, there was ſtill ſomething in the Ship that would never be found by the Seizers, unleſs they pulled her Board from Board; and he knew very well where it lay: That the Witneſs deſiring Mrs. *Seaton* to enquire further into this Matter, ſhe ſaid, Her Daughter was the propereſt Perſon, for ſhe was *Haines*'s Sweetheart: And that her Daughter told them next Morning, *Haines* ſaid, he found they had a Deſign to pump him; but they ſhould never be the wiſer for him.

Mackenzie's *Evidence.*

Kenneth Mackenzie, being ſworn, teſtified, That he was in Company with *Wilkie* the former Witneſs, and *Haines*, at Mrs. *Seaton*'s in *Bruntiſland*; and heard *Wilkie* ask *Haines* about Captain *Drummond*'s Ship; at which *Haines* fell in a Paſſion: And that the ſame Night he heard Mrs. *Wilkie* intreat the Widow *Seaton* to get an Account from ſome of Captain *Green*'s Crew of her Son, who went Doctor on Board Captain *Drummond*'s Ship: And the next Morning, he heard *Ann Seaton*, her Daughter, ſay, That *Haines* told her, they had a Mind to pump him; but what he had ſaid, he had ſaid: And that ſhe aſking him, why he fell in a Paſſion on the mentioning Captain *Drummond?* He anſwered, He knew more of Captain *Drummond* than he would tell.

Wood's *Evidence.*

William Wood teſtified, That being in Company with one *Henderſon*, and the Priſoner *Haines*, at *Bruntiſland*, and *Haines* appearing melancholly, *Henderſon* demanded the Reaſon of it; and *Haines* anſwered, *It is a Wonder, ſince we did not ſink at Sea, that God does not make the Ground open and ſwallow us up, now we are come on Shore, for the Wickedneſs that has been committed during the laſt Voyage, on Board that old Bitch* Beſs, (pointing to the Ship *Worceſter*); and this Witneſs telling *Haines*, that Captain *Madder*'s Uncle was boiled in Oil, for attempt-

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attempting to burn the *Dutch* Ships at *Amſterdam*; *Haines* replied, If what *Madder* had done the laſt Voyage were as well known, he deſerved as much as his Uncle had met with.

This Teſtimony of Wood *was confirmed by* Henderſon, *who was preſent during that Converſation.*

Seaton's Evidence.

Anne Seaton, the Daughter, alſo teſtified, That ſhe heard *Haines* uſe thoſe Expreſſions, *It is a Wonder, ſince we did not ſink at Sea, that God does not make the Ground open and ſwallow us up*, &c. And that *Haines* ſaid, he knew more of Captain *Drummond*, than he would reveal at that Time: That he told her alſo, he had that on Board, when the Ship was ſeiz'd in *Leith* Road, that he would not have had fallen into the Seizers' Hands for twice the Value of the Ship; and that he threw it over-board.

Brown's Evidence.

John Brown, Maſter of a Ship, teſtified, That he went on Board the Ship *Worceſter* by an Order of Council, and found the Hatches faſt ſealed; that he opened them, and ſaw the Goods on the Larboard Side were much damaged, and few of the packed Goods were marked or numbered, as was cuſtomary. *Archibald Hodge*, another Maſter of a Ship, who ſaw the Goods unloaded, teſtified the ſame.

Glen's Evidence.

John Glen, Goldſmith, teſtified, That being on Board *The Worceſter*, after ſhe came into *Leith* Road, Captain *Madder* took a Seal out of his Pocket, and asked him What he thought of the *Scots African* and *India* Companies Arms? and giving the Witneſs the Seal into his Hands, he found in it the St. *Andrew's* Croſs, a Camel, with a Caſtle on its Back, and a Ship, with the riſing Sun above the Helmet, and two wild Men as Supporters: That the Seal was about the Bigneſs of an *Engliſh* half-Crown, and the Handle of *Lignum Vitæ*; but that the Seal produced in Court was not the ſame which Captain *Madder* ſhewed him.

Papers found on Board.

The following Extracts of Books and Papers, found on Board the Ship Worceſter, *were alſo made uſe of as Evidence*, viz.

The Inſtructions or Orders given by the Freighters of *The Worceſter*, to Mr. *Robert Callant*, Supercargo, in which were theſe Words: We would have you write to us by all Opportunities, eſpecially from *Sinde*, by any Ships bound from thence to *Perſia*; and for the greater Secrecy, (eſpecially of the Letter to be ſent to *Mauritius* for us), here-under is an Alphabet for you to write to us by: Your Subſcription muſt be in common *Engliſh*, directing all ſuch Letters to Captain *Thomas Bowrey*, in *Well-cloſe-Square, London.*

(Note, *At this Place the whole Alphabet is inſerted diſtinctly, and above each Letter a different Character is ſet down, to be uſed in Place of the Letters of the Alphabet).*

When your Cargo for *England* is provided, or near compleated, then we would have you ſell the Sloop for what you can get, and inveſt the Produce in Goods for *England.*

And lower, among the ſame Orders, in another Article, are theſe Words.

You muſt engage the Maſter of the Sloop not to let any Letter from himſelf, or any other, be ſent to *England*, but only our Letter, in which you may inſert the Names of any dead: And for the Care and Secrecy of thoſe who go in the Sloop, in caſe no Letter or News comes to *England*, but our Letter concerning our Buſineſs, then we will, on the Return of the Ship, give the Maſter and Crew one Month's Pay *gratis*, and they ſhall alſo have their Shares of the Benefit promiſed the Ship's Company for the Whale Fiſhing.

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By a Letter, dated London, *the 3d of* February, 170$\frac{1}{2}$, *from Captain* T. B-----y, *to Mr.* Callant, *the ſaid Captain adviſes him in theſe Words:*

For the greater Security of our Affairs, when you write by the Alphabet in your Inſtructions, I would have you carry the laſt Letter of each Word, to be in the Room of the firſt Letter to the next Word; as for Example:

Capt. *Tho. Bowrey*, Sir, we are all well.

Captai nthoma sbowre, yſi, rwe ear eal lwell.

Make no Title (as is uſual) to begin your Letter, nor no Date, nor Compliment, nor Name at laſt; but let all be comprehended in the Lines of your Letter, ſo as to make no Diſtinction; and make but one Paragraph of all your Letter, and if any Men be dead, ſet their Names immediately after your own Name, ſubſcribed to the Letter, all in Characters before directed; and pleaſe to keep this as Directions therein.

By another Letter from the ſaid Captain T. B-----y *to the ſaid Mr.* Callant, *dated* London, *the 16th of* February, 170$\frac{1}{2}$, *he adds, concerning the aforeſaid Cypher, in theſe Words:*

On further Conſideration, I think I have commited an Error in my Letter to you Yeſterday, it being wrote in it as, (*viz.*)

Captai nthoma sbowre yſi rwe ear eal lwell.

That is, Captain *Thomas Bowrey*, Sir, we are all well.

Now, I doubt the naming any Name in the Beginning, or making any Compliment there, may be a Means to find the Key of the Alphabet; therefore pray ſtrike out of the Letter I ſent you yeſterday, as above done, and begin directly with your Buſineſs, following the Directions given you. And whereas you are ordered to direct your ſaid Letter to me, I would not have you mention my Name in the Superſcription, but direct the ſaid Letter to Mr. *Nicholas Pope*, Scrivener, in *Nicholas-Lane, London*, to pay five Pounds to the Bearer, as in your Inſtructions.

Part of the Priſoners' Defence.

The Priſoners' Counſel made ſome Objections to the Form of the Indictment, which were over-ruled by the Court; they alſo made ſeveral Objections to the Evidence; as, that the two Blacks, that were produced as Evidence againſt them, were not Chriſtians, and that they were neither of them worth ten Pounds *Scots*. They alſo inſiſted, that *Anne Seaton*, being a Woman, was not a legal Witneſs.

Replied to.

To which the Counſel for the Queen anſwered, That though, by the Laws of *Scotland*, one who was not worth ten Pounds could not be a Witneſs in ſome Caſes, by the Laws of that Kingdom, yet in Crimes ſo atrocious and occult, and committed againſt the Law of Nations, this Rule did not hold: And, as to the Blacks not being Chriſtians, this was a Miſtake, for they profeſſed themſelves ſuch; and they inſiſted

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insisted also, that a Woman was a good Witness in Crimes of this Nature.

Sir *David Dalrymple*, the Queen's Solicitor, after the Evidence was concluded, made his Observations upon it, and afterwards the Prisoners' Counsel did the same; but the *Scots* have thought fit to suppress the Speeches made by the Prisoners' Counsel, and given us only Sir *David Dalrymple*'s: In which Sir *David*, having shewn the Nature of the Crime, and the aggravating Circumstances this Case was attended with, observed, That the first Discovery of this Matter came from the Prisoners themselves, from Words dropped in Passion, or expressed under the Weight of Guilt, concerning the Villanies that had been perpetrated in this Voyage: That the Evidence of the Blacks was fortified by the Journals of the Ship *Worcester*, which gave an Account of the Sloops being furnished with Arms, in the Month of *February*, as the Indictment charged: That it appeared also, from the Journals, that *The Worcester* sprung a Leak upon the Coast of *Malabar*; and although they might have refitted her at *Goa* or *Surat* on that Coast, they chose rather to make a dangerous Voyage of seven or eight hundred Leagues, in a leaky Vessel, than refit her on the *Malabar* Coast, where they were apprehensive of a Discovery. That the Cypher which was given the Captain to write by to his Employers, and that extraordinary Secrecy enjoined (as appeared from the Papers found on Board), shewed, that from the Beginning some ill Design was intended; fair Trading required no such extraordinary Cautions.

Mr. Solicitor's Observations on the Evidence.

Another Inducement to believe the Ship *Worcester* was sent out upon an ill Design, was, that being of two hundred Tons Burthen, and manned by thirty six Men, her whole Cargo, outward bound, did not amount to the Value of a thousand Pounds; and the greatest Part of this Cargo consisted in Arms: That it seemed exceeding strange, a Voyage so hazardous and expensive, should be undertaken with so small a Stock, unless something else besides Trading was intended; concluding, upon the whole, that in so dark a Crime, committed in a Place so distant and solitary, a more convincing Proof could not be expected.

Minutes of the Observations made by the Prisoners' Counsel.

There are some short Notes added to this Trial, containing Minutes of what the Prisoners' Counsel insisted on; as, that the Witnesses against them did not agree in their Evidence; that the Blacks were evidently mistaken in the Times they had sworn to; and that it was highly improbable they should have acted the Part of Pirates, since they sent their Owners an Account of their Voyage from Time to Time, and were not afraid to be seen in any Port in *Europe*, and particularly in *Scotland*, the Nation they were supposed to have wronged: That Captain *Green* and his People were Men of fair Characters, and under no Necessity of turning Pirates; nor did they endeavour to fly or conceal themselves, as they would have done, if they had been conscious of any Guilt.

After the Counsel had concluded, the Jury were ordered to withdraw, and bring in their Verdict on the 16th of *March*, to which Day the Court adjourned; and on the Sixteenth of *March* the Jury brought in the following Verdict, (*viz.*)

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That they, by Plurality of Voices, (being fifteen in Number) find, that there is one clear Witness as to the Piracy, Robbery, and Murder; and that there are accumulative and concurring Presumptions proved for the Piracy and Robbery; but find that *John Reynolds*, second Mate of the Ship *Worcester*, was on Shore at the Time of the Action.

All but Reynolds convicted.

The Court adjourning afterwards to the 21st of *March*, then pronounced Sentence on the following Prisoners, (*viz.*) on Captain *Thomas Green*, *John Madder*, *James Simpson*, *Henry Keigle*, *George Haines*, *George Glen*, *Alexander Taylor*, *Andrew Robertson*, *George Kitchen*, *James Burn*, *John Bruckley*, *Samuel Wilcocks*, *John Bannantine*, and *Thomas Linsteed:*

Sentence passed.

That they should be taken to the Sands of Leith, *within the Flood-Mark, and there hanged till they were dead*, (the first Five on the 4th of *April*, the next Four on the 11th of *April*, and the remaining Five on the 18th of *April*); *and that all their moveable Goods and Geer, and particularly the Ship* Worcester, *should be forfeited to Her Majesty, saving to all Persons, claiming a Right to the said Cargo, their respective Claims.*

But *John Reynolds* was acquitted, and the Court recommended *Thomas Linsteed*, Assistant to the Supercargo, to the Queen's Mercy, he being on Shore at the Time the said Ship was taken.

Linsteed reprieved.

Captain *Green* and the rest of the Prisoners, 'tis said, were afterwards executed, in Pursuance of the Sentence, (except *Linsteed*): But I am not certain how many of them were executed.

The rest executed.

The *Scotch*, as a further Evidence of the Prisoners' Guilt, have given us the Confessions of some of them, under their Hands, after they were convicted, and particularly *Linsteed*'s, (the Assistant-Supercargo), whom they recommended to the Queen's Mercy.——He deposed on the 16th of *March*, before Sir *James Stuart*, the Queen's Advocate, that he was sent to *Callicoiloan*, with Mr. *Hammond*, to dispose of some Goods, in the Beginning of the Year 1703, and that they remained at the said Town of *Callicoiloan* about three Months, during which Time some Fishermen came thither, and reported that *The Worcester* had an Engagement with another Ship; and sending thereupon to know the Truth of it, were answered by the Officers of *The Worcester*, that they should mind their own Business, and not concern themselves about it. That *Coge Commodo*, the Ship's Merchant, afterwards told them, he had bought, of some Pirates, a Ship of an hundred Tons, and twelve or thirteen Guns, being of the Country Building; but they understood afterwards, from the *Dutch* and *Portuguese*, that the Ship *Coge Commodo* had bought, was brought into *Keilon*, in the Night-time, by some of *The Worcester*'s Crew: And that when they went on Board again, their Men would give them no Account of the Matter.

Some Confessions by the Prisoners after Conviction.

Linsteed's Confession.

George Haines also confessed, on the 27th of *March*, before Mr. *James Graham*, Judge of the Admiralty, That, when *The Worcester* lay in the *Downs* outward-bound, he received several Letters, intimating, that it was reported

Haines's Confession.

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in *London* their Ship was going out upon ſome ill Deſign, and that thereupon he attempted to get on Shore, and leave her, but was prevented: That when they came upon the Coaſt of *Malabar*, ſome of their Crew talked of their turning Pirates; and, before they were a Month on that Coaſt, they endeavoured to take a Country Boat, but ſhe got away.

That having built and manned the Sloop, and put Guns on Board her, ſhe left the Ship about eight Days; and on her Return, *John Roberts* appearing melancholly, and he (*Haines*) asking the Reaſon of it, *Roberts* confeſſed he was acceſſary to the cutting off ſeveral Men's Heads at *Sacrifice Rock*, between *Tillicherry* and *Callicut*. That afterwards *The Worceſter* and the Sloop ſailed together, and took a Ship of about ſeventy Tons, ſquare-ſterned, and painted in the Quarters red and yellow, which was of *Indian* Building, but had about twelve or fourteen Men on Board, all white, and generally ſickly; and he heard afterwards they were *Britons*, but he knew not what became of them, being kept between Decks: He doubts they were murdered, becauſe they could not be put on Shore on that Coaſt, there being ſo many *Engliſh* and *Dutch* Factories ſtanding near each other.

The next Day after the Ship was taken, ſhe was carried by ſome of the Crew to *Callicoiloan*, and ſold to *Coge Commodo* for 1500 Roupees, (two Shillings and Threepence each): That ſome Bales of *China* Root and four Cheſts of Copper were taken out of her, and ſold afterwards to a *Bannian* Merchant at *Bengal*. That he underſtood *Coge Commodo* was a great Aſſiſter of Pirates, and bought Goods of *Kidd* and *Avery* when they were upon that Coaſt. That the Deponent kept a Journal during the Voyage, which contained the Subſtance of this Confeſſion; but when *The Worceſter* was ſeized in *Leith* Road, he threw it over-board, leſt it ſhould fall into the Seizers' Hands.——That he ſhould have made this Confeſſion ſooner, but was always aſſured by Captain *Green*'s Agents, That the Defence made for the Crew would certainly bring them off; and if they all agreed in one Story, and kept themſelves reſerved, there would be no Fear; for nothing could be proved that could affect them; and *Wilcocks*, the Surgeon's Mate, informed him that he ſaw a Letter from the Owners of *The Worceſter* in *London*, directed to Captain *Green*, which ſaid, *That although the Crew were condemned in* Scotland, *they had Pardons ready to ſend down for them.*

The next Day, *viz.* the 28th of *March*, 1705, the ſaid *George Haines* added to the above Confeſſion, That after the ſaid Ship was taken on the *Malabar* Coaſt, he ſaw the Men therein killed and murdered with Pole-Axes and Cutlaces, and their dead Bodies put into the ſaid Sloop, and afterwards thrown over-board: That he heard the Men that were taken ſpeak *Scotch* before they were killed; and *The Worceſter*'s Crew underſtood that it was Captain *Drummond*'s Ship, particularly he heard Captain *Madder*, *John Bruckley*, and *Edward Carry* ſay ſo; and, laſtly, that he would have declared the Ship they took belonged to Captain *Drummond* in his former Examination, but he was afraid it would have induced the Government to have dealt the more ſeverely with him.

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Bruckley, *the Cooper's Confeſſion.*

John Bruckley, Cooper of *The Worceſter*, confeſſed, on the 21ſt of *March*, 1705, before Mr. *Graham*, Judge Admiral, That ſome Time after they came upon the Coaſt of *Malabar*, both the Ship and Sloop gave Chaſe to a Country Boat, which eſcaped them by her Oars: That the Sloop being damaged by Worms, was refitted at *Callecut*, manned with ten Men, two Guns, and two Pattereroes, with ſmall Arms, and ordered to ſail towards *Tillicherry*; and ſix or eight Days afterwards the Sloop came back, chaſing another Ship; whereupon *The Worceſter* ſlipt her Anchors, and made out to Sea to meet them: That he ſaw the Sloop board the Stranger's Ship towards Night, and that Captain *Madder* then went off with the Longboat manned: That he ſaw the Men on Board the Prize were white Men, but knows not what became of them, becauſe he ſuppoſes they were put on Board the Sloop, which was ordered away next Morning: That the Prize was manned with ſome of *The Worceſter*'s Crew, and ſailed with *The Worceſter* to *Callicoiloan*, where they met with the Sloop again; and they all three lay at an Anchor there, the Prize riding at the Stern of *The Worceſter*, and was afterwards ſent into the River of *Callicoiloan*, and ſold to *Coge Commodo:* That *The Worceſter* and the Sloop alſo took another Ship, on which were both Whites and Blacks aboard; but knew not what became of them, the Sloop going off ſoon after the Engagement, and not returning in three or four Days: That this Deponent was afterwards in a *Mooriſh* King's Houſe, with about ſix of *The Worceſter*'s Crew, and ſuppoſed that King was *Coge Commodo*'s Maſter, who bargained for one of the Ships that were taken.

The ſaid *John Bruckley* alſo, on the 3d of *April*, 1705, came before Sir *Robert Forbes*, Judge of the Admiralty, and confirmed his former Confeſſion; adding, That the Men on Board the Ship taken near *Callicoiloan* were twelve or fourteen in Number, moſt of them white Men, and he heard them ſpeak *Engliſh:* That they were put into the Sloop and killed there, and the Goods belonging to the ſaid Ship were brought on Board *The Worceſter*, conſiſting of *China* Root and four Cheſts of Copper; and the Copper was ſold at *Bengal*, to a *Bannian* Merchant; and that he heard *Callant* the Supercargo, Captain *Madder*, *John Roberts*, and *Edward Carry* ſay, that the Ship they took was Captain *Drummond*'s Ship, and belonged to the *Scotch African* Company.—And, laſtly, that when *The Worceſter* ſailed from the *Downs*, he did not know whither they were bound; but frequently heard it ſaid, they were going upon a Diſcovery.

Remarks on Green's Trial.

I doubt we muſt give up our Countrymen, and acknowledge them guilty of this barbarous Fact; the Evidence ſeems to be too ſtrong to be reſiſted. Theſe are ſome of the Fruits of ſuffering Merchants to combine, and form themſelves into excluſive Companies, who ſeldom ſtick at any Villainy to monopolize a Trade to themſelves: Never was a Nation ſo cruelly and unjuſtly dealt with, as the *Scots* have been by our *Eaſt-India* Company.

It was by their Influence, their Bribery, and

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other deteſted Arts, that the *Scots* were driven from their Settlement on the *Iſthmus of Darien*, to the unſpeakable Damage of *Great Britain* in general, as well as of the *Scots* in particular; for had the *Scots* been enabled or permitted to maintain their Colony of *New Edinburgh* till the Beginning of Queen *Anne*'s Reign, the Treaſures of the *Spaniſh Weſt-Indies* could never have been ſo effectually made uſe of by the Kings of *France* and *Spain*, to ſupport that War againſt the Confederates. We ſhould either have come in for a Share of thoſe Treaſures, or at leaſt have prevented their being brought to *Europe*, and employed againſt us. We ſuffered ſufficiently for countenancing and aſſiſting our *Eaſt-India* Company to drive the *Scots* from thence; and this piratical Enterprize was but a Continuance of the ſame Injuſtice and Oppreſſion, and was entered upon with the like View of expelling the *Scots* from the *Eaſt-India* Trade, by Force or Fraud.

The *Eaſt-India* Company, by Virtue of the Acts of Parliament, paſſed for their Eſtabliſhment after the Revolution, looked upon themſelves, poſſibly, to be authorized to exclude all other Nations from that Traffick, as well as their Fellow-Subjects; or what had they to do to fall upon the *Scots* in this Manner, who were then as independent of *England* as any other People? But this was a Leſſon they had learned from the *Portugueſe* and *Dutch*.

The *Portugueſe*, for many Years after they found out the Way to the *Eaſt-Indies* by the *Cape of Good Hope*, claimed theſe Seas as their own, and made no Scruple of ſeizing or ſinking *Dutch* and *Engliſh* Ships, or thoſe of any other Nation, that preſumed to trade with the People of *China* or *India* without their Leave; which gave the *Engliſh* and *Dutch* a fair Occaſion of aſſerting their Right of navigating thoſe Seas, and of trafficking and correſponding with the *Indian* Princes; and this at Length proved the Ruin of the *Portugueſe* in that Part of the World; the *Engliſh* and *Dutch* driving them from their principal Settlements, and planting themſelves in their Room. The *Dutch* afterwards treacherouſly and cruelly expelled the *Engliſh* from the Spice Iſlands, their moſt valuable Acquiſitions in *India*, and then ſet up the ſame Pretence the *Portugueſe* had done, that no Nation had a Right to intermeddle in the Spice Trade but themſelves; which we, their good-natured Bubbles, have permitted them to monopolize ever ſince; and though they will not ſuffer us to trade with any Country where the fine Spices grow at this Day, yet have they wheedled us into their Meaſures ſo far, that we are become their Bullies and Tools, to exclude the Emperor and all other Nations from a Share in that leſs profitable Trade which they are pleaſed to ſuffer us to carry on ſtill in *India*. I muſt confeſs, it is paſt my Comprehenſion, to underſtand what Right we or the *Dutch* have to exclude any *European* Nation from trading with the Princes and People of *India*, and to give Orders to ſink the Ships and murder the Men that frequent thoſe Seas without their Permiſſion; though I make no manner of Queſtion, that it was upon this ſuppoſed Right the *Eaſt-India* Company had, of excluding all other Nations from that Trade, that they fitted out *The Worceſter* to deſtroy Captain *Drummond*, who went out in the Service of the *Scots Eaſt-India* Company.

1705. 4 Annæ.

But here we find how dangerous it is to be the Inſtruments to execute ſuch inhuman Orders: Thoſe who employed theſe Wretches to perpetrate this Villany, pretended they would defend them, or at leaſt procure their Pardon if they were convicted; but I don't find they ever made any Application to the Throne in their Behalf: They were aſhamed of the Action, probably, and left their miſerable Agents to ſuffer for their Credulity. If there be no Truſt in Princes, in ſuch Caſes, much leſs can a Man confide in raſcally Companies.

It is impoſſible not to reflect on the Juſtice of Providence alſo in this Caſe, which brought theſe Villains, a great deal out of their Way, to the only Place in the World where their Crimes would have been enquired into, and puniſhed as they deſerved: No Nation in *Europe*, but the *Scots*, had been wronged by them, and no other People, therefore, could have had that Reaſon to ſee Juſtice executed upon them.

1706. 5 Annæ. Fielding's *Trial.*

The Trial of ROBERT FIELDING, Eſq; for *Bigamy*, at the *Old-Baily*, *London*, on the 4th of *December*, 1706. 5 *Annæ*.

1706. 5 Annæ.

The Indictment.

THE Indictment charged, That the ſaid *Robert Fielding*, late of the Pariſh of *St. James*'s, *Weſtminſter*, in the County of *Middleſex*, did, on the 9th of *November*, 4th of Q. *Anne*, at the Pariſh aforeſaid, take to Wife *Mary Wadſworth*, Spinſter; and that afterwards, on the 25th of the ſame Month of *November*, he did, at the Pariſh of *St. Martin's in the Fields*, in the ſaid County, feloniouſly take to Wife the Moſt Noble *Barbara* Dutcheſs of *Cleveland*, his ſaid former Wife, *Mary*, being then alive; againſt the Queen's Peace, and the Form of the Statute in that Caſe made and provided.

The Evidence.

It appeared, by the Evidence, that Mrs. *Deleau*, a beautiful young Widow, was left worth ſixty thouſand Pounds, by her late Husband Mr. *Deleau*; and that in *Auguſt*, 1705, Mr. *Fielding*, the Priſoner, applied himſelf to one Mrs. *Streights*, and conſulted her how he might procure Acceſs to that Lady. Mrs. *Streights* informed him, ſhe had little Knowledge of Mrs. *Deleau* herſelf, but that there was one Mrs. *Villars*, her Acquaintance, who uſed to cut the Lady's Hair, that might be ſerviceable to him in that Affair; and thereupon Mrs. *Streights* was authorized by Mr. *Fielding* to offer Mrs. *Villars*

1708. 7 Annæ. Stirling's *Trial.*

The Indictment.

1706. 5 Annæ.

lars 500 *l.* if ſhe would uſe her Endeavours to promote a Match between Mr. *Fielding* and Mrs. *Deleau*. Mrs. *Villars*, it ſeems, undertook to ſerve the Major-General (*Fielding*); but finding he had little or no Knowledge of Mrs. *Deleau*, and that his Project was altogether romantick, ſhe introduced him to Mrs. *Mary Wadſworth*, an Acquaintance of hers, who had agreed with Mrs. *Villars* to perſonate Mrs. *Deleau*; and Mr. *Fielding* was married to Mrs. *Mary Wadſworth*, at his own Lodgings, by a Popiſh Prieſt, on the 9th of *November*, 1705; the Prieſt performing the Ceremony in *Latin*; only when he came to the contracting Part, Mrs. *Wadſworth* inſiſted, that this ſhould be in *Engliſh*, and the Prieſt accordingly demanded of Mr. *Fielding*, *If he would have this Gentlewoman to be his wedded Wife?* He anſwered, *Yes, with all my Heart*; and then asking Mrs. *Wadſworth*, *If ſhe would have this Gentleman for her Huſband?* She anſwered, *Yes*; and the Ceremony being concluded, they went to Bed together, and lay till Morning; and the Witneſſes ſaw them in Bed together ſeveral Times afterwards; nor did Mr. *Fielding* diſcover he had been impoſed upon till the *May* following, and yet did he in the Interim (though he believed himſelf married to that great Fortune Mrs. *Deleau*), marry the Dutcheſs of *Cleveland*, *viz.* on the 25th of the ſame Month of *November*, 1735; and lay ſometimes with the Dutcheſs, and ſometimes with Mrs. *Wadſworth*, at his own Lodgings; for Mrs. *Wadſworth*, who perſonated Mrs. *Deleau*, pretended, ſhe durſt not declare her Marriage publickly, and admit him to go to her Houſe, for fear of diſobliging her Father, from whom ſhe had great Expectations.

Mr. *Fielding* imagining he had been ſure of Mrs. *Deleau*'s Fortune, uſed the Dutcheſs of *Cleveland* very barbarouſly, who complaining to ſome Noble Peers, her Sons, they diſcovered ſomething of his Marriage with Mrs. *Wadſworth*, and procured Mrs. *Villars*, and *Boucher*, Mr. *Fielding*'s Man, to appear as Witneſſes againſt him; and Mr. *Fielding* being convicted of Felony, in marrying two Wives, the Dutcheſs was releaſed from her Tyrant; and the Beau had the Mortification to find himſelf tricked by two Women of the Town, on whom the cowardly Poltroon took his Revenge by beating them, but could never break the Shackles he had taken ſo much Pains to put on.

1706. 5 Annæ.

Convicted of Felony.

From this Tranſaction we may obſerve,

Remarks on Fielding's Trial.

1. That a Marriage by a Popiſh Prieſt is good in our Law.

2. That the Marriage-Contract may be performed without naming Names, even where one of the Parties perſonates another: If the Contract be mutual, and the Man ſays no more than, *I take this Woman* (or this Lady) *to be my wedded Wife*; and the Woman ſays, *I take this Man* (or this Gentleman) *for my Huſband*, it is a legal Marriage; they are Man and Wife to all Intents and Purpoſes.

Nay, if the Conſent of the Parties is not demanded by a Prieſt, but by a Layman, and they mutually conſent to be Man and Wife in Words of preſent Tenſe, it is ſuch a Contract (where there is Proof of it) as can never be avoided: And if it be not a perfect Marriage, yet either Party may compel the other to ſolemnize ſuch a Marriage in a Church; and if either Party ſhould marry another after ſuch a Contract, he or ſhe may be compelled to return to their firſt Spouſe; their Iſſue by any other are illegitimate.

1708. 7 Annæ.

Stirling's *Trial.*

The Trial of JAMES STIRLING, Laird of *Keir*, ARCHIBALD SEATON, Laird of *Touch*, ARCHIBALD STIRLING, Laird of *Carden*, CHARLES STIRLING, Laird of *Kippendavie*, and PATRICK EDMONSON, for *High-Treaſon*, at *Edingburgh*, the 15th of *November*, 1708. 7 *Annæ*.

1708. 7 Annæ.

The Indictment.

THE Indictment charges the Priſoners with High Treaſon, in aſſembling in Arms at the Time the Pretender and a Body of *French* Forces were upon the Coaſt of *Scotland*, in the Year 1707, with an Intent to join them; and for correſponding with the Enemy.

There being no Proof for what Intent the Priſoners aſſembled, or of their correſponding with the Enemy, they were acquitted.

Acquitted for Want of Proof.

This being a foreign Trial, and of no great Moment, I forbear to enlarge upon it, that I may have the more Room for thoſe that deſerve our Attention better.

The

1709. 7 Annæ. *Dr. Sacheverel's Trial.*

The Trial of Doctor HENRY SACHEVERELL, for *High Crimes and Miſdemeanors*, before the Houſe of Peers, in *Weſtminſter-Hall*, in the Months of *February* and *March*, 170^{9}_{10}. 7 & 8 *Annæ.*

1709. 7 Annæ.

A Complaint of his Sermons.

A Complaint was made in the Houſe of Commons on the 13th of *December*, 1709, of two printed Sermons; the one intitled, *The Communication of Sin*; preached at the Aſſizes at *Derby*, the 15th of *Auguſt*, 1709: And the other intitled, *The Perils of falſe Brethren, both in Church and State*; preached before the Lord Mayor and Citizens, at the Cathedral of St. *Paul*'s, on the fifth of *November*, 1709, by *Henry Sacheverell*, D.D. And ſeveral Paragraphs thereof being read, it was reſolved,

Voted ſcandalous, &c:

That the ſaid Sermons were malicious, ſcandalous, and ſeditious Libels, highly reflecting on Her Majeſty and Her Government; on the late happy Revolution, and the Proteſtant Succeſſion, and both Houſes of Parliament; tending to alienate the Affections of Her Majeſty's good Subjects, and to create Jealouſies and Diviſions amongſt them.

The Doctor being ordered to attend the Houſe next Day, was called, and examined, If he owned thoſe Sermons? Which he did, and then withdrew: When a Queſtion being propoſed, That Dr. *Henry Sacheverell* be impeached of High Crimes and Miſdemeanors; it was thought proper to call him again firſt, and demand, If he had any thing to offer to the Houſe in his Excuſe? Whereupon the Doctor ſaid,

Mr. Speaker,

"I AM very ſorry I am fallen under the "Diſpleaſure of this Houſe: I did not i-"magine any Expreſſions in my Sermons were "liable to ſuch a Cenſure as you have paſſed "upon them. If you had been pleaſed to have "favoured me ſo far as to have heard me be-"fore you paſſed it, I hope I ſhould have ex-"plained myſelf ſo as to have prevented it".

He is impeached.

After which, the Doctor was ordered to withdraw; and it was reſolved to impeach him of High Crimes and Miſdemeanors: And Mr. *Dolben* accordingly carried up the Impeachment to the Lords; acquainting them, That the Commons would, in due Time, exhibit Articles againſt him.

Not ſuffered to be bailed.

And the Doctor, with his Bookſeller, Mr. *Henry Clements*, were taken into Cuſtody of the Serjeant at Arms: And though the Doctor petitioned the Commons to be admitted to Bail, they refuſed it, there being but 79 *Yeas* to 114 *Noes*, when the Queſtion was put.

Debates thereupon.

There were great Debates in the Houſe on bailing the Doctor: Some were of Opinion, they had no Power to take Bail; others inſiſted, they had a diſcretionary Power; while a third Party ſaid, If they had it in their Power, the Doctor did not deſerve ſo much Indulgence: Others ſaid, in Favour of Liberty, If they could, they ought to admit him to Bail: And that they could bail a Priſoner, they argued from the Equity and Reaſonableneſs of the Thing, That thoſe who could commit, might bail him; and produced two Precedents, *viz.* The Caſe of Mr. *Seymour*, and that of the Smugglers, impeached for High Crimes and Miſdemeanors; in one of which, the Perſons impeached and committed by the Houſe of Commons, were admitted to Bail; in the other, the Commons, upon their Petition, conſented to bail them; and they had been bailed, but the Sureties made Objections to the Condition of their Bonds, and would not ſubmit to it. Beſides, it was urged, that this Caſe was in itſelf bailable; and ſo agreed by all Gentlemen: And that the Doctor's Hardſhip might be the greater, becauſe it was probable, if the Commons did not bail him, he muſt lie in Cuſtody, when bailable by Law, till after the Receſs of Parliament: For the Articles not being exhibited to the Lords againſt him, it was thought, the Lords would not take him out of the Cuſtody of the Commons, and commit him upon a general Charge; and till they committed him, they could not bail him: This was his Caſe; for upon Application to the Lords, they refuſed to commit him, till the Commons had exhibited their Articles. The Lords ſaid, The Commons might never exhibit any; and they would not do ſo unreaſonable a Thing, as to commit any one on a general Charge. And ſo he lay a Priſoner, by the Commitment of the Houſe of Commons, in a Caſe bailable by Law, (and for which there were Precedents of the Commons admitting to Bail), from *December* the 14th, to *January* the 12th.

Articles carried up.

Mr. *Dolben* carried up the Articles to the Lords on the 12th of *January*; and the Serjeant at Arms, at the ſame Time, delivered the Doctor to the Deputy Gentleman Uſher of the Black Rod: And the Doctor petitioning the Houſe of Peers to be admitted to Bail, and that he might have Counſel aſſigned him, and a Copy of the Articles; their Lordſhips granted all his Requeſts: And, on the 25th of *January*, Dr. *Sacheverell* attended the Houſe of Lords, and delivered in his Anſwer to the Articles of Impeachment againſt him; which their Lordſhips having communicated to the Commons, they ſent up their Reply on the third of *February*: And the next Day, the Lords ſent a Meſſage to the Commons, acquainting them, That they had appointed the *Thurſday* following for the Trial of Dr. *Sacheverell*, at the Bar of the Houſe: But the Commons reſolving afterwards, that they would be preſent at the Trial, as a Committee of the whole Houſe, and acquainting their Lordſhips with it, and deſiring convenient Accomodations might be made for them; the Houſe of Peers ordered the Lords with White Staves, to move Her Majeſty, to give Orders for preparing a Place in *Weſtminſter-Hall* for the Trial: And Her Majeſty thereupon gave Orders for preparing a Court in *Weſtminſter-Hall*; which

The Lords bail the Doctor.

A Court erected in Weſtminſter-Hall.

1709-10. 8 Annæ.

which taking up ſome Time, the Lords put off the Trial till *Monday* the 27th of *February*.

The Trial appointed. Managers for the Commons.

The Commons thereupon appointed the Gentlemen, who had been of the Committee for drawing up Articles againſt the Doctor, to be their Managers at the Trial, *viz.* Sir *John Holland* Comptroller of Her Majeſty's Houſhold, Mr. Secretary *Boyle*, Mr. *Smith* Chancellor of the *Exchequer*, Sir *James Montague* Attorney-General, *Robert Eyre*, Eſq; Solicitor-General, *Robert Walpole*, Eſq; Treaſurer of the Navy, Sir *Joſeph Jekyll*, Mr. *Lechmere*, Mr. *Dolben*, Sir *Thomas Parker*, Sir *Peter King* Recorder of the City of *London*, Sir *John Hawles*, the Lord *William Paulet*, the Lord *Coningsby*, Mr. *Spencer Cowper*, Mr. *Thompſon*, Lieutenant-General *Stanhope*, Lieutenant-General *Mordaunt*, Mr. *Compton*, and Sir *David Dalrymple*.

The firſt Day of the Trial.

On *Monday* the 27th of *February*, being the Day appointed for the Trial, the Lords came down from their Houſe, about Noon, to the Court erected in *Weſtminſter-Hall*: And the Commons having taken the Places provided for them, the Serjeant at Arms made Proclamation for the Doctor to appear and ſave his Bail; whereupon he came to the Bar, and kneeled; his Counſel, Sir *Simon Harcourt*, Mr. *Dodd*, Mr. *Phipps*, Mr. *Dee*, and Dr. *Henchman*, ſtanding near him.

The Lord Chancellor *Cowper* then commanded the Doctor to riſe; and Proclamation being made for the Proſecutors to appear and make good their Charge, the Lord Chancellor acquainted the Doctor, that it was unneceſſary to give him any Directions for his Defence, the Lords having aſſigned him Counſel; adding, That they had alſo made an Order for ſummoning his Witneſſes, and admitted him to Bail, on the firſt Application, that he might be the better able to provide for his Defence; and that he had all the Time he deſired to prepare himſelf; and ought ever to remember their Lordſhips Indulgence to him.

The Tenor of the Articles.

Then the Articles of Impeachment were read: The Preamble whereof recites, That the late King *William*, when Prince of *Orange*, undertook, with an armed Force, a glorious Enterprize, for delivering this Kingdom from Popery and Arbitrary Power; in which he was joined and aſſiſted by many Subjects of this Realm, well affected to their Country: And that God being pleaſed to crown it with Succeſs, the late happy Revolution took Effect, and was eſtabliſhed: And whereas the ſaid glorious Enterprize had been approved by ſeveral Acts of Parliament, declared to be neceſſary, and that the ſame ought to be juſtified; and the happy Conſequences of it were the Enjoyment of God's true Religion, and the Laws and Liberties of the Kingdom; the uniting the Subjects in Intereſt and Affection, by a Toleration of Diſſenters; the Preſervation of Her Majeſty, the Succeſſion of the Crown in the Proteſtant Line, and the Union of the two Kingdoms: And whereas the Lords and Commons, did, by their Addreſs of 17 *Dec.* 1705, lay before Her Majeſty their Reſolution, That the Church of *England*, which was reſcued from the extremeſt Danger by King *William* III. was, by God's Bleſſing, under Her Majeſty in a moſt ſafe and flouriſhing Condition; and that whoever goes about to inſinuate, that the Church is in Danger under Her Majeſty's Adminiſtration, is an Enemy to the Queen, the Church, and Kingdom: And did beſeech Her Majeſty to take effectual Meaſures for puniſhing the Authors of ſuch Reports: And Her Majeſty iſſued Her Proclamation accordingly; yet the ſaid *Henry Sacheverell* had preached two Sermons, and printed them, with a wicked, malicious, and ſeditious Intention to ſubvert Her Majeſty's Government and the Proteſtant Succeſſion; to defame Her Majeſty's Adminiſtration to aſperſe the Memory of his late Majeſty, to condemn the Revolution, arraign the Reſolutions of both Houſes of Parliament, create Jealouſies and Diviſions among Her Majeſty's Subjects, and incite them to Sedition and Rebellion.

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Art. 1. That the ſaid *Henry Sacheverell*, in his Sermon preached at St. *Paul*'s, doth ſuggeſt and maintain, That the neceſſary Means uſed to bring about the Revolution, were odious and unjuſtifiable: That his late Majeſty in his Declaration, diſclaimed the leaſt Imputation of Reſiſtance: And that to impute Reſiſtance to the Revolution, is to caſt black and odious Colours upon his late Majeſty and the ſaid Revolution.

Art. 2. Was in Subſtance, That he had ſuggeſted and maintained, That the Toleration was unreaſonable, and the Allowance of it unwarrantable; and reflected on Archbiſhop *Grindall*.

Art. 3. Imported, That he did falſly and ſeditiouſly ſuggeſt and aſſert, That the Church of *England* was in great Peril and Adverſity under Her Majeſty's Adminiſtration, contrary to the Votes of both Houſes.

Art. 4. That he did falſly and maliciouſly ſuggeſt, That Her Majeſty's Adminiſtration, both in Eccleſiaſtical and Civil Affairs, tended to the Deſtruction of the Conſtitution: And, that there were Men of Characters and Stations in Church and State, who were falſe Bretheren; and did themſelves undermine, and betray, and encourage and impower others to undermine and betray the Conſtitution: That as a publick Incendiary, he fomented Diviſions, and excited Her Majeſty's Subjects to Arms and Violence: And that his ſeditious Suggeſtions might make the ſtronger Impreſſions, he did wreſt and pervert divers Paſſages of holy Scripture.

All which they were ready to prove, from the ſaid Sermons.

Then the Doctor's Anſwer was read, wherein he denies, he preached or printed the ſaid Sermons with a malicious Intent, as the Preamble to the Articles charges; but ſays, he was induced to print the *Derby* Sermon at the Requeſt of the Grand Jury, who declared their Approbation of it; and the ſaid Lord Mayor having expreſſed his Liking of the Sermon preached at *St. Paul*'s, he did, at his Requeſt, cauſe that Sermon to be printed, and dedicated to him.

Anſwer to the firſt Article.

1. And in anſwer to the firſt Article, he denies, That he ſuggeſted, that the neceſſary Means uſed to bring about the Revolution were odious, and unjuſtifiable; but, on the contrary, endeavoured to clear the Revolution, and his late Majeſty, from the black and odious Colours caſt upon both.

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That he had, indeed, maintained, that his late Majeſty diſclaimed the Imputation of Reſiſtance: But it was ſuch a Reſiſtance as tended to a Conqueſt, as appeared from that Part of the Declaration he referred to; and, as he deſigned this for the Honour of the late King, it could not be taken as a Reflection on him: And obſerved that his Majeſty in that Declaration affirmed, *That his Expedition was intended for no other Deſign but to have a free and lawful Parliament.*

As to his (the Doctor's) maintaining in his Sermons, That thoſe who imputed Reſiſtance to the Revolution, caſt black and odious Colours on the Revolution, and his late Majeſty; he anſwered, that thoſe whom he deſcribed, as caſting black and odious Colours on the Revolution, were not thoſe who imputed Reſiſtance to it, but thoſe who taught, contrary to Law and Goſpel, that the People were the Original of Power, could cancel their Allegiance at Pleaſure, and call their Sovereign to Account for High-Treaſon againſt his Subjects, and even dethrone and murder him for a Criminal; as they did the Royal Martyr.

That he could not find he had given the leaſt Colour for the Accuſation exhibited in this Article, unleſs by his aſſerting, *The utter Illegality of Reſiſtance to the Supreme Power, upon any Pretence whatſoever*; for which Aſſertion he had the Authority of the Church of *England* in her Homilies, ready to be produced; and was adviſed, that the ſaid Aſſertion was agreeable to, and warranted by the Laws of the Land, and divers Acts of Parliament now in Force; and therefore hoped he ſhould not ſuffer for aſſerting the Doctrine of Non-Reſiſtance to the Supreme Powers. But if this Doctrine was declared erroneous, and he ſhould ſuffer for aſſerting it, he truſted that God would enable him to ſhew his Steady Belief of this Doctrine, by a meek and patient Reſignation to whatever ſhould befall him on that Account.

Anſwer to Art. 2.

2. In anſwer to the 2d Article, which charged him with maintaining, That the Toleration granted by Law was unreaſonable, and the Allowance of it unwarrantable; he could not inform himſelf, that a Toleration had been granted; but admitted, an Act paſſed 1 *W. & M.* exempting their Majeſty's Proteſtant Subjects from the Penalties of certain Laws; which Exemption he no where ſuggeſted to be unreaſonable, or the Allowance of it unwarrantable.

But he did, indeed, ſuggeſt it to be one Part of the Characters of a Falſe Brother, *upon all Occaſions to defend Toleration and Liberty of Conſcience, and, to excuſe the Separation, lay the Fault upon the true Sons of the Church, for carrying Matters too high.*

And as to his reflecting on Archbiſhop *Grindall*, he hoped he might be excuſed; becauſe the Archbiſhop had incurred the Diſpleaſure of ſo good and pious a Princeſs as Queen *Elizabeth*; and was ſuſpended till the Day of his Death for permitting Innovations in the Church. However, he hoped, that no Words ſpoken of an Archbiſhop 120 Years after he was dead, would amount to a High Crime and Miſdemeanor.

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Anſwer to Art. 3.

3. To the third Article, he anſwered, That he denied he aſſerted the Church of *England* was in Danger under Her Majeſty's Adminiſtration, or intended to arraign the Vote of both Houſes: But he acknowledged he had ſuggeſted, that the Church was in Danger from our National Sins, from Vice and Infidelity, as it was declared to be by an Act of Parliament 9 & 10 *W.* III. And he conceived, ſince the paſſing of that Act, the deteſtable Crimes, for the Suppreſſing whereof that Act was made, were greatly encreaſed.

That the Vote of both Houſes, made four Years ago, concerned thoſe only who *then* inſinuated the Church was in Danger from her Majeſty's Adminiſtration; and could not be preſumed to affect thoſe who now ſuggeſted the Chriſtian Faith was endangered by thoſe Atheiſtical and Irreligious Principles which were daily propagated from the Preſs amongſt us.

Anſwer to Art. 4.

4. To that Part of the 4th Article, which charges him with ſuggeſting that her Majeſty's Adminiſtration tends to the Deſtruction of the Conſtitution; he anſwers, he hath not mentioned her Majeſty's Adminiſtration, or her Miniſters, in either of his Sermons; and was ſo far from cenſuring it, that he had reckoned it among the ineſtimable Bleſſings that were owing to our Deliverance commemorated on the 5th of *November*, *That Her Majeſty, the good and pious Relict of the Royal Family, ſits now happily upon the Throne of her Anceſtors; and prays, that God may long preſerve Her, for the Comfort and Support of the Church; and profeſſes, that what he ſpoke, proceeded from a tender Concern for Her Majeſty's Perſon and Government.*

As to his ſuggeſting that there are *Men of Characters and Stations* in Church and State, that do weaken, undermine, and betray the Church, &c. He denies he ſuggeſts ſuch Things of Men of Characters and Stations in Church and State. For *where he ſpeaks of thoſe who weaken, undermine, and betray, and encourage and put it in the Power of our profeſſed Enemies, to overturn and deſtroy the Conſtitution*; there Men of Characters and Stations were not mentioned by him: And when he mentions Men of Characters and Stations, twelve Pages afterwards, he ſays nothing of weakening, undermining, or betraying, or putting it in the Power of others to overturn the Conſtitution; and hopes he ſhall not be anſwerable for a ſuppoſed Reflection, which depends upon the Conjunction of Paſſages widely diſtant, and ſo little relating to each other.

And as to that Part of the Charge in this Article, That as a publick Incendiary, he perſuaded Her Majeſty's Subjects to keep up Diſtinctions of Factions and Parties, and fomented Diviſions; he had, on the contrary, in that Sermon, complained of thoſe who had villainouſly divided us with knaviſh Diſtinctions of High and Low Churchmen; and wiſhed that thoſe invidious Diſtinctions were loſt: And had condemned thoſe, who by falſe Inſinuations, and raiſing groundleſs Jealouſies and Fears, embroiled the Publick, and would bring us into Confuſion: And was ſo far from exciting or ſtirring up Her Majeſty's Subjects to Arms and Violence, that he had aſſerted the utter Ille-

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Illegallity of Reſiſtance to the Supreme Power upon any Pretence whatſoever; which he apprehended to be the chief, if not the only Ground, of the Charge exhibited againſt him in the firſt Article.

That he hoped what he had ſaid in the Dedication of the *Derby* Sermon, *That there are not wanting ſome to preach the Truth, and others to ſupport it, at the Expence of their Lives and Fortunes*; would not be conſtrued, as exciting Her Majeſty's Subjects to Sedition and Rebellion; ſince that Truth which he commends ſome for Preaching, and others for Supporting, is by him oppoſed to the Attempts of thoſe who betray and run down the Principles and Intereſts of our Church and Conſtitution; and ſince he there deſervedly commends the High Sheriff of that County, on account of his ſteady Loyalty and Zeal to ſerve her Majeſty and the Government, for which he hath been ſo remarkably diſtinguiſhed.

In the Sermon preached at St. *Paul*'s, he doth indeed excite Chriſtians, *To put on the whole Armour of God, as wreſtling, not only againſt Fleſh and Blood, but againſt Principalities, againſt Powers, againſt the Rulers of the Darkneſs of this World; againſt Spiritual Wickedneſs in High Places*: But he hath learned from the ſame St. *Paul*, That the Arms of Reſiſtance taken up by Subjects againſt the Higher Powers, are no Part of that Spiritual Armour; and the Principalities and Powers by him mentioned, being plainly diſtinguiſhed from Fleſh and Blood, cannot, he thinks, be ſo far miſinterpreted, as to be underſtood of Earthly Potentates and Rulers.

And as to ſo much of the ſaid 4th Article, whereby it is charged, that he, the ſaid *Henry Sacheverell* doth wickedly wreſt and pervert divers Texts and Paſſages of Holy Scripture, that his ſaid malicious and ſeditious Suggeſtions may make the ſtronger Impreſſions upon the Minds of Her Majeſty's Subjects; the ſaid *Henry Sacheverell* ſays, That having no malicious or ſeditious Suggeſtions to imprint, he could not intend to wreſt any Paſſages of the Holy Scripture to that wicked Purpoſe. And *hard is the Lot of the Miniſters of the Goſpel, if, when they cite the Word of God in their general Exhortations to Piety and Virtue, or in their Reproofs of Men's Tranſgreſſions, or where they are lamenting the Difficulties and Conflicts with which the Church of Chriſt, whilſt Militant here on Earth, muſt always ſtruggle; the ſeveral Texts and Paſſages by them cited, ſhall be ſaid to have been by them meant of particular Perſons and Things, and ſhall be conſtrued in the moſt Criminal Senſe, and be made, by ſuch Conſtruction, one Ground of an Impeachment for High Crimes and Miſdemeanors.*

The Replication of the Commons.

Then the Replication of the Commons to the Doctor's Anſwer was read, wherein they aver the Charge againſt the ſaid *Henry Sacheverell* to be true, and that he his guilty in ſuch Manner as he ſtands impeached.

After which the Lord Chancellor intimating to the Commons, that they might proceed with their Evidence, Mr. Attorney General, (one of the Managers) ſaid,

Mr. Attorney opens the Cauſe.

My Lords, by Command of the Knights, Citizens, and Burgeſſes, in Parliament aſſembled, we appear in Behalf of all the Commons of *Great Britain*, to make good the Impeachment againſt the Priſoner at the Bar, Doctor *Henry Sacheverell.*

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The Miſdemeanors he ſtands accuſed of, are ſpecified in the Articles which have been juſt now read to your Lordſhips; and the Facts there charged, are ſaid to have been done with a wicked, malicious, ſeditious Intention, to undermine and ſubvert Her Majeſty's Government, and the Proteſtant Succeſſion, as by Law eſtabliſhed; to defame Her Majeſty's Adminiſtration; to aſperſe the Memory of His late Majeſty King *William*; to traduce and condemn the late happy Revolution; to contradict and arraign the Reſolution of both Houſes of Parliament; to create Jealouſies and Diviſions amongſt Her Majeſty's Subjects; and to incite them to Sedition and Rebellion.

My Lords, if this Charge be made good, (as I am apt to think it will) I may preſume to ſay, no Words can either aggravate or alleviate the Offence.

My Lords, our Proofs in this Caſe will ariſe from Evidence which cannot be liable to the Imputation of being over-awed by the Weight of the Proſecutors, or corrupted, or perverted; for out of his own Mouth we ſhall charge him, and by his own Words and Sermons we ſhall convict him.

My Lords, I can with Truth ſay, That it is no ſmall Trouble to the Commons of *Great Britain*, to have this Occaſion of coming in this Manner before your Lordſhips: Could they have ſatisfied themſelves that Her Majeſty's Honour, the Safety of her People, and the Proteſtant Succeſſion as by Law eſtabliſhed, were not highly concerned to bring this Man to ſpeedy Juſtice, they could very willingly have ſpared your Lordſhips this Trouble.

But when they conſidered, of what import it was to the Nation, how much it concerned the very Being of our Conſtitution, to diſcountenance and put an End to ſuch ſort of ſeditious Proceedings, as the Doctor and ſome others of his Brethren have been lately practiſing in divers Parts of the Kingdom, they could not think otherwiſe, than that it was Matter fit for the Grand Inqueſt of the Nation to take Notice of: And finding it to be a Cauſe of ſo great Moment to the Publick, they judged it fit to be taken under their own Management, and not truſt it to the Deciſion of any inferior Tribunal. And, my Lords, it muſt be agreed, that your Lordſhips are the only proper Judges, when the whole Commons of *Great Britain* find it neceſſary to be the Proſecutors: Nor can Dr. *Sacheverel* have any juſt Cauſe to complain of this Manner of Proceeding, when it gives him ſo publick an Opportunity of defending himſelf (if his Innocence can clear him); and what can he deſire more, when he lies under ſo heavy an Accuſation, than to have your Lordſhips for his Judges, who have already ſhewn your great Indulgence to him, by allowing him (as the Noble Lord from the Woolpack juſt now obſerved) all the Advantages a Man under his Circumſtances can ask, or deſire to have?

My Lords, this Proſecution took its Riſe from a Complaint that was made in the Houſe of Commons the 13th of *December* laſt, of two

Books

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Hereupon the Doctor was ordered to attend; which he did accordingly the next Day, and, at the Bar of the Commons Houſe, owned and avowed both Books to be his; that they were Sermons he himſelf had preached; and that he had cauſed them to be printed and publiſhed.

After ſuch a Confeſſion, your Lordſhips may imagine Her Majeſty's dutiful Commons did expreſs their juſt Reſentments of the great Wrong and Injuries that were done to Her Majeſty, and all that were in Authority under Her, and imediately ordered this Impeachment.

Your Lordſhips will perceive, by Peruſal of the Sermons and Epiſtles Dedicatory, that the Deſign and Drift of the ſame is to poſſeſs the People with ſtrange Notions, and terrible Apprehenſions of the Danger they are in by a general Mal-Adminiſtration of the Publick Affairs both in Church and State.

That both theſe Sermons were preached upon publick Occaſions; and had, ſince the printing thereof, been handed about with more than ordinary Application.

One of theſe Books is intitled, *The Communication of Sin*, being a Sermon preached at the Aſſizes held at *Derby*, in *Auguſt* laſt: And becauſe the Doctor though the had not ſaid enough againſt the Queen and Her Government in the Sermon, he affixes a Dedication to it, wherein he affirms, That the Principles of our Church and Conſtitution are ſhamefully betrayed and run down; that both are perſecuted, on the one Side by rude and preſumptuous Inſults, and baſe undermining Treachery on the other; and that this Perſecution is carried on by aſſociated Malignants.

The other Sermon was preached at *St. Paul's*, *London*, on the 5th of *November*, which is a Day ſet apart for a general Day of Thankſgiving, for two very great Deliverances vouchſafed to this Nation, by the Diſcovery of the Gunpowder-Plot, and the Arrival of his late Majeſty King *William*, to redeem us from Popiſh Tyranny and Arbitrary Power.

My Lords, when ye come to hear this Sermon read, I am confident that it muſt appear very ſtrange to find that, when there were two ſuch memorable Occaſions for the Doctor to have ſet forth his Eloquence, in a Thankſgiving Sermon, he ſhould in a great Meaſure paſs by both the Buſineſſes of the Day, and entertain his Audience with a long Harangue of the deplorable Condition the Church was in; not ſo much from Papiſts, the avowed Enemies of the Church, as from her pretended Friends, as he calls them, the falſe Sons of the Church, who were crept into her Bowels, and had ſhewn themſelves to be perfidious Brethren, by defending Toleration and Liberty of Conſcience, and favouring the Diſſenters.

And to ſhew his little Liking of the great Work which was begun to be wrought on that on that Day, by the Arrival of his late Majeſty, the chief Turn of his Diſcourſe is to cry up Non-reſiſtance and Paſſive Obedience. 1709-10. 8 Annæ.

And to make it moſt evident, that what he ſaid of Non-reſiſtance was to caſt black and odious Colours upon the Revolution, he lays down a general Poſition, *That it was not lawful, upon any Pretence whatſoever, to make Reſiſtance to the Supreme Power*; which Supreme Power, by other Paſſages, he explains to be the Regal Power.

And being apprehenſive that every one that heard him talking in that Manner againſt Reſiſtance, would ſee plainly he was cenſuring and condemning the Means that brought about the Revolution, and being deſirous to caſt as heavy Reflections as he could upon the Memory of King *William*; he aſſerts, that the Prince of *Orange*, in his Declaration, utterly diſclaimed all Manner of Reſiſtance.

My Lords, every Body knows, that knows any Thing of the Revolution, That the Prince of *Orange* came over hither with an armed Force; and that in ſeveral Paragraphs of his Declaration, (the Doctor ſpeaks of) *His late Majeſty invites and requires all Peers of the Realm, both Spiritual and Temporal Lords, all Gentlemen, Citizens, and other Commoners, to come in and aſſiſt him, in order to the executing that Deſign he had then undertook, againſt all that ſhould endeavour to oppoſe him.*

Therefore it muſt be accounted very ridiculous for the Doctor to advance ſuch a Poſition, if he had no further Meaning in it, than to give an Account of the Prince of *Orange*'s Deſign in coming over here into *England*.

And this will make it neceſſary for your Lordſhips to conſider what is the true Meaning of this Aſſertion: Is it not plainly to make the Prince of *Orange* ſay one Thing, and at the ſame Time do directly another? And can this be done with any other Deſign than to aſperſe the Memory of the late King *William?*

Then as to his Diſcourſe concerning Paſſive Obedience and Non-reſiſtance, in ſuch Latitude as is there mentioned, what could it tend to, but to caſt Reflections upon that Reſiſtance which was the Means that brought about the Revolution?

For was there any Occaſion at that Time to be ſo earneſt to cry down Reſiſtance, and preach up Paſſive Obedience?

Can any one pretend to ſay there were any Symptoms of Diſcontent throughout the Nation, in any Parts thereof?

No: To our Comfort be it ſpoken, no Reign, no Age, no Hiſtory can give a better Account of the good Diſpoſitions of the People to their Sovereign. Therefore, ſince the Preaching theſe Doctrines was needleſs, it does ſavour of ſome wicked Deſign to be talking ſo unſeaſonably of this Subject.

If what the Doctor very frequently aſſerts in this Sermon be true, *That all are falſe Sons of the Church who aſſiſted in bringing about the Revolution, or that joined in the Oppoſition that was made to the Encroachments which were begun by evil Miniſters, in the Reign of King* James II. *againſt our Religion and Liberties*; let the Doctor a little conſider how far his Character of a falſe Brother may be carried.

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Every Body knows, that lived in thoſe Days, that the Body of the Clergy of the Church of *England*, made a noble Stand againſt the Encroachments which were then making, and appeared as active as any of the Laity.

And was it not by their Writings, Preaching, and Example, that the Nobility and Gentry were animated to maintain and defend their Rights, Religion, and Liberties? And as an undoubted Monument, that this was the Senſe of the whole Kingdom at that Time of the Revolution, it is entered in the Journal of the Houſe of Commons on the Firſt of *February*, 1688,

That the Unanimous Thanks of the Houſe was given, nemine contradicente, *to the Clergy of the Church of* England, *for the great Services they had done their Religion and Country, by the Oppoſition they had made to the Execution of the Eccleſiaſtical Commiſſion, and their refuſing to read the King's Declaration for a Toleration, which was then founded upon the Diſpenſing Power.*

And how did the Archbiſhops receive the Meſſage, that was ſent them upon this Occaſion, that they might communicate that Reſolution to the Clergy in their reſpective Dioceſes?

Our Journal tells us, That Mr. *Leveſon Gower* the next Day acquainted the Houſe of Commons, that he had attended the two Archbiſhops, according to Order, with the Thanks of the Houſe; and that Archbiſhop *Sancroft*, and the then Archbiſhop of *York*, returned their Thanks to the Commons for themſelves, and in Behalf of all the Clergy, for their favourable Vote.

Your Lordſhips ſee, the Commons were then happy enough to be thought favourable to the Clergy of the Church of *England*; and yet thoſe very Commons were the Men who paſſed the Toleration-Act, for exempting Proteſtant Diſſenters from the Penalties of certain Laws, as one of the moſt neceſſary Acts for the Good of the Kingdom.

And were they not encouraged to go about that charitable Work by the Petition of the ſeven Biſhops, preſented to King *James*; wherein they acquainted him, *That it was not for want of a due Tenderneſs to Diſſenters, which made them refuſe reading his Declaration for Toleration to Diſſenters; in Relation to whom they were willing to come to ſuch a Temper as ſhould be thought fit, when the ſame came to be conſidered in Parliament.*

But now the ſame hath been conſidered in Parliament, and the Toleration hath been ſettled and eſtabliſhed by the Legiſlative Authority of the Kingdom, and hath been ratified and approved of in this Reign, by Her Majeſty and both Houſes of Parliament; Dr. *Sacheverell*, belike, diſapproves of it, and is pleaſed to tell us, in a moſt extraordinary Manner, *That a Man muſt be very weak, or ſomething worſe, that thinks or pretends the Diſſenters are to be gained by any other Grants and Indulgences, than giving up our whole Conſtitution: And he that recedes the leaſt Tittle from it, to ſatisfy and ingratiate with theſe clamorous, inſatiable, Church-devouring Malignants, knows not what Spirit they are of.*

After ſuch an ample Declaration of his Opinion, what fatal Conſequences will attend the granting Indulgences to Diſſenters, can the Doctor imagine, that his ſaying, in his Anſwer to the Articles, *That he intends not to caſt the leaſt invidious Reflection upon that Indulgence the Government has condeſcended to give them*, will take off the hard Cenſures he hath paſſeed upon Diſſenters?

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And, my Lords, if an Archbiſhop, who hath been dead almoſt a hundred and twenty Years, cannot be permitted to reſt quiet in his Grave, but muſt have foul Aſperſions caſt upon his Memory, as being a falſe Son, and a perfidious Prelate of the Church, for interceding (as Dr. *Sacheverell* ſays) with Queen *Elizabeth* for the Diſſenters in thoſe Days; what muſt the preſent Archbiſhops and Biſhops of our Church expect from Dr. *Henry Sacheverell*, if they do not thunder out their Eccleſiaſtical Anathema's againſt Diſſenters, as often as the Doctor ſhall think there is Occaſion for them?

My Lords, I perceive the Doctor hopes to ſalve all he hath ſaid againſt Toleration to Diſſenters, by a nice Diſtinction he hath hit upon, between an Indulgence and a Toleration.

Therefore he tells your Lordſhips, *That upon the moſt diligent Enquiry, he hath not been able to inform himſelf that a Toleration hath been granted by Law.*

Can the Doctor pretend to ſay, That this Word Toleration has never been made uſe of, to expreſs the Religious Liberty and Indulgence that is granted and allowed to Diſſenters? If we wanted Authorities to juſtify the Uſe of the Word, after the Doctor has made uſe of it in the ſame Senſe over and over, in many Paſſages in his Sermon, as will be taken Notice of by the Gentlemen that are to make good the ſecond Article; the Doctor might be put in Mind that Her Majeſty, in Her Speech from the Throne, on the 17th of *December*, 1705, hath been pleaſed to declare, *That ſhe will inviolably maintain Toleration.*

My Lords, as the Time was moſt unſeaſonable for the Preaching ſuch Doctrines as theſe, ſo the Place was very improper for a Lecture of Politicks: For your Lordſhips do perceive this latter Sermon, which was preached on the Fifth of *November* laſt, was preached in the great Metropolis of this Kingdom, before the Lord Mayor, Aldermen, and Citizens of *London*; from whoſe ſteady Loyalty to Her Majeſty, and firm Affections to the Revolution, ſuch vaſt Sums have been contributed, for carrying on this long War againſt *France*, which hath proved ſo fatal to the *French* King, and other Enemies of this Kingdom.

And what more likely to give a fatal Wound to the Publick Credit at this Time, than ſuch a Doctrine, which tends to the Overthrow of all the Acts of Parliament which have been made in Support of this Conſtitution?

And how ſtrange an Attempt was it in the Doctor to preach againſt the Revolution, and this Government, before thoſe Citizens, who owe the Reſtoration of their Charters, and all their Franchiſes and Immunities to it!

But, to do Juſtice to the Doctor, he, in his Anſwer, denies he hath ſaid any Thing of the Means which brought about the Revolution.

And, if your Lordſhips can believe him, he

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says, *He has endeavoured to vindicate the Revolution from the black and odious Colours, the Enemies of the Revolution would throw both upon that and his late Majesty.*

To what End and Purpose then are these Doctrines preached, with so much Vehemence at this Time, unless it be to reflect backwards upon what was done at the Time of the Revolution?

There is certainly no Occasion to preach Non-Resistance to Her Majesty's loyal and dutiful Subjects, who have never shewn the least Inclination to give Disturbances to this present Government.

Was there ever known a Time, in which there was so universal an Agreement, in all Ranks and Degrees amongst us? Does not every one almost strive to shew their Zeal and Affection for Her Majesty and Her Government? If there be any that are less quiet than their Neighbours, we shall find them amongst the Friends of Dr. *Sacheverell*, who are professedly no Friends to the Revolution. Nothing is more certain, than that all that are not satisfied with what was done at the Time of the Revolution, must be Enemies to the present Establishment: And it is from this Source, all these Declamations against Men of Character and Station, both in Church and State, do proceed.

But I would have the Doctor consider, that we have Laws to punish Spreaders of false News and horrible Stories of the great Men and great Officers of the Kingdom: And it is to put a Stop to these malicious Practices now on Foot, that this *Delinquent* is now brought to this Bar.

When we shall have read our several Proofs, which will justify every Particular charged on the Doctor in the Articles of Impeachment, the Commons will not doubt of your Lordships Judgment against this Defendant.

The Sermon read in Evidence.

Then the Dedication before the *Derby* Sermon was read, and the Sermon preached at St. *Paul*'s, with the Dedication to the Lord Mayor, Sir *Samuel Garrard*; after which, the Court adjourned to the next Day.

The Arguments of the Managers on the first Article.

On *Tuesday* the 28th of *February*, the Managers for the Commons, Sir *Joseph Jekyll*, Mr. Solicitor *Eyre*, Sir *John Holland*, Mr. *Walpole*, Sir *John Hawles*, and Mr. *Stanhope*, proceeded to maintain the first Article; *viz. That the Doctor did suggest and maintain, that the necessary Means used to bring about the Revolution, were odious and unjustifiable: And that to impute Resistance to the Revolution, was to cast black and odious Colours on his late Majesty, and the Revolution*, &c.

Sir J. Jekyll.

Sir *Joseph Jekyll* among other Things, said, That it was far from the Intention of the Commons, to state the Bounds of the Subjects Submission; what the Law was wisely silent in, the Commons desired to be silent in too: Nor should they put any Case of a justifiable Resistance, but that of the Revolution only; and to make out the Justice of that, laid it down for a Maxim, *That as the Law is the only Measure of the Prince's Authority and the People's Subjection; so that Law derives its Being and Efficacy from common Consent.*

Religion had nothing to do to extend the Authority of the Prince, or the Submission of the Subject; but only secured the legal Authority of the one, and enforced the due Submission of the other, from the Consideration of higher Rewards and heavier Punishments.——That as the Doctrine of unlimited Non-Resistance, was implicitly renounced by the whole Nation at the Revolution, so had that Renunciation been expressed and confirmed by several Acts of Parliament since: And in the Prayers appointed for the Fifth of *November*, *We thanked God for His late Majesty's safe Arrival; and making all Opposition fall before him, till he became our King and Governor:* Notwithstanding all which, Dr. *Sacheverell* had condemned the Resistance, by which that Deliverance was wrought; and knowing that there was Resistance used at the Revolution, and that the late King and Parliament had avowed that Resistance; yet asserted, That those who say, There was any Resistance in it, cast black and odious Colours on the late King and the Revolution; consequently, he had condemned the Resistance used to bring about the Revolution, which was the Charge contained in the first Article.

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Mr. Solicitor.

Mr. Solicitor then cited several Passages out of the Sermon preached at St. *Paul's*, to prove the first Article; and observed, that the Doctor's Argument run thus: All Resistance is utterly illegal; the King disclaimed the least Imputation of Resistance: The Parliament set the Crown upon his Head, upon no other Title than that of the Vacancy of the Throne, and burnt a Book, because it asserted a Title by which Resistance was supposed: And therefore to impute Resistance to the Revolution, is to cast black and odious Colours upon it.

That the Doctor in his Answer, indeed, denied that he maintained the *necessary Means* used to bring about the Revolution, were odious and unjustifiable, or affirmed any thing concerning the necessary Means; and, it was true, the Words *necessary Means* were not used in his Sermon: But if Resistance was necessary, and the Means by which the Revolution was effected, then he had asserted the Means to be odious and unjustifiable, though he had done it in other Terms.

And as to the late King's disclaiming all Resistance, it was an apparent Scandal on his late Majesty, who was so far from disclaiming Resistance, that he declared he brought over sufficient Forces to defend himself against evil Councillors, and encouraged the People to join with him.

That had the Doctor the Authority of the Church of *England*, and of the Common and and Statute Law, to justify his Maxim of *The utter Illegality of Resistance to the Supreme Power*, there had been no Colour to charge him with maintaining it: The Resistance used at the Revolution, could not then be defended: But the Commons should think themselves ungrateful for that Deliverance, if they did not vindicate the Honour of the late King, and of those illustrious Persons, who, upon his Invitation, defended the Constitution at that Time by Resistance, and declare, that this Resistance was lawful, honourable, and just.

It could never be supposed, that the Laws were made to set up a despotick Power, to destroy themselves, and to warrant the Subversion of a Constitution they were designed to establish: And it appeared by the Act declaring the Rights

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Rights and Liberties of the Subjects, That at the Time of the Revolution, there was a total Subverſion of the Conſtitution in Church and State; which was a Caſe the Laws of *England* could never provide for, or have in View; and the ſame Anſwer might be applied to the general Doctrine of the Church, expreſſed in her Homilies.

Sir John Holland.

Sir *John Holland*, in Maintenance of the firſt Article, obſerved, That it was plain, there was a Reſiſtance at the Revolution; If the taking up Arms in moſt of the Counties of *England*, if the Deſertion of King *James*'s own Troops to an invading Prince, and the turning their Arms againſt their Sovereign were Reſiſtance. And if Subjects were obliged to an abſolute unconditional Obedience, then the Convention of the States, the Settlement and Entail of the Crown by them, and the Settlement of the Proteſtant Succeſſion, in Purſuance of that Reſiſtance, was unlawful and void.

The Commons did not plead for a licentious Reſiſtance, or abet humourſome factious Arms: They acknowledged theſe to be Rebellions. But they maintained, that the Reſiſtance at the Revolution, was lawful and juſt; from the Neceſſity of it. They agreed alſo, that the Laws concerning Obedience, were very expreſs and poſitive, and the Homilies and Fathers of the Church, both dead and living, alſo expreſſed our Duty in general Terms; but it did not follow from thence, there could be no Exceptions to theſe general Rules.

That the Clergy at the Revolution, were ſo far from maintaining the Unlawfulneſs of Reſiſtance, that the true diſtinguiſhing Characteriſtick of a Church-of-*England*-Man, then was the wiſhing that Reſiſtance Succeſs: And yet the Doctor made this Exception, the Inſtance of an unjuſt Reſiſtance.

Mr. Walpole.

Mr. *Walpole*, among other Things, ſaid, He was very ſenſible of the Difficulty and Nicety that attended ſpeaking to this Point; for while a loyal Subject, and a faithful Servant of the beſt of Queen's, was ſpeaking in Defence of the neceſſary and commendable Reſiſtance uſed at the Revolution, his Arguments might be miſconſtrued and miſrepreſented, as maintaining Antimonarchical Schemes.

But to plead for that Reſiſtance which was concerned in this Debate, was to aſſert and maintain the very Being of the preſent Government: And to aſſert Non-Reſiſtance in that boundleſs and unlimited Senſe, Dr. *Sacheverell* preſumed to aſſert it, was to ſap and undermine the very Foundations of our Government.

If the general Poſition, laid down in the Sermon, of the utter Illegality of Reſiſtance upon any Pretence whatſoever, was ſtrictly true, then the aſſuming and exerciſing a Power of diſpenſing with the Laws; the Commitment and Proſecution of the Biſhops, the erecting a High Commiſſion Court, the levying Money by Pretence of Prerogative, the raiſing and keeping a Standing Army without Conſent of Parliament, the violating the Freedom of Elections of Members to ſerve in Parliament, and all the Grievances enumerated in the Bill of Rights, were all meer Pretences, and not ſufficient to juſtify what was done in Defence of the undoubted Rights and Liberties of the People at the Revolution; and which were ſince ratified and confirmed by ſeveral Acts of Parliament.

Reſiſtance, indeed, was no where enacted to be legal, but ſubjected to the greateſt Penalties, by all the Laws in Being; nor ought it to be deſcribed or affirmed to be excuſable, by any poſitive Law; or upon what Occaſions it may be exerciſed, it ought never to be thought of, but when an utter Subverſion of the Laws threatened the whole Frame of the Conſtitution, and no Redreſs could otherwiſe be hoped for.—But becauſe Men, out of Folly and Wantonneſs, might not commit Treaſon, or make their own Diſcontents, ill Principles, or diſguiſed Affections to another Intereſt, a Pretence to reſiſt the Supreme Power: Would it follow from thence, that the utmoſt Neceſſity ought not to ingage a Nation in its own Defence for the Preſervation of the whole? Or, on the other Side, becauſe the greateſt and moſt inexpreſſible Emergencies, did ſufficiently juſtify and warrant the Reſiſtance at the Revolution; would it be a Conſequence therefore, that, upon every ſlight Occaſion, the Laws that guarded againſt Treaſon ſhould be of no Effect? No; he hoped their Lordſhips juſt Judgment in this Caſe would convince the World, that every ſeditious, diſcontented, hot-headed, ungifted, unedifying Preacher, (the Doctor would pardon him for uſing one String of his Epithets) who had no Hopes of diſtinguiſhing himſelf in the World, but by a matchleſs Indiſcretion, ſhould not advance with Impunity, Doctrines deſtructive of the Peace and Quiet of Her Majeſty's Government and the Proteſtant Succeſſion, and prepare the Minds of the People for an Alteration, by giving them ill Impreſſions of the preſent Eſtabliſhment and Adminiſtration.

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If Reſiſtance was illegal, on any Pretence whatſoever; If it was a Sin, which unrepented of, by the Doctrine of the Church of *England*, carried ſure and certain Damnation, without making all poſſible Reſtitution; he begged their Lordſhips to conſider what a Duty was here preſſed, on the Peril of Damnation, upon every Man's Conſcience that knew or believed there was Reſiſtance in the Revolution, and was conſcious to himſelf of being any ways aſſiſting or conſenting to this damnable Sin; and what muſt be the Conſequence, if theſe Doctrines, without any Reſerve or Exception, were preached throughout the Kingdom with Impunity. All which he hoped was ſufficient to ſatisfy their Lordſhips, that Dr. *Sacheverell* was guilty of the Charge exhibited againſt him in the firſt Article; and from their Lordſhips Juſtice, the Commons hoped his Puniſhment would be adequate to the Heinouſneſs of his Offence.

Sir John Hawles.

Sir *John Hawles*, in Maintenance of the firſt Article, ſhewed, that the *Roman* Emperors, under whom our Saviour and the Apoſtles lived, were generally Uſurpers; and yet, when they were poſſeſſed of Sovereign Power, the Apoſtles taught, that they ought to be obeyed: The ſame he held of ſuch of our Kings as had uſurped the Throne.

He further ſuggeſted, that Allegiance was as much due to an Uſurper, as to a lawful Prince: Or in other Words, that every Man, that could find Means to aſcend he Throne, became a lawful Sovereign the Moment he poſſeſſed himſelf of it, and had depoſed his Predeceſſor. And he was of Opinion, That the Doctor's maintaining the

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Doctrine of Non-Reſiſtance was High Treaſon; though the Commons had been ſo merciful as to impeach him only of High Crimes and Miſdemeanors.

Mr. Stanhope.

Mr. *Stanhope*, in Maintenance of the firſt Article, ſaid, That thoſe who aſſerted, in general Terms, the abſolute Illegality of Reſiſtance, muſt do it with a Deſign to overthrow Her Majeſty's Title and Government; ſince, at the ſame Time they skreened themſelves under the Notion of profeſſing abſolute Paſſive Obedience to the Supreme Power, they could not conceal, that the real Object of this darling Doctrine, was a Prince on the other Side the Water; they could not otherwiſe be conſiſtent with themſelves: For in the ſame Diſcourſe to preach Paſſive and Unlimited Obedience to Magiſtrates, and to revile and defame Magiſtrates; to preach Non-Reſiſtance on any Pretence, and to encourage Sedition, were ſuch Contradictions as could no otherwiſe be reconciled, than by concluding, That, however they were pleaſed to colour and diſguiſe their Diſcourſes, their true End was to alienate the Peoples Affections from their preſent Governors: To inſinuate, that the Revolution itſelf was an Uſurpation: That whatever had been built on that Foundation was wrong; and to repreſent thoſe who had a Hand in it as Rebels and Traitors.

That it was not material, what the Opinions of ſome Divines have been: It was ſufficiently known what the Practice of the Church of *England* had been, when ſhe found herſelf oppreſſed; and appealed to the Practice of all Churches and Nations, how they behaved themſelves, when they found their Civil and Religious Rights invaded and oppreſſed by Tyranny.

He believed, *There was not that Government in the World but had its Beginning in Reſiſtance, or Compact:* And if Compact was admitted, there muſt likewiſe be admitted a Right to defend thoſe Rights accruing by Compact: That *Grotius*, in his Treatiſe *De Belli & Pacis*, L. 1. Cap. 4. Sect. 13. ſays, *If the King hath one Part of the Supreme Power, and the other Part is in the Senate, or People; when the King ſhall invade that Part that doth not belong to him, it ſhall be lawful to oppoſe a juſt Force to him, becauſe his Power doth not extend ſo far. Which Poſition I hold to be true, even though the Power of making War ſhould be veſted only in the King; which muſt be underſtood only to relate to Foreign War: For as for Home, it is impoſſible for any to have a Share in the Supreme Power, and not to have likewiſe a Right to defend that Share.*

This was exactly adapted to the Conſtitution of *England*; for that the Lords and Commons, and every Subject of *Great Britain*, had Rights, could not be denied: And to ſay, that, when a Prince ſhall invade all theſe Rights, the whole Collective Body of the Nation has no Way to vindicate thoſe Rights, was ſo inconſiſtent, and contrary to Reaſon, that it was to be wondered it could ever enter into the Mind of Man.

That, at the Revolution, it was not thought a black and odious Crime, to take up Arms for Defence of the Conſtitution: Many of their Lordſhips, and the beſt Part of the Nation, were concerned in it; and it was with much Gratitude to the greateſt of Queens, they remembered how great a Share Her Majeſty had in the Revolution: And after this, for the Doctor to give the injurious Epithets of *Republicans*, of *Enemies, and Traitors to Church and State*, to thoſe who were concerned in that Reſiſtance, was not to be borne: It would have become him to have conſidered firſt, who were concerned, and who had a Share in it. 1709-10. 8 Annæ.

That the Principles broached by the Doctor well enough became profeſſed Jacobites; and had they confined themſelves to their own Conventicles, it might have been conſiſtent with the mildeſt Government to ſuffer them to enjoy the Toleration, how Deſtructive ſoever their Principles were. But when they ſhould vent their Treaſons abroad, and occaſionally conform and take the Oaths to the Government, the better to deſtroy it: When they ſhould abjure the pretended Prince of *Wales*, but not forget him; and when the Pulpit of our Metropolis ſhould be proſtituted and polluted by venting Sedition againſt the beſt of Queens, it was high Time for their Lordſhips to animadvert upon it.

And having made a Panegyrick on the then Miniſtry, who had, he ſaid, compelled the Enemy to ſue for Peace, and they were about to reap the Fruits of a long expenſive War; At ſuch a critical Juncture, when it behoved us more than ever to be united, then did this pious Son of the Church, this Loyal Subject, this Paſſive-Obedience Gentleman, endeavour to create groundleſs Miſtruſts and Jealouſies of the Adminiſtration.—— He was, indeed, but *an inconſiderable Tool of a Party*, not worth the Trouble they had given their Lordſhips: But they looked upon it, that their Lordſhips Judgment in this Caſe would be giving a Sanction, which would determine what Doctrines of this Kind ſhould or ſhould not be preached; and they hoped their Lordſhips would inflict ſuch Puniſhment on this Offender, as ſhould deter others from committing the like Inſolence.

Sir Peter King's *Arguments on the 2d Art.*

Sir *Peter King* being aſſigned to maintain the ſecond Article, which charges the Doctor with aſſerting, *That the Toleration granted by Law was unreaſonable, and the Allowance of it unwarrantable*, &c. ſaid, It was true, that the Word Toleration was not mentioned in the Act, as the Doctor had obſerved in his Anſwer; but every Body knew, that the Exemption granted to Diſſenters by 1 *W. & M.* was called *The Toleration Act*; and the Doctor himſelf, in the 14th Page of his Sermon, had called it, The Toleration, where he ſaid, the Toleration was never intended to indulge and cheriſh ſuch Monſters and Vipers in our Boſom: And, again, in the 19th Page, where he ſays, The Diſſenters had advanced themſelves from the Religious Liberty their Sovereign had indulged them in, to claim a civil Right, and juſtle the Church out of her Eſtabliſhment, by hoiſting their Toleration into its Place.

And for the Doctor to affirm, That Hetrodoxy, or a different Opinion from any of the Articles of the Faith of our Church, almoſt neceſſarily infers Rebellion and High-Treaſon in the State; What could be a more direct

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breaking in upon, and disavowing the Toleration, than this? Was not this to maintain the Toleration granted by Law to be unreasonable, and the Allowance of it unwarrantable, when he knew every Denomination of Dissenters differed from the Church in some of her Articles?

Another Reflection on the Toleration was in Page 16, where he says, What could not be gained by Comprehension and Toleration, must be brought about by Moderation and Occasional Conformity: That is, what they could not do by open Violence, they will not fail by secret Treachery to accomplish: *&c.*

Was not this calling the Toleration an open Violence to the Church, and affirming that it was made with an Intent to destroy the Church, and maintaining that the Toleration was unreasonable, *&c?*

And as to that Part of the 2d Article, which charges him with asserting, That he is a False Brother, with relation to God, Religion, and the Church, who defends Toleration and Liberty of Conscience; he cited the 8th Page of his Sermon, where the Doctor says, If to defend Toleration and Liberty of Conscience, and under Pretence of Moderation, to excuse the Separation, and lay the Fault upon the true Sons of the Church; If to court the Fanaticks in private, and hear them rail at and blaspheme the Church, and, upon Occasion, to justify the King's Murder; If to flatter both the Dead and the Living in their Vices, and tell the World, if they have Wit and Money they need no Repentance, and that only Fools and Beggers are damned; If these are the modish and fashionable Criterions of a true Churchman, *God deliver us from all such False Brethren!*

Here he made it one Mark of False Brethren, *To defend Toleration and Liberty of Conscience*, which was an evident Declaration against the Justice and Expediency of the Toleration.

That by his Reflection on Archbishop *Grindall*, he also designed to censure the Toleration; for he says, Page 20, Have they not, ever since their first unhappy Plantation in this Kingdom, by the Intercession of that false Son of the Church, Bishop *Grindall*, always improved and rose upon their Demands in the Permission of the Government? Insomuch, that Queen *Elizabeth*, who was deluded by that perfidious Prelate, to the Toleration of the *Genevian* Discipline, (the Discipline and Polity of the Dissenters), found it such an headstrong and encroaching Monster, that she foresaw it would endanger the Monarchy as well as the Hierarchy; and, like a Queen of true Resolution and pious Zeal for both, pronounced, That such were the restless Spirits of that factious People, that no Quiet was to be expected from them, till they were utterly suppressed: Which, like a prudent Princess, she did by *wholesome Severities*, that the Crown for many Years sat easy and flourishing on her Head.

Here he called the Archbishop a false Son of the Church, and a perfidious Prelate, for persuading the Queen, to grant a Toleration to Dissenters: And what was this in Effect, but to declare the Parliament were in the Wrong in granting a Toleration to the Dissenters? and that the Bishops, who were for tolerating them, were neither Fathers or Sons of the Church, but corrupt and perfidious Prelates? And what could he do more to enflame the Government against the Dissenters, than by recommending it as a noble Resolution and pious Zeal in Queen *Elizabeth*, utterly to suppress the Dissenters; and to recommend the Severities used in her Reign, because they were wholesome, and of happy Consequence to that renowned Queen.

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The last Charge in this Article was, The Doctor's asserting it to be the Duty of the Superior Pastors, to thunder out their Ecclesiastical *Anathema's* against Persons entitled to the Benefit of the Toleration, and insolently defying any Power on Earth to reverse those Sentences: For which he referred to the 25th Page of the Sermon, and observed, that the Doctor did in his Answer own this Charge in Effect; for he there affirmed, That some Sentences pronounced by the Pastors of the Church were ratified in Heaven: That some Persons exempted from Punishment by the Laws of the Land, might yet, by the Laws of Christ, be liable to such Sentences: And that Schism, or a causeless Separation from a Church, enjoining no sinful Terms of Communion, was a Sin which exposed the Person guilty of it to the Censures of the Church.—— Which was not only a weakening and censuring the Toleration, but a direct impugning the Queen's Supremacy, which by the Canon he was bound to maintain.

Lord Will. Paulet.

The Lord *William Paulet* being assigned to assist in Maintenance of the 2d Article, said, That the Nation had seen the good Effects of the Toleration, many of the Dissenters since it passed having become sincere Converts to the Church: That the Prejudices of the Dissenters generally wore off, and the Numbers daily decreased; and yet the Doctor had set forth Toleration in the most odious Colours, and factiously endeavoured to stir up the People against it: He hoped, therefore, their Lordships would, by an Exemplary Punishment, suitable to so high a Crime, vindicate the Authority of Parliaments, and effectually discourage such turbulent and seditious Preachers.

Mr. Cowper.

Mr. *Cowper* also was assigned to assist in maintaining the 2d Article; but there being nothing in his Argument but what Sir *Peter King* had already insisted on, it may very well be omitted here; though the Managers might think it proper at the Trial to enforce and inculcate the same Things over and over again, that they might make the deeper Impression on the Audience.

Mr. Thompson *on the 3d Art.*

The Court assembling again on *Wednesday* the 1st of *March*, Mr. *Thompson* endeavoured to maintain the Charge in the 3d Article, *viz.* That the Doctor had asserted, in Contradiction to a Vote of both Houses, *That the Church was in a Condition of great Peril and Adversity under Her Majesty's Administration*; and insinuated, that the Members who passed that Vote were themselves conspiring the Ruin of the Church, while they voted it out of Danger; alluding, by way of Parallel to that Assembly, who voted the Person of King *Charles* I. out of Danger, at the same Time they were conspiring his Destruction.

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To prove this Part of the Charge he quoted a Paſſage in the 5th Page of the Doctor's Sermon; where he ſays of the Church of *England*, Her Holy Communion has been rent and divided by factious and Schiſmatical Impoſtors, her pure Doctrine corrupted and defiled, her primitive Worſhip and Diſcipline prophaned and abuſed, her ſacred Orders denied and villified, her Prieſts and Profeſſors, like St. *Paul*, calumniated, miſrepreſented, and ridiculed; her Altars and Sacraments proſtituted to Hypocrites, Deiſts, Socinians, and Atheiſts; and this done, I wiſh I could not ſay, without Diſcouragement, I am ſure with Impunity, not only by our profeſſed Enemies, but, which is worſe, *by our pretended Friends and falſe Brethren.*

Here the Manager obſerved, That none could proſtitute Altars, Sacraments, *&c.* to Deiſts and Atheiſts, but thoſe of his own Order; thoſe who were to puniſh ſuch Offences among the Clergy, their Spiritual Superiors; and whether they were not Part of Her Majeſty's Adminiſtration, he ſubmitted to their Lordſhips.

Another Paſſage he cited for Proof of this Article, was in Page 18; where the Doctor ſays, Falſhood alway implies Treachery, and whether this was a Qualification for any one to be truſted, eſpecially with the *Guardianſhip of our Church and Crown*, let our Governors conſider: Whether this Reflection did not aim higher than the Adminiſtration, he ſubmitted to their Lordſhips.

The next Paſſage cited is in Page 20; where he ſays, And now are we under no Danger in theſe deplorable Circumſtances? Muſt we lull ourſelves under this ſad Repoſe, and in ſuch a ſtupid lethargick Security embrace our Ruin? When *Eliſha*, the great Prophet of God, was ſurrounded with an Hoſt of Enemies that ſought his Life, his blind Servant beheld not the Peril his Maſter was in, till his Eyes were opened by a Miracle, and he found himſelf in the Midſt of Horſes and Chariots of Fire: *I pray God we be out of Danger; but we may remember the King's Perſon was voted to be ſo, at the Time his Murderers were conſpiring his Death.*

That the Doctor would excuſe himſelf, indeed, in his Anſwer, by ſaying, that theſe deplorable Circumſtances proceeded from the Maturity of National Sins, *&c.* But it was plain he inſinuated and aſſerted, that this Danger was occaſioned by the Diſſention from the Church, which the Legiſlature apprehended to be no Danger to it, and therefore it did not become him to aſſert the contrary: And as to the Parallel between the Aſſembly who voted King *Charles* I. out of Danger, and the Members who voted the Church out of Danger, though the Doctor ſaid he meant no Reflection on the Members who paſſed that Vote, becauſe he never mentioned that Vote, and that they were not the ſame People who voted King *Charles* out of Danger, that conſpired his Ruin; the Doctor could not be ignorant, that it was in *November*, 1648, that King *Charles* was voted out of Danger; and how ſoon after the King's Trial and Death happened every Body knew; and though there might be ſome Alteration made in that Aſſembly, during that Time, the Perſons who conſpired his Deſtruction, were Part of that Aſſembly who voted him out of Danger; and it was not to be doubted but the Doctor intended his Alluſion in the ſame Manner. 1709-10. 8 Annæ.

And as to the Place of Scripture quoted by the Doctor, viz. *That the blind Servant beheld not the Peril his Maſter* Eliſha *was in, till his Eyes were opened by a Miracle, and he found himſelf in the midſt of Horſes and Chariots of Fire. Theſe Horſes and Chariots of Fire*, he obſerved, were not the Prophet's Enemies; ſo that he plainly perverted the Senſe of the Text, to make a ſtronger Impreſſion, and more effectually to delude the People.

The laſt Paſſage he cited to maintain this Article, was in the laſt Page, where ſpeaking of the Danger of the Church, the Doctor quotes a Text out of *Lamentations*, viz. *Though ſhe lies bleeding of the Wounds ſhe received in the Houſe of her Friends*; this Text, he ſaid, he could not find, and therefore it ſeemed to be a Lamentation of the Doctor's own making. Then, he obſerves, the Doctor goes on, *Though the Ways of* Sion *may mourn for a Time, and her Gates be deſolate, her Prieſts ſigh, and ſhe in Bitterneſs, becauſe her Adverſaries be Chief, and her Enemies at preſent proſper; though among all her Lovers ſhe has few to comfort her, and many of her Friends have dealt treacherouſly with her, and are become her Enemies.*

Theſe Paſſages he ſaid, he mentioned only to ſhew that the Doctor, by the moſt pathetick Expreſſions of his own, mixed with theſe Texts of Scripture, endeavoured to repreſent the Church of *England* to be in the utmoſt Danger.

And as to the Doctor's Pretence, That the Vote concerning the Church's Danger could not concern him, becauſe it was made four Years ago; he ſhould have obſerved, that the Words were, *Whoſoever ſhall go about to inſinuate that the Church is in Danger, under Her Majeſty's Adminiſtration*; and therefore it muſt relate to any Time during Her Majeſty's Reign.

And that the Doctor (whoſe Education would not permit us to preſume he ſinned through Ignorance) ſhould take upon him, in his private Capacity, to contradict the Senſe of the whole Nation, and caſt ſuch Aſperſions on his Superiors, this immoderate Zeal could only be intended to animate a deluded People to the Execution of ſeditious Deſigns.

But the Commons were ſo well ſatisfied of their Lordſhips true Concern for the Preſervation of the Conſtitution, that they could not imagine they would ſuffer ſuch Attempts to paſs without condign Puniſhment.

Mr. *Compton* alſo being aſſigned to maintain the third Article, ſaid, It had been one of the conſtant Artifices of the Enemies of the preſent happy Eſtabliſhment, to inſinuate that the Church was in a Condition of great Peril and Adverſity, in order to cover Deſigns they durſt not own; but this Aſſertion was never ſo boldly maintained, or with ſuch invidious and aggravating Circumſtances, as by the *Criminal* at their Lordſhips' Bar.——That, notwithſtanding the great Benefits the Church (of which he was a Member) reaped by the Revolution, he made that the very Period of Time when the Enemies of the Church firſt entertained Hopes of delivering her up to her worſt Adverſaries, and that, ever ſince, there had been a continued Series of Contrivances to ruin it: At the Revo- *Mr.* Compton.

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lution by open Violence, and now, under Her Majesty's Administration, by secret Treachery: And, since neither the late nor the present Reign could escape his Invectives, it was evident for what Person he reserved his Panegyricks.

That there were no Grounds to compare the dutiful Proceedings of the late Parliament, who had Her Majesty's Thanks for their Unanimity and Zeal in her Service, to that Parliament with which he would maliciously draw a Parallel; nor was there the least Resemblance between Her Majesty's glorious Reign, and that unfortunate Administration; unless it were, that then, as now, the Ministers of the Church, though by by their Function Messengers of Peace, set up to be Trumpeters of Sedition, and Incendiaries to Rebellion: But the Commons hoped, that even this Resemblance would be determined, by their Lordships fixing such an Exemplary Punishment on this Offender, as should deter others from endeavouring to distract the Kingdom, by groundless Distrusts and Jealousies.

Lord Conings-by.

Lord *Coningsby* being assigned also to maintain the third Article, observed, That the Doctor's Sermon, preached at *St. Paul's*, from the Title Page to the Conclusion, was one malicious and seditious Assertion, that the Church of *England* was in the utmost Peril and Danger in the last Reign and the present; and was preached with an Intention to bring in the Pretender and Popery.

Mr. Dolben.

Mr. *Dolben*, in Maintenance of the third Article, observed, That the wicked Parallel of the Doctor's, might justly be turned upon him; for it was beyond a Suspicion, that he, and all his Abettors, were conspiring the Ruin and Destruction of the Church, while under the Disguise of a false Zeal, they prostituted her sacred Name, to carry on dark Designs, fatal to Church and State: And that they might take up a much juster Complaint, than that in the Doctor's Answer; namely, That hard was the Fate of that People, who, after twenty Years War, in Conjunction with so many great Allies, and with the Expence of so much Blood and Treasure, had been contending against Tyranny and Oppression, and which they might justly hope they had at last subdued; should then see all *Europe* enjoy the Fruits of their Labours, and they themselves only must be rendered incapable of the common Blessing; *betrayed at Home to a Condition of perpetual Bondage, by such false Brethren as are at your Lordships Bar*; (where then stood some of the greatest Divines in *England*, to countenance the Doctor and his Cause, *viz.* Dr. *Stanhope*, Dr. *Atterbury*, Dr. *Smalridge*, and Dr. *Moss*): Whereupon Lord *Haversham* moved the Lords to adjourn; and after their Return, the Lord Chancellor acquainted Mr. *Dolben*, That the Words *as are at your Lordships Bar*, needed Explanation: And Mr. *Dolben* answered, Thy had Relation only to the Prisoner at the Bar.

Mr Serj. Parker *on the fourth Article.*

Mr. Serjeant *Parker* being assigned to make good the Charge in the fourth Article, *viz.* That the Doctor does falsly and maliciously suggest, That Her Majesty's Administration, both in Ecclesiastical and Civil Affairs, tends to the Destruction of the Constitution: And that there are Men of Characters and Stations, both in Church and State, who are false Brethren, and do themselves weaken, undermine, and betray, and do encourage, and put in the Power of others, who are professed Enemies, to overturn and destroy the Constitution and Establishment. And chargeth Her Majesty, and those in Authority under Her, with a general Mal-Administration; and, as a publick Incendiary, he perswades Her Majesty's Subjects to keep up a Distinction of Factions and Parties, instils groundless Jealousies, and foments destructive Divisions among them, and excites and stirs them up to Arms and Violence: And that his said seditious and malicious Suggestions may make the stronger Impressions upon the Minds of Her Majesty's Subjects, he the said *Henry Sacheverell* does wickedly wrest and pervert divers Texts and Passages of Holy Scripture:

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Observed, That the avowed Design of this Sermon, was to represent the extreme Perils and Distresses of the Church and Constitution, from false Brethren that are *in* the Administration, and countenanced *by it*. And beginning with the second Clause in this Article, *viz.* That he did falsly and maliciously suggest, *That there are Men of Characters and Stations in Church and State, who are false Brethren, and do weaken, undermine, and betray*, &c. To prove this, he cited p. 15. where the Doctor says, *That they weaken, undermine, and betray in themselves, and encourage and put it in the Power of our professed Enemies, to overturn and destroy the Constitution and Establishment:* That this run through his whole Discourse; and being affirmed of false Brethren in general, must be applied to every Sort of false Brother; and consequently, if there were Men of Characters and Stations, whom he represented as false Brethren, then he affirmed of them, and had undertaken to prove, *That they did weaken, undermine, and betray the Constitution*, &c.

That Pag. 21. he said, What a vast Scandal and Offence it must be, to see Men of Characters and Stations, thus shift and prevaricate with their Principles! What can unwary Persons conclude from this Tergiversation and Hypocrisy, but that all Religion is State of Craft and Imposture; that all Godliness is Gain; and that the Doctrines of the Church lie not so much in her Articles as her Honours and Revenues?

This was a full Charge of False Brotherhood upon Persons of Characters and Stations: And, according to the Description he had given above of False Brethren, that they did weaken, undermine, and betray, *&c. he had charged Men of Characters and Stations, with Weakening, Undermining, and Betraying*, &c.

That this was a general Arraignment of the Government: And, to put the Matter beyond all Doubt, he said, in Scripture-Words, Page 26, *That the Church's Adversaries are Chief.*

As to the 3d Clause in this Article, That he charged Her Majesty, and those in Authority, with a general Mal-Administration, he cited Page 14, where he said, These False Brethren in our Government do not singly, in private, spread their Poison, but (what is lamentable to be spoken) are suffered to combine into Bodies, and Seminaries, wherein Atheism, Deism, Tritheism, Socinianism, with all the hellish Principles of Fanaticism, Regicide, and Anarchy, are openly professed and taught, to corrupt and debauch the Youth of the Nation, in all Parts of it, down

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down to Poſterity, to the preſent Reproach and future Extirpation of our Laws and Religion.

That, Page 23, a Falſe Brother is repreſented, as relinquiſhing his old Friends and Principles, and betraying his own Party, for the little ſordid Lucre of Place or Preferment. And that the Falſe Brethren he mentions, as put into Places, are put in by our Governors, he plainly ſuggeſts, Page 18, when he bids the Governors conſider, whether they are fit to be entruſted, eſpecially with the Guardianſhip of our Church and Crown.

As to the firſt Clauſe in this Article, which charges him with ſuggeſting that Her Majeſty's Adminiſtration in Church and State tended to the Deſtruction of the Conſtitution: This he obſerved was made out by what had been ſaid of the other two. All thoſe fatal Miſchiefs complained of in them, aroſe from the Adminiſtration; which therefore plainly tended to the Deſtruction of the Conſtitution.

As to that Clauſe, which charged the Doctor as a publick Incendiary, with fomenting Factions and Parties, inſtilling groundleſs Fears and Jealouſies, *&c.* he ſaid, His Language of Forſaking old Friends and Principles, and betraying their Party, could have no other Drift, but the keeping up Diſtinctions, and inſtilling groundleſs Jealouſies; and though he pretended to approve of an Indulgence to ſcrupulous Conſciences, in Reality he approved of none; ſince he did not admit any one to have a Conſcience truly ſcrupulous, who differed from him; but all ſuch were Falſe Bretheren, and Villains, and to be ſtigmatized with all the other Names of Reproach was ſo liberal of.

And as to his inciting Her Majeſty's Subjects to Arms and Violence, this was moſt manifeſt from his ſpreading ſuch hideous Repreſentations of the Government, ſuch Outcries of the Church and true Religion being undermined, betrayed, and expoſed by thoſe in the Adminiſtration. This naturally tended to Rebellion; and therefore at Common Law, *To bear the People in Hand, that the King's Government was erroneous, heretical, or unjuſt, whereby the Manner of the Government was arraigned or impeached, was held to be High Treaſon.* Roll's Rep. p. 89, 90.

The laſt Part of the Charge, his perverting Texts of Scripture, he proved from the Paſſage concerning *Eliſha*, mentioned before by Mr. *Thompſon*, Page 21. And whether he ſhould impute that Miſtake to the Doctor's Ignorance, and taking it upon Hearſay, or to his Reſolution knowingly to pervert it, he left to the Doctor's Choice.

And whereas the Doctor ſaid, he was, to his great Comfort, charged in this Article only with *ſuggeſting*, and not maintaining, that Her Majeſty's Adminiſtration tended to the Deſtruction of the Conſtitution, and hoped that bare Suggeſtions and Inſinuations ſhould not involve an *Engliſh* Subject in the Guilt and Puniſhment of High Crimes and Miſdemeanors.

He replied, That although this Charge had not been poſitive (as it was), it would be very extraordinary to imagine that, let a Man caſt never ſo many Scandals and Reproaches on the Government, if it were done by Way of Suggeſtion and Inſinuation, and the Charges were expreſsly maintained and avowed, there ſhould be no Crime in it, or not a high one: This was to ſay that Sedition and expoſing the Government were lawful, only the Manner was to be taken care of; that if you do it by Suggeſtions, which every Body will underſtand, and which will have their full Effect, yet you may be ſafe; for thoſe who come to judge you are not to underſtand you, though every Body elſe does. 1709-10. 8 Annæ.

That his Lamentation with which he concluded his Anſwer, *That hard was the Lot of the Miniſters of the Goſpel*, &c. was a moſt inſolent Reflection on the Honour and Juſtice of the Houſe of Commons, and was not inſerted by Way of Defence, but to inſinuate that Dr. *Sacheverell* had been proſecuted only for doing his Duty as a Clergyman.—— But was the Story of *Eliſha*, as he told it, an honeſt Quotation? Were the Enemies that were Chief, and the Adverſaries that at preſent proſpered, no particular Perſons now in being? Was his Sermon an Exhortation to Piety and Virtue? Was it not manifeſtly a Trumpet of Rebellion? an expoſing the Faults of his Governors to make their Perſons hated?—The Commons had the greateſt Veneration for the Clergy of the Church of *England*, who were glorious through the whole Chriſtian World, for their Preaching and Writing, and their Steadineſs to the Proteſtant Religion in the utmoſt Danger; and, it was with Regret and Trouble, that they found themſelves obliged to bring before their Lordſhips Bar one of that Order: But when they conſidered Dr. *Sacheverell* diveſting himſelf of all the becoming Qualities proper for his Order, of all that peaceful, charitable Temper, Chriſtianity requires; and, with Rancour and Malice, branding all who differed from him (though through Ignorance) with the Titles of Hypocrites, Rebels, Traitors, Devils; reviling and expoſing them, conducting them to Hell, and leaving them there, *&c.* and doing this at a Time when all *Europe* was in War, and nothing could preſerve us from falling into the Hands of the Grand Enemy and Oppreſſor, but our Unanimity: That he ſhould labour to ſap the Eſtabliſhment, railing and declaiming againſt the Government, crying, To Arms; and blowing a Trumpet in *Sion*, to engage his Country in Seditions and Tumults, and overthrow the beſt Conſtitution, and betray the beſt Queen that ever made a People happy; and this with Scripture in his Mouth.——The Commons looked upon it, that he had ſevered himſelf from the reſt of the Clergy; and were in no Fear of being thought Diſcouragers of thoſe who preach Virtue and Piety, becauſe they proſecuted him who preached Sedition and Rebellion; or to have any Deſign to leſſen the Reſpect and Honour that is due to the Clergy, by bringing him to Puniſhment who diſgraced the Order.

Mr. Secretary *Boyle*, and Mr. Chancellor of the *Exchequer*, aſſiſted alſo in maintaining the Charge in the fourth Article; but there being nothing material in their Arguments that had not been touched on before, they are deſignedly omitted; and, indeed, if all the Invectives and ill Language were weeded out of this Trial, it would have come into a much narrower Compaſs.

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The Managers conclude.

On *Thurſday* the 2d of *March*, the Court being met again, Mr. *Lechmere* obſerved, That the Commons had made their Impeachment good in every Part: And having given a ſhort Abſtract of the Managers Arguments, he added, That the Commons had gone through their Charge together, that their Lordſhips might have it entire; but they reſerved to themſelves the Liberty of Replying, and every other legal Advantage that ſhould ariſe to them in the Progreſs of their Impeachment.

The Court meeting again on *Friday* the 3d of *March*; and the Doctor's Counſel, being directed to proceed in his Defence, ſaid,

The Defence made by the Doctor's Counſel.

As to the Charge contained in the firſt Article, *viz.* His maintaining unlimited Non-Reſiſtance, the Doctor had indeed affirmed the utter Illegality of Reſiſtance to the Supreme Power, on any Pretence whatſoever: But this could never be interpreted as a Reflection on the neceſſary Means uſed to bring about the Revolution; for the Supreme Power was the Legiſlative Power, which was not then reſiſted, the Revolution taking Effect by the Lords and Commons concurring and aſſiſting in it.

That, by the happy Conſtitution under which we live, a Subject of *England*, was not to be made Criminal, by a laboured Conſtruction of doubtful Words; or, when that would not ſerve, by reſorting to his Meaning. That it had been Reſolved by their Lordſhips, in Sir *Samuel Barnardiſton's* Caſe, That Inuendo's, or ſuppoſed or forced Conſtructions ought not to be allowed; and if there were any Doubt or Uncertainty in the Doctor's Expreſſions, they hoped the moſt favourable Conſtruction would be put upon them.

But the main Objection they obſerved was, That the Doctor's Aſſertion of the Illegality of Reſiſtance muſt neceſſarily be underſtood of the Executive Power: If it be utterly unlawful to Reſiſt in any Caſe, then it was ſo at the Revolution; and from thence the Conſequence was drawn, That the Doctor was guilty of maintaining, *That the neceſſary Means uſed to bring about the Revolution were odious and unjuſtifiable.* To this they anſwered, That the Doctor had not, in any Part of his Sermon, applied this general Aſſertion to the Revolution; and 'twas one Thing expreſly to affirm the Revolution was ſuch a Caſe as ought not to be excepted out of the general Rule; and another Thing not to make the Exception: That extraordinary Caſes, Caſes of Neceſſity were always implied, though not expreſſed in the General Rule: That the General Rule ought always to be preſſed, but the Exceptions were never to be particularly ſtated. To point out every ſuch Caſe before-hand, was as impoſſible, as it was for a Man in his Senſes not to perceive plainly when ſuch a Caſe happens.

That the ſame Apoſtle, who enjoined Obedience and Non-Reſiſtance to the Higher Powers, commanded alſo Servants to obey their Maſters, and Children to obey their Parents in all Things. Notwithſtanding which general Precepts, many Caſes might happen wherein it might be not only unfit, but ſinful, for Servants to obey their Maſters, or Children to obey their Parents; and yet the Apoſtle never thought it proper to ſtate or mention thoſe Caſes; but contented himſelf to preſs the Duty of Subjection in general, leaving ſuch Caſes (when they happened) to juſtify themſelves. 1709-10. 8 Annæ.

That the Doctor's Aſſertion of the Illegality of Reſiſtance to the ſupreme Power, on any Pretence whatſoever, in general Terms, without expreſſing any Exception, was alſo warranted by the Authority of the Church, and was agreeable to the Laws of *England*: That the Doctor was by Law obliged to read the Homilies, in which this Duty was preſſed in much ſtronger Terms, without any Limitation or Exception; and was it Criminal for a Man to preach that Doctrine which 'twas his Duty to read?

That had this ſlaviſh Doctrine of Non-Reſiſtance been firſt branded with its indelible Mark of Infamy, and the Right and indiſpenſible Duty of Reſiſtance plainly ſhewn; had all the ſlaviſh Notions of the Common Law diſperſed in our Law Books, which gave Countenance to this Doctrine of Non-Reſiſtance been firſt weeded out, and ſome few Acts of Parliament, entirely agreeable with this ſlaviſh Doctrine, firſt repealed; had the People been ſet right in the Notions of their Obedience, and the Miniſters of the Goſpel inſtructed by an Act of Parliament, what Doctrine they ought to preach, and what not, and the Doctor had afterwards erred, their Lordſhips might then have looked upon him as an obſtinate Offender.

But as this Doctrine of the Illegality of Reſiſtance on any Pretence whatſoever, was the Doctrine of the Church, it had alſo been confirmed by the Legiſlature, without making any particular Exception: And whatever Meaſures might have been taken by the People, in Caſes of the laſt Neceſſity, to preſerve their Liberties; yet in no Age could an Inſtance be given, no not in the Reigns of thoſe Princes who had been depoſed, That this Doctrine of the Right of Reſiſtance, was ever permitted to be aſſerted by any particular Perſon: But on the contrary, in the Reign of King *Edward* II. when an Act of Parliament paſſed for the Baniſhment of the two *Spencers*, the Reaſon of their Baniſhment is recited to be, for that they had affirmed and publiſhed in Writing, that Homage and Allegiance was due more by reaſon of the Crown, than by reaſon of the Perſon of the King; and that if the King did not demean himſelf according to Reaſon, in the Exerciſe of his Government, his Subjects might remove him: And ſince that Removal could not be by Courſe of Law, they might therefore remove him by Force. And my Lord *Coke* in his Reports, in *Calvin's* Caſe, ſtiles the Opinion of the *Spencers*, a damned Opinion. Here many Acts of Parliament were recited, that condemned Reſiſtance, and particularly, the Act for the Attainder of the Regicides, wherein it is declared, That *by the undoubted and Fundamental Laws of this Kingdom, neither the Peers of this Realm, nor the Commons, nor both together, in Parliament, or out of Parliament; nor the People, collectively or repreſentatively, nor*

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any other Perſons whatſoever, ever had, have, hath, or ought to have, any coercive Power over the Kings of this Realm. And by the 13th of *Car.* 2. *Seſſ.* 2. *cap.* 1. all Officers in Corporations are required to ſwear, That it is not lawful upon any Pretence, to take up Arms againſt the King. And by the 13 & 14 *Car.* 2. *cap.* 4. Several Officers and Eccleſiaſtical Perſons, are required to ſubſcribe the Truth of this Aſſertion: And though it might be objected, That this Oath was now diſpenſed with, the Act was not yet repealed; and if it was, the Propoſition was never the leſs true, becauſe it was not ſworn: If it was true when it was ſworn, the Propoſition was equally true before and after: And ſince that Oath had been taken by ſo many of the Peers and Commons, no Man would pretend to queſtion the Truth of the Propoſition.

As to that Part of the Charge, that King *William* in his Declaration diſclaimed the leaſt Imputation of Reſiſtance; though the Doctor had ſpoken impróperly, yet he had ſpoken innocently: For the Reſiſtance the Doctor mentions his late Majeſty to have diſclaimed, could have no ſuch Meaning as the Managers would put upon it: He was a Sovereign Prince, and might reſiſt when he pleaſed; and the Doctor had elſewhere ſhewn, he meant Conqueſt by Reſiſtance: And that the Words caſting black and odious Colours, were ſo far from referring to his late Majeſty's diſclaiming the Imputation of Reſiſtance, that they conclude the Sentence that went before it.

The Doctor's Counſel afterwards defended him againſt the Charge in the remaining three Articles, but the Doctor having given us an Abſtract of their Arguments himſelf in the following Speech, after his Counſel had concluded, I ſhall content my ſelf with giving that Speech entire, which is eſteemed one of the fineſt Pieces of Oratory we have in *Engliſh*.

The Defence made by the Doctor himſelf;

Dr. *SACHEVERELL.* My Lords, the Defence made by my Counſel has been ſo full and particular, and the Trial it ſelf drawn out into ſo great a Length, that I ſhould not add to your Lordſhips Trouble, by ſaying any Thing for my ſelf, did I not think that in ſuch a Cauſe as this (wherein the Doctrine of our Church, the Dignity of that Holy Order to which I belong, and even the common Intereſt of Chriſtianity it ſelf, are ſo nearly concerned) it becomes me not to be altogether ſilent.

For, my Lords, It has been owned by ſome of the Managers for the Honourable Houſe of Commons, that though I am the Perſon impeached, yet my Condemnation is not the Thing principally aimed at. I am it ſeems, *an inſignificant Tool of a Party*, not worth regarding; the avowed Deſign of my Impeachment is, by the Means of it to procure an eternal and indelible Brand of Infamy to be fixed, in a Parliamentary Way, on all thoſe who maintain the Doctrine of Non-Reſiſtance, and to have the Clergy directed what Doctrines they are to preach, and what not: And therefore, as inſignificant as I am in my ſelf, yet the Conſequences of my Trial (if rightly repreſented to your Lordſhips by ſome of thoſe Gentlemen) are of the higheſt Moment and Importance. 1709 10. 9 Annæ.

Since I am the unfortunate Occaſion of bringing theſe Matters in Judgment before your Lordſhips, it will behoove me, I think, after what has been pleaded in my Behalf by my Counſel learned in the Law, to ſay ſomewhat alſo for my ſelf, in Order to clear the Innocence of my Intentions, and remove that Load of Guilt and Infamy which may be laid upon me, ſhould your Lordſhips determine (as I truſt in God you will not) that the Articles of Impeachment exhibited, have been made good againſt me.

With your Lordſhips Permiſſion then, I ſhall lay before you ſome few General Remarks, which, in my humble Opinion, may be added to what my Counſel have already obſerved, concerning the Methods taken by the Managers for the Honourable Houſe of Commons, to prove and ſupport the Articles of their Charge: And ſhall then, with your Lordſhips Leave, ſay ſomewhat ſeverally to the Articles themſelves, which may ſerve to remind your Lordſhips of what my Counſel before offered more at large, and with greater Advantage.

My Lords, the Charge brought againſt me in theſe Articles, is of a very high and heinous Nature; and had it been as clearly made out, as it has been ſtrongly affirmed, it would juſtly have expoſed me to a very ſevere Sentence: But the more heinous the Charge is, the more evident and undeniable, I ſhould think, the Proof ought to be. And how, my Lords, has this Charge been ſupported in the ſeveral Articles of it? By plain, direct, and expreſs Paſſages, produced and read to your Lordſhips out of my Sermons; or by Intendments, unneceſſary Implications, and ſtrained Conſtructions? By laying entire Sentences before your Lordſhips, and relying upon what was manifeſtly contained in them; or by piecing broken Sentences, and conjoining diſtant and independent Paſſages, in order to make me ſpeak what I never thought of?

I am unacquainted, my Lords, with the Methods of legal Proof, and little thought I ſhould have had this Occaſion of enquiring into them. But, as far as I am able to comprehend any Thing of this Nature, I ſhould think, that there cannot be a clearer Indication that I am not guilty of having aſſerted, what I am charged by the ſeveral Articles to have ſaid, than that ſo many Hours Learning and Eloquence have been employed in proving me to have ſaid it. Had I really affirmed thoſe Propoſitions for which I am accuſed, my Sermons being before your Lordſhips, the Places wherein ſuch Propoſitions were directly contained, might have been referred to, and read, with the ſame Eaſe as my Counſel referred to the Paſſages contained in the ſeveral Writings and Sermons of the Reverend Fathers, and other eminent Divines of our Church, wherein they taught the Doctrine of Non-Reſiſtance in the ſame Extent as I maintained it, or in Terms much ſtronger.

Theſe Paſſages produced by my Counſel, were barely read to your Lordſhips: No Argument, no Colours were uſed, becauſe none were neceſſary, to prove what Propoſitions were laid down

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down in thoſe Paſſages. Whereas, to prove me guilty of having aſſerted what is laid to my Charge, after my Sermons and Prefaces were read to your Lordſhips, much Art and Induſtry were uſed to perſuade your Lordſhips, that ſuch Aſſertions were really contained in them.

My Lords, When my Words were capable of two Senſes, the worſt and moſt invidious, though at the ſame Time the moſt ſtrained and unnatural Conſtruction, has been always made of them. Nay, when my Words were ſo plain and expreſs, that it was impoſſible to put any Criminal Gloſſes or Colours upon them, I have been accuſed of meaning the direct contrary to what I have ſaid: And when I preſſed the Duty of Allegiance to the Queen, your Lordſhips were told, that it was moſt certain I meant the Pretender.

To aggravate my Guilt, I have been accuſed, not only for what I am ſuppoſed to have ſaid, but for what I am allowed not to have ſaid; not only for what I have taken Notice of in my Sermons, but for what I have paſſed by unobſerved: I have been charged with Negative Crimes; as if what I omitted to ſay, had been omitted with Deſign, and my Silence it ſelf were Criminal.

Theſe, my Lords, are the Methods that have been made uſe of to prove me guilty of Crimes, which, if proved, might affect my Liberty and Fortune: No favourable Allowances have been made to a Miniſter of the Goſpel, diſcharging the Duty of his Function, and rebuking Vice and Irreligion, with an honeſt and well-meant Zeal; but ſometimes perhaps carrying him into Expreſſions too open and unguarded. I could add, my Lords, if ſuch a Complaint might not be thought improper from one in my Circumſtances, that, in the Courſe of my Accuſation, I have been ſtiled a Criminal, and treated as ſuch by ſome of theſe Honourable Gentlemen, with a Degree of Scorn and Indignity, from which I hoped my Sacred Profeſſion, my preſent unhappy Condition, and a Regard to this ſolemn and awful Judicature, might have ſcreened me.

But, my Lords, I lay aſide all Complaints of this Nature, and with your Lordſhips Leave, ſhall proceed to make ſome few, ſhort Obſervations upon the ſeveral Branches of the Charge exhibited againſt me.

to the 1ſt Article;

I am charged, my Lords, in the firſt Article, with having maintained, That the neceſſary Means, uſed to bring about the late happy Revolution, were odious and unjuſtifiable; in Proof of which it has been urged, That I have in General Terms aſſerted, the utter Illegality of Reſiſtance to the Supreme Power, upon any Pretence whatſoever. My Lords, the Reſiſtance in that Paſſage by me condemned, is no where by me applied to the Revolution; nor is it applicable to the Caſe of the Revolution, the Supreme Power not being then reſiſted.

My Lords, I neither expreſly applied my Doctrine of Non-Reſiſtance to the Caſe of the Revolution, nor had I the leaſt Thoughts of including the Revolution under my general Aſſertion. I expreſſed this Doctrine in the ſame general Terms in which I found it delivered by the Apoſtles of Chriſt, I taught it, as I had learnt it, from the Homilies of our Church, and as I was enjoined to teach it, by the Articles of our Religion: I uſed no other Language than what had been uſed by our firſt Reformers, by a continued Series of Right Reverend Prelates, and other celebrated Divines now with God, and by many of thoſe venerable Fathers before whom I ſtand, and what is perfectly agreeable to the Laws and Statutes of this Realm. I had little Reaſon to apprehend that I could ever have been accuſed by the Gentlemen of the Houſe of Commons to your Lordſhips as a Criminal, or as an Aſperſer of the Memory of the late King, for preaching this Doctrine; when others, who preached the ſame Doctrine, in the ſame Terms before their late Majeſties, before our preſent Gracious Sovereign, (whom I pray God long to preſerve!) before each Houſe of Parliament, before this very Houſe of Commons, have met with publick Approbation. But ſince it is my ſingular Misfortune to be accuſed, for what others have received Thanks, in ſome Inſtances conveyed to them by ſeveral of the Managers themſelves, I do with all humble Confidence rely upon your Lordſhip's Juſtice; not doubting but that the learned Judges, if thought neceſſary to be conſulted, will declare what I have in this Caſe aſſerted to be warranted by Law, and the Right Reverend the Biſhops will affirm it to be the Doctrine of the Goſpel.

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The Doctrine I preached being the Doctrine of the Homilies of our Church, not expreſſed only in a few particular Paſſages of thoſe Homilies, but perfectly agreeable to the whole Tenor, the main Scope and Deſign of them; and thoſe Homilies being eſtabliſhed by the Thirty-Nine Articles, as containing godly and wholeſome Doctrine; and thoſe Articles being confirmed by the 13th of Queen *Elizabeth*; and that Statute being made perpetual and fundamental to our Conſtitution by the late Act of Union; I leave it to your Lordſhips to conſider, how far the Condemnation of me, on the Account of that Doctrine, may affect, and ſhake the preſent Frame of the *Britiſh* Conſtitution in Church and State, and tend to diſſolve the Union of the Two Kingdoms.

to the 2d Article;

My Lords, Upon the Second Article, I would humbly pray your Lordſhips to conſider, that I have no where in my Sermon ſhewn any the leaſt Diſlike of the Indulgence granted by Law to Diſſenters; that, on the contrary, I have declared my Approbation of it in the moſt expreſs Terms imaginable, which I beg Leave once more to repeat to your Lordſhips out of my Sermon preached at St. *Paul*'s. *I would not* (I there ſay) *be miſunderſtood, as if I intended to caſt the leaſt invidious Reflection upon that Indulgence, which the Government hath condeſcended to give them; which, I am ſure, all thoſe who wiſh well to our Church are ready to grant to Conſciences truly ſcrupulous; let them enjoy it in the full Limits the Law hath preſcribed.*

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My Lords, This then was, and ſtill is my ſincere Opinion; nor am I conſcious that I have uttered one Word inconſiſtent with it. I have indeed blamed, and perhaps with ſome Warmth and Earneſtneſs blamed, the Abuſes which Men of no Conſcience have made, of the legal Exemption granted to Conſciences truly ſcrupulous: Nor could I think that thoſe Reprehenſions of mine, would have drawn upon me the Diſpleaſure of any ſincere Chriſtian, which were levelled againſt Hypocrites, Socinians, Deiſts, and ſuch as, under the Umbrage of that Act, which permits Proteſtant Diſſenters, and thoſe only, to ſerve God, every Man in his own Way, think themſelves at Liberty to be of no Proteſtant Congregation, of no Religion at all. I will farther ingenuouſly own to your Lordſhips, that I had in my Eye ſome Abuſes made of that Act by the Diſſenters themſelves; who, I am told, do (both Paſtors and People) rarely obſerve the Qualifications preſcribed by that Act; and who erect Seminaries for educating Youth in Principles oppoſite to the Doctrine, Diſcipline and Worſhip of our Church: Whereas that Act was intended for the Eaſe of thoſe, whoſe Minds, through the unhappy Prejudices of Education, were already eſtranged from the Church; not, as I humbly conceive, to indulge Men in taking the moſt effectual Methods to propagate and perpetuate their Schiſm.

My Lords, of any Favours to Diſſenters granted, or intended by the Law, I have no where complained. Of Toleration, a Word unknown to our Laws, and implying, as I am informed, much more than our Law-givers deſigned, if I have ſaid any Thing offenſive, I may, I hope, reaſonably preſume, that it will not be judged by your Lordſhips in any wiſe to reflect on that Act of Exemption, which I have ſpoken of in Terms, no ways, I think, misbecoming a good Subject, or betraying any Want of Chriſtian Moderation. Nor is there, my Lords, any Want of it, I conceive, in affirming that this Act, which relieves ſome Diſſenters from legal Puniſhments, to which they were before obnoxious, hath not anyways altered the Nature of Schiſm, or extinguiſhed the Obligations to Church-Communion; which is an Evangelical Duty, incumbent on all Chriſtians by the Rules of the Goſpel, antecedent to all ſecular Laws, and can by no human Power be diſpenſed with. If the Church of *England*, my Lords, impoſes no unlawful Terms of Communion, as ſhe certainly does not, then all Separatiſts from her Communion, will, notwithſtanding the Indulgence, continue to be guilty of Schiſm; The Conſequence of which Guilt may ſtill reſt upon their Souls, however it may ceaſe to affect their Bodies or Eſtates. For, as no human Law can render that lawful which God hath forbidden, ſo neither can it make that void, which God hath commanded.

My Lords, I am accuſed under this Head, of maintaining, That it is the Duty of ſuperior Paſtors to thunder out their Eccleſiaſtical *Anathema's* againſt Perſons entitled to the Benefit of the Toleration: I hope it hath evidently appeared to your Lordſhips, that I advance no ſuch Poſition. Sure I am, that my Words do not in themſelves carry ſuch a Meaning, nor does the Connection of my Diſcourſe require that Senſe, or eaſily admit it. Schiſmaticks, my Lords, are not the only Perſons againſt whom Eccleſiaſtical Cenſures may be denounced; the Works of Darkneſs, which I referred to, as fit to be reproved, in that Part of my Sermon, where I ſpeak of theſe Cenſures, are of the ſame Kind with thoſe mentioned by the Apoſtle, whoſe Words I produced, all lewd and immoral Practices: Againſt theſe, my Lords, and againſt Hereſies, and Blaſphemies, (a black Catalogue of which has been diſplayed before your Lordſhips) I thought the *Anathema's* of the Church would be well employed; ſuch *Anathema's*, I doubt not, my Lords, would be ratified in Heaven, and would therefore, by any Power on Earth, be irreverſible.

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As to Archbiſhop *Grindall*, though I may ſeem to have uſed ſome undue Aſperity of Expreſſion concerning him, yet I charged him with nothing but what I had good Grounds for, from our Hiſtorians. It hath been made appear to your Lordſhips, that, on the Account of his Remiſſneſs in Church-Government, he lived and died under the High Diſpleaſure of Queen *Elizabeth*; and whether therefore he, or that Glorious Queen, ſhall bare the Blame of his Diſgrace and Sufferings, is with all Humility ſubmitted to your Lordſhips.

I hope, my Lords, I ſtand clear in your Opinions of the Charge advanced againſt me, in the two firſt Articles; and as my own Conſcience acquits, ſo I truſt your Lordſhips will acquit me, of whatever is laid to my Charge in the Third.

to the 3d Article.

My Lords, I neither have ſuggeſted, nor do in my Conſcience believe, that the Church is in the leaſt Peril or Adverſity from Her Majeſty's Adminiſtration: So far am I from any ſuch Thoughts, that I am entirely ſatisfied of Her being a moſt affectionate Nurſing-Mother to it. But I hope I may ſay, without Offence, that the Church may be in Peril from other Cauſes, without any Reflection upon Her Majeſty's Government, or any Contradiction to Her Royal Proclamation, and the Reſolution of both Houſes of Parliament, four Years ago. If the Church be in Danger, when the Chriſtian Religion is evidently ſo, I hope it will be thought no Crime to ſay, It has ſcarce ever been in greater Danger than it is now, ſince Chriſt had a Church upon Earth. For, beſides that Deluge of Profaneneſs and Immorality, which overſpreads the whole Kingdom; beſides the Variety and growing Strength of thoſe Schiſms which weaken and divide us, and of thoſe Heterodox Opinions, and damnable Hereſies, which are daily publiſhed and propagated among us; I verily believe, that never were the Miniſters of Chriſt ſo abuſed and vilified; never was the Divine Authority of the Holy Scriptures ſo arraigned and ridiculed; never was Infidelity and Atheiſm it ſelf ſo impudent and bare-faced; never was ſuch horrid Blaſphemies printed in any Chriſtian State, from the Foundation of Chriſtianity to this Day.

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Out of the many Inſtances of this Kind, which, being ready at Hand, I could have produced to your Lordſhips, I have ſelected a few only; but thoſe ſuch, as I am perſuaded, your Lordſhips could not hear without Horror and Aſtoniſhment. Pardon me, my Lords, if my Apprehenſion of the ſad Conſequences we may expect from ſuch crying Abominations, have forced from me ſome Expreſſions, which, upon a leſs Occaſion, might ſeem too harſh and vehement. A Man that dreads no Danger from ſuch unparalleled Iniquities, that do as it were call down God's ſevereſt Judgments upon that poor Church and Nation, wherein they are openly and daringly committed, muſt be dead in his Love for his Country and Religion. If I have diſcloſed ſuch a frightful and deteſtable Scene of Impiety, which by reaſon of your Lordſhips high Stations and great Employments, might poſſibly lie undiſcovered to your Sight before; I ſhall think my ſelf happy, whatever ſhall befall me, if I may by God's Grace become the mean Inſtrument of putting a Stop to that Overflowing of Ungodlineſs and Blaſphemy which as yet no Laws, no Proclamations, how well ſoever deſigned, and how often ſoever repeated, have been able to reſtrain.

Nor ought I, my Lords, to forget, though it was forgotten by the honourable Managers, another Ground of Danger ariſing to this Church, from the Attempts of Popiſh Emiſſaries, by me mentioned, I hope without the leaſt Offence, in my Sermon at St. *Paul's*; where I ſay, It were highly to be wiſhed, that thoſe excellent Laws, made for the Defence and Security of the Church, were at preſent put ſtrictly in Execution; for the Roman Catholick Agents, and Miſſionaries, that ſwarm about this great City, as 'twere in Defiance and Contempt of them, were never more buſy in making Proſelytes to their Superſtition and Idolatry, and perverting and debauching Her Majeſty's Subjects in every Corner of our Streets. I have not, my Lords, been called upon to prove the Truth of this Paſſage, nor has it been reckoned among the falſe Inſinuations I have made, *That the Church is in Danger*. I pray God the Church may be in *no* Danger, upon any of theſe Accounts! Her Majeſty, your Lordſhips, and the Commons, have indeed provided againſt theſe Dangers by wholeſome Laws, and I hope I did not exceed the Limits of my Function, when, being called to preach before Magiſtrates, I exhorted them to prevent theſe Dangers, by putting thoſe Laws ſtrictly in Execution.

Juſt had been the Indignation of the Honourable Houſe of Commons, juſt would be your Lordſhips moſt ſevere Reſentments, if by any Parallel by me drawn, I had inſinuated that the Members of both Houſes, who paſſed the Vote concerning the ſafe and flouriſhing Condition of the Church, had been then conſpiring its Ruin. I have already purged myſelf from this Imputation, by obſerving that the Parallel, aſcribed to me, implies, that they who voted King *Charles* I. to be out of Danger, and thoſe who conſpired his Death, were the very ſame Perſons, whereas it is certain they were not; for, my Lords, the Vote about the King's Safety, was paſſed by Lords and Commons an Year and half before his execrable Murther, which had been contrived by the Army, and was perpetrated by a pretended Ordinance of a ſmall Remnant of the Houſe of Commons (not a tenth Part of the whole), after the reſt of the Members had been impriſoned or ſecluded, and without the Concurrence of the Houſe of Peers, who totally rejected it. You have had, my Lords, a very different Repreſentation of this Fact made by one of the learned Managers: But this, my Lords, is the real Truth, as recited in the Act of Parliament for the Attainder of the King's Murtherers; and is an Evidence, that I could not poſſibly mean by any odious Parallel to inſinuate, that the Members of both Houſes, who paſſed the Vote concerning the Safety of the Church, were then conſpiring its Ruin.

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I humbly crave your Lordſhips Patience yet a little farther, whilſt I ſpeak what is alledged in the fourth Article, which charges me with many Crimes of a very high and flagrant Nature; none of which have been endeavoured to be proved upon me, otherwiſe than from ſuppoſed Suggeſtions, and undetermined Expreſſions; and I muſt ſtill, with your Lordſhips Leave, humbly inſiſt upon it, that where the Expreſſions are doubtful, there the favourable Senſe is always to be preferred. *to the 4th Article;*

After all that has been ſaid by the learned Managers for the Commons, What Miniſter of State, I beſeech your Lordſhips, have I been proved to reflect upon, directly or indirectly? Where, and how, do I, by any Suggeſtion, charge Her Majeſty, or thoſe in Authority under Her, with a general Mal-Adminiſtration? How do I perſuade Her Subjects to keep up a Diſtinction of Parties and Factions, while I reprove thoſe who divide us by knaviſh Diſtinctions, and while I perſuade my Fellow-Subjects to loſe and forget them? How is it poſſible, I ſhould ſtir up the People to Arms and Violence, when I am endeavouring to convince them of the utter Illegality of Reſiſtance upon any Pretence whatſoever? Theſe Things, my Lords, ſeem to be inconſiſtent, unleſs a Man may be thought a Rebel for recommending Loyalty, or ſeditious for preaching againſt Sedition.

I remember, indeed, at the Opening of this Charge againſt me, that one of the Managers for the Houſe of Commons, vouchſafed to offer his charitable Aſſiſtance towards reconciling this ſeeming Inconſiſtency; for he was pleaſed to ſuppoſe that, when I ſpake againſt reſiſting the Sovereign, I had not our Gracious Queen, but ſome other Perſon in View; and that I might therefore, agreeably to my Principles of Non-Reſiſtance, ſtir up the People to Arms and Violence againſt Her Sacred Majeſty. Your Lordſhips will once more pardon my Earneſtneſs, if I call God to Witneſs, that I utterly deteſt any ſuch traitorous Intention, and I ſhould, in my own Opinion, be unworthy of the Name of a Chriſtian, if I could give my ſelf Leave to caſt ſuch a black and groundleſs Imputation upon any one in like Circumſtances with mine, who had given all poſſible Evidence of his Duty and Affection

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to the preſent Government. My Lords, I have taken the Oaths of Allegiance to Her Majeſty, and that of Abjuration againſt the Pretender; and when therefore I preached the Doctrine of Non-Reſiſtance, it is moſt apparent, that the Government, which I perſuaded my Fellow-Subjects not to reſiſt, is the preſent Government; and I humbly conceive, that the preſent Government can never be overturned, if it be never reſiſted.

How true a Zeal and Affection I have always borne to Her Majeſty's Perſon and Government, I leave to be judged by your Lordſhips, and the whole World, from thoſe publick Demonſtrations which I have given of it, at all Times, when I had Occaſion to make mention of either. I hope your Lordſhips will pardon me, if I refer to ſome of my own printed Expreſſions, as an evident Proof of my unfeigned Duty and Allegiance. *If to call it the moſt ineſtimable Bleſſing this Nation could enjoy, that Her Majeſty, the good and pious Relict of the Royal Family, ſits now happily upon the Throne of Her Anceſtors; If to pray that God may long preſerve Her for the Comfort and Support of the Church, as the only Security, under God, it has to depend upon; If earneſtly to contend for the Safety, Rights, and Eſtabliſhment of Her Majeſty, together with thoſe of the Church; If to vindicate Her Majeſty's Title to the Crown againſt the Uſurpations, Pretences and Encroachments of Her Adverſaries, and to aſſert Her Right to the Throne to have been ſo clear, manifeſt, and undoubted, that even Her worſt Enemies (could ſuch a Pious Princeſs be ſuppos'd to have any) muſt acknowledge it; That ſhe was proclaimed as 'twere by the Voice of God, in the univerſal Joy, Satisfaction, and Unanimity of Her Subjects; That Her perſonal Merit exempted from that, made Her worthy of a brighter Diadem than ſhe wears; If to perſuade Her Subjects, with the moſt hearty Zeal, and Generoſity, to enter into a neceſſary War, for the Defence of Her Majeſty, and the Common Preſervation of our Church, Liberties, and Conſtitution, againſt a powerful Adverſary; If to beſeech God to proſper ſo good an Undertaking, to give an happy Event and Iſſue to ſuch a Righteful Cauſe, to crown our Arms with Victory, and to make them as ſucceſsful, as they are juſt and honourable; and that, in order to this, we are all bound, both in Duty to God and our Sovereign, as well as by our own Intereſt, unanimouſly and heartily to aſſiſt and ſupport Her under this great Undertaking, as far as our Prayers, and Eſtates, Lives, and Fortunes, can ſerve Her; If to perſuade Her Subjects, that the great and threatning Dangers of our Enemies, ſhould have that juſt Effect upon us, to unite us, as much in our Reſolutions and Affections, as they do in our common Intereſts, Apprehenſions, and Troubles; If to ſet out the Bleſſings we enjoy in the wiſe Conſtitution of our Government and Laws, in the moſt refined Policies of our Parliament and Miniſtry, in the Strength and Number of our Armies, Fleets, and Confederates, in the Care and watchful Vigilance, the Courage, Reſolution, and Conduct of our General, and, above all, in the Piety, and Prudence of our Moſt Gracious QUEEN; If to affirm that She daily gives freſh Inſtances of Her Wiſdom, in the happy Adminiſtration of her Government, and in nothing more ſhews Her Policy, and diſtinguiſhing Judgment, than in making Choice of ſuch Miniſters of State, who are acceptable to their Country, and expreſs ſuch a Zeal and Steadineſs in its Service and true Intereſts, and whom nothing could Bride, or betray into a Party, wherein it might any ways ſeem to be endangered; If, with the moſt ardent Requeſts to implore God's Providence, which through ſo many Dangers and Difficulties has raiſed up, and preſerved Her Majeſty, to carry on theſe glorious Undertakings with Succeſs, that She may be able to reſtore and ſettle the Peace of* Europe, *in its juſt Rights and Limitations; and that, as God has beſtowed a Crown upon Her in this World, as the Reward of theſe heroick and pious Deſigns, ſo after a long Reign here, he would advance Her to a higher Throne in Heaven, and dignify Her with a glorious and immortal Crown hereafter:* If this, my Lords, I ſay, is falſely and maliciouſly to ſuggeſt, that Her Majeſty's Adminiſtration, both in Eccleſiaſtical and Civil Affairs, tends to the Deſtruction of the Conſtitution; If this be charging Her Majeſty, and thoſe in Authority under Her, both in Church and State, with a general Mal-Adminiſtration; If this be, as an Incendiary, to perſuade Her Subjects to keep up Diſtinctions of Factions and Parties; If this be inſtilling groundleſs Jealouſies, fomenting deſtructive Diviſions, and ſtirring up Her Majeſty's Subjects to Arms and Violence, againſt any but Her Enemies; then, my Lords, I am guilty of this Article of Impeachment; otherwiſe I am innocent.

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My Lords, I have always thought it my Duty, upon all publick Occaſions, to aſſert the Principles of Loyalty and Subjection to the Supreme Power, whenever I had a proper Call ſo to do; of this there are numberleſs Witneſſes in thoſe ſeveral Places to which I have belonged. One of theſe I beg Leave of your Lordſhips particularly to mention, *Magdalen College* in *Oxford*, whereof I am at preſent an unworthy Member, and which by the known Sufferings of the whole Body for the Church and Conſtitution, contributed as much towards the late happy Revolution, as any Society in the Kingdom: To which Honourable Society I humbly appeal for my Character and Behaviour. I could alſo appeal for the ſame to a Right Reverend Lord, that now ſits on the Bench of Biſhops.

Had it been fit to have troubled your Lordſhips with Evidences of my hearty Affection to the preſent Government, I could have produced them in great Abundance, from the Perſons with whom I have converſed, from the Gentlemen whom I have bred up, and from the Congregations to which I have preached. If my Principles had any Tendency towards Alienating the Affections of Her Majeſty's Subjects, ſurely ſome one Inſtance of my Diſloyalty to the QUEEN, ſome favourable Expreſſions toward the Pretender, ſome Indications of my Diſlike to the preſent Settlement, and the Proteſtant Succeſſion, might have been pitched upon, and expoſed to your Lordſhips, in order to juſtifie the Charge of Sedition against me. But I cannot but with Pleaſure obſerve to your

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your Lordſhips, that from the whole Courſe of my Actions, no one Inſtance of that kind is alledged, or ſo much as pretended.

My Lords, the Charge of wickedly wreſting divers Texts of Scripture lies very heavy upon me, as a Chriſtian and Miniſter of Chriſt. If I am guilty of it, there is another Tribunal, another Bar, at which I am to appear, and where, by that Scripture which I have wreſted, I ſhall be judged and condemned. In the mean Time, my Lords, I hope that thoſe, whoſe particular Profeſſion and Studies qualify them to be the moſt competent Judges of ſuch Matters, will abſolve me in this Particular.

Upon the whole, therefore, my Lords, I hope it appears, that I am not guilty of any of the Crimes of which I am accuſed; that I have tranſgreſſed no Law of the Land, neither Statute, nor Common Law, relating either to Her Majeſty, or to my Fellow-Subjects, to the Church, or to the State: And that I may with all Humility apply to my own Caſe, the Words of that bleſſed Apoſtle, whoſe Doctrine I defend, and whoſe Example I hope I ſhall have the Grace to follow, *Neither againſt the Law, nor againſt the Temple, nor againſt Cæſar, have I offended any thing at all.*

What I have hitherto humbly offered to your Lordſhips, relates to my Words and Actions; and as to the Thoughts and Intentions of my Heart, which are known only to God, and my own Conſcience, and which are affirmed in my Impeachment to be wicked, ſeditious, and malicious; I call the Searcher of Hearts to Witneſs, in the moſt ſolemn and religious Manner, as I expect to be acquitted before God and his holy Angels, at that dreadful Tribunal, before which, not only I, but all the World, even your Lordſhips, who now ſit in Judgment upon me, muſt appear, to be acquitted or condemned; that I had no ſuch wicked, ſeditious, or malicious Intentions; that there is nothing upon Earth I more deteſt and abhorr: That my Deſigns were, in every Reſpect, directly contrary. I had no Intention to aſperſe the Memory of his late Majeſty, to traduce or condemn the late happy Revolution, or to arraign the Reſolutions of both Houſes of Parliament. So far was I from deſigning to undermine and ſubvert Her Majeſty's Government, and the Proteſtant Succeſſion as by Law eſtabliſhed, that it was my ſincere Intention to exert my beſt Endeavours for their Security. So far was I from intending to perſuade Her Majeſty's Subjects to keep up a Diſtinction of Parties and Factions, from inſtilling groundleſs Jealouſies, fomenting deſtructive Diviſions among them, or exciting and ſtirring them up to Arms and Violence, that my Aim was to perſwade them to lay aſide all Diſtinctions, to unite in one well-compacted Body, to be obedient to their Governors, and to ſupport the preſent Eſtabliſhment. So far was I from deſigning to defame Her Majeſty's Adminiſtration, or to infuſe any undutiful Thoughts of Her, that I not only pay Her all Honour and Obedience, but am, from the Bottom of my Soul, zealouſly and affectionately Loyal to Her; being entirely perſuaded, that the Church is ſo far from being in Danger from Her, that She is as heartily affected to its Eſtabliſhment and Proſperity, as I hope I have always ſhewed my ſelf to be to Her Sacred Perſon and Government.

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As to the Proteſtant Succeſſion by Law eſtabliſhed, though the Doctrine which I preached tends to the Security of it (as I heartily deſire every thing by me ſpoken ſhould tend); yet having no Occaſion in either of my Sermons to take Notice of it, I do no where in thoſe Sermons mention it, nor ſay any thing that can be interpreted to have any View towards it. Therefore, though I cannot with my beſt Application apprehend, how it comes to be ſaid in the Preamble to my Impeachment, that I had deſigned to undermine and ſubvert it; yet I ſhall gladly take this Opportunity of declaring my ſelf before your Lordſhips upon that Subject. It is my ſincere and hearty Prayer, that God would prolong the Life of Her moſt Sacred Majeſty, whoſe exemplary Goodneſs and Piety, give us the beſt Hopes we have of averting that Vengeance, which is due to the Wickedneſs of the Age we live in; that he would bleſs Her Councils at Home, and Her Arms abroad, and make Her Reign exceed that of Her Renowned Predeceſſor Queen *Elizabeth*, in Length as well as Glory. But when the Inheritrix of the Bleſſed Martyr's Crown and Piety, when She, the Deſire of our Eyes, and the Breath of our Noſtrils, ſhall, full of Years and Honour, be gathered to Her Fathers, and exchange Her Temporal for an Immortal Crown; (ſince we are deprived of that Prince, Her Royal Offſpring, whoſe Loſs no true Lover of his Country, and of the Royal Family, can reflect upon without a bleeding Heart, and whom God in his Anger took from us, becauſe we were unworthy of ſo ineſtimable a Bleſſing,) I earneſtly beſeech God, in Defect of future Iſſue from Her Majeſty, to perpetuate the Succeſſion of the Crown, as it eſtabliſhed in the moſt Illuſtrious Houſe of *Hanover*, which I look upon as, next to His Providence, the beſt Guard we have againſt Popery and Arbitrary Power, the beſt Security of our Church, and of the Conſtitution of our Government, which is the Glory and Happineſs of our own Nation, and the Envy of all others. And I cannot yet apprehend, how the Doctrine which I have taught, tends to weaken or undermine it; nor, on the other Side, how the Doctrine of Reſiſtance, which brought Her Majeſty's Royal Grand-father to the Block, (ſuppoſing it a true Doctrine) comes to be mentioned, or thought of; much leſs to be induſtriouſly maintained, as a neceſſary and indiſpenſible Duty, under the moſt mild and gracious Adminiſtration of the beſt of Queens. Nothing ſeems more ſtrange, than that Reſiſtance ſhould be ſo carefully taught under ſuch a Government, unleſs it be that Non-Reſiſtance ſhould overturn it.

So far was I therefore from having any of thoſe wicked, malicious, and ſeditious Deſigns, which are laid to my Charge, that my Intentions were, on the contrary, to inſtill the Principles of Loyalty and Obedience into my Fellow-Subjects, and withal, to put a Stop to

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that Torrent of Lewdneſs, Irreligion, and Atheiſm, of which I have given your Lordſhips ſo many flagrant Teſtimonies.

Thoſe outrageous Inſults upon God, and Goodneſs, are ſo provoking, that they may excuſe ſome Heat and Severity of Expreſſion in a Miniſter of Chriſt, who has a juſt Senſe of Religion, a due Concern for the Diſcharge of his Holy Function, or for the Honour of his Maker and Redeemer. And if any Objection be made againſt me, for treating with an unbecoming Bitterneſs ſuch daring *Rabſhekahs*, who defy the Living God; I beg Leave to reply, in the Words of a Reverend Father of our Church, Let them conſider what Moderation, and Temper, a Man had need be of, that in this Nation, and this Age, ſhall ſpeak againſt Faction, and Rebellion, (I add Deiſm, Tritheiſm, and all Sorts of Hereſy, Blaſphemy, and Atheiſm) without extraordinary Severity. Nay, it is our Duty, in ſuch Caſes, to expreſs our ſelves with Warmth and Sharpneſs, according to the Example of our Bleſſed Saviour, who, though Meekneſs it ſelf, could not but ſhew the utmoſt Indignation at the Prophaning the Houſe of God. This is not, my Lords, to rail, but to rebuke; and thoſe who ridicule, or cenſure us for it, either have not, I preſume, or will not own they have, a right Notion of the Dignity of our Office; will not conſider, that we are the Ambaſſadors of Chriſt, that we are commanded, in His Name, to exhort and rebuke with all Authority; and that our Authority is derived from thoſe to whom it was ſaid by our Bleſſed Saviour, *He that deſpiſeth you, deſpiſeth me; and he that deſpiſeth me, deſpiſeth him that ſent me.* Whatever Expreſſions, therefore, in my Sermons may have ſlipt from me, which ſeem ſo far liable to Exception, as to carry a Senſe I never intended (as he muſt be an happy Speaker indeed, whoſe Words are altogether unexceptionable) yet, I humbly hope, the above-mentioned Provocation will plead my Excuſe, or that, at the very worſt, ſome haſty, or even violent Expreſſions, ſhall not be deemed High Crimes and Miſdemeanors. I deſire it may be farther conſidered by your Lordſhips, that I could have no Temporal Intereſts to ſerve by the Doctrines I advanced; and therefore could have no Deſign in View, but to diſcharge my Duty to God, as a Miniſter of Chriſt, and to my Sovereign, as a Faithful and Loyal Subject.

My Lords, theſe Things being humbly offered to the Conſideration of your Lordſhips, I hope, that what I have already ſuffered, as a ſuppoſed Criminal, will be thought ſufficient Puniſhment for one, who has offended againſt no Law yet in Being. It muſt be thought no little Grief and Vexation to any ingenuous Man, to be brought to this Bar, under the leaſt Suſpicion of ſuch Crimes as are laid to my Charge: But for a Perſon of my Function to have an Accuſation of this Nature alledged againſt him, ſo heinouſly reflecting upon his Holy Character, is ſuch a foul Blot, as, though his Innocence ſhould at laſt be cleared by your Lordſhips, upon the moſt undeniable Evidence, muſt leave a Scar upon his good Name; which is to all Men dear, but much more ſo to thoſe, whoſe whole Capacity of doing good in the World principally depends upon it.

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My Lords, as the Matter of my Charge was highly criminal, ſo the Form and Manner of it ran in ſuch general and uncertain Terms, that 'twas impoſſible to know the Grounds of my Accuſation; or how to defend my ſelf, when I knew not where I ſhould be attacked. So that, after I had provided as particular an Anſwer as ſuch a general Accuſation would admit of, the Commons were pleaſed in their Replication to ſay, That there were ſeveral Things in it foreign to the Charge. To the great Misfortune of falling under the Diſpleaſure of that Honourable Houſe, I might add, That of a long and cloſe Confinement, and of an Expence no ways proportioned to my Circumſtances. Theſe, my Lords, are Afflictions, which can be conceived by no body ſo well as by him, who has been ſo unhappy as to feel the Weight of them. And among theſe I reckon it not the leaſt of my Sufferings, that I have been for ſo long a Time debarred from taking Heed to that Flock, over which the Holy Ghoſt hath made me an Overſeer. For, ever ſince I have had my Liberty, by the Favour of your Lordſhips admitting me to Bail, I have purpoſely avoided doing any Part of the Duty of my Function, or even appearing in Publick, leſt it ſhould occaſion any Tumult or Diſturbance; as my neceſſary Attendance on your Lordſhips from Time to Time has ſince been thought unhappily to have done, without any Fault of mine, or the leaſt Degree of Encouragement given by me, which I profeſs, in the Preſence of God, to abhor.

All theſe Circumſtances, my Lords, being conſidered, together with the publick Manner, the Length and Solemnity of my Trial, before ſo Auguſt a Court of Judicature, by which Means I am made a Gazing-ſtock, both by Reproaches, and Afflictions, and a Spectacle to the whole World; I have ſtood in this Place, Day after Day, to hear my ſelf accuſed of the blackeſt Crimes, and openly reviled; I have been repreſented as a Papiſt in Diſguiſe, as a Rebel, as an Enemy to Her Majeſty's Perſon and Government, and a Favourer of the Pretender, though I have abjured him, (but not forgot him, as a learned Perſon was pleaſed to ſay); that is, as the worſt of Perjured Villains. I have been called *an inſignificant Tool of a Party* on the one hand, and a moſt dangerous Incendiary on the other; nay, an Angel, that is, a Devil, detached from the Infernal Regions. All theſe Things, I ſay, being conſidered, (and your Lordſhips, I am ſure, in tender Compaſſion to me, will conſider them), it is moſt certain, that whatever be your Lordſhips Determination concerning me, I cannot eſcape without being a very great Sufferer; and I ſhall have been abundantly puniſhed, though I ſhall have the Happineſs to be by your Lordſhips at laſt acquitted.

Yet I cannot reflect without Comfort, (the greateſt of Comforts, next to that of a good Cauſe, and a good Conſcience) that I anſwer for my

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my ſelf, this Day, before the moſt Illuſtrious Aſſembly in the World, the whole Body of the Nobility of *Great Britain*, whoſe princely Extraction, and high Quality, whoſe magnificent Titles, and ſplendid Fortunes, whoſe hereditary Candor and Generoſity, inherent in Noble Blood, inſeparable from the Birth and Education of Peers; in a Word, whoſe ſolid Judgment, and exact Skill in the Laws of this Realm, ſo eminently qualify them for the final Determination of Juſtice; who are neither to be ſwayed by Hopes, over-ruled by Fears, nor miſled by any falſe Prejudice or Paſſion. If it muſt be a Man's Misfortune to labour under ſuch hard Circumſtances as mine, it is no ſmall Mitigation of them, that he pleads his Cauſe before ſuch Judges, who, he knows, will decide it with the ſtricteſt Impartiality, Equity, and Honour.

And when I conſider, that I now ſtand, and am judged for ſome of the Doctrines of that Goſpel which God delivered unto our Fathers, and you, my Lords the Biſhops, their Succeſſors, have received from Chriſt and His Apoſtles, as the ſacred *Depoſitum* of the Church, to be maintained inviolably in its primitive Simplicity: When I conſider, what is the Cauſe for which I am this Day called in Queſtion; that it is one of thoſe Eternal Truths, which you are ſo ſolemnly commiſſioned to teach, and earneſtly contend for: When I conſider, that 'tis what our Bleſſed Lord and his Apoſtles ſealed with their precious Blood, and ſo many primitive Martyrs maintained even in the midſt of Flames; ſo many learned Biſhops and Confeſſors recommended to Poſterity in their immortal Writings, as the diſtinguiſhing Badge and Glory of our Reformation; nay, when I conſider that 'tis what you your ſelves have already ſupported with inconteſtable Reaſon and Authority, it is no ſmall Satisfaction to me to think, that as your Lordſhips are my Judges, ſo, I hope in God, you muſt be my Advocates. What a Guilt, as well as Diſgrace, would it juſtly devolve upon the Clergy, to recede from any Principle of our excellent Church, eſpecially from what has been ſo long retained, and boaſted of, as its peculiar Character! By abandoning which, we muſt relapſe into ſome of the worſt Doctrines even of Popery it ſelf, and render our ſelves the moſt contemptible, as well as inconſiſtent Church of the World! I think I may therefore, with Confidence, uſe the Words of the great Apoſtle to his Accuſers, *Having obtained Help from God, I continue unto this Day, witneſſing both to ſmall and great; ſaying none other Things than thoſe which the Prophets and* Moſes (I may add, Chriſt and his Apoſtles), *did ſay.*

For, my Lords, if I have committed any Faults or Errors in Expreſſion, yet, as I inſiſt upon my Innocence with Reſpect to all the high Crimes laid to my Charge, ſo I muſt ſtill inſiſt upon all the Doctrines which I have taught, as being agreeable to the Word of God, and to the Doctrine of our moſt excellent and truly Apoſtolical Church, and which we of the Clergy are obliged, both by Subſcription and Oath, to acknowledge and defend. And how hard are our Circumſtances, if we muſt be puniſhed in this World for doing that, which, if we do not, we ſhall be more heavily puniſhed in the next! What a Condition are we in, if we are commanded to cry aloud and ſpare not, to exhort, rebuke, in Seaſon and out of Seaſon, on the one hand, and proſecuted, impriſoned, ruined on the other! If this be our Caſe, who, indeed, is ſufficient for theſe Things? And how truly may we of the Miniſtry, above all Men living, apply to our ſelves thoſe Words of the Apoſtle, *If in this Life only we have Hope in Chriſt, we are of all Men moſt miſerable:* But our Comfort is, that our Hope in Chriſt is not only in this Life. Juſtly might we be reproached, and deſerve ſome of thoſe Reflections, which in theſe licentious Times are ſo plentifully poured upon us, were we not ready to practiſe the Doctrines we preach, of Self-Denial, taking up our Croſs, and patient Submiſſion to Sufferings and Afflictions. For my own Part, it matters not what becomes of me, nor is my Deliverance, or Ruin, of any Moment to the World; or, if it be, I am not only ready to be bound, but to die, could I by that do Service to my Queen, my Church, or my Country: Neither count I my Life dear, ſo that I might finiſh my Courſe with Joy, and the Miniſtry which I have received of the Lord Jeſus. But may God ſo direct your Lordſhips, that through me a Wound may not be given to the Doctrines of the Scriptures, and of the Church, which Chriſt hath purchaſed with his own Blood.

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And ſo, with all Humility and Reſignation, I ſubmit my ſelf to your Lordſhips Judgment, be it what it will. One Thing, I am ſure, it can never take from me, the Power of wiſhing and praying, and (whether in Proſperity or Adverſity, whether I am acquitted, or condemned) I ſhall always pray for the Queen my Sovereign, for your Lordſhips my Judges, and for the Commons my Accuſers; moſt earneſtly beſeeching Almighty God, to deliver all Orders, and Degrees of Men amongſt us, *from all falſe Doctrine, Hereſy and Schiſm, from Hardneſs of Heart, from Contempt of His Word, and Commandment; from Envy, Hatred and Malice, and all Uncharitableneſs.*

Reply to the Doctor's Defence.

The Managers, in their Reply to the Doctor's Defence, took Notice of the Conceſſions made by his Counſel, *viz.* 1. *That Neceſſity creates an Exception to the General Rule of Submiſſion to the Prince.* 2. *That this Exception was underſtood, or implied in the Laws that require ſuch Submiſſion.* And, 3. *That the Caſe of the Revolution was a Caſe of Neceſſity.* They ſaid, Theſe Conceſſions fully anſwered the Commons Meaning, and they could not forbear congratulating them upon the Succeſs of their Impeachment; that in full Parliament this erroneous Doctrine of unlimited Non-Reſiſtance was given up and diſclaimed: But though the Doctor, for Fear of impending Puniſhment, had tolerated his Counſel to make theſe unwilling Conceſſions, yet, ſince he himſelf did not expreſsly come into theſe Conceſſions, they thought they ought not to avail him.

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That he was not impeached for preaching the general Doctrine of Non-Reſiſtance, as his Counſel ſuggeſted; but for preaching againſt an excepted Caſe, after he had ſtated the Exception. This was not preaching the Doctrine of Non-Reſiſtance in the General Terms uſed by the Apoſtles, and Fathers of the Church, where Caſes of Neceſſity might be underſtood to be excepted by a tacit Implication, as his Counſel allowed: But 'twas preaching directly againſt the Reſiſtance uſed at the Revolution, and muſt be deſigned to bring an Odium upon the Revolution, and thoſe who were concerned in it; he would otherwiſe have ſhewn, That the Reſiſtance uſed at the Revolution was abſolutely neceſſary, and the only Means left to revive the Conſtitution: But, inſtead of this, he denied there was any Reſiſtance in the Revolution; and ſaid, They were the greateſt Enemies to it, who caſt ſuch black and odious Colours upon it.

Therefore the Security of the Government, and the Proteſtant Succeſſion, the undeceiving of the People, the quieting the Minds of the Proteſtant Diſſenters, the vindicating the Honour of the late Revolution, and the Glory of their great Deliverer, and to baniſh Sedition from the Pulpit, which ought to be Sacred to Divine Purpoſes; theſe Things did require the Commons to demand their Lordſhips Judgment on this Offender.

Nor was his Puniſhment, as the Doctor obſerved, all they aimed at; but what they expected from their Lordſhips Juſtice was, the ſupporting the Eſtabliſhment, and the preventing all Attempts to ſap its Foundation for the future.

2. If the very Words, ſuppoſed Criminal, ought not to have been laid.

The Lords being adjourned to their Houſe, it was propounded to the Judges, Whether by the Law of *England*, and conſtant Practice in all Proſecutions, by Indictment, or Information, for Crimes and Miſdemeanors, by writing or ſpeaking the particular Words ſuppoſed to be Criminal, muſt not be expreſsly ſpecified in ſuch Indictment or Information? and the Judges unanimouſly declared, *That the particular Words, ſuppoſed to be Criminal, ought to be ſpecified* in ſuch Indictment or Information.

However, it was carried by a Majority in the Houſe of Peers, That, by the Law and Uſage of Parliament in Proſecution by Impeachments for High Crimes and Miſdemeanors, by writing or ſpeaking *the particular Words ſuppoſed to be Criminal, were not neceſſary to be expreſsly ſpecified* in ſuch Impeachment.

Proteſt of ſome Peers.

Againſt this Reſolution ſeveral Peers proteſted for the following Reaſons, *(viz.)*

1. Becauſe we conceive the Law of the Land is as much the Rule of Judicature in Parliament as it is in inferior Courts of Juſtice; and ſince by the Opinions of all the Judges, in all Proſecutions by Information, or Indictment, for writing and ſpeaking the particular Words, ſuppoſed to be Criminal, muſt be expreſsly ſpecified, in ſuch Information or Indictment; and that this is the Law of the Land, confirmed by conſtant Practice: We conceive that there is the ſame Reaſon and Juſtice for ſpecifying in Impeachments the particular Words, ſuppoſed to be Criminal; for otherwiſe a Perſon, who is innocent and ſafe by the Law, out of Parliament, may, nevertheleſs, be condemned in Parliament.

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For we conceive, that ſome Reaſons of Law and Juſtice, why the Words, ſuppoſed Criminal, muſt be ſpecified in Informations and Indictments, may be, that the Party accuſed may certainly know his Charge, and be thereby enabled to defend his Innocence; that the Jury may know it too, and be enabled thereby the better to apply the Evidence given by the Witneſſes to the Matter of ſuch Charge; and that the Judges themſelves may the better judge of the Nature of the Crime, and of a Puniſhment adequate to it, which, in Caſes of Miſdemeanors, which are indefinite and innumerable, muſt extremely vary, according to the Heinouſneſs of the Offence: And, finally, that the Houſe of Lords, upon Complaint to them, may alſo judge whether the Fine, which is uſually one of the Puniſhments for Miſdemeanors, do not exceed the Demerit; eſpecially ſince by the Bill of Rights exorbitant Fines are declared to be illegal: Which Reaſons ſeem to be fully as ſtrong in the Caſe of Impeachments as in Indictments, or Informations; for the particular Words are as neceſſary to enable the Lords to determine uprightly, and impartially, as the Jury, or Judges, and as neceſſary for the Defence of the accuſed here, as in the Courts below; and, if there were to be a Difference, it ſeems more neceſſary in this High Court; for the weightier the Proſecution is, the more Need has an unfortunate Man of Indulgence, and all lawful Favour; and ſurely there cannot be a heavier Load upon a Man, than an Accuſation by all the Commons of *Great Britain*.

2. We do not remember any Precedent inſiſted on for the Maintenance of this Reſolution, ſave only the Caſe of Doctor *Manwaring*, which, we conceive, could not warrant this Reſolution: For, firſt, the Words charged upon him by the Commons Declaration, were not compared with the Sermon, though it was deſired, and conſequently no Lord could ſay, They were not the Words of the Sermon; and therefore, upon ſuch Uncertainty, we conceive, we could not ground a poſitive Reſolution. 2*dly*, The Charge upon him, taken out of his Sermon on the 4th of *May* 1628, ſeems to be the very Words by him ſpoken; for they were atteſted by Ear-Witneſſes, who ſurely never were, nor could be admitted to atteſt their own Conjectures of the Scope of a Sermon, and not ſpecify the very Words; for that would be to make the Witneſſes the Judges. 3*dly*, Beſides, in ſuch a Caſe as this, where the Party did not inſiſt upon any legal and juſt Exceptions, of which he might have taken Advantage, if he had made his Defence, which he did not, but ſubmitted and begged Pardon; this ought not to be looked upon as a Precedent, or Authority, to juſtify the Illegality of the Form of that Impeachment.

3. But although this Precedent were full and expreſs to the Point reſolved, we humbly conceive, That one Precedent is not ſufficient to ſupport a Law and Cuſtom of Parliament, nor

1709-10. 9 Annæ. nor consequently a Resolution declaring it; for surely there is a great Difference between a single Instance, and a Law and Custom.

4. Since we conceive, that in all the Precedents, at least all that have appeared to us for four Hundred Years, of the Prosecutions in Parliament, the particular Words, charged as Criminal, have been constantly expressed in the Articles, or Declarations of Impeachment.

Upon the whole therefore, we humbly conceive, that so great a Number of Precedents is sufficient to out-weigh the single Instance of Dr. *Manwaring*'s Case, how opposite soever it may seem to be to the present Case; which, for the Reasons we have mentioned, is far from being plain and clear, or having the full Authority of a Precedent: And the Law and Custom of Parliaments, as we conceive, is to be determined by constant Course and Practice, and not one Precedent occasioned by such odious Doctrines as those of Dr. *Manwaring*: Nor can the contrary Assertion to the aboveſaid Resolution be of any ill Consequence to Impeachments of the Commons; because it is easy for them to specify the Words which offend them, but extremely difficult for the accused to defend himself without knowing them: And as all who are charged Criminally, have Leave to make their Defence, so they should also have allowed to them all lawful Means for it.

Names of the Protesting Lords. *Jo. Ebor. Scarborough, Northampton, N. Duresme, W. Cestriens', Jersey, Sussex, Stawell, North* and *Grey, Scarsdale, Conway, Willoughby Br. Plymouth, Guilford, Craven, R. Ferrers, Lempster, Osborne, Beaufort, H. London, Howard, Denbigh, Leeds, Guernsey, Yarmouth, Thanet, Nottingham, Rochester, Anglesey, Berkshire, Weymouth, Abingdon.*

The Question being put in the House, *That the Commons had made good their first Article of Impeachment*, as also the 2d, 3d, and 4th, it was, as to every Article, *Resolved in the Affirmative.*

On *Monday, March* the 20th, the Lords being come down to the Court, erected in the Hall, the Question was again put to every Peer, beginning with my Lord *Pelham*, the Junior Baron; and having delivered their respective Opinions, the Lord Chancellor numbered them, and declared, That there were one Hundred and Twenty of their Lordships present, of whom *Sixty-eight had found Dr.* Sacheverell *GUILTY* of the High Crimes and Misdemeanors charged on him by the Impeachment of the House of Commons, and *Fifty-two had found him Not Guilty.*

The Doctor convicted,

moves in Arrest of Judgment.

Then the Doctor was brought to the Bar and kneeled till the Lord Chancellor bid him rise; after which he moved in Arrest of Judgment. 1. That no entire Clause, Sentence, or Expression, contained in either of his Sermons, or Dedications, was particularly set forth in the Impeachment. 2. That the Articles were said to be only by the Knights, Citizens, and Burgesses, leaving out Commissioners of Shires, and Boroughs, which was neither agreeable to the Impeachment, nor to the Title of the House of Commons since the Union.

Then the Lords adjourned to their House: And on the 23d of *March*, the Commons came up with their Speaker to the House of Lords, to demand Judgment; and the Dr. being brought to the Bar, kneeled till the Lord Chancellor bid him stand up; and the Speaker of the Commons having demanded Judgment, 1709-10. 9 Annæ.

The Lord Chancellor acquainted the Dr. that his Exceptions in Arrest of Judgment had been over-ruled; and then proceeded to pronounce the following Judgment, *viz.*

His Sentence. *That you* Henry Sacheverell, *Dr. in Divinity, shall be, and you are hereby enjoin'd not to Preach during the Term of three Years next ensuing: That your two printed Sermons, referred to by the Impeachment of the House of Commons, shall be burnt before the* Royal Exchange *in* London, *between the Hours of One and Two of the Clock on the 27th of this Instant* March, *by the Hands of the Common Hangman, in the Presence of the Lord Mayor of* London, *and the Sheriffs of* London *and* Middlesex. And the Doctor being withdrawn, an Order was made, directed to the Lord Mayor and Sheriffs to see the Sentence executed.

Historical Remarks on Doctor Sacheverell's *Trial.*

This favourable Sentence was looked upon by the Doctor's Friends, rather as an Acquittal than a Condemnation, and as a certain Indication of the Impotence of his Enemies: And that Night several of the Streets of *London* and *Westminster* were illuminated, and Bonfires made, where every one that passed by was compelled to drink the Doctor's Health.

The Lord Mayor insisted, That, as he was a Member of the House of Commons, he was excused from attending at the burning of the Sermons pursuant to their Lordships Sentence; and so left the Execution of the Sentence to the Sheriffs.

During the Trial, the Doctor was daily attended from the *Temple*, where he then resided, to *Westminster-Hall*, by vast Numbers of People huzzaing, and praying for his Deliverance; and many that were not much his Friends were obliged to pull off their Hats, and Huzza with them as the Coach went by, among whom were several Members of Parliament; and as the Queen was one Day going to *Westminster* in her Chair, the People gathered about her, and cryed out: *God bless Your Majesty, and the Church! We hope Your Majesty is for Dr. Sacheverell:* For the People generally looked upon this Prosecution as an Attempt to overturn the Church, and establish the Dissenters. And as at the Revolution, when they thought their Religion to be in Danger from the Papists, they pulled down several Mass-Houses, and others whose owners were mark'd as Zealots of that Persuasion: So now when they looked upon the Church to be in as imminent Danger from the Fanaticks, they in like Manner expressed their Resentment against the Dissenters, and particularly on the first of *March*, when they resorted to Mr. *Burgess*'s Meeting-House, with more Zeal than Devotion, and having pulled down the Pulpit, Pews, Wainscot, and all that was combustible, they carried them into *Lincoln's-Inn-Fields*, and made a Bonfire of them, crying out, *High Church, and* Sacheverell! Several other Meeting-Houses also suffered by their Hands: And 'tis said, they began to threaten the Houses

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Houſes of ſome Whig Patriots; and particularly the Lord Chancellor's, the Earl of *Wharton*'s, the Biſhop of *Sarum*'s, Mr. *Dolben*'s, Mr. *Hoadley*'s, &c. But if they had any ſuch Intentions, they were prevented, being diſperſed by a Detachment of the Horſe-Guards; and the Guards were afterwards doubled, and the Trained-Bands commanded to their Arms, while the Trial laſted, in order to prevent further Miſchief. This however is a Specimen what fine Work a Whig Principle will make, when reduced to Practice. It was once their avowed Opinion, that when we apprehend our Religion, or Civil Rights in Danger, we may, nay, we lie under an indiſpenſable Obligation to defend them: That we may, and ought to do our ſelves Juſtice without, and even upon, our Governors, when they invade our Properties, or decline to comply with our Demands. The Whigs, indeed, were pleaſed to make great Out-cries on this Occaſion, and gave theſe tumultuous Proceedings the Name of Rebellion: But they could find ſofter Names for the Riots and Tumults they incited in the Days of *Bethel* and *Coniſh*. Theſe were accounted Noble Struggles for Liberty and Property, and the greateſt Rebel was then eſteemed the beſt Patriot: With ſuch a different Face does the ſame Fact appear, when we have a different Intereſt to manage! But ſurely 'tis with an ill Grace, when a Whig complains of a Practice which is the natural Reſult of his favourite Principle. While the Mob was on their Side, *The Voice of the People was the Voice of God*; but when by their ſtupid Management, they had loſt their Hearts, that which before was the Voice of Heaven, degenerated into down-right Rebellion; and inſtead of Lectures againſt Tyranny, that were ſo frequent in former Reigns, we have ſince been entertained with Satyrs againſt the Rabble; and indeed a Whig ſhifts his Principles (if they may deſerve that Name) with more Eaſe than he does his Cloaths. He takes them up with no other Deſign than to ſerve a preſent Turn, and when they make againſt his Intereſt, he inveighs againſt them with as much Warmth as he formerly eſpouſed them: He muſt be a Perſon of very ſmall Obſervation who does not ſee that Intereſt is their only fixed Principle, and that all others are but taken up Occaſionally, to be diſmiſſed when they have ſerved their Ends of them.

When Gentlemen ſpeak of the Juſtice and Lawfulneſs of the *Reſiſtance* uſed at the Revolution, they ſeem to inſinuate, that every Step that was taken towards it, was perfectly agreeable to our Conſtitution, and that the whole Scheme from one End to the other, was formally laid and concluded on by a Majority of the Nation, before the Prince of *Orange* came over; whereas it is very certain, that different Parties had then very different Views; and though they all agreed, that Reſiſtance was neceſſary to reſtrain King *James* from deſtroying the Conſtitution, yet few thought of the Abdication, and fewer yet of the Prince of *Orange*'s being advanced immediately to the Throne; for this ſeems to have been effected by Abundance of extraordinary Accidents, which no human Wiſdom could foreſee. It was generally expected, upon the Arrival of the Prince of *Orange*, the King would have agreed to call a free Parliament, and have conſented to ſuch Acts as ſhould have ſecured our Religion and Laws againſt future Incroachments; or, if he had refuſed this, That the Princeſs of *Orange* would have been declared Regent of the Kingdom, and have had the Adminiſtration of the Government during her Father's Life. Farther than this, I am ſatisfied, the Views of the Majority did not extend at firſt: But when King *James* retired beyond Sea, and the Vote of Abdication, and the Vacancy of the Throne had paſſed, it ſeemed generally agreed, that the Prince and Princeſs of *Orange*, or one of them, ought to ſucceed him as on a Demiſe of the Crown; and it is manifeſt, a Majority were for the Princeſs of *Orange*'s ſucceeding, as if her Father had been dead, till ſhe herſelf was pleaſed to decline it, for Reaſons not difficult to be gueſſed at; and thereupon it was agreed, to veſt the Adminiſtration *ſolely* in the Prince; to proclaim them jointly King and Queen; but *to exclude the Princeſs* from any Share in the Government, as ſhe deſired to be.

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It is very evident, Reſiſtance was neceſſary at the Revolution, to preſerve the Conſtitution; but it was never intended to make the Crown Elective, which was before Hereditary, for this would have been deſtroying an Eſſential Part of our Conſtitution, inſtead of preſerving it: It was indeed held, that as there might be a Natural Incapacity to govern, as Frenzy, or doating Old Age; ſo there might be alſo a Moral Incapacity, ſuch as an irremoveable Perſuaſion in a falſe Religion, ſo as to render the Exerciſe of the Government by the reigning Prince impracticable, and our Obedience to him conſiſtently with the Conſtitution impoſſible; and this being unanimouſly agreed to be the Caſe at the Revolution, the Crown devolved of Courſe on the Princeſs *Mary*, the King's eldeſt Daughter and Heir, and ſhe being pleaſed to waive her Right in Favour of her Husband the Prince of *Orange*, no Body had any Reaſon to oppoſe his being advanced to the Throne: For ſo it was in the Caſe of *Henry* VII. who married the Princeſs *Elizabeth*, the undoubted Heireſs of the Crown. This Princeſs alſo was pleaſed to conſent (tacitly at leaſt) that the Executive Power ſhould be veſted ſolely in her Husband, and the Lords and Commons concurring in it, *Henry* VII. was recognized.

Some indeed would have had it, that the Government was entirely diſſolved at the Revolution; that we were in a State of Nature again, and might go to a new Election, and ſettle the Government as we ſaw fit: But this Opinion muſt have made mad Work; for if the Government was diſſolved, and the Laws were no longer in Force, no Man could have had a Right to Houſes or Eſtates, ſuch Rights being fixed and limitted only by the Laws: Then the Rabble would have been at Liberty to ſcramble for the Eſtates and Effects of their betters, and would have had as good a Right to elect and appoint their Governors, as

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as the States of the Kingdom: And indeed there could be no ſuch Thing as States, if the Government was diſſolved. But the Caſe was otherwiſe, the King was indeed incapable of governing on account of his Bigottry; but then we looked upon ourſelves to be in the ſame Condition as on a Demiſe of the Crown, and as the Princeſs, the next Heir, and the Lords and Commons, that is every Branch of the Legiſlature, agreed to ſet the Crown on the Head of the Prince of *Orange*, we might well recognize him our lawful Prince: Had Queen *Mary* done this by a formal Act of Parliament, I am confident there would not have been a Man in the Kingdom, unleſs Papiſts, that would have oppoſed it. The lodging the Adminiſtration ſolely in the Prince of *Orange*, and excluding the Princeſs from any Share in the Government, was what ſhocked Archbiſhop *Sancroft*, and other great and good Men, who were very well ſatisfied with the Reſiſtance that had been made to King *James*, and the Application that was made to the Prince and Princeſs of *Orange*, to aſſert their own and the People's Rights, and ſave the Conſtitution: Every one would have been ſatisfied if the Princeſs of *Orange* had been proclaimed Queen, and afterwards called a Parliament, and ſettled the Crown upon her Husband the Prince. None were diſſatisfied at his aſcending the Throne, but with the *manner of his Advancement*; becauſe it ſeemed to break into the Hereditary Succeſſion, and had the Appearance of an Election: Though, as I have obſerved already, ſince the Princeſs, on whom the Crown devolved by the Abdication of her Father, (in the ſame manner as if he had been dead) conſented to transfer her Right to her Husband, I do not ſee why we might not without Scruple, obey the Prince of *Orange*, and every other Prince on whom he and his Parliament ſettled the Succeſſion; for the Supreme Power in this Nation being lodged in King, Lords and Commons, they may ſettle the Succeſſion, and make ſuch Laws as they ſee fit; and as this Supreme Power is not to be reſiſted on any Pretence whatſoever, ſo neither is the King to be reſiſted in the due Execution of thoſe Laws which have been made by the Legiſlature, or in the Adminiſtration of the Government, which he is entruſted with by the Conſtitution, ſo long as he does not exceed the Limits the Law preſcribes in the Exerciſe of his Power: We may ſafely aver the Doctrine of Non-Reſiſtance and Paſſive Obedience to the Supreme Power and to the King, who has the Executive Power, ſo far as his Prerogative is ſupported by Law, or by the Legiſlature; becauſe that reſiſting the Prince in this Caſe, is reſiſting the Legiſlature.

But where a Prince takes upon him to ſubvert and deſtroy the Conſtitution in Church or State, as King *James* did, Reſiſtance then becomes neceſſary.

But notwithſtanding King *James* had begun, and appeared determined to finiſh the Ruin of Church and State, yet to his own Folly and Indiſcretion we muſt aſcribe it in a great Meaſure, that it was in our Power to reſiſt the Deſtruction he was bringing upon us. Had he not been infatuated to the higheſt Degree, we might have lamented the ſad Condition we were reduced to, but could never have retrieved the Misfortune: Had he not diſobliged every Claſs of Men in the Kingdom, our Reſiſtance had been vain. He was weak enough to fall upon the Clergy, the Univerſities, the Corporations, and even upon his own Fleet and Army at once, and render them all Malecontents; and when he had done this, refuſed the Foreign Troops the *French* King offered him to ſupport his Tyranny.

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It is to the Weakneſs, or rather the Bigottry and Madneſs of that Prince, therefore, that we in a great Meaſure owe our being a free People at this Day; for as he had his Treaſury well repleniſhed, a good Fleet, a fine Army of Twenty Thouſand Men, and a Reſerve of as many Thouſand Foreigners as he pleaſed to accept of; what Service would our darling Doctrine of Reſiſtance have done us in theſe Circumſtances, if he had not done our Work to our Hands, and ſuffered himſelf to be puſhed upon ſuch Extravagancies by cunning treacherous Stateſmen, as rendered the very Fleet and Army his Enemies, which he had provided to enſlave us: Had the Military Gentlemen alone been politickly careſſed, no Popiſh or *Iriſh* Officers or Soldiers forced upon them; had no Prieſts with their ſuperſtitious Trumpery been introduced both into the Fleet and Army, of which he might have known they had the utmoſt Abhorrence (before the Seamen proceeded ſo far as to threaten to throw the Popiſh Fathers over-board); had he not been blinded by an unaccountable Zeal for Popery, it was impoſſible he ſhould have committed ſuch a Series of Blunders, as could end in nothing but his Ruin.

But before I leave this Doctrine of Reſiſtance, I cannot avoid taking Notice of a Set of Men, who make the diffuſive Body of the People, the Original of Power, and the laſt Reſort, whenever the Adminiſtration is not agreeable to their Taſte. They would have the Rabble inveſted with a Power of calling King, Lords and Commons to Account, who are, according to this Notion, but their Servants; for they hold, that whether the Government be lodged in one or more, whenever their Governors deviate, in their Opinion, from the general Good, and betray that Truſt which it is pretended the People once upon a Time conferred upon them; then they have an indefeaſible Right to reſume the Supreme Authority to depoſe the Governors, and put the Adminiſtration into other Hands.

But, were this admitted, there could be no ſuch Thing as a Government of any Duration in the World; for how inconſiſtent the People are, and how unqualified to judge what is for their own Good, or the Good of the Community, does not require much Sagacity to diſcover: And if this Maxim were eſtabliſhed in *Great Britain*, then would not the Supreme or Legiſlative Authority be lodged in King, Lords and Commons, as it is generally held to be, but in the Rabble; and conformable to this Notion, theſe Gentlemen tell us, that if their Repreſentatives conſent to Acts which tend to reſtrain the People's natural or

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acquired Rights, or to abridge thoſe Privileges they have been poſſeſſed of for Time immemorial; that then their Repreſentatives betray their Truſt, and all ſuch Acts are void.

In Anſwer to which, it may be proper to conſider, that ſcarce ever any Law is made that does not, in ſome Reſpect, limit, reſtrain, or alter the People's Rights and Properties: And that ſome Acts affect the Majority in the tendereſt Points, and yet have ever been ſubmitted to: From whence it is natural to conclude, that this Notion of the People's being the laſt Reſort, and the Original of Power, has very little Foundation.

Were not the Supreme Legiſlative Power lodged in the King, Lords and Commons, would the People have ever ſubmitted to have been excluded from giving a Voice at an Election for Knights of the Shire, as a Majority were by the Statute of 8 *Hen.* VI. *cap.* 7? or would they have ſuffered ſome Parliaments to enlarge their Duration, and others to make themſelves perpetual, as the Parliament in the Year 1641 did, and thereby excluded all the Freeholders and Burgeſſes in the Kingdom from that ineſtimable Privilege of electing Repreſentatives for the future?

Can we ſuppoſe, that the common People would ever have conſented to Abundance of unequal Taxes, ſuch as the charging Lands at the Rate of 4*s.* in the Pound in one County, and 18 *d.* in another? or that a Man who rents a Houſe at 20 *l. per Ann.* would be content to pay as much for his Lights as a Duke who has forty times as many, if they were not ſatisfied that theſe Things were done by the Supreme Legiſlative Authority; and therefore ought not to be diſobeyed or reſiſted? If I have any Notion of the Conſtitution of our Government, the King, Lords and Commons have an abſolute, diſcretionary Power, and are accountable to none: Whatever the King or Lords conſent to, binds themſelves and their Poſterity; and what the Commons in Parliament aſſent to, binds thoſe they repreſent and their Poſterity; and the whole Commonalty, King, Lords and Commons, may new-model the Conſtitution, and repeal and alter the Laws as they apprehend moſt conducive to the Safety and Welfare of the Kingdom; and though they ſhould be miſtaken in their Views, yet their Acts are binding: The People who elected them cannot repeal or alter ſuch Laws, for this good Reaſon, becauſe this is our Conſtitution; and for another as good, becauſe the King, Lords and Commons in Parliament muſt be ſuppoſed to underſtand the State and Intereſt of the Nation better than the inferior People do themſelves; and becauſe any Government is better than Anarchy, which we ſhall not be far from, whenever we admit the diffuſive Body of the People to be the Supreme Legiſlative Authority, or which is all one, to controll and oppoſe King, Lords and Commons, when they imagine themſelves aggrieved.

Another Obſervation that every one makes on this Trial is, That the Event was very different from what the Proſecutors expected The Deſign of proſecuting the Doctor, was certainly to ſuppreſs all Murmurs againſt the Conduct of ſome great Men, to eſtabliſh a certain Junto in the Adminiſtration, and deter the Clergy from medling with Politicks; for many celebrated Divines, as well as the Doctor, ſtill ventured to preach up the Church's Danger, notwithſtanding the aboveſaid Vote to the contrary, for which it was thought fit to make one of the Clergy an Example: But had thoſe Gentlemen known the Bravery of the Man, or been acquainted with that true Church-of-*England* Spirit, which the Clergy manifeſted both at the Revolution and on this Occaſion, they would poſſibly have thought better of it.

For the Body of the Clergy, looking upon their whole Order to be ſtruck at in Doctor *Sacheverell*, adhered firmly to him. Doctor *Lancaſter* Vice-Chancellor of *Oxford*, accompanied him to the Houſe of Commons, when he was carried thither, and above an Hundred of the moſt eminent Clergymen about Town met him in the Court of Requeſts, among whom were ſeveral of the Queen's Chaplains; and the Queen, well ſatisfied there was a great deal of Truth in what the Doctor advanced, changed her Miniſtry ſoon after the Trial, and the Doctor was preferred about the Time: He was allowed to open his Lips again to that fine Living of St. *Andrew's Holborn*, worth 8 or 900 *l. per Ann.* In the mean Time, the Doctor going from *London* to take Poſſeſſion of a Living a Gentleman preſented him to on the Borders of *Wales*, he was met, near all the Towns through which he paſſed, by Multitudes of People, from whence he received all the Honours they could pay him; but none did him greater Honours in this Triumphant Progreſs than the Univerſity of *Oxford*, of which he was a Member. This important Trial did not only occaſion a Change in the Miniſtry, but the Diſſolution of the Parliament, and the Choice of another of a very different Stamp: So that, how defective ſoever the Doctor's Sermons may be thought by ſome, never any Diſcourſe had a greater Influence. He carried his Point, and by thoſe very Sermons, which are ſaid to abound in Faults, he ſhewed he knew how to move and perſuade, not only a ſingle Audience, but a whole Kingdom; and there are certainly ſome Paragraphs in them that the greateſt Divines and Orators might have been proud of owning: Nor do I think him at all incapable of compoſing that admirable Speech he ſpoke in his Defence, how mean an Opinion ſoever ſome may have entertained of his Talents.

Biſhop Burnet's Character of the Doctor.

His Enemy, Biſhop *Burnet*, indeed, treating of Dr. *Sacheverell's* Trial, *pag.* 537, 538, of his Poſthumous Hiſtory, ſays, That he was a bold inſolent Man, with a very ſmall Meaſure of Religion, Virtue, Learning, or Good Senſe: That his Sermons contained the moſt petulant Railings at Diſſenters and Low-Church-Men, and were wrote without either Chaſtneſs of Stile, or Livelineſs of Expreſſion: That all was one unpractiſed Strain of indecent ſcurrilous Language: That he made great Reflections on the Miniſtry; repreſenting, that the Church was in Danger, being neglected

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neglected by thoſe who governed, while they favoured her moſt inveterate Enemies. That in his Sermon, at St. *Paul's* in *London*, the Fifth of *November*, he gave full Vent to his Fury in the moſt virulent Declamation he could contrive upon theſe Words of St. *Paul*, *Perils from falſe Brethren*, in which he let himſelf looſe into ſuch Indecencies, that both the Man and the Sermon were univerſally condemned. He poured out much Scorn and Scurrility on the Diſſenters, and ſaid, The Church was violently attacked by Her Enemies, and looſely defended by her pretended Friends. That he animated the People to ſtand up for the Defence of the Church, and ſaid, He ſounded the Trumpet, and deſired them to put on the whole Armour of God: That the Party that oppoſed the Miniſtry did ſo magnify the Sermon preached at St. *Paul's*, that Forty Thouſand of them were printed and diſperſed over the Nation: That the Queen ſeemed highly offended at it; and the Miniſtry looked on it as an Attack made on them, that was not to be deſpiſed: The Lord Treaſurer was ſo deſcribed (under the Name of *Volpone*) that it was next to the naming of him; ſo a Parliamentary Impeachment was reſolved on; though *Eyre*, the Sollicitor-General, and others, thought the ſhort Way, of burning the Sermon, and keeping him in Priſon during the Seſſion, was a better Method; but the more ſolemn Way was unhappily choſen.

A more equal Character of the Doctor.

I do not pretend to any great Intimacy with Dr. *Sacheverell*; but being employed in compiling the firſt four Volumes of State Trials, and receiving an Intimation, that there were ſome Omiſſions and Alterations in that of the Doctor, publiſhed by Authority, particularly as to the Republican Principles there advanced, and the ſcurrilous Language given him by ſome of the Managers; I went to his Houſe in *Holborn*, and enquired, If he could furniſh me with any Materials that would ſet his Caſe in a truer Light: He anſwered, That the printed Trial was no more his Trial than it was my Trial; intimating, That the Whole muſt be altered to do him Juſtice; and that the real Trial was preparing to be printed in *Holland*: But whether a Turn of the Times prevented his going on with that Deſign, or whatever was his Reaſon for ſuppreſſing it, we have not met with any other Trial, than that publiſhed by Authority, from that Day to this.

All that I can ſay of the Doctor of my own Knowledge is, That he was a tall, fair, perſonable Man, and ſpoke gracefully: That no Man read Divine Service better than he did; and that he choſe to do this frequently at the Pariſh-Church of St. *Andrew's Holborn*, of which he was Rector, to create in the People a juſt Veneratson for the Service of the Church; and I have heard ſeveral excellent Diſcourſes from him in the Pulpit (at leaſt as far as I am capable of judging of a Diſcourſe): His Voice and Action were exceeding juſt, and ſuitable to the Place, as well as to the Audience to whom he preached. 1709-10 9 Annæ.

The Doctor had a good Reputation at *Oxford*, as to his Parts, Learning, and Morals; and had ſome Perſons of Diſtinction under his Tuition at *Magdalen-College*, of which he was a Fellow: And it is obſervable there was nothing immoral proved againſt him at his Trial, after the ſtricteſt Examination had been made into his Life and Converſation. As to the Scurrility the Biſhop mentions in the two Sermons, for which he was impeached, the World muſt judge for themſelves: But thus much I may venture to obſerve, That theſe Sermons are far from being ſo ſcurrilous as the Biſhop's Hiſtory, where all Mankind, Friends and Foes, are moſt egregiouſly ſlandered and calumniated.

Further Remarks on the Doctor's Trial.

It has been the Opinion of many, That one great Reaſon of maintaining the Doctrine of Reſiſtance ſo ſtrenuouſly at this Time, was, to let the Queen know, That if ſhe would not ſubmit to the Dictates of the Whigs, ſhe would run the Hazard of being dethroned. It ſeems to have been a Maxim among ſome People, That whenever the Queen refuſed to be adviſed by Her Subjects (by whom they meant the Whigs) they were impowered by the *Original Contract*, and the Laws of the Land, to depoſe her: And, indeed, if we may credit this Hiſtory of Biſhop *Burnet's*, he told her ſo not long after; which was, no doubt, a ſufficient Reaſon for the Queen's changing Hands. What Prince would not have done it on ſuch an Intimation? She could not, after this, avoid ſuſpecting, that this Doctrine was eſpouſed, not with an Intention to juſtify the former Revolution, but to make Way for another; or, at leaſt, to exclude her from the Adminiſtration, and place it in the Triumvirate above-mentioned: By which Scheme, ſhe would have become a meer Cypher, and her Name only uſed to ſupport their Uſurpation.

The

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Dammaree's *Trial.*

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The Trial of DANIEL DAMMAREE, Waterman to the Queen, for *High-Treaſon*, at the *Old-Baily*, *London*, on the 18th of *April*, 1710. 9 *Annæ.*

The Indictment.

THE Priſoner was indicted by the Name of *Daniel Dammaree*, of St. *Clement Danes*, in the County of *Middleſex*, Labourer, of High-Treaſon, in conſpiring to levy War, and actually levying War againſt the Queen, on the firſt Day of *March*, in the 8th Year of Her Reign, at the Pariſh of St. *Clement Danes* aforeſaid; aſſembling and marching with a great Multitude of People, to the Number of 500 Perſons, armed and arrayed in a Warlike Manner, with Colours flying, Swords, Clubs, and other Weapons, offenſive and defenſive; againſt the Queens Peace, and the Form of the Statute in that Caſe made and provided.

Tolboy's *Evidence.*

A Jury being ſworn, and the Witneſſes for the Crown called, *Thomas Tolboy* teſtified, That on *Tueſday*, the laſt of *February*, being the Day before the Meeting-Houſes were pulled down, he paſſed through the *Temple* in the Evening, and ſaw a great Number of People aſſembled there, who had attended Doctor *Sacheverell* to his Trial and back again, and heard them talk of pulling down Mr. *Burgeſs*'s Meeting-Houſe; ſome, however, were for deferring it till the next Day, and others, till they ſaw the Succeſs of the Trial: But which they reſolved on, he did not know, for he made no Stay there.

Orrel's *Evidence.*

Edward Orrel teſtified, That he was at *Leonard*'s Coffee-Houſe, on the Firſt of *March* in the Evening, where News was brought that the Mob were pulling down Dr. *Burgeſs's* Meeting-Houſe; that he thereupon went thither, and was in the Meeting-Houſe three or four Times that Night, and ſaw them pulling down the Pulpit, Pews, *&c.* That he went from thence to *Fetter-Lane*, where he ſaw another Mob about ten o'Clock, demoliſhing the Inſide of *Bradbury*'s Meeting-Houſe, and carrying the Materials into *Holborn*, burnt them there: From thence he went to *Lincoln's-Inn-Fields*, where he found the firſt Mob burning the Materials of *Burgeſs*'s Meeting-Houſe; and heard ſome of them ask, which was my Lord *Wharton*'s, Others ſaid, St. *James's*, and Others, the City, the Bank: That they divided themſelves, and went from thence, ſome towards the Arch, but more towards *Powis*-Houſe: That he ſaw *Dammaree* the Priſoner, in the Queen's Livery, with his Badge, go with thoſe towards *Powis*-Houſe in *Queen-ſtreet*; and *Dammaree* ſaid, *Damn it, We will have them all down.* Some were for going to the Meeting-Houſe in *Wild-Street*, but another ſaid, That's a Hen-Rooſt, the other is worth Ten of it: And *Dammaree* thereupon ſaid, *I will lead you on Boys; Huzza! High Church, and* Sacheverell! *God Damn them all; We will have them all down:* And ſome of them turning off to *Wild-Street*, *Dammaree*, led the reſt through *Queen-ſtreet*, and once in ten or twelve Yards, turned about, crying *Huzza! Why don't you come on, Boys, to* Drury-Lane? and he led them thither; but the Witneſſes never ſaw him afterwards: That he ſaw a little Fellow with a Pick-Ax, endeavouring to break open the Meeting-Houſe Door in *Drury-Lane*, working at the Bottom of it; when another came up with a Hatchet, and ſaid, *Damn you, you break open a Meeting-Houſe! You don't know how*, and with two or three Strokes of his Hatchet, he broke through it: That he (the Witneſs) then went into the Meeting-Houſe with them, and asked for *Jolly*, the Queen's Waterman; and one ſaid, he was gone to the Back-Door, and another, that he was gone to Lord *Wharton*'s; but he never ſaw him afterwards.

Joſeph Collier teſtified, That he ſaw *Dammaree* bring the Branch, or great Candleſtick from *Burgeſs*'s Meeting-Houſe, to the Fire in *Lincoln's-Inn-Fields*, and that he carried it three Times round the Fire, in a ſort of a Proceſſion, huzzaing; and then threw it in.

Still's *Evidence.*

John Still, ſaid, he ſaw the Priſoner hollowing in the Alley that leads to *Burgeſs*'s Meeting-Houſe; and *John Mitchel* depoſed, That he ſaw him hollowing, and throwing up his Hat, about the Fire in *Lincoln's-Inn-Fields*.

Morgan's *Evidence.*

Francis Morgan teſtified, That *Dammaree* was at the Fire in *Lincoln's-Inn-Fields*, in his Waterman's Coat, encouraging the Mob: That he walked round the Fire, and threw ſeveral Things in; and he (the Witneſs) telling them the Guards were coming, ſome of the Mob ſaid, *Damn the Guards and the Parliament too: We are ready to face them all*; and he ſaw the Doors of the Meeting-Houſe thrown into the Fire, after they were carried about it in Proceſſion.

Eaton depoſed, he ſaw *Dammarree* and ſome Others, force a Soldier that was at the Fire, to pull of his Hat.

The Evidence for the Queen being cloſed, Mr. *Darnell*, the Priſoner's Counſel, made the following Obſervation on it, *viz.*

Obſervations of the Priſoner's Counſel on the Evidence againſt him.

As this Indictment charges the Priſoner with levying War, there muſt be a Proof of ſuch Facts as do amount to a levying of War. The Witneſſes for the Queen have ſworn, that the Priſoner was at the Fire in *Lincoln's-Inn-Fields*, and that there he did hollow and throw up his Hat. I believe that muſt be agreed, for my Inſtructions are, that he did ſo, and our Witneſſes will all ſay as much. But if that were all, then the Witneſſes againſt the Priſoner muſt be equally Guilty:

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For the Chief of them, *Orrell*, ſays, he was forced to pull off his Hat; and it was known to be the Practice of the Mob that Night, to make all that paſſed by, pay Obedience, as they called it, to Dr. *Sacheverell* and High Church. But my Lord, that which I humbly offer on behalf of the Priſoner, is, That unleſs he were in the Intention of pulling down the Meeting-Houſes in general, and did ſomething in Execution of that general Intention, it will not be a levying War againſt Her Majeſty. My Lord, it is obſerved that this Man was at the Fire in his Coat and Badge, and we think a great deal my be inferred from his Habit, that he was not in ſo evil an Intention as levying War againſt Her Majeſty, whoſe Servant he was ſo remarkably diſtinguiſhed to be; but a Man, who had ſuch a vile Deſign to execute, would dreſs himſelf in ſuch a Manner as would beſt conceal him: Therefore we think his being preſent at the Fire, and hollowing, and the reſt of the Evidence againſt him, is not enough to prove him in that general Intention, and the Execution of it.

The Gentlemen of the other Side thought it neceſſary to give ſome Evidence of a Deſign to pull down the Meeting-Houſes in general, and for that purpoſe, proved that a great Number of People were got together, the Night before, in the *Temple* Walks; where there was a Diſcourſe by ſome of them, that they would pull down Mr. *Burgeſs*'s Meeting-Houſe; but who thoſe People were, I don't hear, nor do they by any means bring that Home to the Priſoner. And it is impoſſible for us to give an Anſwer to that Evidence; for to ſay the Mob ſaid ſo, is to ſay that Nobody ſaid ſo; and no Witneſſes can be falſified on ſuch an Evidence, for who that Mob were, is not explained. And my Lord, if there was no Intention, or no general Intention, to pull down Meeting-Houſes, we apprehend there can be no levying of War: If the Fact were ſudden and accidental, or only intended againſt a particular Meeting-Houſe, we muſt ſubmit that to your Lordſhip, whether, if he were Guilty of that Fact, it would amount to High-Treaſon. We think all the Caſes go on this Foundation, that there muſt be an *Intention* to commit ſuch like Offence in general; and an Intention to commit it to the particular Injury of a Perſon, or Place, will not be ſufficient. The Witneſſes againſt the Priſoner ſay, there was an Intention, or Diſcourſe, of going to Mr. *Burgeſs*'s Meeting Houſe, and no Talk of any other; but when they were there, then they went to a Second, and on to a Third: But the original Intent by the Mob, doth not appear to be more than to go to Mr. *Burgeſs*'s Meeting-Houſe, and to pull that down, and therefore is not a levying of War.

The Caſe in Print, in the ſecond *Anderſon*, 66, where the People in *Oxfordſhire* conſpire to aſſemble together, and move others to join them, and to pull down Incloſures, was attended with this Circumſtance, That it was a general Intent; and, when they were got together themſelves, they perſuaded others to join with them: They conſpired to go to ſeveral Gentlemen's Houſes, and to take Arms and Horſes, and to kill ſeveral Gentlemen, and then to come to *London*; and their Intent was general, not to pull down any particular Enclоſure, but all of them for the Enlargement of Highways and Commons, and ſo to reform that which the Law ought to do.

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So in the ſame Book, in the Caſe of the Apprentices of *London*, 2 *Anderſon*, 4, 5. For reducing the Price of Victuals in general, they agreed to break open the Priſons, to releaſe ſome of their Companions, and to go to the Lord Mayor's Houſe, and to kill him, and burn his Houſe, and then to break open two other Houſes near the *Tower*, where there were Arms for three hundred Perſons: Then to diſperſe Libels, and to perſuade other People to join with them.

There is a later Caſe in my Lord Chief Juſtice *Keyling*'s Reports, which was the Intention of pulling down Bawdy-Houſes; there they took upon themſelves Regal Authority, and would not take the Courſe the Law preſcribed: But, my Lord, thoſe Caſes are attended with many worſe Circumſtances than this is, for there they aſſembled with Arms; there they had one they called Captain to lead them, with his Sword drawn; they had Aprons, and ſuch Things on Staves, which they called Standards and Colours, and, in a Military Way they marched, and did pull down ſeveral Houſes, which they called Bawdy-Houſes: That Caſe is reported in my Lord *Keyling*'s Reports, fol. 70. and was adjudged levying of War, becauſe the *Intent* was general, and becauſe they took upon themſelves to do that which is the Buſineſs of the Queen, and the Laws of this Kingdom only to do. But, my Lord, in that Caſe, there are two Perſons who ſeem to have as great a Charge of Guilt upon them as the Priſoner at the Bar, and were diſcharged from thoſe Indictments for levying War, by the Opinion of all the Judges. One of them was found to be at the Meeting where the Diſcourſe was of pulling down theſe Bawdy-Houſes, that is *William Green*, that he went along with them, caſting up his Cap, and hallowing, with a Staff in his Hand; but becauſe there was not any particular Act of Force found to be committed by him, he was diſcharged. Another, one *Bedell*, was found among the Mob, and, when the Guards came to diſperſe them, and he was purſued by one of the King's Soldiers, he called out to his Fellows to face about, and not to leave him. This, we think, is at leaſt as ſtrong an Evidence againſt them as has been given againſt the Priſoner at the Bar; and yet they were both diſcharged by the Opinion of all the Judges.

My Lord, where a Fact is found, which Fact is an aiding and aſſiſting, we think it can't be a Defect in the finding of the Verdict, that he did not aid and aſſiſt. The Facts they found were only Inſtances of aiding and aſſiſting; and if theſe Inſtances will be ſufficient, then the Court were as fully poſſeſſed of them, as they are now upon this Evidence.

My Lord, as to the Fact, we think we have a very good Caſe of it: We have Proof, every Hour of the Day, of the 1ſt of *March*,

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where the Priſoner was, from Morning till Night. That he was at the Conſult the Night before, with the Mob, I think, is not pretended on the other Side. On the Day in the Indictment, we ſhall ſhew he was, from Eight or Nine in the Morning, in the Company of ſeveral Perſons, till about Ten at Night, or later: That at that Hour, he was at an Alehouſe in *Water-Lane*, in *Fleetſtreet*, where a Gentleman's Servant came in, and told the Company there was a Fire; the Priſoner ſtarted up, and thought it had been in the Houſe, but finding it was not, he went into the Street; there it was reported, That Mr. *Burgeſſes*'s Meeting-Houſe was pulled down and burnt. In about an Hour after that, he came along *Fleet-ſtreet*, and, at *Hercules-Pillars-Alley*, near the *Temple*, there was a Sempſtreſs ſtanding at her Door, with whom, the Priſoner ſtaid talking ſome Time, and, whilſt they were together, ſeveral People came by, and ſaid, that *Burgeſſes*'s Meeting-Houſe was quite down, and burnt: From thence, he went up *Chancery-Lane*, and through *Lincoln's-Inn-Fields*, to ſee what was the Matter, and found, as it was reported, that it was all burnt. The Mob that were then about the Fire, laid hold of him, and uſed him as they did all other People that came by, and made him pull off his Hat, and hollow, *High Church, and* Sacheverell! If not, they muſt have a Knock on the Pate. When they found he was much in Drink, they puſhed him about, and ſaid, He ſhould be their Captain; and then they hollowed, and ſaluted him Captain: But nothing of this came from himſelf, but they gathered about him, and there their Captain was in the Middle, more like to ſuffer than command. My Lord, the Evidence againſt him don't pretend to charge him to be in *Drury-Lane*, only that he went that Way with them. Now as to the Intention, which they would ſuppoſe the Priſoner had, of pulling down all the Meeting-Houſes, I ſay, my Lord, a Man would not, from being a Captain, and from ſo great a Zeal to the Cauſe, deſert his Companions, even in the firſt Inſtance in which he could ſerve them: For, I ſubmit it, Whether there is any Evidence that he was in, or at any one of the Meeting-Houſes, after the Fire in *Lincoln's-Inn-Fields*: And if he was ſo forward, as the Witneſſes ſeem to charge him to have been, ſurely he would have gone to *Drury-Lane* at leaſt, and done ſome Act of his Authority; but that is not proved. And, my Lord, of our Side, we ſhall prove, that he did not go to *Drury-Lane*, but that, at Twelve o'Clock, he was in Bed, at his own Houſe in *Lambeth*: So that there will be no Time to ſuppoſe him guilty of doing any thing after his entering upon his Office, but only that he went off as ſoon as he could.

There was one of the Witneſſes, my Lord, that ſaid, he was in *Lincolns-Inn-Fields* about Eight or Nine o'Clock, and ſaw the Priſoner there; now we ſhall ſhew, that till half an Hour after Ten, he was engaged in Company in *Water-Lane*: But there is a Circumſtance in our Evidence, which, we think, may reconcile that; for we can prove, that at Doctor *Burgeſs's* Meeting-Houſe, there was a Waterman, in his Livery and Badge, who was buſy in pulling down, and carrying away the Materials; but the Priſoner can't be ſuppoſed to be the ſame, for that Perſon wore his own Hair, and the Priſoner has worn a Wig many Years: And, my Lord, if my Inſtructions are true, we have Perſons that knew the Priſoner before, that will take it on their Oaths, that it was not *Dammaree*; if ſo, then the Witneſſes that prove him to bring out the Branch, we hope, will be reconciled by this, that there was another Man in the ſame Habit. It is an eaſy Thing for a Boy, in a Croud, to make ſuch a Miſtake; for that was the Reaſon why he knew it to be *Dammaree*, becauſe he had his Waterman's Coat and Badge on: That Man is not found out; but we hope we ſhall not ſtand in his Place.

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My Lord, another Circumſtance we have of the Innocence of the Priſoner, is, that the next Morning, when he got up, he went to his common Buſineſs, to Work upon one of the Queen's Barges, and there, I think, he was, when the Meſſenger came to take him: He was not under the leaſt Apprehenſion that he had done any Thing that would make him Guilty of a Crime, eſpecially ſo great a one as this he is charged with: If he had, he would have taken ſome Care of himſelf; but his Innocence was all the Protection he made uſe of. We hope our Evidence will ſatisfy your Lordſhip and the Jury, that ſome of the Witneſſes againſt him were miſtaken, and ours will ſhew that he withdrew from the Fire as ſoon as poſſibly he could; and we ſhall call ſome other Witneſſes to ſhew that he is a Man of another Character, than to be guilty of ſuch an Offence. The Gentlemen of the other Side, ſaid, he was doubly obliged to bear Allegiance to Her Majeſty; we own it, that he was Her Waterman; that he always behaved himſelf dutifully towards Her Majeſty; that, on other Occaſions, he has expreſſed his Abhorrence of any Thing of this Nature. My Lord, if he is of a good Character, zealous for the Government, and has always expreſſed himſelf ſo, no Man, that is of that Character, can be guilty of ſuch a Crime, than which there can be none greater, to raiſe War againſt Her Majeſty, in the Bowels of the Kingdom; and the Greatneſs of the Charge is that which, we hope, will make your Lordſhip and the Jury require the more exact Proof. We will call our Witneſſes to make out our Caſe, and then ſubmit it to your Lordſhip and the Jury.

The Evidence for the Priſoner.

The Witneſſes for the Priſoner being called, *Thomas Allen* teſtified, That on the firſt of *March*, the Day the Meeting-Houſes were pulled down, he was with the Priſoner *Dammaree* from Ten in the Morning till Twelve at Noon; and that the Priſoner was then engaged in taking an Apprentice from *Chriſt's-Hoſpital*.

Stephen Pink depoſed to the ſame Effect, and that he left him with Mr. *Wood*, at the *Cock* in *Amen-Corner*, at 2 or 3 o'Clock in the Afternoon.

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Wood teſtified, That he was with *Dammaree* on the firſt of *March*, from Nine in the Morning till Ten at Night, drinking from one Houſe to another; and that the laſt Ale-houſe they were at, was at the *Bell* in *Water-Lane*, where one *John Light* a Poſtillion came in about Ten, and ſaid there was a Fire in the *Strand*, and thereupon *Dammaree* ſaid he would go and aſſiſt a Gentlewoman of his Acquaintance that lived in the *Strand*: That he (the Witneſs) went with *Dammaree* as far as *Temple-Bar*, and there they met a great Mob, which forced them up *Sheer-Lane* into *Lincoln's-Inn-Fields*, ſaying to *Dammaree*, *Damn you, you are the Queen's Waterman, you ſhall go with us, or we will tear you in Pieces*: And *Dammaree* deſired they would not knock him on the Head, and he would go with them, That they went with them into *Lincoln's-Inn-Square*, and then were forced through a Wicket into the Street that leads to Great *Lincoln's-Fields*, and there he (the Witneſs) left them; but they forced *Dammaree* to go with them to the Fire.

Fucard who kept the *Bell* Ale-houſe at *Water-Lane* End depoſed, That *Dammaree* came to his Houſe at Two in the Afternoon on the firſt of *March*, and ſtaid there till half an Hour after Ten, and then went away very much in Drink; but he heard nothing of a Fire.

Charles Biſhop depoſed, That *Dammaree* ſtaid with him at the *Bell* Ale-houſe, on the firſt of *March*, till half an Hour after Ten at Night, and went away much in Drink; that News was brought in of a Fire about Nine, an Hour before he went away.

John Light depoſed, That he brought the News of the Fire into the *Bell* Ale-houſe about Nine at Night, the firſt of *March*, and *Dammaree* ſtaid there afterwards till between Ten and Eleven.

Ward depoſed, He ſaw *Dammaree* at Mr. *Giles*'s Shop in *Fleet-ſtreet*, at half an Hour after Ten, on the firſt of *March* at Night, and he was ſo drunk that he reeled; and the People ſaid there was a Fire, the Inſide of *Burgeſs*'s Meeting-houſe was burnt, and he ſaw ſome People carry the Irons, by that ſupported the Pulpit.

Mrs. *Giles* teſtified, That *Dammaree* called at her Shop againſt St. *Dunſtan*'s Church, after Ten, the firſt of *March*, and asked what was the Meaning of the Tumult, and was told *Burgeſs*'s Meeting-Houſe was burnt: That he ſtood talking with her a good while, at the Shop Door; ſhe remembered him well, becauſe he had the Queen's Coat on; and being asked, how ſhe came here as a Witneſs? ſhe anſwered, that hearing ſuch a Man was taken up, ſhe ſaid to ſeveral Neighbours, it was impoſſible he could be at the pulling down the Meeting-Houſe, for that he was at her Door at that Time, and came from the City; and ſome of *Dammaree*'s Friends hearing of it, ſubpœna'd her: That a great many other People came by the Shop at the ſame Time, crying out, Who are you for? and thereupon *Dammaree* ſaid, he was for the Queen; but he ſeemed to be pretty much in Drink.

Cummins teſtified, That he ſaw *Dammaree* at the Fire in *Lincoln's-Inn-Fields* about Eleven at Night; that he was very drunk, and the People pulled him about, and made Sport with him, and one ſtruck him, becauſe he did not pull off his Hat. 1710. 9 Annæ.

Mary Reading, and *Iſabel Prince* depoſed, that it was a little Waterman, in his own black Hair, that threw the Sconce into the Fire at *Lincoln's-Inn-Fields*, and not the Priſoner; and, when the Fire was almoſt out, they ſaw the Priſoner going towards it, and ſpoke to him, and he kiſs'd the laſt Witneſs upon her ſaying, *here comes the Queen's Waterman*.

Rowland Walker depoſed, That he carried *Dammaree* croſs the *Thames* from the Stairs at *Strand*-Bridge, to his Houſe at *Lambeth*, on the Firſt of *March* at Night, at half an Hour after Eleven, and he was very much in drink.

Hales, and *Harbin* teſtified, They met *Dammaree* in the *Strand* the ſame Night after Eleven: That he was in drink, and going towards *Strand* Bridge.

Then ſeveral Witneſſes appeared to his Reputation, and ſaid, He was well-affected to the Queen and Government, and of a peaceable Diſpoſition; and one ſaid he heard him ſay, He wiſhed Dr. *Sacheverell* had never preached that Sermon, and then there had been none of this Trouble: And others ſaid, He was as ſerviceable as any one in raiſing Men for the Queen, when he was Maſter of the Waterman's Company.

Obſervations of the Priſoner's Counſel on the Evidence.

Mr. *Darnel*, in his Obſervations on the Evidence given for the Priſoner, ſaid, This Caſe comes far ſhort of that in the Lord *Keyling*'s Reports; for there was plain Hoſtility, a Captain with a Sword drawn, Colours, two Meetings to conſult, and a Reſolution taken, a reſiſting and wounding the Conſtable, and ſtriking the Officer of the Guards, and their Intention to pull down Bawdy-Houſes, which might be any Houſe they thought fit to call ſo. As for the Caſe of *Oxfordſhire*, it is plain, there was an arming themſelves, they had put on Armour to act offenſively, as well as defenſively; they propoſed to come to *London*, and to have others join with them, and that Caſe was adjudged High-Treaſon. For the general Intention to pull down Incloſures, Where there is any Reſolution, that theſe great Tumults amount to High-Treaſon; it is on this Foundation, that the Deſign is general, and is an exerciſing of a Regal Authority, which no Body but Her Majeſty ought to make uſe of. It is ſaid in *Meſſenger*'s Caſe, that the Intent muſt be ſuch, and that ſuch Intent muſt appear by ſuch Proof as will ſatisfy the Jury. Now, how do they offer to prove the Intent of this Man? If there is any Thing to prove it, it is ſubſequent to the pulling down the firſt Meeting-Houſe; for it is plain, he was not there 'till the Deſign was ſo far executed, and the Fire had been made an Hour before he came: Now, if he comes there, and hollows and rejoices at it, that cannot make him guilty. I agree, that if any Number of Perſons are going to commit High-Treaſon, and a Man meets them, and joins with them in the Execution of that Fact, he is guilty; but if he be ignorant of their Deſign, and hollows

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hollows and rejoices with the Crowd, that will not make him guilty: And in this Case it appears, that every Body that passed by the Crowd that Night were constrained so to do; but where such Person, who is got into such a tumultuous Assembly, doth get off as fast as he can, this cannot be High-Treason, or any Crime whatsoever. If the Prisoner had gone to *Drury-lane*, and they had shewn that he did any Thing there, we should have had a harder Case than we hope we have; but we think there is no Proof of the Intention of this Man to commit those Facts of pulling down the Meeting-Houses in general, and of assisting in the Execution of that Intention.

My Lord, if our Witnesses (whose Credit stands unimpeached) be believed, it is impossible he could be concerned in this Design, or the Execution of it, or know any Thing of it till it was executed: For it don't appear, that, on any of the Days when the Mob were together, he was among them, or that he acted any Thing 'till after the Meeting-House was pulled down, and the Fire made. We have shewn where he was all that Day, and that it was near Eleven when he came to the Fire. I think we have shewn by the Waterman that carried him Home, that there was not Room for him to bear any Share in this Outrage; for between the Time of his coming to the Fire, and going Home by Water, there is no Room for him to do any Thing more than to go between those Places. There is no Proof that he did any Thing, but what the Mob in a Manner forced him to do; and perhaps it might have cost him his Life, in so tumultuous an Assembly, or, at least, some bodily Harm, if he had done less.

Mr. Sollicitor in his Reply to the Prisoner's Counsel said,

The Reply to the Prisoner's Defence.

My Lord, there are two Points to be considered in this Case: First, Whether this Tumult be a levying War, and High-Treason? And in the next Place, how far the Prisoner may be concerned in it? Whether what he has done, has made him equally guilty with the others, supposing the general Design, and the Execution of it, to be High-Treason?

We take it, that this Design to pull down these Meeting-Houses, was a general Design; and being a general Design, and done upon Pretence of Reformation, and in Defiance of the Law, that this is High-Treason, and levying War; and Facts of this kind, in all Ages, have been adjudged so. The general Design is proved by what followed, by the Action, by pulling them down; for we have proved that four were pulled down, and that there was an Intention, or Declaration, that they would pull down Meeting-Houses. What is this Design against? It is against the Queen: It is levying War within the Realm, which I take to be a material Word in the 25th of *Edward* III. It is levying War against Her Sovereignty, Her Power and Authority, in Matters which She, either as concerned in the Legislature, or in the executive Power of the Government, may reform and correct. The taking Arms in Defiance of any Law, or to correct any Abuse, or to deprive the Subject of the Benefit of any particular Act of Parliament, is levying War and High-Treason; and so adjudged by the Statute of Queen *Elizabeth*. The Case of the ——— was long before that Time; the Case of Inclosures was a private Interest; yet the getting a Number of People together, in order to throw down all Inclosures, is adjudged to be High-Treason; and that Resolution has always been affirmed. That is the Interest of Private Persons, and therefore will shew what they insist on of the other Side against the Queen, is of no Consequence; for, if it was levyed against Her Authority, with Submission, that is High-Treason: The taking up Arms against it, though there was no immediate Intention against Her Person, or to destroy Her. Indeed it has been common to lay a Design to compass and imagine the Death of the Queen, and the Overt-Act of the Treason has been the Proof of that Design; there the compassing is the Treason, and the Overt-Act is only the Proof, and therefore a Design must be laid in that Case. But in Cases of this Nature, the levying War is the Treason, and therefore the proving the levying War, is sufficient, without laying any Design to compass or imagine Her Death. Now that this is against the Queen, and Her Sovereignty, is most plain, because it is certain these Meeting-Houses are tolerated by Law: The Dissenters are indulged in the Exercise of the Worship of God, in their own Way, by the Act of Parliament: That Act of Parliment can be taken away by nothing but an equal Power; in which the Queen must give Her Assent, and it must have Her Concurrence. The Queen has the Administration of Justice under her Care, therefore taking up Arms to destroy Meeting-Houses in this Manner is levying War against the Queen, and levying War within the Realm; to invade that Right which by the Laws of the Kingdom these People are entituled to; for the Law has given this Right. Now, to take up Arms to violate that Right, is High-Treason, and is a stronger Case than any that have been mentioned and agreed to be Law. The Case of an Inclosure is a private Interest; the taking Arms to enlarge a Highway is so; to destroy Bawdy-Houses is so; to take up Arms to remove a Publick Nusance, which ought to be the Particular Care of the Government, that is levying War.

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They have insisted upon the Statute of the 13th of *Elizabeth*, which they use as an Argument to shew that this was not Treason within the Statute of *Edward* III. but that Act was to make a Conspiracy to levy War, High-Treason. But then how stood the Case of the Inclosures at that Time? Several People conspired to throw down Inclosures, and that was adjudged High-Treason, because it was a Conspiracy to levy War; and how could that be High-Treason, if taking Arms to throw down Inclosures were not so? We take it that the Case of *Anderson*, is full in Point; and these Cases are affirmed by the Judges in the Case of *Messenger*: So that this is the greatest Authority, and never to be shaken. They say the Case in *Anderson* is a private Opinion; it is the Opinion of the Two Chief Justices; and the Master of the Rolls;

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Rolls; the others are the Opinion of all the Judges: So that it is ſuch an Authority as never can be ſhaken.

This ſhews the Foundation that there is for this neceſſary Proſecution, that People may ſee, that it is not in the Power of every Man, according to his own Fancy, to find Fault with the Government, and alter the Laws, and deprive the Subject of any Benefit he is entitled to by Law. It is an Invaſion of the Royal Authority; they may, by the ſame Reaſon, fall upon a Man's Perſon, as they may pull down a Man's Houſe: And Things of this Nature muſt run into endleſs Confuſion, and none can be ſafe, unleſs People, that are thus Guilty, be brought to Puniſhment.

Theſe Authorities then being ſo ſtrong, we hope, as the Caſe ſtands, on the Evidence for the Queen, that the Priſoner has been proved Guilty of the Charge in the Indictment; for that there was a general Deſign, appears by what was done in the Execution of it. The only Queſtion is, Whether this Man was privy to any precedent Deſign? And, for this, I rely on the Lord *Eſſex*'s Caſe, in *Moor*'s Reports, which was ſettled by all the Judges in *England*. I ſay, that it is not neceſſary to prove any ſuch previous Intention, any more than if a Man ſhould be ſo bold as to murder a Judge on the Bench. Muſt you prove that there was any Deſign? Don't the Blow that was given ſhew the Deſign? And is it not High Treaſon in caſe of counterfeiting the Coin? Muſt you prove an Intention? No; the Treaſon is in the Fact, and not in the Intention: Where it is in the Intention, as compaſſing the Death of the Queen, there muſt be an Intention proved; but where it is in Fact, where the Fact is Treaſon, no previous Deſign is neceſſary to be proved, in any Caſe whatſoever: The Fact it ſelf is the Treaſon, and ſpeaks the Deſign; and the Man that commits Treaſon, muſt do it with a Treaſonable Intention. And, in the Lord *Eſſex*'s Caſe, it was adjudged that my Lord *Southampton*, who joined with him in that Fact, which was adjudged levying War, was Guilty of the ſame Treaſon, though he did not know of the Deſign of the Lord *Eſſex*, but thought he meant only to remove ſome particular Enemies of his from the Queen.

They ſay, if he was there, he was only there by Force: As to his coming there, I think it is as fully proved as can be; but, ſay they, it was not he that threw the Sconce into the Fire, for he was at another Place at that Time; for that was thrown in at Nine or Ten o'Clock, and he was then elſewhere. I wonder this ſhould be inſiſted upon, it being only a ſmall Variance in Time; and as he was obſerved to do the Fact, it is not material as to the Hour: Therefore, unleſs what the Women ſay is an Anſwer to that Evidence, it ſtill remains unanſwered; and as to what they ſay, we muſt ſubmit it, whether it can be believed; whether they deſerve that Credit; whether a Man that ſtood by, and ſaw every Thing that paſſed, and followed him up the Street, to the Fields, whether they can deſerve that Credit that this Man does; for what they ſaw was only at the Fire. They agree a Waterman did it, but it was a ſhort Man in black Hair, and they ſaw him only by looking under ſome People's Arms; they could not diſcern ſo particularly as this Man, that ſaw him come out of the Houſe, and followed him: But whether he was concerned in that Act or no, is not material. His going from the Fields, and hollowing the People to *Drury-Lane*, is a Matter they have not anſwered; they have given no Evidence to anſwer that; and if that were ſo, it is a ſufficient Evidence of his levying War; that is enough, his ſaying he would lead them, and encouraging them to go with him; that, no Doubt, will be a full Evidence, joined with his being at the Fire, which is proved by five or ſix Witneſſes; and this is contradicted by nothing, but ſaying he did it by Force; and if that were Fact, then certainly he would not be guilty: But on what does this depend? On two Witneſſes; on *Wood*, whom, I think, no body can believe, for he contradicts himſelf in coming to the Place, and going from it again; and how defective he was in every Point, I doubt not, your Lordſhip and the Jury have obſerved. But when they call their other Witneſs, they make it clear; for, if any Credit is to be given to their other Witneſs, *Wood* is not to be believed; for he ſays, the Priſoner left the Alehouſe to ſerve a Friend in the *Strand*, and that he went along with him; but this is contradicted by the other Witneſſes, and it appears, that he was not with him in *Fleet-ſtreet*. *Cummins* ſays, the Priſoner was drunk, and thruſt about by the Mob from one to another; but he don't prove he was under any Force: If he had, they would have treated him otherwiſe; but they are continually juſtling and playing with one another; and though other People were threatened, that don't prove that he was. They ſay he was drunk; that is no Excuſe at all. I was willing the Jury ſhould have all the Circumſtances before them, and therefore joined in asking that Queſtion; but it cannot be material, nor is he more or leſs Guilty, whether he was drunk or ſober: So that we take it, there is no Evidence that he was under any ſuch Force, as put him under a Neceſſity, for his own Preſervation, to join with the People in this Tumult. If he was not under an abſolute Neceſſity, he cannot be excuſed: So that it is plain, they have not anſwered that Matter at all. And as to the two Women, that never ſaw him before, but met him coming back to the Fire; and as to the Proof, That he was at Home at Twelve o'Clock, that is no ways inconſiſtent with our Evidence. The Matter of Reputation is no ways to be conſidered in this Caſe: I would not ſay any thing more, but you hear what was the Noiſe of the Mob, and that Cry and Hurry that was made on this Occaſion, was in Defiance of the Juſtice of the Nation, which was then carrying on in the moſt ſolemn Manner. But we ſubmit it to your Lordſhip, that this Fact, this Deſign, executed in this Manner, is plainly levying War and High Treaſon; and the Priſoner at the Bar, by the

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Evidence that has been offered, is Guilty of the Fact charged againſt him in the Indictment.

The Chief Juſtice afterwards gave his Directions to the Jury, and ſaid,

It is unhappy, indeed, that theſe Miſtakes are propagated; but it is monſtrous to ſee how People may be miſled; that they ſhould fall foul on the Diſſenters, and pull down the Meeting-Houſes, when they are rather the Objects of Pity than Anger. If they are not ſatisfied with the Eſtabliſhed Church, which is the beſt in the World, and they loſe the Benefit and Advantage of that excellent Conſtitution, they are to be pitified for their Miſtake: But why ſhould any one be angry becauſe they do a Prejudice to themſelves? But this Matter having been under the Conſideration of the Legiſlature, and there being a Law that allows them the Liberty to ſerve God in their own Way; ſince that Liberty is allowed them, why ſhould any body be concerned that they enjoy it? And why ſhould their Meeting-Houſes be pulled down? But Dr. *Sacheverell*, at that Time (I would not reflect on him; he has undergone a Cenſure in another Place), when he had fallen foul on the Toleration, and repreſented it as an Encouragement to Schiſm, and a Ground of Danger to the Church; thoſe People that thought him a Confeſſor for the Church, thought they could do no leſs than pull down thoſe Meeting-Houſes, which were the Seminaries of Schiſm. And this Doctrine of Non-Reſiſtance, which is cried up in all Caſes to be the Doctrine of the Church, this Doctrine is propagated by Reſiſtance: Theſe People will reſiſt to ſhew they are not for reſiſting, and oppoſe the Queen's Guards in Vindication of that Doctrine, That no body ought to reſiſt: But it ſhews, that when a Madneſs is got among the People, they cannot think as they ought to do; and many unaccountable Things will be done; and, therefore, he might think it no Blemiſh to his Reputation. And Dr. *Sacheverell*, that has been condemned for thoſe Things by the Parliament, and ſtands convicted of being Guilty of them, ſome People having made it honourable to him, others thought it might be an Honour to them too, to demoliſh Meeting-Houſes, and to raiſe Seditions and Riots which are not to be borne in a civilized Country; for no body knows where popular Tumults will end.

This being then the Matter of Fact on both Sides, and what there is in Fact, and in Preſumption, Give me Leave to take Notice what the Law is in this Caſe. For it has been inſiſted on by the Counſel for the Priſoner (I muſt do them Right, they have taken into Conſideration all the Caſes that relate to this Matter); that they inſiſt, his is not levying War; and, on this Ground, that he was not proved to be at the Meeting-Houſe in *Drury-Lane*, but only at the Fire at Dr. *Burgeſs*'s: And if he was only at one Place, one Inſtance would not make it levying War. If, ſay they, there had been a general Intention, it would have gone hard with him: There was an Intention the Night before, and Mr *Burgeſs*'s was only mentioned; and it is not certain that there was a general Deſign to pull down the reſt: Nay, he was not there, and it was by Accident that he came into *Lincoln's-Inn-Fields*, and he was but at that one Place; and they take Notice of ſome Caſes, eſpecially that about the Bawdy-Houſes, and that the Lord Chief Juſtice *Hales* differed from the reſt of the Judges.

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This is a Matter that has been often under Conſideration: The Act of 25 *Edward* III. which is the great Law for Declarations of Treaſon, declares what ſhall be adjudged Treaſon: Compaſſing, or imagining the Death of the King, and levying War againſt the King, are two diſtinct Species of Treaſon. Now they ſay, that nothing was deſigned againſt the Queen. If the levying War againſt the Queen, was there meant only of a War againſt the Queen's Perſon, it would have been idle to mention it in that Act, becauſe they had before made the compaſſing Her Death to be Treaſon.

Now he that levies War, does more than compaſs and imagine the King's Death; therefore, it has been always ruled, that where there is an actual levying of War, which concerns the Perſon of the King, they lay the Treaſon to be the compaſſing the Death of the King, and give a Proof of it by levying War. But there is another levying of War, which is not immediately againſt the Perſon of the King, but only between ſome particular Perſons. There is a vaſt Difference between a Man's going to remove an Annoyance to himſelf, and going to remove a publick Nuſance, as the Caſe of the Bawdy-Houſes; and the general Intention to pull them down all is the Treaſon: For, if thoſe that were concerned for them would defend them, and the others would pull them down, there would be a War immediately.

In the Caſe of Incloſures, where the People of a Town have had Part of their Common incloſed, though they have come with a great Force to throw down that Incloſure, yet that is not levying of War; but if any will go to pull down all Incloſures, and make it a general Thing to reform that which they think a Nuſance, that neceſſarily makes a War between all the Lords and the Tenants. A Bawdy-Houſe is a Nuſance, and may be puniſhed as ſuch; and if it be a particular Prejudice to any one, if he himſelf ſhould go in an unlawful Manner to redreſs that Prejudice, it might be only a Riot; but if he will ſet up to pull them all down in general, he has taken the Queen's Right out of her Hand: He has made it a general Thing, and, when they are once up, they may call every Man's Houſe a Bawdy-Houſe: And this is a general Thing, it affects the whole Nation.

Now, to come to this Inſtance: If you believe the Evidence, *Dammaree* was concerned in pulling down two Meeting-Houſes: He was not preſent at *Drury-Lane*, that is, he was not proved to be there; but, if he ſet others on to do it, it is his doing; and he as much pulled down that Meeting-Houſe in *Drury-Lane*, as if he had pulled it down with his own Hands. Beſides, they tell you his Decla-

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Declaration, that he would have all of them down. Again, theſe Gentlemen don't ſeem to deny, but if the Intention were general, it would be levying War: If it were general, where would it end? And it is taking on them the Royal Authority; nay more, for the Queen can't pull them down till the Law is altered: Therefore he has here taken on him not only the Royal Authority, but a Power that no Perſon in *England* has. It concerns all that are againſt the Meeting-Houſes on one Side, and all that are for them on the other; and therefore is levying War.

They ſaid they would deſire this Point to be reſerved to them, on Account of the Opinion of the Lord Chief Juſtice *Hales*; but I believe this Matter has been ſo often ſettled, that it would be ſtrange for us to depart from ſuch a ſettled Rule of Law; for theſe are only the ſame Arguments that were offered by the Lord Chief Juſtice, and he offered the ſame Arguments that were uſed in Queen *Elizabeth*'s Reign; but it was then held to be Treaſon, and has been held ſo ever ſince. His Objection made them conſider it then, and they did ſo; and I ſuppoſe they will not expect that it ſhould have more Weight out of their Mouths than out of his: It was then ſettled, and has been taken for Law at all Times ſince, ſo that it is not a Matter now to be called in Queſtion. And as to the Statute 13 *Eliz.* the Intention to levy War ſurely is not an Intention to do a Thing, which, when it is done, is not levying War.

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Thus the Matter ſtands in Point of Law: I take it to be clear, that it is levying War, if you take him to be guilty of being at one of the Meeting-Places, and leading them and tempting them to another: Whether that is true or not, is what muſt be left to your Conſideration. You have heard what has been ſaid, and what Difficulties ariſe in Point of Time, and on the other Proofs: If you are of Opinion, that he was preſent at *Lincoln's-Inn-Fields*, and did encourage them, and acted any otherwiſe than by Force; if you believe he led or invited them to another Place, and pulled down that, then you will find him guilty of High-Treaſon: If you think he was not there, or was under a Compulſion, then he will not be guilty. As for his being drunk, whether he was ſo or not, ought not to influence one Way or other.

Then the Jury withdrew, and after an Hour's Receſs, brought in the Priſoner GUILTY, and Sentence was paſſed on him as a Traitor: But the Queen, being fully ſatisfied of his Loyalty and Affection to Her Perſon, though he had been miſtaken in the Manner of expreſſing it, was pleaſed to grant him Her Pardon.

The Remarks on this Trial will be found at the End of that of Purchaſe, *whoſe Offence was of the like Nature.*

1710. 9 Annæ. Willis's Trial.

The Trial of FRANCIS WILLIS, a Footman, for *High-Treaſon*, at the *Old-Baily*, *London*, on the 21ſt of *April*, 1710. 9 *Annæ.*

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The Indictment.

THE Priſoner was indicted by the Name of *Francis Willis*, of the Pariſh of St. *Andrew's Holborn*, in the County of *Middleſex*, Labourer, for conſpiring to levy War and ſtir up Rebellion, and actually levying War againſt Her Majeſty on the firſt of *March*, in the Ninth Year of Her Reign, in the ſaid Pariſh of St. *Andrew's Holborn*, by aſſembling and marching with a Multitude of People in a Warlike Manner, that is to ſay, with Colours flying, Swords, Clubs, and other Weapons, offenſive and defenſive; againſt the Queen's Peace, and the Form of the Statute, *&c.*

The Evidence for the Crown.

The Witneſſes being called, *Thomas Tolboy* depoſed as he had done at the former Trial, That paſſing through the *Temple* on the laſt of *February* in the Evening, he heard the Mob that attended Doctor *Sacheverell* talking of demoliſhing *Burgeſs*'s Meeting-Houſe.

Grove teſtified, That the inſide of two Meeting-Houſes were demoliſhed, on the firſt of *March*, one in *Fetter-Lane*, and another in *Hatton-Garden*: That with the Materials of the *Fetter-lane* Meeting-Houſe, the Mob made a Fire in *Holborn*; and with the Materials of the other, they made a Fire in *Hatton-Garden*: That at the Fire in *Holborn*, he ſaw a Man with a Curtain on a Pole, which he called the High Church Standard, who was very active, ſtopped Coaches, got Money from the People, and made them cry out, High Church and *Sacheverell!* That this Man was in a Livery, but he could not tell whether it was Blew or Green; and was not ſure the Priſoner was the Man, but believed he was.

Victor teſtified, He ſaw the Priſoner throw a Piece of Wood into the Fire in *Hatton-Garden*, and Huzza; and ſeeing him ſpeak to Mr. *Lunt* his Acquaintance, he (the Witneſs) asked *Lunt* if he knew him? and *Lunt* told him he did.

Lunt depoſed, That he ſaw the Priſoner at the Fire in *Hatton-Garden*, who ſaid, they had made him Captain of a Party; that he took a Window-Curtain and made it his Colours, and that they burnt the Clock; but the Priſoner was above, when this Witneſs ſaw him.

Orrel only teſtified in general, that the Meeting-Houſes of *Bradbury*, *Burgeſs*, and thoſe

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thoſe in *Drury-Lane*, *Black-Friers*, &c. were pulled down, and that the People declared, *That they would have them all down*; but ſaid nothing againſt the Priſoner in particular, only that there was a Footman in a Blew Livery, very buſy at the Fire in *Holborn*, of the Size of the Priſoner.

The Evidence for the Priſoner.

The Priſoner's Witneſſes on the other Side being called, Mrs. *Miles* of *Grevil-Street*, with whom the Priſoner lived, teſtified, That hearing there was a Fire in *Holborn* on the firſt of *March* at Night, ſhe ſent him out to ſee what was the Matter a little after Ten, and he returned before Twelve: Her Daughter Mrs. *Briſco*, and the other Servants of the Family teſtified the ſame; and that Mrs. *Miles* being angry he ſtaid out ſo long, he anſwered, he had never ſeen a Mob before.

Pryor depoſed, That he met the Priſoner in *Leather-Lane* the ſame Night about Eleven o'Clock, and walked with him through *Leather-Lane* from *Holborn* to *Brook's* Market; and having talked with him ſome Time, left him, and he thought the Priſoner went Home then; he did not ſee he was concerned with the Mob.

Fletcher teſtified, That *Groves*, one of the Witneſſes againſt the Priſoner, having been to ſee him in *Newgate*, declared he was not the Man that carried the Curtain; and *Grove* acknowledged at the Trial, that he declared he could not be poſitive it was he, after he had been to ſee him in *Newgate*.

Holgate teſtified, That he ſaw a Footman in a Green Livery very active at the Fire in *Holborn*; but he did not ſee the Priſoner there.

Two or Three other Witneſſes depoſed, That *Grove* was a broken Baker, a looſe idle Fellow, and a Gameſter; and Mrs. *Miles*, and two or three Witneſſes more, gave the Priſoner a very good Character for a peaceable, ſober, well-behaved Servant.

Obſervations on the Evidence, by the Priſoner's Counſel.

After which, Mr. *Darnel* ſaid in his Defence, My Lord, We will not trouble you with any more Witneſſes; we hope we have well accounted for the Time he was out of his Miſtreſs's Houſe; for that ſeems to be all that ſticks upon him, that his being out ſo long might give Room for him to be concerned in this Tumult: But by the Witneſſes it appears, that the Curioſity of ſeeing a Mob, which he had never ſeen before, might take up ſome Part of his Time; and the two Fires being ſo near, that he could not go from one without ſeeing the other, engaged him to go to them both. There was a Friend too that met him, with whom he walked up and down the Street an Hour; but we think it ſhews that he was not a Ringleader, or aiding or aſſiſting in pulling down the Meeting-houſes; for that Witneſs ſays, they were then carrying the Materials, and the Fire was lighting at the Time when they were together; and that he parted with him in order to go Home, but his Curioſity carried him to ſee that Fire that was then lighting, that he might carry an Account of it.

But upon the main Queſtion, we muſt humbly inſiſt, that there is not Evidence to fix it upon the Priſoner. There are not two Witneſſes to any Overt-Act of the ſame Treaſon, nor do theſe Witneſſes aſcertain it to be the Priſoner; for now it appears a little plainer, that his firſt Charge was againſt a Footman in a Green Livery: He declared it was a Footman in Green with Braſs Buttons, and when he came to *Newgate* to ſee this Man, he believes him to be the ſame Man, that is the moſt of his Evidence; but when he came Home then to his Companion, that he lived in the Houſe with, he believed it was not the ſame Man, and he could not ſwear it was the ſame Man, becauſe he had a blue Coat; and now he would carry his Belief ſo far as to believe that he then had a blew Coat with black Buttons; and ſurely, no Man could miſtake a blew Coat with black Buttons for a green Coat with braſs Buttons: Whatever may be ſuppoſed of the Colour of Blew by Fire-light, altering by that Light towards a Green, yet it can't turn black Buttons into Braſs ones.

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Suppoſing the Perſon whom *Groves* pretends to accuſe were here, yet there are not two Witneſſes to any Overt-Act, for it is only confirmed by the Confeſſion, which is proved by *Lunt*; but we hope the Priſoner is not the Perſon that had the Colours, and therefore there is no Evidence to make him Guilty. We cannot differ from the Reſolution in the Books in *Meſſenger's* Caſe, much leſs with your Lordſhip's Reſolution Yeſterday: But the Caſe is entirely different between the Waterman and this Man, for there it did appear, that he carried the Branch, and threw it into the Fire; that from thence he hollowed, and led a Party, and offered to be their Captain, to *Drury-Lane*; and in that Manner he took upon him to lead them, and did lead them: But there is not any one Inſtance of that Nature here; there is not any one Witneſs that proves him to be in a Meeting-Houſe, or to have done any Thing there, or to have gone from one to another. If he had joined with them at the firſt Fire, and gone in with them in what they were doing, yet we muſt inſiſt, that it would not make him guilty of High-Treaſon. In the Caſe in King *Charles* the Second's Time, it was apparent they were all in the Deſign; the Verdict found that they aſſembled, that they armed themſelves, that they choſe a Captain, that when the Government thought fit to interpoſe to ſuppreſs them, they ſtruck at the Officer, threw Stones at the Captain of the Guards, expreſſed their Reſolutions of going to *White-hall*, and ſhewed what their Intent was; but no Deſign is proved againſt this Man, and nothing to make it agree with that Caſe: But thoſe Perſons that ſtood by, were by all the Judges acquitted from that Treaſon. We think the Evidence was much ſtronger againſt them, than what is offered againſt this Man: For in the Caſe of *Beadle*, he was proved to be among them; and when the Officer purſued him, he turned about, and cryed to the People to face about, and not to leave him: And though it appeared he was in the Deſign, and called to the reſt to reſiſt in his Defence, yet it was agreed, he was not guilty of High-Treaſon, becauſe he was not aiding in pulling down the Houſes; which (in thoſe Matters wherein the Judges gave their Opinions)

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Opinions) made it to be High-Treaſon: But as to *Green* and *Beadle*, in the firſt ſpecial Verdict, they agreed the Verdict was not full enough to convict them.

In anſwer to this Defence of the Priſoner's Counſel, Mr. Sollicitor ſaid,

The Reply of the Queen's Counſel.

I think Mr *Darnell* does agree, that if there was a general Intention to pull down Meeting-Houſes, it would be Rebellion and High-Treaſon. I take it, that it was ſo, is as fully proved as poſſible, by having ſo many pulled down, and by ſuch a Multitude of People as were got together for that Purpoſe: For it cannot be thought, that the People that were at one Houſe intended to pull down that, and thoſe that were at the other Houſes intended to pull down them only; but it muſt be a general Intention to pull down Meeting-Houſes in general; we think, therefore, the general Intention is proved, therefore what *Tolboy* ſays don't confine it: For though he ſays, what they declared was only in Regard to Mr. *Burgeſs*'s Meeting-Houſe, yet that don't take off from the Evidence of what paſſed the next Day, when the ſeveral Meeting-Houſes were pulled down; and the Fact, without that Evidence, ſhows the particular Intention, and the Mob that were at *Lincoln's-Inn-Fields* ſwore, *Damn them, they would have them all down*, and accordingly they went away to another, and pulled that down; therefore, that there was a general Intention, is ſufficiently proved, and that this Man did act in that Intention: We think it is ſufficiently proved, that he was at two of them; but if it had been but one, it had been the ſame Caſe. But they object, that this is not a legal Evidence; for, ſay they, the Statute reſtrains it, and ſays, that no Confeſſion can be given in Evidence, and the Evidence of *Lunt* without it will not do; and *Grove*'s not ſwearing poſitively to the Man without the Help of *Lunt*, will not be a legal Evidence, ſo as to prove it an Overt-Act. This is the Strength of the Objection in Point of Law, and God forbid that we ſhould inſiſt on any Thing but what is legal Evidence: It is Juſtice to him, not to offer any ſuch Thing, as it is to the Crown, to inſiſt on what is legal Evidence, to bring him to Puniſhment. The Words of the Act are, *That no Perſon ſhall be indicted, tried, or attainted of High-Treaſon, whereby Corruption of Blood may be made, or of Miſpriſion of ſuch Treaſon, but by the Oaths and Teſtimonies of two lawful Witneſſes, either both to the ſame Overt-Act, or one to one, and the other to another Overt-Act of the ſame Treaſon, unleſs the Party willingly, in open Court, confeſs the ſame*, &c. Now in this Caſe, here are two lawful Witneſſes: *Grove* is a lawful Witneſs, he is capable of being a Witneſs; whether what he ſays is ſufficient for the Proof of the Point muſt be left to the Conſideration of the Jury. If there are two legal Witneſſes, to which there are no legal Objections, it is ſufficient; whether what they ſwear is ſufficient to prove the Fact, is of another Conſideration; but there is not one Word in the Act to reſtrain a Confeſſion from being given in Evidence: He ſhall not be convicted on a Trial without two lawful Witneſſes, that is the Thing that is provided for, and it was to exclude a Precedent that had been ſettled in *Tong*'s Caſe, in my Lord Chief Juſtice *Keyling*'s Reports, an Evidence of Confeſſion only, that was proved by two Witneſſes, and that was the Occaſion of making this Law, that his Confeſſion alone ſhould not be ſufficient, without an Overt-Act. This was the Reaſon and Ground of making that Act of Parliament, but it was not deſigned to exclude all Confeſſions: That was Evidence at Law, and always muſt be ſo; that Evidence that comes out of a Man's own Mouth, was always allowed: The Deſign of the Act was to exclude Confeſſions from having the Force of a Conviction, unleſs it were in a Court of Record, and to prevent a Confeſſion proved by two Witneſſes, from being a ſufficient Ground for a Conviction. A Confeſſion is a conſiderable Evidence, and in many Caſes clears a Thing beyond Contradiction; and in this Caſe it ſhews how neceſſary it is, for when Things are tranſacted in the Dark, and it is impoſſible for Strangers to give a clear Deſcription of Perſons, ſurely the Confeſſion of a Man himſelf is the moſt proper Evidence in the World, and the moſt ſatisfactory. This then being a lawful Evidence, it ſtands clear of that Objection: Here are two Witneſſes to the Overt-Act, and this Evidence of *Lunt* is not excluded, but this Confeſſion of the Party is lawful to be given in Evidence.

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This being the State of the Matter, how ſtands it then? It is agreed he was at the Bonfire in *Holborn*; he was ſent out for that Purpoſe; the Fire was ſeen at his Miſtreſs's Houſe, and he was ſent out to enquire after the Matter. That there was a Man there in a blew Livery, is proved by ſeveral People, and it is proved he had a blew Livery. *Grove* ſays, he ſaw a Man, he can't tell whether he was in Blew or Green, with a Standard, in *Holborn*: He ſays he don't know whether he was in Blew or Green, but he took him to be a Man of that Size, and he ſuppoſes him to be the Man. But here is ſtill a Doubt, whether this is the Man that carried the Standard; and how is that cleared? Now this, with Submiſſion, is cleared by the Man himſelf, if that be Evidence, which we inſiſt upon it, it is. This Declaration to *Lunt*, that he had made Colours of a Curtain, and that he was choſe Captain of a Party, That does explain it, and is not anſwered by any Thing that they have offered to the contrary. As to his acting in the Tumult in *Leather-Lane*, *Victor* ſwears he ſaw him with a Piece of Timber on his Shoulder, and that he carried it, and threw it into the Fire. *Lunt*, as to every Thing he ſpeaks, is clear: He proves that he ſpoke ſome Words to him; and as to what *Victor* ſays, he is as clear, that he had the Wood, and threw it in. The only Queſtion then will be, where he had this Wood? Whether he had the Wood that he threw into the Fire, made of the Materials of the Meeting-Houſe, from any other Place? They give you ſome Evidence, that he was going Home quietly, and that they parted about Eleven at *Brook's Market*; but it is plain he did not go Home till juſt Twelve, for ſo all the Family agree: So that that Time is to be accounted for, which he might have ſpent

1710. 9 Annæ. at this Bonfire, and in this Tumult. There is another Man to anſwer the Buſineſs of what they call the High-Church Standard: He ſays, there was a Man in a Green Livery which he ſaw, and thought he knew him, but could not be poſitive becauſe he was at a Diſtance; but if it had been this Man, he believes he ſhould have known him; but there is as little Reaſon for him to know the one as the other. The Man in the Green Livery, he ſays, is run away, but he ſays nothing as to the Braſs Buttons; and it is eaſy to miſtake between Green and Blue.

I ſhall not urge the Evidence further than it is reaſonable; theſe are Circumſtances which will be under the Conſideration of the Jury. But ſuppoſing the Man to be concerned in this Manner, acting as the Queen's Evidence have proved, it will be High-Treaſon within the Caſe in my Lord *Keyling*'s *Reports*, and is not diſtinguiſhed by what Mr. *Darnell* offered. He ſays there was leading and arming, and they ſtruck at the Guards; ſo here was leading, for nobody denies but they had a Standard: The only Queſtion is, Whether the Priſoner carried it? And in the other Mob in *Lincoln's-Inn-Fields*, they were led and hollowed away to *Drury-Lane*. And as to the Caſe of *Beadle*, which he would compare it to, there was no Act that was done by him: Beſides, the Verdict was defective, in not finding the aiding and aſſiſting; for though they found the Facts, yet they did not draw the Concluſion from thoſe Facts. As to what has been ſaid to the Reputation of *Grove*, I don't find it any ways affects him; it is not proved that he has cheated, or that he is a Common Gameſter, or that he lives by that way. As to the Reputation of the Priſoner, there may be many honeſt Men that might think they did Service at this Time, and he might be deſired among the reſt; but that is no Argument why he ſhould not be concerned in the Fact: Whether he was, or not, is what we muſt ſubmit to the Conſideration of the Jury.

The Chief Juſtice's Directions to the Jury. Then the Chief Juſtice, having ſummed up the Evidence on both Sides, gave the following Directions to the Jury. He obſerved that the Uſe the Counſel for the Priſoner would make of their Evidence, was, firſt, to ſhew that they had given an Account of his Time; that he was otherwiſe employed than in the Manner the Witneſſes for the Queen have given an Account of. Now it is certain, they have not; for they give an Account only of a Walk from *Holborn* to *Brook's Market*, whereas his own Witneſſes ſay, he was out at leaſt an Hour and a half; ſo that there was Time enough for him to be there: And though that Witneſs ſaw him going homeward, and not to the Fire, yet it is certain, he did not go Home then, and that he was at the Fire, becauſe two Witneſſes ſwear he was at the Fire; and it does appear that he was at both the Fires. Before I ſtate that, give me Leave to ſay, that as there is a full Proof of a general Deſign, put in Execution, of pulling down the Meeting-Houſes, ſo any one that is aiding in that, is Guilty of High-Treaſon, though he were not privy to the firſt Deſign; for in High-Treaſon, there is no ſuch Thing as Acceſſaries; all that are Actors are equally Guilty, and that was the Caſe of the Lord *Eſſex*: He went with ſome Forces to remove ſome evil Counſellors, and came to the City to deſire Aſſiſtance; ſome Forces he had aſſembled in his own Houſe; others join'd him in the City; it was adjudged they were all Guilty of High-Treaſon, though they did not know of his Deſign; and thoſe that were accidentally there, and did depart, it was ſaid, were entitled to Her Majeſty's Grace; but it is not ſaid they were Not Guilty. So was the Caſe of the Bawdy-Houſes; yet it is not ſaid, that any of them were the Perſons that formed the Deſign of pulling them down. 1709-10. 9 Annæ.

You are therefore to conſider, that it is not enough to charge the Priſoner, that he was at the two Fires: It is not enough that there was Time for him to do what he is charged with; but you are to conſider what is proved on him, that he did. You obſerve what is objected as to *Grove*, that there is a great Uncertainty as to his Evidence, and that his Credit is not fair: He don't Charge the Priſoner poſitively, nor ever did. He differed as to the Colour of his Cloaths: And though it is rightly obſerved, that Blue and Green are not eaſily diſtinguiſhed by the Light of the Fire, yet that is not the Objection; the Objection is, that the Witneſs, at firſt, declared he believed it to be Green, and now he has told you, that he believes it to be Blue, and that is not conſiſtent, and does therefore a little concern his Credit in this Matter, that he has changed his Evidence. Then they ſay, that he did not ſee him at the Meeting-Houſe: He ſaw ſome Body carrying Colours, and believes this to be the Man; but he ſays, he was not near enough to diſtinguiſh his Cloaths, ſo he might not be able to diſtinguiſh his Face. But then they bring ſome Witneſſes to ſhew he is not a Man of ſo clear a Credit; but they don't charge any great Matter upon him. As for his having broke, that is a Misfortune that may attend any Man: But then they would ſupport this by the Confeſſion he made to *Lunt*, who ſwears, that he ſaid he made Colours of a Curtain. Now that may ſeem to give ſome Colour to it; but I ought to take Notice of the other Part of his Confeſſion, that they made him Captain of a Party, which don't appear to be likely; for as he was moving from one Party to another, it would be very natural for the Captain to have his Mob with him, but it is plain, he was unattended in going from one Fire to another. When he was at that Fire in *Hatton-Garden*, he went away alone, as *Lunt* ſays: And they don't ſay that he did encourage the Mob. He did throw down a Piece of Wood, and Huzza; but he did not much encourage others. As to the Piece of Wood, one of the Witneſſes did not ſee it, and the other, that did ſee it, did not ſee him in the Meeting-Houſe; ſo that it is not proved he was at either of the Meeting-Houſes, though he was at the Fires. And you may conſider another Circumſtance, and that is, that this Witneſs, *Victor*, did not know him before; nor did he know what Cloaths he had on; and if he had not come nearer to him, to *Lunt*'s Door, in Probability, he had not known him

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him again; but he ſays he ſaw him throw a Piece of Wood into the Fire; and he ſays he kept his Eye upon that Man, and ſaw him come up and ſpeak to *Lunt*. Now you will conſider, whether ſuch a Man might not, in a Crowd, ſlip out of his Eye, and he might take another for him; for *Lunt*, that knew him, ſays, He did not ſee him have any Timber at all.

Theſe are the Obſervations that, I apprehend, may be moſt proper for me to make to you. As for the Law, if you take it, that he is the Man that had the Colours in *Holborn*, and afterwards came to the other Fire, and threw the Piece of Timber in there, he is undoubtedly Guilty of High Treaſon: Therefore you muſt conſider firſt, how far you believe he is the ſame that carried the Colours in *Holborn*, and how far you take him to be concerned in pulling down the Meeting-Houſe in *Leather-Lane*. I ſhould take Notice of another Thing, that there was a Footman in Green, at the Fire in *Holborn*, who was very active; and that Man could not miſtake the Colour of Blue and Green, becauſe he knew the Priſoner: Now, that being ſo, it does appear there was a Footman in Blue, and another in Green, that was active at the Fire in *Holborn*; and one of theſe two, perhaps, had the Colours; the Queſtion is, Which? *Grove* firſt ſays, the Man that had the Colours was in Green, and then he ſays he was in Blue. Now, if the firſt be right, that he was in Green, it does appear there was ſuch an one in Green: If you believe he was the Perſon that did make uſe of theſe Colours, and that he was aſſiſting in pulling down the Meeting-Houſe in *Hatton-Gardon*, then you are to find him Guilty: If you think he was not the Perſon, you will acquit him.

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Then the Court adjourned, and the Jury brought in their Verdict in the Afternoon, That the Priſoner was *Not Guilty*: And thereupon *Willis* was diſcharged.

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Purchaſe's Trial.

The Trial of GEORGE PURCHASE, for *High Treaſon*, at the *Old Baily*, *London*, on the 21ſt of *April* 1710, 9 *Annæ*.

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The Indictment.

THE Indictment charged, That *George Purchaſe*, late of the Pariſh of St. *Andrew*, *Holborn*, in the County of *Middleſex*, Labourer, did, on the firſt of *March*, in the ninth Year of the Queen, at the ſaid Pariſh of St. *Andrew*, in the County aforeſaid, conſpire to levy War, and raiſe a Rebellion, and did actually levy War, on the Day and Year aforeſaid, at the Pariſh aforeſaid, aſſembling with a Multitude of other People, to the Number of Five Hundred, with Colours flying, and armed with Swords, Clubs, and other Weapons, offenſive and defenſive; againſt the Queen's Peace, and the Form of the Statute in that Caſe made and provided.

Tolboy's *Evidence.*

The Evidence for the Crown being called, *Tolboy* was ſworn again, and teſtified as he had done at the former Trials, That paſſing through the *Temple* on the laſt of *February*, in the Evening, he heard Dr. *Sacheverell*'s Mob ſay, They would pull down *Burgeſs*'s Meeting-Houſe that Night, or the next; and improving in his Evidence, he added, He heard them reſolve to pull down *the Meeting-houſes in general*.

Orrell's *Evidence.*

Orrell being ſworn again, depoſed as he had done at the former Trials, That he ſaw the Inſide of the Meeting-Houſes in *Lincoln's-Inn-Fields*, *Fetter-Lane*, and that of *Drury-Lane*, demoliſhed and burnt, and that *Dammaree* led the Mob from the Fire in *Lincoln's-Inn-Fields* to *Drury-Lane* Meeting-Houſe, huzzaing and crying out, *High Church and* Sacheverell! *God damn all his Enemies! We will have all the Meetings down to Night.* That he (the Witneſs) met the Horſe-guards coming towards *Lincoln's-Inn-Fields*, and carried them back to *Drury-Lane*, where they rode among the Mob, who were burning the Materials of that Meeting-Houſe, and diſperſed them: And there particularly he ſaw the Priſoner, *Purchaſe*, with his Sword drawn, and ſome of the Horſe riding up to him, he retired towards a Bulk, and puſhed at them, and ſome of them ſtruck at him with the Flats of their Swords; and thereupon he (the Witneſs) ſaid to *Purchaſe*, Do you know what you do in oppoſing the Guards? You oppoſe the Queen's Perſon; and, in Friendſhip, laid his Hand on the Priſoner's Breaſt, to prevent Miſchief; but the Priſoner anſwered, *God damn you*; *are you againſt* Sacheverell? *I am for High Church and* Sacheverell: *God damn all his Enemies*; *I will loſe my Life in the Cauſe*; *I will fight the beſt of them*: Then he huzza'd, and ſaid, Boys, I will lead you on for High Church and *Sacheverell*. That afterwards he ſaw the Priſoner run his Sword at the Officer of the Guards, and believed he would have run him through, if one of the Guards had not ſtruck down his Point; but he did not ſtay to ſee what followed: He apprehended the Guards would fire, and it would be dangerous ſtaying longer, and concluded the Guards had either killed the Priſoner or taken him; adding, that as the Guards paſſed by, ſome of the Mob ſaid, Damn them, we will be even with them Tomorrow Night; they dare not fire upon us; and that *Purchaſe*, the Priſoner, was very much in Drink.

Ruſſel's *Evidence.*

Richard Ruſſel, one of the Horſe-Grenadiers, teſtified, That he was commanded to go with his Serjeant to *Drury-Lane*, on the 1ſt

of

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of *March* at Night, and they drew up about the Fire that was made in *Drury-Lane*, at the End of *Queen-ſtreet*, and there he ſaw *Purchaſe*, the Priſoner, come down the Lane, at the Head of the Mob, with his naked Sword, hazzaing and flouriſhing it over his Head, and crying, God damn you, are you for Low-Church, or High-Church and *Sacheverell?* and the Witneſs and another Soldier, thereupon, ſtruck at him; and he got between them, and made ſeveral Puſhes. And it being demanded, If the Mob diſperſed themſelves on their coming, *Ruſſel* anſwered, As they diſperſed them one Way, they drew together at another Place; and they were commanded to draw into a Line, and to draw back their Horſes, that no body might get behind them; and drawing back into a Door-way, *Purchaſe* was got behind them between their Horſes, and then they ſtruck at him with the Flat of their Swords.

Southerland's *Evidence.*

Southerland, Serjeant of the Grenadiers, teſtified, That he ſaw *Purchaſe* flouriſhing his Sword at the Fire in *Drury-Lane*, and crying out, *Sacheverell! Sacheverell!* and thereupon he rode up to him, and asked him, If he encouraged the Mob, and *Purchaſe* anſwered, Damn you, I am for *Sacheverell*; and the Witneſs lifting up his Hand, *Purchaſe* drew back and offered his Point, but did not thruſt: He (the Witneſs) then asked, If he was mad, and bid him go home; *Purchaſe* anſwered, He was one of the Life-Guard; and Captain *Horſey* ordered them to cut him to Pieces, but he got away into *Long-Acre*.

Richardſon's *Evidence.*

Richardſon, another of the Life-Guard, depoſed, That he knew *Purchaſe* very well, he having ſerved in the Firſt Troop of Horſe-Guards, and that he ſaw him make a Thruſt at his Officer, Capt. *Hensbrough*, as they were diſperſing the Mob in *Drury-Lane*; and he (the Witneſs) beat down his Point, and ſaid, You Raſcal, have you a Mind to kill my Officer? and going to ſtrike at *Purchaſe* afterwards, he threw himſelf againſt a Bulk and the Witneſs; and he hit the Pent-houſe, and broke his own Sword to Pieces.

Evidence for the Priſoner.

The Queen's Counſel having cloſed their Evidence, *Purchaſe*'s Witneſſes were called, and proved that he had been employed the firſt of *March* in his proper Buſineſs, *(viz.)* arreſting ſome People, and drinking with them and others from Morning till Night. And *Broad* the Bailiff particularly teſtified, That he left *Purchaſe* very drunk in *Covent-Garden*, a quarter before Eleven that Night.

Bembridge, another of his Witneſſes, teſtified, That he ſaw *Purchaſe* in *Long-Acre*, alone, that Night, and there was no Mob with him, nor was his Sword drawn, but two or three of the Horſe-Guards rode up to him, and ſtruck at him; whereupon he retired; and that the Mob were then diſperſed.

Blanſeild depoſed, He ſaw *Purchaſe* come up *Drury-Lane*, towards the Fire, alone, about a quarter after Eleven, when the Guards had diſperſed the Mob, and that ſome of the Guards riding up to him, and ſtriking at him, he held up his Sword in the Scabbard to defend himſelf, and retired.

Thomas Street, the Watchman, alſo depoſed, That he ſaw two or three of the Guards ſtrike at the Priſoner, and he endeavoured to defend himſelf with his Sword, and fell againſt a Bulk-door; for he was ſo drunk he could neither ſtand nor go; and almoſt all the Mob were gone before *Purchaſe* came. 1710. 9 Annæ.

Plaxton, the Surgeon, teſtified, That he was ſent for by *Purchaſe*'s Wife, on the firſt of *March*, late at Night, to let him blood, becauſe ſhe thought he had got ſome Hurt; and he went to *Purchaſe*'s Houſe, and found him very much in Drink.

Then Mr. *Darnell* made his Obſervations on the Evidence for the Priſoner, and ſaid,

Obſervations on the Evidence, by the Priſoner's Counſel.

We think, my Lord, though he is a Bayliff (for there ſeems to be ſome Reflection caſt upon him for that Reaſon) yet we doubt not, but he will have the ſame Juſtice done him here, as if he were a Man of the beſt Eſtate: For whatever is determined as to this Man, may be the Caſe of any other who may happen into the like Circumſtances; therefore I beg Leave to obſerve, how far any Thing is proved againſt him, that may make him guilty of High-Treaſon. We think we have given a full Anſwer to all the Preſumption, that he was engaged in the original Intention of pulling down the Meeting-Houſes, or that he was aiding in the Execution of that original Intention. We think the Evidence on both ſides agree in this, That the Priſoner was not concerned in the original Intention, and that he was not with the Mob that purſued Doctor *Sacheverell* to *Weſtminſter*, and brought him back in Triumph, and then went to pull down the Meeting-Houſes: But the only Thing that is proved againſt him is, that after they were pulled down, and after they were burnt, when the Guards were come, and they were diſperſing the Mob, then the Priſoner is ſo unfortunate to be found with his Sword drawn, hollowing and aſſerting the Right of Doctor *Sacheverell*; and that he would ſtand by him, and encouraging the People to do ſo. This is the moſt of the Evidence that can be againſt him: Then the Queſtion is, Whether this, ſingly, can make him guilty of High-Treaſon? For if his Part in the general Intention be out of the Caſe, as it muſt be if he came after the Fact was committed, then the Queſtion will be, Whether a Man that comes in afterwards, by ſaying the worſt he can ſay, ſhall make himſelf guilty of High-Treaſon?

My Lord, we hope the Evidence on behalf of the Queen, is reconcileable with the Evidence for the Priſoner; and that the Evidence for the Priſoner ſhall be believed, that he only defended himſelf againſt the Guards that rode up againſt him; for *Richardſon* ſays, he did not ſee him when the Guards firſt came there, and that agrees with the Account that *Broad* gave; for he ſays, he heard the Guards were marching, before they came out of the Tavern. *Blanfield* agrees with the Evidence *Orrell* gave: Says he, the Mob were diſperſed under the Eaves of the Houſes. Says *Blanſeild*, At the Time the Guards ſtruck him, there were People under the Houſes: But I don't look upon them to be the

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the chief Mob, but only ſome Women and People looking on. And then the Queſtion is not whether his Sword was drawn or not, but on what Occaſion, and what his Deſign was in drawing it? Our Witneſſes ſay, That when the Guards ſtruck at him, he only held up his Hand to defend himſelf, and that might fright the Horſe; and he being angry at it, ſpurred up and ſtruck him. It is natural to think the Guards ſhould ride up to thoſe that were ſtanding in the Street, and enquire who they were: I don't depend on the Circumſtance of his being in Drink, that it is any Excuſe; for then, if a Man has ſuch a Deſign as this, he may eaſily pretend himſelf to be in Drink, and he will give himſelf Drink enough to encourage himſelf to do ſo bold an Act: But the Uſe we make of it is to ſhew, that he had not any Intention in this. He had drank himſelf too far for to have a Deſign of joining with any Party, or to do any particular Thing. And my Lord *Coke* in his *Pleas of the Crown*, where he is giving his Opinion what is levying War againſt the Queen, ſays, That the Act alone is not ſufficient to convict the Party; but the Mind is to concur in it: It is not barely doing an Act that is ſufficient to convict a Man; for he muſt do it with that Deſign. Indeed, if a drunken Man ſtabs another, it is Murther; becauſe Malice is ſuppoſed, where ſuch a Fact is done: But in Caſe of High-Treaſon, there muſt be an Intention proved in the Party that doth the Fact. If he was in that Condition at the Time he came out of the Tavern, and did any Thing by Way of encouraging them, we hope it is not ſuch an Evidence againſt him as will make him guilty of any Part of the Intention, if his Mind did not concur in it.

The Reply of Mr Sollicitor to the Priſoner's Defence.

Mr. *Sollicitor General.* My Lord, the Evidence given by the Priſoner, and the Defence made on his Behalf, is ſo far from giving any Anſwer to our Evidence, that it renders the Fact more probable than it was before: For they have proved, that he is a Man likely to be concerned in ſuch an Affair; that he had been drinking all Day, and fit to engage in ſuch a Matter, and that he is troubleſome in his Drink; which are Circumſtances that ſhow the Inclination of the Man, and make it probable that he ſhould engage in this Matter: The Facts we take to be High-Treaſon. They ſay on the other ſide, it is not ſo, becauſe we muſt prove a general Intention to pull down all Meeting-Houſes, and the pulling down a ſingle one is not ſufficient. I will not now diſpute that Point with them; for that there was ſuch an Intention, appears moſt plainly, by what paſſed that Night, by the ſeveral Meeting-Houſes that were pulled down. It was a general Intention, or elſe they could not have gone through ſo many in ſo ſhort a Time; and it is not neceſſary to prove any precious Conſult, for the Act it ſelf is Treaſon: Where the Intention is the Treaſon, there the Act muſt be proved that ſhows it. So it is in the Caſe of counterfeiting the Coin. No Body will ſay there is any need to prove any Deſign. That there was ſuch an Intention is plain, by what was committed; and any one that joins with ſuch a Number of People who are committing Treaſon, is equally guilty with them. They ſay, he had not his Sword drawn; that he was going Home, and he only lifted up his Hand with his Sword in his Scabbard, to defend himſelf. But that Evidence don't interfere with what is offered on Behalf of the Queen; or if it did, yet we think our Evidence is of greater Credit and Weight than what they offer: For they that encounter a Man who has his Sword drawn, can never be miſtaken, but deſerve more Credit than thoſe that are only paſſing by, and have no Danger from, or Concern with him: But this is all conſiſtent; for *Ruſſel*, and thoſe who ſay his Sword was drawn, ſay, he came from St. *Giles* s Way, and the others ſay, it was after the Mob was diſperſed; and that he came up the Lane; and that he went off by *Long-Acre*, and they ſaw him no more. Now, ſince no Body ſaw him Home, he might go that Way, and afterwards come down and join the Mob, in the Manner the Soldiers have told you, and then he might be driven off, and come ſome Way round again, with his Sword in his Scabbard: And theſe muſt certainly be different Times, for thoſe who ſpeak of his Sword being drawn, ſay, it was when he came from *Holborn*; and they that ſay his Sword was in his Scabbard, ſay, it was when he came from the other Way, and then there can be no Contradiction between the Evidence. And we take it, the Law is as plain as the Fact; and that it is High-Treaſon.

Then the Chief Juſtice directed the Jury, and ſaid,

The Chief Juſtice's Directions to the Jury.

The Matter will be now for you to compare theſe two Evidences together; and to conſider, firſt, Whether thoſe Things are true which are ſworn by the Queen's Witneſſes, or whether they are anſwered by the Witneſſes for the Priſoner; and then what Streſs is to be laid upon his being in Drink: And as there is no Objection made to the Witneſſes of either ſide, you are to take what they have ſaid to be true, abating the little Miſtake a Man may fall into as to the Exactneſs of Time, and the like. As to what they would pretend of his going ſtraight Home from the Tavern, you will obſerve, there is Time enough for him to have done all that he is charged with; for it all happened in a quarter of an Hour, or a little more. If he parted from the Tavern about Ten, from that Time till a quarter or half an Hour after Eleven, is Time enough to do all has been ſpoken of. I think, there is little Streſs to be laid upon the Time, becauſe there is a Series of Facts. The firſt Thing done by him before the Mob was diſperſed, was his coming behind the Horſes; and you will find the Reaſon for that Command of the Officer to let none come behind him: But he, as drunk as he was, knew there was no hurting the Guards, unleſs they could get behind them. He had been in the Guards himſelf; and you muſt conſider what Deſign he had in getting behind them, when the Street was open for him to go in. But if he had a Deſign to get behind them, that the Mob might pull them off from their Horſes, he acted very rationally, though he was drunk: That Fact was proved by *Orrell* and *Ruſſel*.

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Another Fact was, when they were drawn up above the Fire near *Holborn*, he was then coming eown from St. *Giles*'s: So that is plainly not the Time that the Witneſſes ſpeak of when he was coming up the Lane. Then this was only when the Horſe-Grenadiers were there, and the other was when the Horſe-Guards came, when they were drawn up below *Long-Acre*; and there they ſwear he made a Paſs at Captain *Hensbrough*: And *Ruſſel* tells you, that as he ſheltered himſelf under the Houſes, his Sword ſtruck againſt the Pent-houſe, and broke to Pieces. *Southerland* ſpeaks of another Time when he was at the Corner of *Long-Acre*; and then indeed he was doing nothing: And that is the Time when he told the Captain that he had been troubleſome to the Grenadiers; and thereupon the Captain bid him go and cut him to Pieces: He did go, and then the Priſoner made off; but this was when the Mob was in a great Meaſure diſperſed. Now when do his Witneſſes ſpeak of? They ſpeak of a Time when he came up the Lane, that ſurely is not the Time that either of thoſe Witneſſes ſpeak of: They ſay he ſtood quiet, and a Soldier rode up to him and ſtruck him. You will conſider whether that was not the Time that *Southerland* ſpeaks of: So that you will conſider whether the Evidence of both ſides is not reconcileable; whether after he parted from *Broad*, he might not join the Mob, come down from towards St. *Giles*'s, get behind the Horſe, and afterwards make a Paſs at the Captain, and then be driven down with the Mob towards the lower End of the Street. If ſo, it was natural, when they were driven down the Lane, for them to go Home, and as his Home was up the Lane, he muſt come back alone. If you do believe he was guilty of reſiſting the Guards in this Manner, when he was admoniſhed what the Conſequence was, and he, inſtead of making an Anſwer, only asks, are you an Enemy to *Sacherell*? and encourages the Mob to follow him; you are to conſider how far this will make him guilty with the reſt: For the Counſel for the Priſoner, though they object to the Evidence of what paſſed in the *Temple*, yet they agree, this Tumult was a Rebellious Tumult, and the Fact ſhews there was ſuch a Deſign. Indeed, they did not pull down all the Meeting-Houſes; but the Reaſon was, becauſe the Guards diſperſed them. They admit therefore, this was levying War in the Perſons concerned in it; but they would excuſe him, that he came late and very drunk, and did nothing, but was beat by the Guards; and that his Drunkenneſs diſables him from having a Share in the Deſign; and therefore he cannot be guilty. It is inſiſted, that it is neceſſary he ſhould be engaged in the original Deſign; but there is no Need of that, for that is the Earl of *Eſſex*'s Caſe: It is there adjudged, that the Earl of *Southampton* was guilty of Treaſon, by joining the Earl of *Eſſex*, though he did not know of his Deſign; and thoſe that diſperſed upon the Queen's Proclamation, it is ſaid, they were entitled to the Queen's Grace; but it is not ſaid, they were not guilty of High-Treaſon. In Felony there may be Acceſſaries, thoſe that are concerned in contriving the Felony, or afterwards in aſſiſting the Perſon; but in High-Treaſon all are Principals, and are guilty equally with thoſe that are the Actors. If there is a Deſign to levy War, and it is not levied, thoſe who were in the Deſign are guilty of Treaſon; and ſo are thoſe that act in it, though they were not in the original Deſign, are Guilty. Say they, He was not at the pulling down any Meeting-Houſe: It is true; but he was defending thoſe that did. It is plain, by the Courſe they took, if they had not been diſperſed, they would have pulled them all down. It is not, indeed, accompliſhed; ſome of them are ſtanding; but it is becauſe they were diſperſed. Now, is not this aiding them, when he endeavours to kill the Captain of the Guards, who came to diſperſe them? And if he could have prevailed to have baffled the Guards, they might have gone to the reſt; and, when they had pulled them down, they might have pulled down every Man's Houſe they thought fit. My Lord *Coke*'s Expreſſion is made uſe of, That the Act don't make the Man guilty, unleſs the Mind be guilty; therefore they would infer, that he muſt be concerned in the Deſign originally. This is a great Fallacy: *Oldcaſtle* was at War againſt the King; ſeveral furniſhed him with Victuals and Drink, and it was found they did it meerly for Fear of Death; but, as ſoon as they could eſcape from him, they did; and thereupon they were adjudged not to be guilty of Treaſon. Now you may eaſily obſerve the Difference in this Caſe: If a Man be *non compos*, it excuſes him from Felony, and all other Crimes. That Man can't be criminal that has not the Uſe of his Reaſon; but can that be applied to any one that is drunk? That Matter is ſtated in the ſame Caſe: He ſays, if a Man will make himſelf drunk, ſhall this voluntary, this criminal Incapacity of his Mind, excuſe him? No; he ſays it ſhall not: And it would be of dangerous Conſequence if it ſhould. Indeed, his being drunk might make him more forward than otherwiſe he would have been; but you ſee he had Senſe enough to get between the Guards and the Wall, and to attack the Captain when he was paſſed by him. If he can't be criminal unleſs his Mind be ſo, I would ask, If he had killed the Captain, would it not have been Murder? If ſo, then if the Act be Treaſon, he would be guilty notwithſtanding his Drunkenneſs. Therefore, if you do believe he committed the Facts, there is no Regard to be had to his Drunkenneſs. If the Witneſſes don't contradict one another, but they may be reconciled, you need not then weigh which Side you moſt credit; but if you think they can't be reconciled, but that the Witneſſes overthrow one another, then you muſt conſider which of them is of moſt Weight: But if they can be reconciled, I think where ſuch a Conſtruction can be put on it, it ought to ſtand.

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A ſpecial Verdict found.

Then the Jury withdrew, and found a ſpecial Verdict of the following Tenor, (*viz.*) That on the firſt of *March*, in the eighth Year of the Queen, a Multitude of People, to the Number of five hundred, aſſembled in a Warlike Manner; with Swords, Clubs, and other

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other Arms, offenſive and defenſive, in the Pariſh of St. *Clement Danes*, in the County of *Middleſex*, under Pretence of pulling down Meeting-Houſes, and rifling them, and having pulled down the Pulpits, Pews, and Furniture of ſeveral, they proceeded to rifle that in *Drury-Lane*, and were burning the Materials of it in the Street when the Priſoner, *George Purchaſe*, came thither with his Sword drawn, and encouraged the People to burn them; but the ſaid *George Purchaſe* was not with the ſaid People before, and was at that Time much in Drink.

And they further ſay, That the Guards coming to diſperſe the People at the ſaid Fire in *Drury-Lane*, *Purchaſe* aſſaulted the Captain of the Guards with his Sword, and ſtruck ſeveral of the Horſes of the Guards with his Sword; and being told, *That he that reſiſted the Guards reſiſted the Queen*, anſwered, *Are you an Enemy to* Sacheverell? and led the People on againſt the Guards, crying, *I am for High Church and* Sacheverell: *Come on, Boys! I will loſe my Life in the Cauſe, and will fight the beſt of them:* And that the general Cry of the People, while they were rifling the Meeting-Houſes, was, *High Church and* Sacheverell!

But whether, upon the whole Matter, the ſaid *George Purchaſe* was guilty of High Treaſon, they left to the Court.

No Judgment given

The Judges, it ſeems, were moſt of them of Opinion, that the Fact, as found by this ſpecial Verdict, was High Treaſon; but Her Majeſty granting *Purchaſe* a Pardon, Judgment was never given againſt the Priſoner.

Purchaſe *pardoned.*

Remarks on the Trials of Damma-ree *and others.*

The Ides of *March* were not more fatal to *Cæſar* and his Friends than to ſome modern Stateſmen, who being arrived at the Meridian of Power, and looking upon themſelves to be as firmly eſtabliſhed as ever *Cæſar* was, did, by one wanton Proſecution, in which they vainly propoſed to have triumphed over Church and State, Prince and People, draw upon themſelves the Indignation of all Mankind, and were precipitated from that Height of uſurped Dominion, which had in a Manner turned their Heads, and rendered them incapable of cool Advice.

No Doubt but it is High Treaſon and Rebellion in the People, to attempt a Redreſs of their Grievances by Force. The Doctrine of *Non-Reſiſtance*, unleſs in ſome very extraordinary Caſes, is eſtabliſhed both by Law and Goſpel: But both Whigs and Tories ſeem to agree, that if either King, Lords or Commons, endeavour *ſeparately* to ingroſs the whole Legiſlative Power, and enſlave the other two, as well as the People in general, and conſequently to overturn the Conſtitution; then ſuch Uſurpers may be reſiſted, and reduced within due Bounds: And it is the Duty of every Subject to aſſiſt in reſtoring the Conſtitution to its Primitive Form. This was reſolved at the Revolution, in the Caſe of King *James*. And when the Lords and Commons aſſumed the Sovereign Legiſlative Power in 1641, it is held that no Man was obliged to ſubmit to them: Reſiſtance, to their uſurped Authority, was lawful and commendable: Nay, it has been the avowed Principle of the Whigs, till very lately, That if King, Lords and Commons *united*, ſhould endeavour the Subverſion of the Conſtitution, by conſenting to a Law to make the King abſolute, that ſuch a Law would be void: The People are not bound to obey it, but may call their Repreſentatives to Account for a Breach of Truſt, and fix the Government upon its ancient Baſis, or ſtrike out any other Form that pleaſes them better, the People being the Original of Power, and the laſt Reſort in all ſuch extraordinary Caſes. But though I cannot come entirely into theſe Notions, yet ſhould a Cabal, or Junto of Miniſters, find Means to impoſe upon their Prince, and under Pretence of eſtabliſhing his Prerogatives, and promoting the Welfare of the Kingdom, in His Name aſſume an Arbitrary Dominion; and, by bribing Members with Places and Penſions, or the Expectation of them, procure the Concurrence of a Majority to eſtabliſh a deſpotick Power: Whether, in ſuch a Caſe, Reſiſtance would not be as lawful, as where the People are in Danger of being enſlaved by Force, either by the Prince, or by either or both Houſes, may be a Moot Point.

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It is certain that a great Part of the Nation was of Opinion, that the Queen was deceived in ſome of her Miniſters as well as Dr. *Sacheverell*: That they apprehended the Throne was ſo ſurrounded by them and their Creatures, that no others could have Acceſs to Her Majeſty: That they kept Her in a kind of Durance and Dependance, and would not ſuffer her to diſpoſe of any Poſt, Civil or Military, without their Advice; and that both the Queen and her Subjects were in a manner Slaves to the Junto; and if this were Fact, Will any Man ſay, That ſuch a Miniſtry might not be reſiſted as well as the Prince, or either Houſe of Parliament, that ſhould aſſume an abſolute Dominion over the reſt of the Nation? If the Queen's Name was made uſe of, as that of ſome of our Kings have been, to the Deſtruction both of Prince and People, could thoſe who endeavoured to reſcue her Majeſty and themſelves from ſuch an inglorious —— Servitude, be termed Rebels and Traitors? Where our Liberties are invaded by open Force, all Parties agree, the People are authorized to reſiſt: And does it alter the Caſe much, if we are enſlaved by Fraud, by Bribery, Hypocriſy, Lying, and other deteſted Arts? If a People loſe their Liberties, will it be any Satisfaction, that they were impoſed upon, and tricked out of them, and not ſubdued by Force?

It is the Opinion of ſome, that if Doctor *Sacheverell* had not alarmed the Nation, a certain Cabal would have been ſo firmly eſtabliſhed, that both the Queen, and Her Succeſſors, would have been obliged to obey their Dictates, and would have enjoyed little more than the Name of Sovereignty; and that the Conſtitution had been entirely alter'd: And 'tis obſervable, how ſtrenuouſly the Managers themſelves maintained, that Reſiſtance was not only

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only lawful, but heroical, when it was intended to ſave a ſinking Conſtitution; provided there were a Majority of the People of the Opinion of the Doctor's Mob: Therefore theſe Tumults muſt have been lawful and commendable, according to that favourite Doctrine, *That the People are the Original of Power, and that it devolves on them again, whenever they imagine their Repreſentatives betray their Truſt.* It appears very evident from the Queen's Conduct, that She was far from imagining this Rebellion, as it was called, was intended againſt Her: She ſeemed convinced, the People intended no more than to reſcue her out of the Hands of thoſe that would have made a Prey of Her, for She did not only Pardon thoſe that were convicted, *but diſplaced the Men* who were the Authors of theſe Proſecutions. The People alſo, when they were left at Liberty, ſoon diſcovered their Sentiments of theſe Proſecutions in their next Choice: So that it appears, the Doctor's Friends had both the Queen and People of their Side. How then could the *Reſiſtance* that was made to a Cabal, which would have enſlaved both Prince and People, and ſubverted the Conſtitution, be termed Rebellion: If we pay any Regard to the Arguments of the learned Managers, thoſe avowed Patrons of the Doctrine of Reſiſtance? And 'tis remarkable of this Mob, that it was the moſt inoffenſive that was ever raiſed: For except the Pews and Furniture of three or four Meeting-Houſes, no Manner of Hurt or Violence was offered to any one Perſon whatever.

The Queen was much more in Danger from the Cabal themſelves, if Biſhop *Burnet* is to be believed, who ſays, *that he charged the Queen with being about to deliver up her People, to be ſacrificed after Her Death, and threatned Her if ſhe perſiſted in it, that the People would depoſe her, and bring in the* Hanover *Family in her Life time, in which he would aſſiſt them*: Surely the Queen could not have greater Enemies than theſe, who repreſented Her in ſuch odious Colours, in order to ſpirit up the People to dethrone Her, as the Biſhop himſelf confeſſes They had Recourſe alſo to other Arts, to deter the Queen from making a Change in the Miniſtry. They brought a Deputation from the Bank, to repreſent to her Face the Hazard She run in doing it, Sir *Gilbert Heathcote*, Governor of the Bank, *Nathaniel Gould*, Deputy-Governor, Sir *William Scawen*, and *Francis Eyles*, Directors, were introduced to Her Majeſty, and affirmed, That the publick Credit could not be ſupported, if ſhe changed *any* of Her Miniſters; and the Queen proceeding to make ſome Alterations contrary to the Advice of theſe Wiſe Citizens, They prevailed on the Imperial and *Dutch* Miniſters to make another Attack on their Sovereign, who in Purſuance of their Inſtructions, laid before the Queen the diſmal Conſequences the Change of Her Miniſtry would have on her Affairs abroad; Which Affront Her Majeſty juſtly reſented, and told the *Dutch* Envoy, *She was ſurprized his Maſters ſhould take upon them to direct Her what Servants ſhe ſhould employ, and that this was the greateſt Inſult that was ever offered to the Crown of* England *by a Foreign Power.*

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However, Biſhop *Burnet* ſays, he ventured afterwards to reprove the Queen to her Face, for diſmiſſing her old Miniſtry: He told Her (he ſays) *Her Miniſters had ſerved Her with that Fidelity and Succeſs, that Her making a Change in them would amaze all the World.*

So that the turning out the Whigs, and introducing the Tories (though a vaſt Majority of the Nation, and the trueſt Friends to the Proteſtant Religion and Monarchy) was the great Grievance: As to the Calumny of the Queen's bringing in the Pretender and Popery, this was all Artifice, the Chiefs of the Whigs themſelves, did not believe it; but this is the grand Engine by which they have frequently impoſed upon the People, and been too hard for their Rivals: Thus it is they have frequently wriggled themſelves into the Favour of the Populace, if not of their Prince; but the ſtale Stratagem was now detected, and an End put to their Reign and Influence: They were diveſted of thoſe Poſts without which the Whigs never made any tolerable Figure in this Nation.

But ſurely never any Sovereign Prince was ſo rudely dealt with by her Servants, who having failed in their Attempts of raiſing the Mob upon her, under Pretence of her Affection to Popery and the Pretender; ſet every Foreign Power upon Her, to compel Her to change Her Meaſures, which would in ſome Reigns have been interpreted High-Treaſon. However, all the World are convinced by this Time, that the Priſoners who huzza'd for High-*Church* and *Sacheverell*, were much truer Friends to the Queen and Conſtitution, than the Cabal that occaſioned that unneceſſary Proſecution.

Pro-

1715. 2 Geo. I.

The Trial of Lord Derwentwater, *&c.*

Proceedings on an Impeachment for *High-Treaſon*, againſt JAMES Earl of *Derwentwater*, WILLIAM Lord *Widdrington*, WILLIAM Earl of *Nithiſdale*, ROBERT Earl of *Carnwath*, WILLIAM Viſcount *Kenmure*, and WILLIAM Lord *Nairn*, before the Houſe of Peers, in *Weſtminſter-Hall*, on *Thurſday*, the 9th of *February*, 1715. 2 *Geo.* I.

1715. 2 Geo. I.

The Impeachment.

THE Articles of Impeachment ſet forth, That for many Years paſſed, there had been a wicked Deſign formed, to ſubvert the Government, extirpate the Proteſtant Religion in this Kingdom, and to introduce Popery: In which Conſpiracy, many Proteſtants, pretending an uncommon Zeal for the Church of *England*, had joined: But that God, in his good Providence, had raiſed up King *William*, and made him the glorious Inſtrument of ſettling the Proteſtant Succeſſion in the Houſe of *Hanover*; ſince which, the Conſpirators had been indefatigable in their Endeavours to deſtroy the ſaid Eſtabliſhment, and make Way for a Popiſh Pretender; particularly in the laſt Years of the Reign of Queen *Anne*, when the holy Scriptures were wreſted, and the moſt wholeſome Doctrines of the Church of *England* perverted, by Men in holy Orders, in order to condemn the Juſtice of the Revolution, and undermine the Foundation of the ſaid happy Eſtabliſhment; and the moſt notorious Inſtruments of theſe wicked Purpoſes were countenanced, by particular Marks of publick Favour and Diſtinction: Falſe and dangerous Notions of Hereditary Right were propagated and incouraged by Perſons in the higheſt Truſts and Employments; and, to conceal their Deſigns, Multitudes of People, of all Ranks, pretending a Zeal for the Proteſtant Succeſſion, voluntarily took the Oaths for the Security of the ſaid Eſtabliſhment; but, at the ſame time, fomented groundleſs Fears of the Danger of the Church of *England*, to diſorder the Minds of well-diſpoſed Proteſtants.

That they proceeded to procure a Diſſolution of the late glorious Confederacy againſt *France*, and clapped up an ignominious Peace with the *French* King, whereby the Proteſtant Succeſſion was reduced to the moſt imminent Danger: And by theſe and other pernicious Meaſures, the Deſtruction of theſe poor Nations, ſo long intended by the ſaid Conſpirators, ſeemed near at Hand.

In which deplorable Circumſtances, it pleaſed God providentially to take off the late Queen *Anne*, and bring his preſent Majeſty to the Throne of his Anceſtors, to which he was received with one full Voice and Conſent of Tongue and Heart, and the united Joy of every good Subject and good Proteſtant, as their only lawful and rightful Liege Lord. And although his Majeſty's Reign had been one continued Series of Wiſdom, Juſtice, and Clemency; his Labours conſtant, unwearied, and ſucceſsful, to retrieve the Honour of the Nation, and reeſtabliſh Trade; *And although he had given all imaginable Encouragement to the Church of* England, *&c.* Nevertheleſs the Conſpirators had renewed their Endeavours to throw this Kingdom into the utmoſt Confuſion, under falſe Pretences of Zeal for the Church of *England*; and did contrive and confederate to put their ſaid wicked and traitorous Deſigns in immediate Execution: For which Purpoſe, *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, and *William* Lord *Nairn*, together with *Thomas Forſter*, *jun.* the Lord *Charles Murray*, *Edward Howard*, *Thomas Errington*, *John Clavering*, *William Shaftoe*, Sir *Francis Anderton*, *Ralph Standiſh*, *Richard Townley*, *Thomas Butler*, *Thomas Walton*, *Gabriel Hasket*, *Richard Gaſcoigne*, and divers other Perſons, as falſe Traitors to his preſent moſt ſacred Majeſty King *George*; did, in or about the Months of *September*, *October*, or *November*, 1715, moſt wickedly, maliciouſly, falſely, and traitorouſly, imagine and compaſs the Death of his moſt ſacred Majeſty.

And for the accompliſhing and executing their ſaid traitorous Purpoſe, they, the ſaid *James* Earl of *Derwentwater*, and *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, *William* Lord *Nairn*, did, in or about the ſaid Months, or ſome of them; and at divers other Times, and in divers Places within this Kingdom; wickedly and traitorouſly agree, confederate, conſpire, and reſolve, together with many other evil-diſpoſed Perſons, to raiſe, excite, and levy, within the Counties of *Teviotdale*, *Northumberland*, *Cumberland*, and the County-Palatine of *Lancaſter*, and elſewhere, within this Kingdom, a moſt cruel, bloody, and deſtructive War againſt his Majeſty, in order to depoſe and murther his ſacred Majeſty, and to deprive him of his Royal State, Crown, and Dignity.

And the ſaid *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, *William* Lord *Nairn*, their Accomplices and Confederates, in or about the Months aforeſaid, in the Counties aforeſaid, or ſome of them, did gather together great Numbers of his Majeſty's Subjects, and with them did aſſemble in a warlike and traitorous Manner, in order to raiſe Tumults and Rebellion within this Kingdom, and procured great Quantities of Arms, Ammunition, and warlike Inſtruments, at the Times and Places aforeſaid,

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foreſaid, or ſome of them; and did form and compoſe, or did aſſiſt in the forming and compoſing an Army of Men, conſiſting of his Majeſty's Liege Subjects, in order to wage War againſt his ſaid Majeſty, for, and in Behalf, and in Favour of the ſaid Pretender to the Crown of theſe Realms; and the ſaid laſt-mentioned Conſpirators, their Accomplices and Confederates, at the Time and Times, and Places aforeſaid, and at divers other Times and Places within this Kingdom, did maliciouſly and traitorouſly make, levy, and raiſe War and Rebellion againſt his moſt ſacred Majeſty; and, in a warlike and hoſtile Manner, did march through and invade ſeveral Parts of this Kingdom, and did unlawfully take and ſeize the Horſes, and other the Goods and Chattels of many of the peaceable and good Subjects of his Majeſty; and in other Places, did take and ſeize from his Majeſty's faithful Subjects, Guns, and other warlike Inſtruments, for the carrying on their traitorous Purpoſes.

And the ſaid laſt-mentioned Conſpirators, their Accomplices and Confederates, during their March and Invaſion aforeſaid, in open Defiance of his moſt ſacred Majeſty's juſt and undoubted Title to the Imperial Crown of theſe Realms, did wickedly and traitorouſly cauſe and procure the ſaid Pretender to be proclaimed in the moſt publick and ſolemn Manner, as King of theſe Realms; and, in ſeveral Places, in the Counties aforeſaid, or ſome of them, did unlawfully take and ſeize from his Majeſty's Officers of the Revenue, the publick Money, for the Uſe and Service of the ſaid Pretender; and though many of the ſaid Conſpirators were avowed Profeſſors of the Popiſh Religion, yet, the more effectually to cover and diſguiſe their moſt wicked and traitorous Deſigns, and to delude his Majeſty's Subjects, they did prevail on, and procure ſeveral Men in holy Orders, Miniſters of the Church of *England*, and who had, before that Time, abjured the ſaid Pretender, to accompany, countenance and abet the ſaid moſt traitorous Enterprize; and, in ſeveral Places, in the Counties aforeſaid, where the ſaid Conſpirators, their Accomplices and Confederates then were, to pray for the ſaid Pretender, in publick Churches, as King of theſe Realms.

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And the ſaid laſt-mentioned Conſpirators, their Accomplices and Confederates, did, in or about the 9th, 10th, 11th, 12th, or 13th of *November* aforeſaid, traitorouſly ſeize and poſſeſs themſelves of the Town of *Preſton*, in the County-Palatine of *Lancaſter*, againſt his Majeſty, and did then and there, in a warlike and hoſtile Manner, levy War, oppoſe, engage, and fight againſt his Majeſty's Forces; and did then and there cauſe and procure a miſerable and horrid Slaughter and Murther of many of his Majeſty's faithful Subjects; againſt the Duty of their Allegiance, *&c.* Of all which Treaſons, the Knights, Citizens, and Burgeſſes, in Parliament aſſembled, did, in full Parliament, impeach the ſaid Earl of *Derwentwater* and his ſaid Accomplices.

The Lords Anſwer to the Impeachment. To which Articles the impeached Lords put in their ſeveral Anſwers; wherein they endeavour to extenuate their Crimes, by ſhewing, it was a raſh unpremeditated Enterprize; and, though they acknowledged their Guilt, they inſiſted, that they ſurrendered on a Promiſe of their Lives: However, Sentence was pronounced on them as Traitors; and, on the 18th of *February*, 1715-16, Writs for executing the Earls of *Derwentwater*, *Nithiſdale*, and *Carnwath*, the Lord *Widdrington*, the Lord Viſcount *Kenmure*, and the Lord *Nairn*, were delivered to the Lieutenant of the *Tower*, and the Sheriffs of *London* and *Middleſex*. *They confeſs their Guilt, and are condemned.*

Petitions to the Parliament, to intercede for them. On the twenty-ſecond of the ſame Month, they petitioned both Houſes of Parliament, to intercede with his Majeſty on their Behalf; and the Lords addreſſing the King accordingly, his Majeſty anſwered, *That on this, and all other Occaſions, he ſhould do what he thought moſt conſiſtent with the Dignity of his Crown, and the Safety of his People.* *The Lords Addreſs.*

The Commons refuſe to interpoſe. And the Commons adjourning themſelves, to avoid being importuned by the Friends of the condemned Lords; an Order of Council was iſſued on the 23d Inſtant, for the executing the Earl of *Derwentwater*, the Earl of *Nithiſdale*, and the Lord *Kenmure*, the next Day; and the Lords *Derwentwater* and *Kenmure* were executed accordingly, on a Scaffold on *Tower-Hill*, on the 24th of *February*; but the Lord *Nithiſdale* found Means to make his Eſcape the Night before: The other three were reprieved from Time to Time; and at length diſcharged. *Lords Derwentwater and Kenmure executed.* *Lord Nithiſdale eſcapes.* *The reſt reprieved.*

1715. 2 Geo. I.

The Impeachment of GEORGE Earl of *Wintoun*.

1715. 2 Geo. I.

Earl of Wintoun's Impeachment. His Anſwer. AN Impeachment alſo was preferred againſt the Earl of *Wintoun*, of the ſame Tenor as the former: In Anſwer to which, he ſaid, He was forced from his Houſe by the King's Troops, who plundered and demoliſhed it without any Offence given; and he was obliged to take Shelter among the Malcontents in his own Defence, but had no treaſonable Deſign or Intention againſt his Majeſty: That he did not ſo much as fire a Piſtol at *Preſton*, or elſewhere; and ſurrendered himſelf there to General *Wills*, being conſcious of his Innocence.

He acts the Part of an Ideot at his Trial. He behaved himſelf at his Trial, which began the 15th of *March*, for the moſt Part like an Idiot; but inſiſted, That he ſurrendered on a Promiſe of Mercy: Whereupon the Managers for the Commons examined their Witneſſes; and proved, that his Lordſhip was as active in the Rebellion as the reſt, and did not appear to be defective in his Senſes at that Time: They alſo produced the Generals and Officers, to prove, that they ſurrendered at Diſcretion, and had no Terms granted them: Whereupon the Lords found him GUILTY. *The Facts proved againſt him.* *He is convicted;*

The Lord *Wintoun* afterwards moved in Arreſt of Judgment, *That he was ſuch a Perſon, againſt* *moves in Arreſt of Judgment,*

1715 2 Geo. I. *he was non compos:*

against whom, by Law, Judgment ought not to be given; or, in other Words, That he was *Non compos*; and desired his Counsel, Sir *Constantine Phipps*, might speak to that Point: But Sir *Constantine* beginning to speak, was reprehended for it; and the Lord *Wintoun* was told, That this was a Point of Fact, and not of Law; and that their Lordships were of Opinion, *That he was such a Person, against whom Judgment of Death for High Treason ought to be pronouncea.*

This Exception over ruled.

Objects that the Time was not ascertained.

Then the Lord *Wintoun* said, That his Counsel were ready to offer in Arrest of Judgment, *That the Impeachment was insufficient, because the Time of committing the Treason was not laid with sufficient Certainty in the Impeachment.*

His Counsel permitted to argue this Point.

Whereupon the Lord High Steward intimating to the Prisoner's Counsel, That they were at Liberty to speak to that Point; Sir *Constantine Phipps* said, We humbly apprehend the Impeachment against the Noble Lord at the Bar, to be insufficient; it is so uncertain, that no Judgment can be given upon it: In Indictments, even for Trespasses, the Law requires the certain Day when the Offence is supposed to be committed to be alledged; and, if a particular Day be not laid, the Indictment is insufficient: And, if such Certainty is required in Offences of the most minute Nature, much more in Capital Crimes; and especially in Treason, with which this Noble Lord is charged.

One Reason why, in Indictments for High Treason, a certain Day should be assigned, is for the Advantage of the Prisoner; that being apprized of the Time when those Facts are supposed to be committed, he may be the better able to make his Defence: He may possibly prove he was in another Place, or in other Company, at the Time he is charged with committing the Treason; or may, by other Circumstances, make his Innocence appear.

Another Reason is for the Benefit of the Crown, that it may be known to what Time the Forfeiture shall relate; for if there be no precise Time alledged in the Indictment, the Forfeiture can relate no further than to the Judgment.

Indictments have been held insufficient for less Faults than not specifying the Day: But I will not trouble your Lordships with citing Authorities: For there is not a Gentleman of the long Robe, but will agree, an Indictment for any Capital Offence is erroneous, if the Offence be not alledged to be committed on a certain Day.

My Lords, an Attainder upon an Impeachment, subjects the Offender to the same Punishment and Forfeitures, as an Attainder upon an Indictment; and there should, therefore, be the same Certainty in one, as in the other: And if equal Certainty be required in both, we submit it to your Lordships, whether this Impeachment be not erroneous and insufficient, there being no certain Time alledged, when the Treason or Overt-Acts were committed.

The Treason alledged, is conspiring and imagining the Death of the King: And the Impeachment sets forth, That this Noble Lord did, in or about the Months of *September*, *October*, or *November*, 1715, together with others in the Impeachment named, traitorously compass and imagine the Death of his most sacred Majesty: That he did, in or about the said Months, or some of them, together with the rest, agree and confederate to levy War against his Majesty: That in or about the said Months, or some of them, this Noble Lord, with others, did levy War, and march through several Parts of this Kingdom, and did proclaim the Pretender to be King: And that on or about the 9th, 10th, 11th, 12th, or 13th of the said Month of *November*, this Noble Lord, with others, did seize and possess themselves of the Town of *Preston*, and fought against his Majesty's Forces.

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As to the first Overt-Act: Can any thing be more uncertainly alledged, than to say, That the Conspirators did, in or about the said Months, or some of them, and at divers other Times and Places within this Kingdom, confederate, *&c.* to levy War?

The next Overt-Act, which is actual levying of War, is not laid with greater Certainty. And as to the third, the proclaiming the Pretender, there is no certain Time or Place alledged, when or where the Pretender was proclaimed; but only that it was during their March and Invasion. The last Overt-Act, the seizing of *Preston*, seems to be laid with greater Certainty; but then the Words *or about* leave it at large: For no Man can tell how many Days may be included in these Words *or about*.

We apprehend, a Charge of this High Nature, ought not to be alledged with such Uncertainty; and that the Impeachment is as erroneous as an Indictment would be: I do not pretend to any great Skill in Parliamentary Proceedings; but I never saw a Charge exhibited in any other Court in so uncertain a Manner, unless in Libels in the Ecclesiastical or Admiralty Courts, which cannot influence the Case before your Lordships, this being a Proceeding according to the Course of the Common Law.

The Answer of Mr. Attorney to this Exception.

Mr. Att. Gen. My Lords, we are upon an Impeachment, and not an Indictment. The Courts below have set Forms, which have prevailed for a long Course of Time, and are thereby become the Forms by which those Courts are to govern themselves; but it was never thought, that their Forms had any Influence on the Proceedings of Parliament. In the Reign of *Richard* II. it is said in the Records of Parliament, That Proceedings in Parliament are not to be governed by the Forms in *Westminster-Hall*: And though it is usual in the Courts below, to alledge a certain Day, yet they add (and at divers other Days and Times); and that Day which is laid, is not material; for they are not bound to prove the Crime committed on that Day, but may prove the Defendant guilty at any Time, either before or after the Day laid in the Indictment.

As to Dr. *Sacheverell*'s Case, there was an Exception taken to the Impeachment for Uncertainty; and it was argued, from the Forms of the Courts in *Westminster-Hall*, That where Indictments were for Words spoke or writ, the Words must be laid as they were spoke or wrote, according to the Opinion of the Judges: But it was resolved to be otherwise in the Court of Parliament; and they were not bound but by their own Forms.

As

1715. 2 Geo. I.

As to their Objection, That there is no Time laid for ſome of the Overt-Acts, I think there is a certain Day when *Preſton* was ſeized: And, in the inferior Courts, it is held, That it is not neceſſary there ſhould be a Day and Place alledged for every Overt-Act: We think therefore this Objection has no Weight, eſpecially in the Caſe of an Impeachment. Your Lordſhips have already given Judgment againſt ſix upon this Impeachment, and it is warranted by Precedents in Parliament: Therefore we inſiſt, that the Articles are good in Subſtance, and according to the Forms of Parliament.

The Reply of the Priſoner's Counſel.

To this Anſwer of Mr. Attorney, Sir *Conſtantine* replied, I don't remember I ſaid the Day laid in the Indictment was material; for I never thought it ſo material, that there was a Neceſſity to prove the Treaſon to be committed upon that very Day: But, I conceive, the Day laid in an Indictment, ought to be very near the Time, if not upon the very Day, the Treaſon is ſuppoſed to be committed: And I take the conſtant Practice to be ſo.

All the Gentlemen who have ſpoke in Anſwer to me, have admitted, that in Indictments for Treaſon, a certain Day is always alledged: But the honourable Gentleman that ſpoke firſt, makes a Difference between an Indictment and an Impeachment; becauſe an Impeachment is a Parliamentary Proceeding, and the Parliament is not tied up to ſuch ſtrict Forms as the Courts below: But I ſubmit it to your Lordſhips Judgment, Whether an Impeachment, by which a Noble Peer is to be attainted, ought not to be as certain as an Indictment, by which a Commoner is to be attainted? And whether by the *Lex Parliamentaria*, as much Certainty is not required in one Caſe as the other? As to the Impeachment of the Lord *Stafford*, that began with an Account of the Plot in general; and, in that Caſe, a general Allegation was ſufficient: But whether the particular Part which my Lord *Stafford* had in that Plot, be not more certainly alledged, I cannot take it upon my Memory to ſay: Nor is it material; for it is admitted, that no Objection was made to that Impeachment for the Uncertainty of the Charge: If ſuch an Objection had been made, and over-ruled, it would have been a full Anſwer to us; but there being no Notice taken of it, our Objection is as ſtrong, as if that Caſe had never happened. As to that Part of the Impeachment which relates to the taking of *Preſton*, though that ſeems more certain than any other Overt-Act, yet the Words *or about* leave it at large, and render it uncertain. 1715. 2 Geo. I.

Mr. Attorney rejoins.

Mr. Att. Gen. My Lords, the learned Gentlemen now agree, that the particular Day in an Indictment is but Form, and that the Fact may be proved any Day, before or after; conſequently the Priſoner gets or loſes nothing, by having a Day charged or omitted: He muſt provide for his Defence, as if no Day was laid: And ſince it is immaterial in Indictments, it muſt be ſo in Impeachments. As to the Anſwer given of my Lord *Stafford*'s Caſe, That this Point paſſed *ſub Silentio*: If that Impeachment had not been thought good, he had the Aſſiſtance of learned Counſel, well able to adviſe him; and who certainly would have taken the Exception. Here is no Uncertainty that can be to the Diſadvantage of the Priſoner: The Impeachment is agreeable to the Forms of Parliament; he has pleaded to it, and your Lordſhips have found him guilty.

Then the Lord High Steward demanding of the Lord *Wintoun*, If he had any thing elſe to offer in Arreſt of Judgment? Lord *Wintoun* anſwered, If you pleaſe to ask my Counſel, they will tell you. The Lord High Steward replied, You have been told often, that the Point you would have your Counſel ſpeak to, muſt be propoſed by yourſelf: Whereupon Lord *Wintoun* anſwered, Since your Lordſhip will not allow my Counſel, I know nothing; *and then the Court adjourned.*

The Court ſitting again at Five in the Afternoon, the Lord High Steward informed the Priſoner, That what he had moved in Arreſt of Judgment was over-ruled: And having made a Speech upon the Occaſion, pronounced Sentence on the Lord *Wintoun* as a Traitor.

The Priſoner having been reprived from Time to Time, made his Eſcape out of the Tower, *on the 4th of* Auguſt, 1716, *and went over to* France.

It being as much too ſoon to make Remarks on the Trials of the laſt Reign, as to write the Hiſtory of it, I ſhall only give a ſhort Abſtract of the remaining Trials, as I have done of this, and defer giving a fuller Account of them to a more convenient Seaſon.

The Trial of FRANCIS FRANCIA (generally eſteemed a *Jew*) for *High-Treaſon*, at the *Old-Baily*, *London*, on the 22d of *January*, 1716. 3 Geo. I.

1716. 3 Geo. I.

Francia's *Trial.*

1716. 3 Geo. I.

The Indictment.

HE was indicted by the Name of *Francis Francia*, of *London*, Merchant, of High Treaſon, in compaſſing the Death of the King; and, for that End, conſulting with divers other Traitors, to raiſe a War and Rebellion in the Kingdom, in Favour of the Pretender: He was alſo charged with ſoliciting to procure Arms, Ammunition, and Money from *France*, to ſupport the ſaid War; and with compoſing and writing ſeveral treaſonable Letters, ſignifying the Reſolutions of himſelf and his Accomplices, and requiring the Aid of Foreigners in the ſaid intended War; and with ſending the ſaid Letters beyond Sea, and cauſing them to be delivered to their Correſpondents in *France*; againſt the Duty of his Allegiance, *&c.*

The Evidence againſt him and his Letters.

The principal Evidence againſt *Francia*, were ſome *French* Letters directed to him, and a Book

1716. 3 Geo. I.

Book wherein he entered his Foreign Letters; which the Meſſenger found in a Cloſet in his Room, when he apprehended the Priſoner. *Francia* acknowledged that he received thoſe Letters which were directed to him: And that ſome of the Letters in the Book were entered by himſelf, and ſome of them by his Son.

In the Priſoner's Examination alſo before the Secretaries of State, which was read in Evidence againſt him, he confeſſed, That he received ſeveral Letters in Covers from the Abbot *Butler*, directed to Mr. *Edward Harvey* of *Combe*: And that he conveyed ſeveral Letters from Mr. *Harvey* to the Abbot: That he conveyed Letters alſo from Mr. *Harvey* to the Abbot: That he conveyed Letters from Mr. *Harvey* to the Duke *D'Aumont* in *France*, directed to M. *D'Aulmay*, alias *Payen*, at *Paris*, and received Letters from Duke *D'Aumont* for Mr. *Harvey*.

That about two Months ſince, this Method was altered; and *Payen*, inſtead of incloſing the Anſwers to Mr. *Harvey* in Covers, wrote only to the Priſoner, directing him to ſhew the Letters to Mr. *Harvey*, which he did.

That in theſe Letters directed to the Priſoner, and ordered to be ſhewn Mr. *Harvey*, he underſtood the initial Letters *M. H.* ſtood for Mr. *Harvey*; *D. D.* for the Duke of *Ormond*, and *M. B.* for my Lord *Bolingbroke: And he verily believed, the Subject of theſe Letters was the Deſign of the Pretender to invade his Majeſty's Dominions:* And, in another Examination, he depoſed, That a Letter of Mr. *Harvey*'s was left with him to be forwarded to the Abbot *Butler* in *France*, (which was found in the Priſoner's Cuſtody): And that he believed by the Number 22 in his Letter was meant Duke *D'Aumont*, by No. 6. the late *French* King, by No. 17. the Tories, by No. 8. the Pretender, by No. 9. his Majeſty.

Then the ſaid Original Letter of Mr. *Harvey*'s was read; wherein he ſhews a great Regard for the Intereſt of the *French* King and the Pretender. Several of the Letters from *Payen* to the Priſoner, with the Copies of his Anſwer to them entered in the Priſoner's Book, were read alſo; wherein the Priſoner himſelf ſeems ſolicitous for the Pretender's Intereſt, and laments the Loſs they had ſuſtained by the Death of the *French* King.

The Priſoner's Exceptions to the Indictment. Proves he was an Alien. His further Defence by his Counſel.

After the reading theſe Letters, the Priſoner's Counſel took Exceptions to the Indictment, That he was indicted as a Native of *England*; whereas he was, in Truth, an Alien; and produced Witneſſes to prove he was born at *Bourdeaux* in *France*.

His Counſel alſo obſerved, That there was nothing of the Treaſon in the Letters entered in his Book: And as to what was contained in the Letters he received, if there was Treaſon in them, that could not affect him; he could not help People's directing Letters to him: However, a great Part of the Letters concerned only Horſes and Dogs, and a Suit in *Chancery*; and they could prove that the Book was not wrote by him. They alſo produced Witneſſes to ſhew the Priſoner was threatened and tampered with by ſome great Men, and received Money of them to accuſe Mr. *Harvey*: They obſerved alſo that Mr. *Harvey*, who was repreſented to be the Promoter of this treaſonable Correſpondence, was at Liberty, and not ſo much as brought to a Trial; from whence they inferred, the Government did not imagine this Correſpondence to be treaſonable.

1716. 3 Geo. I.

They inſinuated alſo, That *Francia* was wheedled to ſign his Examination, and promiſed, that it ſhould not be produced as Evidence againſt him.

The Reply of the King's Counſel to his Defence.

To this Defence, the King's Counſel replied, That the Evidence conſiſted of Letters wrote by the Priſoner to his Correſpondents in *France*; and of Letters wrote to him by thoſe Correſpondents, ſignifying, the Receipt of Letters wrote by the Priſoner, touching this traitorous Deſign: That for Proof of the Letters wrote by the Priſoner, they had produced his own Copy-Book, wherein they were entered by himſelf or his Son; which was, indeed, ſo rare a Way of perpetuating the Teſtimony of Treaſon, as he thought the like Evidence was never to be expected again.

That they had produced the original Letters from *D'Aulmay* to him, and which he confeſſed to have received: That theſe were an Evidence that the Priſoner ſent ſuch Letters as are mentioned in *D'Aulmay*'s Letters; for theſe were Anſwers to them, and tallied exactly as to Dates, Circmſtances, and Subject.

That if the Priſoner had received but one treaſonable Letter, his concealing it would have been but Miſpriſion of Treaſon: But receiving ſo many, in every one of which the Writer charges him with writing High Treaſon; and the Priſoner preſerving and concealing theſe Letters, was a ſtrong Evidence of his Approbation and Aſſent to that Treaſon: And ſo it is, where a Man falls accidentally into the Company of Traitors, and hears treaſonable Diſcourſes, this is but Miſpriſion, if he conceals it; but if he meet them a ſecond Time at their treaſonable Conſults, he is guilty of High Treaſon, becauſe this ſhews an Approbation of the Thing, as was reſolved in Sir *Everard Digby*'s Caſe.

And though it had been objected, he was not anſwerable for what others wrote; this was a Miſtake: For if what was written was Treaſon, it was his Duty to diſcloſe it; and, if he did not, but continued to receive ſuch Letters, it was a clear Proof of his traitorous Correſpondence, and by that he made the Treaſon his own: And though it was pretended, he was only the Conveyer of Mr. *Harvey*'s Letters, the contrary appeared from the Letters themſelves; and ſhewed, that the Correſpondence was his own, and carried on by himſelf.

And as to the Intention of theſe Letters, though it was ſaid, they related to Dogs and Horſes; it was true, one of Mr. *Harvey*'s Letters was about Dogs and Horſes; but even in that, there was a good deal of Treaſon intermixed: And as to his own Letters, it was not to be expected in a treaſonable Correſpondence, that Men ſhould ſpeak out plain; ſome Cant was neceſſary to dreſs it up in. Neither he, nor his Counſel, had offered at the Interpretation of above one in the whole Packet; and that they would interpret contrary to the very Grammar and Senſe of it: But was the Meaning of theſe Letters doubtful; He himſelf ſufficiently explained them, when he confeſſed the Subject

1716. 3 Geo. I.

The Chief Baron's Directions to the Jury.

Matter of them to be, *the Deſign of the Pretender to invade his Majeſty's Dominions.*

The Lord Chief Baron then ſummed up the Evidence, and obſerved, That if a Man is privy to a treaſonable Deſign, and aſſents to it, and contributes to the carrying it on, it is High Treaſon: Indeed where one had only a bare Knowledge of it, without any other Concern in it, and concealed it, that was but Miſpriſion of Treaſon.

He ſaid, it was plain from the Letters, that the Cauſe of the Pretender was one, and the Cauſe of the Law-Suit another; and theſe Letters containing ſuch treaſonable Matter, and being written to him, and found in his Cuſtody, was a ſtrong Evidence of his aſſenting and contriving to bring the Pretender over, and of his having writ ſuch Letters as were mentioned to be received from him.

As to the Priſoner's being an Alien born, he thought the Proof was ſtrong, and therefore they ſhould find that Matter ſpecially, for the Judgment of the Court, and find the other Fact: And if they believed he did promote the Invaſion, or concealed and aſſented to that Deſign, that was a conſpiring the King's Death, and the Priſoner was guilty of the Treaſon charged in the Indictment. 1716. 3 Geo. I.

That as to the Threats and Promiſes made to *Francia*, by my Lord *Townſend* or Mr. *Buckley*, they had abſolutely denied it, and their Credit muſt be weighed againſt *Simon Francia* and the two Women who had ſworn it.

That it was not material in whoſe Hand the Copy-Book of Letters were written, if it contained the Copies of his Letters, as he had acknowledged. He concluded, that if they believed the Letters to be wrote to him, and by him, and that they contained a Correſpondence of a treaſonable Nature, inciting or encouraging a War againſt the King, or any Thing that ſhewed he was privy and aſſenting to it, then he was guilty of High-Treaſon; but if they did not believe they were his, or that they did not amount to ſuch a Correſpondence, then they muſt acquit him.

Then the Jury withdrew, and returning into Court after ſome Time, gave their Verdict, that the Priſoner was NOT GUILTY.

He is acquitted.

Proceedings againſt ROBERT Earl of *Oxford* and Earl *Mortimer*, upon an Impeachment for *High-Treaſon, and other High Crimes and Miſdemeanors*, before the Houſe of Peers, in the Months of *May* and *June*, 1717. 3 *Geo.* I.

1717. 3 Geo. I.

Earl of Oxford's Trial.

1717. 3 Geo. I.

Articles againſt him.

THE firſt Article of Impeachment charged, That the ſaid Earl, being devoted to the *French* King, although he was then Lord Treaſurer, and a Privy Counſellor, in Breach of his Oath, and in Defiance of the ſeveral Treaties made with the Allies, the frequent Advices of Parliament, and the Declarations of Her Majeſty, did, in the Months of *July* or *Auguſt*, 1711, maliciouſly form a treacherous Confederacy with other evil-diſpoſed Perſons of the Privy Council, to make a ſeparate and deſtructive Peace with *France*, without communicating the ſame to the Allies; adviſed the Queen to ſend *Matthew Prior* to *France* in a clandeſtine Manner, to make Propoſitions, in which the particular Intereſts of *Britain*, and the common Intereſts of *Europe*, were betrayed, and an Article inſerted, that the Secret ſhould be inviolably kept from the Allies; and thereby put it in the Power of *France* to create Jealouſies between Her Majeſty and her Allies, and deſtroyed that Confidence which had ſo long ſubſiſted between them.

2. That the *French* King thereupon ſending Mr. *Meſnager* to *England*, in *Auguſt* or *September* following, a ſeparate Treaty was ſigned by the ſaid *Meſnager* on the Part of *France*, and by the Earl of *Dartmouth* and Mr. *St. John*, two of Her Majeſty's Secretaries of State, on Behalf of Her Majeſty, by Virtue of her Sign-Manual only; in which Treaty the Intereſts of *Britain* were given up to *France*, and the Duke of *Anjou* admitted King of *Spain*. And thus the Earl had aſſumed Regal Power, in treating with the Enemy without ſufficient Authority from Her Majeſty; and by the ſaid ſeparate Treaty did what in him lay to diſſolve the many ſolemn Treaties Her Majeſty ſtood engaged in to her Allies.

3. That the Earl, with others, contrived a Set of general Preliminaries, to be ſigned by *Meſnager*, only adviſing Her Majeſty to communicate them to the Miniſters of the Allies as the Ground of a general Peace, and concealed the Treaty, ſigned, as aboveſaid, by the ſaid *Meſnager* and the Secretaries of State.

4. That the ſaid Earl did declare in Her Majeſty's Name, to the Miniſters of the Allies, That ſhe had made no ſeparate Treaty with *France*, nor would make any, before ſhe had complied with all her Engagements to her Allies, and given them an Opportunity of making good their Pretentions; by which falſe Aſſurances he had diſhonoured Her Majeſty, by whoſe Privity the ſaid ſeparate Treaty with *France* had been ſigned, and Her Allies groſly abuſed.

5. That he gave Inſtructions to the Biſhop of *London* and the Earl of *Strafford*, Her Majeſty's Plenipotentaries, to inſiſt that *Spain* and the *Weſt-Indies* ſhould not be allotted to the Houſe of *Bourbon*; whereas the Earl had at that Time privately agreed with *France* that *Spain* and the *Weſt-Indies* ſhould remain to the Houſe of *Bourbon*, and prevailed with Her Majeſty to be a Party to the ſaid private Treaty.

6. That

1717. 3 Geo. I.

6. That Conferences being opened upon the mutual Engagements of the Allies, to act in Concert, and promote their common Intereſt, the Earl and his Accomplices did, notwithſtanding, afterwards promote a ſeparate Negotiation of Peace with *France*, without communicating it to the Allies; and did concert with the Enemy Terms of Peace prejudicial to the Intereſt of her Majeſty and her Allies; whereby the good Effects of the ſaid general Negotiations were defeated.

7. That he conſented *Spain* ſhould remain to the Houſe of *Bourbon*, on condition the Duke of *Anjou* ſhould renounce his Right to the Kingdom of *France*, though it had been declared by the Miniſters of *France* that ſuch a Renunciation would be invalid.

8. That he conſented to the ſending an Order to the Duke of *Ormond*, her Majeſty's General, not to fight the *French*; and to the ſending Orders to the Biſhop of *Briſtol*, her Majeſty's Plenipotentiary, to declare to the *Dutch* Miniſters, that her Majeſty, from their Conduct, looked upon herſelf to be under no Obligations to them; and adviſed her Majeſty to diſregard the Repreſentations made to her by the *Dutch* on thoſe Heads; whereby the Progreſs of the Arms of the Allies was ſtopped, and the moſt favourable Opportunity loſt of conquering the Enemy; the Confidence between her Majeſty and her Allies was deſtroyed, the *French* King made Maſter of the Negotiations, and the Affairs of *Europe* given into his Hands.

9. That he cauſed the *Britiſh* Troops to ſeparate from thoſe of the Allies, and refuſed to pay the Auxiliaries that refuſed to withdraw with them; and by that Separation the Allies were ſacrificed to the *French* at *Denain*, and the Towns of *Queſnoy*, *Bouchain*, and *Doway* were loſt.

10. That he adviſed the Queen to ſend over Lord *Bolingbroke* to *France*, to ſettle a Suſpenſion of Arms, before any Terms of Peace were made, whereby the Safety of the Kingdom, and the Proteſtant Succeſſion, was expoſed to the Enterprizes of the Enemy.

11. That he concerted Meaſures with the Court of *France* for delivering up *Tournay* to them.

12. That he traitorouſly adhered to the Duke of *Anjou* in the Years 1710, 1711, and 1712, when that Prince was an Enemy to this Kingdom, and promoted the yielding up of *Spain* and the *Weſt-Indies* to him.

13. That he ſacrificed the Commerce of *Great Britain* to *France*; and particularly conſented to their Fiſhing at *Newfoundland*, and the yielding up of the Iſland of *Cape Breton* to them.

14. That he conſented to the yielding up of *Sicily* to the Duke of *Savoy*, in Prejudice to the Emperor, and ordered the *Britiſh* Fleet to aſſiſt in putting the Duke in Poſſeſſion of that Iſland.

15. That he had impoſed on her late Majeſty, and induced her to break her Royal Word, given to her Parliament and to her Allies, in ſeveral Inſtances; as, where he made her ſay in a Speech, *That the States General expreſſed an entire Confidence in her Negotiations; that ſhe would do her utmoſt to procure every one of her Allies Satisfaction*, &c. and yet at that Time a ſeparate Negotiation had been carried on between *Britain* and *France* for five or ſix Months. That by indirect Arts he had obtained the Approbation of Parliament to his dangerous Practiſe, and expoſed her Majeſty and her People to the Contempt of the common Enemy. 1617. 3 Geo. I.

16. That the Houſe of Peers having given their Opinion to her Majeſty, that no Peace could be ſafe or honourable if *Spain* and the *Weſt-Indies* were allotted to the Houſe of *Bourbon*; the Earl, to prevent the good Effects of that Advice, and in order to obtain ſuch further Reſolutions on the Subject of Peace as might promote his ſecret Negotiations, adviſed her Majeſty to create twelve Peers, who took their Seats on the 2d of *January*, 1711, to which Day the Houſe ſtood adjourned; by which deſperate Advice he perverted the true End of the Prerogative, to the Diſhonour of the Crown, and the ſubverting the Conſtitution of Parliaments.

The Commons afterwards exhibited ſix additional Articles againſt the Earl, of the following Tenor:

1. By the firſt of which they charged him, with adviſing the Queen to make a Detachment from her Troops in *Flanders*, to employ them in the Reduction of *Quebeck* and *Canada* in the Year 1710; and paying 28,000*l.* on Pretence of purchaſing Arms and Merchandize for that Expedition; and that, when the Enterprize had proved unſucceſsful, and it appeared the Nation had been cheated of 20,000*l.* he employed his wicked Arts and Credit to prevent the Commons enquiring into it.

2. That he adviſed her Majeſty to ſign a Warrant to *John Drummond*, Eſq; for 13,000*l.* for ſpecial Services relating to the War, which he afterwards applied to his own private Uſe; and then prevailed on her Majeſty to ſign another Warrant, reciting, that it was for great Services done by the ſaid Earl.

3. That the ſaid Earl, in *Auguſt* 1712, ſent his Creature *Mat. Prior* into *France*, to carry on a ſeparate Negotiation; prevailed on the Queen to make him her Plenipotentiary, and corruptly combined with him to defraud her Majeſty of great Sums of Money; prevailing on her to ſign Warrants for the Payment of 12,360*l.* to the ſaid *Mat. Prior*, between *Auguſt* 1712 and *July* 1714; which exceeded the Allowance of an Ambaſſador of *Great Britain*: And that he prevailed on her Majeſty to ſign Warrants for the Payment of 5,560*l.* to *Thomas Harley*, his Emiſſary and near Relation; and for the Payment of divers other Sums to other Perſons; thereby introducing a Practice highly prejudicial to the Conſtitution.

4. Whereas the Revenues of the *Exciſe* and *Poſt-Office* had been charged, by a Grant of the late King *James*, with certain Annuities for the Uſe of Queen *Mary* his Conſort, but were afterwards ſettled by Act of Parliament for the Support of the Royal Houſhold, and other publick Uſes; he the ſaid Earl, notwithſtanding, ſoon after the Concluſion of the Peace, holding a Correſpondence with the ſaid Queen, and being in the Intereſt of the Pretender, undertook to procure the Payment of the yearly Sum of 47,000*l.* to the Uſe of the ſaid Queen Conſort for Life; and did adviſe her Majeſty Queen *Anne*,

1717. 3 Geo. I.

Anne, on the 23d of *December*, 1713, to ſign a Warrant to himſelf, reciting King *James*'s Grant for the Payment thereof; and the next Day the ſaid Earl ſigned a Warrant, requiring the Auditor of the *Exchequer* to paſs Debentures for paying one Quarter of the ſaid Annuity out of the Sum of 500,000 *l.* appropriated by Parliament to the Payment of her Majeſty's Debts; and that he ordered 1000 *l.* to be paid to *Gualtier*, the *French* Agent, who negotiated that Affair with him, and was an Emiſſary of the Pretender's.

5. That he adviſed her Majeſty to admit *Patrick Lawleſs*, as a publick Miniſter from *Philip* King of *Spain*, though he was an *Iriſh* Papiſt, and had ſerved in Arms againſt King *William*; introducing him to her Majeſty under the Name of Don *Carlo Moro*; and adviſed her Majeſty to ſign a Warrant for the Payment of 1000 *l.* to the ſaid *Lawleſs*, and did often negotiate the moſt important Affairs of the Nation with him; and by thus countenancing the ſecret Emiſſaries of the Pretender, did greatly encourage his open Adherents, to the apparent Danger of the Proteſtant Succeſſion.

6. That he treacherouſly adviſed her Majeſty to conclude a Peace with the King of *Spain*, without any Security for the Rights and Liberties of the *Catalans*; and adviſed her to ſend Admiral *Wiſhart* with a Squadron of Men of War into the *Mediterranean*, to favour the Reduction of *Barcelona* and the Iſland of *Majorca*; and her Majeſty, contrary to her ſolemn and repeated Aſſurances, was by the Earl prevailed on to abandon that diſtreſſed People, drawn in and engaged by her own Invitation into a War with the Duke of *Anjou*, for the Preſervation of the Liberties of *Europe*, giving them up a Sacrifice to their enraged Enemy.

For all which the Commons impeached him, *&c.*

The Earl's Anſwer.

1. To the firſt Article the Earl anſwered, That he was never devoted to the *French* King, or acted contrary to his Duty, in Defiance of Treaties, the Advice of Parliament, or her Majeſty's Declarations from the Throne; denies that he contrived the ſetting on Foot a ſeparate Peace, or knew of any ſuch; but believes that in *April*, 1711, *France* made ſome Propoſals of Peace, ſigned by Monſieur *Torcy*, Secretary of State to the *French* King, and the States General deſiring the *French* might explain thoſe Propoſals, her Majeſty ſent Mr. *Prior* to *France* to obtain an Explanation of them; but denies he adviſed the Queen to ſend Mr. *Prior* to make Propoſitions of Peace without communicating them to the Allies; and if any Inſtructions were given to Mr. *Prior* for not divulging ſome Propoſitions which concerned *Britain* in particular, it was the undoubted Right of every Member of a Confederacy to demand particular Advantages for themſelves, not inconſiſtent with their Alliances, and which were not to take Place but on the Concluſion of a general Peace; and the States General, in the Treaties of 1709 and 1710, did the like for themſelves: However, he believed the Propoſitions relating to *Britain* were communicated to the Allies, and her Majeſty was ſo far from treating ſeparately, that ſhe invited all Parties to the Congreſs.

2. He admits that Mr. *Meſnager*, in the Year 1711, brought a Letter from the *French* King to her Majeſty, acknowledging her Queen of *Great Britain*, and therein expreſſed his Deſire of a Peace. He denies that he treated with Mr. *Meſnager* ſecretly, or without Authority, or that he aſſumed Regal Power, or adviſed a ſeparate Treaty; but believed there was a Paper ſtiled, *The Anſwer of* France, *to the Preliminary Demands of* Great Britain; to which was ſubjoined, *A Declaration of the Queen's Acceptance of thoſe Preliminary Articles in caſe of a General Peace*; which Declaration was ſigned by the Secretaries of State: But whether this could be called a ſeparate Treaty, he ſubmitted to their Lordſhips; and believes, however, that the Allies had early Notice of theſe Propoſals; and denies that the Intereſts of *Britain* were given up to *France*, or the Duke of *Anjou* admitted King of *Spain*, by that or any other Treaty; or that he ever endeavoured to diſſolve any Treaties her Majeſty was engaged in.

1717. 3 Geo. I.

3. He denies he adviſed the preparing general Preliminaries to be ſigned by Mr. *Meſnager*, to diſguiſe the carrying on any private Negotiation; but believes ſome preliminary Articles, which were ſigned by *Meſnager*, were received by her Majeſty, and communicated to the Allies, as the Grounds on which they might treat of a general Peace; but why the adviſing the receiving them ſhould be ſtiled impious, he could not conceive; and if any Treaty was ſigned by the Secretaries of State on the Part of *England*, and by *Meſnager* on the Part of *France*, he did not adviſe the concealing it from the Allies, the Council, or the Parliament; nor did he adviſe the offering the ſaid Preliminaries to the Allies as a Foundation for a general Peace, or adviſe the Inſtructions given to the Earl of *Strafford*, but believes they were well warranted by the Truth of the Facts.

4. He admits there was ſuch a Declaration made by the Privy Council to the *Dutch* Miniſter as is mentioned in this Article; but ſays it was agreeable to Truth, and he could not ſee wherein the Articles ſigned by *Meſnager* and the Secretaries were inconſiſtent with it; or how her Majeſty was diſhonoured, or her Allies abuſed thereby.

5. He believes the Inſtructions given to the Biſhop of *Briſtol* and the Earl of *Strafford* were as ſet forth in this Article, and that when they were inſtructed to inſiſt that *Spain* and the *Weſt-Indies* ſhould not be allotted to the Houſe of *Bourbon*, no Treaty had been made whereby it was ſtipulated that *Spain* or the *Weſt-Indies* ſhould remain to the Houſe of *Bourbon*; for her Majeſty had then Grounds to believe, that King *Philip* would be induced to quit *Spain* and the *Weſt-Indies*; and denies he was ever privy to any ſecret Treaties between *Great Britain* and *France*, whereby any Reproach could be brought on the Crown, or any Treaties were violated.

6. He denies he knew of any Negotiation relating to the Peace, which was carried on without communicating the ſame to the Alllies; or that he had concerted any Terms prejudicial to her Majeſty, or her Allies.

7. Though he did not adviſe it, he ſaw no Reaſon why *Spain* and the *Weſt-Indies* might not be left to the preſent Poſſeſſor, rather than a War be continued, which was ſo burthenſome to the People, and ſo impracticable upon the Foot it was carried on.

8. That

1717. 3 Geo. I.

8. That the Piety of Her Majeſty was ſuch, that ſhe would not hazard the Blood of Her Subjects, without the greateſt Neceſſity, when ſhe had ſo near a Proſpect of Peace; and ſhe might thereupon ſend Orders to the Duke of *Ormonde*, not to engage in any Siege or Battel; which ſhe was as much at Liberty to do, as the Deputies of the States, who often refuſed to engage in Siege or Battel, on ſuch Motives as they thought reaſonable; though the Generals of the Allies, and their own Generals in particular, were of Opinion, they had a viſible Advantage. However, he denies he adviſed the ſending thoſe Orders to the Duke of *Ormonde*, or the Orders to the Biſhop of *Briſtol*, mentioned in this Article: Nor was he conſcious he had given any Councils, by which the Progreſs of the victorious Arms of the Confederates were ſtopped; or that tended to deſtroy the Confidence between Her Majeſty and Her Allies.

9. To the Ninth, he ſays, The Allies ſeparated their Forces from the Duke of *Ormonde*, and left him in his Camp; the Duke and the *Britiſh* Forces did not march away from them: And that the Generals of the Auxiliaries refuſed to continue with the Duke, or obey his Orders; and it might proceed from the Diſobedience of thoſe Troops, that Her Majeſty did not think fit immediately to pay their Arrears: And, he admits, ſome of the Troops of the Allies were defeated at *Denain*; and that the Towns of *Queſnoy*, *Bouchain*, and *Doway*, were afterwards retaken by the *French*.

10. He admits there was a Suſpenſion of Arms for four Months, agreed on the 12th of *Auguſt*, 1712; which was the Continuance of a former Ceſſation, into which Her Majeſty invited the Allies; and, it was uſual for Princes at War, to deſire ſuch a Ceſſation of Arms, during a Negotiation of Peace; but he did not adviſe it.

11. He denies he ever adhered to the *French* King, or adviſed him in what Manner *Tournay* might be gained from the States-General: On the contrary, it was by Her Majeſty's Interpoſition, that *Tournay* was left to the *Dutch*: However, it was not High Treaſon for a Privy Councillor to adviſe the delivering up of a Town.

12. He denies he ever adhered to the Duke of *Anjou*, or adviſed the yielding *Spain*, or the *Weſt-Indies* to him: However, that was not High-Treaſon, if he had.

13. He ſays, He does not know of any Conceſſions made by the Miniſters of *Great Britain*, to promote the Intereſt of *France*, or to enable her to impoſe Terms of Peace on the Allies. He denies he entered into any Meaſures with *France*, deſtructive to the Commerce of *Great Britain*: And believed, when it was conſidered, what Advantages were like to accrue to the Commons of *Great Britain* by the *Aſſiento* Contract, the Liberty of Trading to the *Spaniſh Weſt-Indies*, the Ceſſion of *Accadia*, *Hudſon's-Bay*, *St. Chriſtopher's*, *Newfoundland*, the Demolition of *Dunkirk*, and the Ceſſion of *Gibraltar* and *Port-Mahon*; it would not be thought the Commerce of *Great-Britain* had been neglected in the late Treaty of Peace: And though he did not adviſe the 9th Article of the Treaty of Commerce; yet, he obſerved, that nothing was poſitively ſtipulated in that Article, but the whole was left to the Determination of the *Britiſh* Parliament: Nor did he adviſe the *French* ſhould have the Liberty of drying their Fiſh in *Newfoundland*, or the Ceſſion of *Cape Breton* to *France*; nor does he know that *Cape Breton* was ever Part of the Territories of *Great Britain*: And he could not but obſerve, with great Satisfaction, the flouriſhing Condition of the Trade and Navigation of theſe Kingdoms, by Means of the late Peace; the great Increaſe of Shipping, and in the Exportation of the *Britiſh* Manufactures, the Fiſh, and other Produce of this Kingdom: Whereby the Cuſtoms had been greatly advanced near three Millions of Gold and Silver lately coined; and the *Exchange* been in Favour of *England*, in all Parts of *Europe*.

1717. 3 Geo. I.

14. He denies he adviſed the allotting of *Sicily* to the Duke of *Savoy*; but did not diſcern, how the diſpoſing of that Kingdom to him could be thought unjuſt to his Imperial Majeſty, or a Breach of the Grand Alliance.

15. He ſays, He was always of Opinion, that the Word of the Sovereign was Sacred: And that all Communications from the Throne to the Parliament, ought to be true: But that Her Majeſty's Declaration, *That the States-General had expreſſed a Confidence in Her*, was ſtrictly true, at the Time it was made: And whoever conſidered, what had been done by Her Majeſty for the Service of all Her Allies in the enſuing Treaty, muſt confeſs, ſhe had done her utmoſt to procure for the Allies, all that they could reaſonably demand, agreeably to Her Speech and Meſſage: Nor could any one, who conſidered the Efforts ſhe had made in *Spain* for ſo many Years, entertain a Doubt, but ſhe had done her utmoſt for the Recovery of it from the Duke of *Anjou*: Nor did he ſee, how Her Majeſty could be charged with uttering a Falſity, when ſhe took notice of the groundleſs Reports that were ſpread of a ſeparate Peace, when there never was the leaſt Foundation for ſuch a Report: Only ſome few Points were adjuſted, relating to the Intereſts of Her own Kingdoms; and even thoſe were to have no Effect, but on the Concluſion of a General Peace; and theſe were, before the Concluſion of the Peace, communicated to the Allies: That King *Philip's* Renunciation of the Crown of *France*, was not a mere Speculation; but of ſuch a Nature, as would execute itſelf, and keep the Crowns of *France* and *Spain* divided more effectually than ever; a Title to the Crown of *France* being thereby given to the Duke of *Orleans*, and the reſt of the Princes of the Houſe of *Bourbon*; who could not be preſumed to want Will, or Power, to take Poſſeſſion of the Crown of *France*, when the King of *Spain* would be at ſuch a Diſtance, and had renounced it.

16. He obſerved, that it was the undoubted Right of the Sovereign to create Peers: Nor were the Warrants for ſuch Patents ever communicated to the Privy-Council, or the Treaſury; and therefore he could not, as a Privy-Councillor, or Treaſurer, have any Knowledge of them: But had the Queen acquainted him with her Intentions, he might have approved the Choice, without any Breach of his Duty, they being all Perſons of Honour and diſtinguiſhed Merit; and the Peerage was not great-

1717. 3 Geo. I.

ly increaſed by it, conſidering ſome of them would have been Peers by Deſcent, and many Titles of Honour were lately extinct; and, he believes, many Inſtances might be given, where former Princes had exerciſed this Prerogative, in as extenſive a Manner, particularly *Hen.* VIII. *James* I. and his late Majeſty King *William.*

Anſwer to the additional Articles.

Then the Earl proceeded to anſwer the additional Articles.

1. To the firſt, he anſwered, he was againſt the Expedition to *Canada:* But he believed, thoſe of Her Majeſty's Council, who promoted that Enterprize, acted ſincerely for the publick Good; and that the ill Succeſs of it was to be aſcribed to contrary Winds, and other unforeſeen Accidents: Nor did he believe the common Enemy received any Advantage by detaching thoſe Forces from *Flanders*, becauſe the General had Orders to ſupply their Places with other Troops, if he judged it neceſſary. That he was ſo far from adviſing the Payment of the 28,000 *l.* mentioned in this Article, that he put a Stop to it, till he received Her Majeſty's Orders to pay it: And though this Matter had been examined by the laſt, and the preſent Houſe of Commons, he had not heard of any Fraud that had been made out in that Affair; and, if he prevented its being brought before the Parliament, it was becauſe he could not diſcover there was any Proof of a Fraud. That he had never exerciſed any arbitrary Power or Influence, either in the Privy Council, or the Great Council of the Nation; or deſigned to prevent Juſtice being done to the Queen or Nation.

2. He acknowledges, Her Majeſty did ſign a Warrant for the Payment of 13,000 *l.* ariſing from the Sale of Tin; which was the Queen's proper Money, and not appropriated to the Uſe of the War; and the Tallies and Orders for it were ſtruck in Mr. *Drummond*'s Name: And, it was recited in the ſaid Orders, That Her Majeſty gave the ſaid Sum of 13,000 *l.* to the Earl, in Conſideration of his Services; and mentioned the Attempt made on his Life by *Guiſcard:* That the ſaid Grant, according to the Diſcount of thoſe Tallies at that Time, amounted to 10,000 *l.* for which he acknowledges Her Majeſty's Bounty; but obſerves, that much larger Grants had been made to other Miniſters of State, when the Neceſſities of the Crown have been equally preſſing: And ſays, That in this, or any other Part of his Adminiſtration, he had not been guilty of any Corruption, or Breach of Truſt; but had managed the publick Treaſure in the moſt frugal Manner: That he never made any Advantage by the Diſpoſal of Places: Nor did he, in or out of Place, receive any Penſion from the Crown; and, at length, left the Service with clean, and almoſt empty Hands: So that, notwithſtanding the Queen's Bounty, he could with great Truth affirm, his private Fortune had received a very inconſiderable Addition, by the Employments he poſſeſſed.

3. He acknowledges, That ſeveral Payments were made to Mr. *Prior*, amounting in the whole to 12,360 *l.* by Her Majeſty's Direction; and he does not know of any Law that limits a certain Allowance to Ambaſſadors: That other Ambaſſadors and Plenipotentiaries, have been allowed 1,500 *l.* for their Equipage, 100 *l.* a Week for their ordinary Entertainment, and 1,600 *l.* for Extraordinaries, beſides further Sums for ſpecial Services; and, if Mr. *Prior* had been paid on that Foot, he would have been entitled to much larger Sums. He acknowledges alſo, that 5,560 *l.* was paid to Mr. *Harley*, who went twice to the Court of *Hanover*; but denies that either of them were his Creatures, or that he ever entered into any Combination with them, or any other Perſons, to defraud Her Majeſty, under Colour of ſuch Employments.

1717. 3 Geo. I.

4. He denies his having a Correſpondence with the late Queen *Mary*, or being in the Intereſt of the Pretender; but admits, that King *James* having granted ſeveral annual Sums, amounting to 47,000 *l. per Annum*, out of the Hereditary *Exciſe*, and the *Poſt-Office*, to the Uſe of his ſaid Queen, and the late Act of Parliament containing a Saving of all People's Rights, the ſaid late Queen did employ the Abbot *Gualtier* to receive, for her Uſe, all Sums of Money due to her at *Lady-Day* 1713; and Her Majeſty Queen *Anne* thereupon ſigned a Warrant to the Earl, then Treaſurer, of the Purport in this Article mentioned; and the Money was thereupon paid, the Queen's Counſel at Law allowing the Demand to be legal; and it was paid out of the 500,000 *l.* raiſed for the Payment of Her Majeſty's other Debts: That the Queen did alſo order 1000 *l.* to be paid to the ſaid *Gualtier*, who acted as a publick Miniſter from the *French* King, and had been inſtrumental in releaſing the *French* Proteſtants on board the Gallies.

5. He admits that *Patrick Lawleſs* was ordered 1000 *l.* by the Queen, and that he expected a much larger Sum, having negotiated the ſending the *Britiſh* Merchandizes to the *Spaniſh Weſt-Indies*; and that he was not known to be a Native of *Ireland* till long after his Arrival: That he (the Earl) never adviſed the receiving him under the feigned Name of *Don Carlo Moro*, or had any Knowledge of his being a Miniſter of the Pretender's, or that he was ſent to promote his Intereſts; nor had he ever countenanced any Emiſſary of the Pretender's, or his Adherents, to the endangering the Proteſtant Succeſſion in the Houſe of *Hanover*; and was perſuaded his Conduct was ſo well known in that Reſpect, as to need no further Juſtification: But if it ſhould, he was able to produce ſuch Proofs of it, as were the beſt Authority in the World, for his Vindication.

6. To the Sixth Additional Article, he ſays, Her Majeſty being informed, that the People of *Catalonia* were inclined to caſt off the *French* Yoke, and return to the Obedience of the Houſe of *Auſtria*; ſhe ſent Mr. *Crowe* to aſſure them of Her Majeſty's utmoſt Endeavours, to procure the Re-eſtabliſhment of thoſe Rights they formerly enjoyed, under the Houſe of *Auſtria:* And that Manifeſto's of the like Tenor, were alſo publiſhed by the Earl of *Peterborough*, and Sir *Cloudeſly Shovel:* And the *Catalans* did afterwards acknowledge King *Charles* III. and join their Arms with Her Majeſty's and Her Allies, againſt the preſent King of *Spain*; but what Motives induced them to it, he did not know. He admits alſo, That the Arms of the Confederates, were, for ſome Time, attended with great Succeſs in *Spain*; their Troops having

twice

1717. 3 Geo. I.

twice entered into the Capital City of that Kingdom: And that the *Catalans* were under the higheſt Obligations to Her Majeſty, for aſſiſting them with thoſe numerous Forces and Supplies, to make theſe Conqueſts: But the Advantages of theſe Succeſſes being loſt, and the other Allies withdrawing their Troops from *Spain*, Her Majeſty found the Burthen of that War too heavy for Her Subjects alone; and therefore, for the Good of Her People, thought fit to enter upon a Treaty of Peace: But denies he ever conſpired to ſubject the *Spaniſh* Monarchy to the Houſe of *Bourbon*; or the Deſtruction of the *Catalans*; or adviſed the acknowledging the Duke of *Anjou* King of *Spain*, before a Treaty of Peace was ſet on Foot in Form: On the contrary, he uſed his beſt Endeavours to obtain the Liberties of the *Catalans*: And if from the Meaſures taken by the *Catalans*, or his Imperial Majeſty, Her Majeſty's Endeavours had not their full Effect, it could not be imputed to any Neglect in Her Majeſty, or Want of Duty in the Earl: He denies that his Imperial Majeſty was neceſſitated, by any Practices of his, to enter into the Convention for the Evacuation of *Catalonia*; but that Her Majeſty was prevailed on by the Importunity of the Emperor, to be one of the Guarantees thereof: But knows not why his Imperial Majeſty, whom it moſt concerned, omitted in that Convention, to make expreſs and poſitive Stipulations for the Liberties of the *Catalans*. As to Her Majeſty, Her beſt Offices were employed, and repeated Inſtances made by Her Miniſters, in the moſt pathetick Manner, to obtain for them the Privileges they deſired: And that Her Majeſty did actually obtain for them a perpetual Amneſty and Oblivion, a full Poſſeſſion of their Eſtates and Honours, and a further Grant of all the Privileges, which the Natives of both *Caſtiles* (the moſt favoured of all the *Spaniards*) enjoyed; whereby the *Catalans* were let into the Trade of the *Weſt-Indies*, which they were excluded from before: And the Queen might have obtained ſtill larger Privileges for them, if they had waited the Event of Her Interpoſitions, and not determined to carry on the War by themſelves againſt King *Philip*; whereby they loſt the Advantages ſhe had ſtipulated for them: Concluding, that he cannot juſtly be charged with any Conſequences on the *Catalans* Refuſal to comply with the King of *Spain*, and acquieſce in the Terms Her Majeſty had obtained for them. And ſays, He is not guilty of all, or any of the Matters contained in the ſaid Articles.

Obſervations of the Earl's on the whole.

The Earl having anſwered the ſeveral Articles, obſerved, That every thing he was charged with was done in the Reign of a Princeſs, who having a perfect Knowledge of the State of Affairs at that Time, could have been the only competent Judge, Whether ſhe was fraudulently dealt with, led into ill Meaſures which ſhe did not direct or approve; or made an Inſtrument of ſacrificing Her Kingdoms to the Enemy. It was with great Grief, he obſerved ſuch Things ſuggeſted, as ſeemed to reflect on the Character of that excellent Queen: But he aſſures their Lordſhips, that every thing relating to the Peace, was communicated to Her late Majeſty, and maturely conſidered by Her, before any thing was determined thereupon: Nor was any Step taken, but in Purſuance of ſuch Determination.

1717. 3 Geo. I.

He ſaid, That the Queen had nothing more at Heart, than to procure Her People the Bleſſing of Peace; and, when ſhe had obtained it, ſhe had this Satisfaction, that ſhe had taken the moſt proper Meaſures to juſtify her Conduct, both to Her Allies, and Her own Subjects: That upon a Review of Her Actions it would appear, and had, in Part, appeared by this Anſwer, That as Her Majeſty entered further into the War, than ſhe was obliged by any Treaties in Being at Her Acceſſion, ſo ſhe contributed more Men and Money towards the carrying it on afterwards, than ſhe was engaged to provide by any ſubſequent Treaties: That Her earneſt Deſires of Peace being twice fruſtrated, when ſuch Conditions might have been obtained, as would have anſwered all the Ends for which the War was declared; and our Succeſſes and Victories produced only an annual Increaſe of the Charge to *England*, without any further Aſſiſtance from the Allies; and theſe Kingdoms were exhauſted to ſuch a Degree (notwithſtanding the great Advantages obtained by Her Arms), that ſhe was not able to continue the War upon the Foot it then ſtood a Year longer: And Her Allies refuſed to continue it upon thoſe equal Conditions, they were obliged to by their Treaties; ſhe was conſtrained, in Compaſſion to Her People, to hearken to the Overtures of Peace made Her by *France*, without relying longer on the vain Hopes of gaining more advantageous Terms, by protracting the War a Year longer. She had carried it on ſome Time under that Proſpect, without reaping the Benefits propoſed; and thereby, perhaps, raiſed the Glory of Her Arms; but ſhe could not think this a ſufficient Recompence for the increaſing Miſeries of Her People; and therefore reſolved to lay hold on the Opportunity that was offered Her, of ending the War, by a Safe and Honourable Peace: And thoſe who were then employed in Her Majeſty's Councils, thought themſelves obliged to ſecond Her good Intentions.

And as the Terms of Peace were advantageous to *Great Britain*, it was approved by both Houſes of Parliament: Solemn Thanks were rendered to God for it here, and in the *United Provinces*; and Her Majeſty received, on this Occaſion, the hearty Congratulations of Her People, from all Parts of Her Dominions.

This being a true Repreſentation of the Caſe, the Earl does not ſee, how he, or any others in Her Majeſty's Service, can juſtly be charged with betraying the Intereſts of their Country, or the Allies, by negotiating that Peace, ſo acceptable and advantageous to theſe Kingdoms: And, if the Peace itſelf be not condemned, and it be not charged as a Crime that he adviſed Her Majeſty to conclude that Peace, he conceives it an extraordinary Hardſhip, that rough Draughts and Eſſays towards a Peace, leading to an End that was juſt and profitable, ſhould be brought to form ſo many diſtinct Heads of Accuſation againſt him: For, ſuppoſing any improper Steps had been taken, which he does not admit; yet, if Things were at laſt conducted to a right Iſſue, and ended in an Honourable and Advantageous Peace, there can be no juſt Ground to find Fault with the Meaſures uſed to compaſs

1717. 3 Geo. I.

compaſs it, becauſe they ſeemed before the Accompliſhment to have a different Tendency; eſpecially if it were conſidered, that ſcarce any Peace had been made by a Confederacy, where leſs Reaſon had been given to complain among the ſeveral Parties; and therefore he hoped that no Steps taken for obtaining a Peace, approved by former Parliaments, would be accounted Criminal by any ſucceeding Parliament; unleſs it appeared that thoſe Steps were taken contrary to the Queen's Orders, or upon corrupt Views of private Advantage.

And as a further Proof that the Queen's Miniſters acted with upright Intentions, and were not conſcious of any Failure in their Duty, the Earl obſerves, they never attempted to cover their Actions from publick Cenſure by any Pardon or Indemnity.

That he never ſought or deſired any of the great Employments he held, but came into them by Her Majeſty's ſpecial Command, and had ſerved Her with the utmoſt Zeal and Faithfulneſs; and as he continued in thoſe Stations many Years, it was with Wonder and Pleaſure he obſerved Her Majeſty's whole Thoughts and Time divided between her Duty to God and her Love to her People, whoſe Proſperity ſhe preferred to her own Eaſe, and often hazarded Her Health and Life to procure it: That he found it the moſt effectual Way to recommend himſelf to Her good Opinion, to act upon the ſame Principles of Juſtice and Love to his Country that ſhe did; and as ſhe abhorred the Thoughts of every Thing that might be burthenſome or injurious to Her People, ſo ſhe expreſſed herſelf with the greateſt Satisfaction and Delight, when ſhe reflected on the Advantages ſhe had obtained for Her own Subjects, and the Quiet and Repoſe ſhe had gained for *Europe*, by that Honourable Peace, for which, as the preſent Age bleſſed Her, future Generations would adore Her Memory.

The Trial begins.

The Commons replied to the Earl's Anſwer, and averred their Charge to be true: And the Earl being brought to his Trial before the Houſe of Peers in *Weſtminſter-Hall*, on the 24th of *June*, 1717, the Managers proceeded to open the Charge: But before they had gone through the firſt Article, the Lord *Harcourt* moved the Peers to adjourn to their Houſe above, and they adjourned thither accordingly; where the Lord *Harcourt* propoſed the following Queſtion, (*viz*).

1717. 3 Geo. I.

That the Commons be not admitted to proceed, in order to make good the Articles againſt Robert *Earl of* Oxford *and Earl* Mortimer, *for High Crimes and Miſdemeanors, till Judgment be firſt given on the Articles of High Treaſon.*

A Difference between the two Houſes

Which being reſolved in the Affirmative, the Lords returned to *Weſtminſter-Hall*, and the Lord High Steward acquainted the Commons with the ſaid Reſolution: Whereupon Mr. *Thompſon*, one of the Managers, ſaid, The Commons conceived it to be their undoubted Right to proceed in their own Method; and that this Reſolution might be of ſuch fatal Conſequence to the Rights and Privileges of the Commons, that they could proceed no further without reſorting to the Houſe for their Direction. Then the Houſe of Peers adjourned, and a Conferrence was held afterwards between the two Houſes on this Subject.

The Commons refuſe to appear at the Trial.

But the Lords perſiſting in their Reſolution, Not to ſuffer the Commons to proceed on the Articles of High Crimes and Miſdemeanors till Judgment was given on the Articles of High-Treaſon; and the Commons inſiſting, that it was their undoubted Right to impeach a Peer either for High-Treaſon, or for High Crimes and Miſdemeanors, or if they ſaw fit to mix the one and the other in the ſame Accuſation; there followed ſuch a Breach between the two Houſes, that, the Lords ordering the Earl to be brought before them again on *Monday* the 1ſt of *July*, and giving Notice to the Commons that they intended to proceed further in the Trial that Day, the Commons refuſed to attend: Whereupon the Lords adjourned from *Weſtminſter-Hall* to their Houſe above, and the Queſtion being put, *That* Robert *Earl of* Oxford *and Earl* Mortimer *be acquitted of the Articles of Impeachment exhibited againſt him by the Houſe of Commons, for High-Treaſon and other High Crimes and Miſdemeanors, and that the ſaid Impeachment be diſmiſſed*; it was unanimouſly reſolved in the Affirmative.

The Earl acquitted.

Then the Lords went again to the Court in *Weſtminſter-Hall*; and the ſame Queſtion being put and reſolved in the ſame Manner there, the Earl was brought to the Bar, and the Lord High Steward declared to him, that he was ACQUITTED, and that the ſaid Impeachment was diſmiſſed: After which the Lord High Steward broke his Staff, and the Earl was diſcharged.

1718. 5 Geo. I.

Bonnet's Trial.

The Trial of STEDE BONNET, and Thirty-three more of his Crew, for *Piracy*, before a Court of *Admiralty*, at *Charles-Town* in *South-Carolina*, the 30th of *October*, 1718. 5 Geo. I.

1718. 5 Geo. I.

The Pirates taken by the Townſmen of Charles-Town.

NICHOLAS TROTT, Eſq; Judge of the Court of Admiralty, and Chief Juſtice of *South Carolina*, at the opening the Commiſſion for the Trial of theſe Pirates, obſerved, That the Inhabitants of that Province had lately been great Sufferers by Pirates, who had the Aſſurance to lie at their Bar, in Sight of *Charles-Town*, where they took and plundered ſeveral of their Ships, inward and outward-bound; which at length ſo provoked the Government of *Carolina*, that they fitted out a Force, under the Command of Colonel *Rhet*, who fought the Pirates, and brought them in Priſoners; and they were now indicted for their numerous Depredations

1718. 5 Geo. I.

predations at Sea; but ſeveral of their People had loſt their Lives in thus bravely diſcharging their Duty to their King and Country, which he hoped would prove a ſtrong Inducement to the Jury to do Juſtice on theſe Wretches, who were Enemies to all Mankind.

Two Indictments being found againſt the Priſoners, they were tried on the 30th of *October*, 1718, except their Commander *Stede Bonnet*, who had made his Eſcape out of Priſon, and was not then retaken.

The Indictment.

The firſt Indictment charged, That *Edward Robinſon*, *Robert Tucker*, *William Scot*, and the reſt of this piratical Crew, on the 2d of *Auguſt*, in the 5th Year of the King, upon the High-Sea, near *Cape James*, alias *Cape Inlopen*, being about two Miles diſtant from the Coaſt, in the Latitude of Thirty-nine or thereabouts, did piratically take, board, and break up a certain Merchant Sloop, called *The Francis*, *Peter Manwaring* Commander; carrying away the ſaid Sloop and Cargoe, which was of a conſiderable Value; againſt the King's Peace, *&c.*

The Evidence.

Ignatius Pell, Boatſwain of *The Revenge*, *Bonnet*'s Sloop, teſtified, That he and the reſt of the Priſoners, came, with the Pirates *Thatch* and *Bonnet*, from the *Bay of Honduras*, and took ſeveral Veſſels in their Way; after which they lay off of *Charles-Town*, where they took five Veſſels more: That they ſailed then to the Capes of *Virginia*, and afterwards to *Cape James*, where they took the Sloop commanded by Captain *Manwaring*, as charged in the Indictment.

Captain *Thomas Read* teſtified, That he was Priſoner on Board of *Bonnet* when he took Captain *Manwaring*'s Sloop; and that *Bonnet* demanding of *Manwaring*, from whence he came; he anſwered, he came from *Antigoa*, and was bound for *Boſton*; and the next Morning the Pirates took ſeveral Hogſheads of Moloſſes and Rum, and other Goods, out of *Manwaring*'s Sloop, and put them on Board his own, and he ſaw the Crew ſhare the Goods amongſt them.

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Captain *Peter Manwaring* alſo gave Evidence of his being taken by *Bonnet* and his Crew; and depoſed, that they demanded of him what he had on Board; and he anſwered, he had Moloſſes, Sugar, and Rum; and thereupon they took out his Moloſſes and Rum, and put them on Board the Pirate.

James Keiling, *Manwaring*'s Mate, confirmed the Evidence of the former Witneſſes, and added, that the Pirates carried their Sloop to *Cape Fear*.

Convicted on the firſt Indictment.

The Fact being abundantly proved, and the Priſoners having nothing material to offer in their Defence, they were all found GUILTY on this Indictment, except four, who appeared to be under a Force.

A ſecond Indictment.

They were then tried upon a ſecond Indictment, which charged, That the ſaid *Edward Robinſon*, *Robert Tucker*, &c. on the 31ſt of *Auguſt*, in the 5th Year of King *George*, on the High-Sea, at a certain Place called *Cape Fear*, in the Latitude of Thirty-four, did feloniouſly and piratically take, break, and enter a certain Merchant Sloop, called *The Fortune*, *Thomas Read* Commander, carrying away both the Veſſel and Cargoe; againſt the King's Peace, *&c.*

Convicted on the ſecond Indictment.

The Fact being proved beyond all Doubt by the ſame Witneſſes, and the Priſoners offering nothing material in their Defence, they were convicted alſo upon this Indictment, (except the four that were under a Force) and Sentence of Death was paſſed on them, on the 5th of *November* following; in Purſuance whereof they were executed.

Condemned.

Bonnet himſelf alſo being retaken, was brought to his Trial on the 10th of *November*, and convicted on the ſame Evidence, and afterwards confeſſed the Facts; whereupon Sentence of Death was pronounced on him, and he was executed at the *White Point*, near *Charles-Town*, on the 10th of *December*.

Bonnet convicted, and executed with the reſt.

1719. 5 Geo. I.

Anneſley *and* Sherlock.

Proceedings of the *Iriſh* Houſe of Lords againſt the Lord Chief Baron GILBERT, and other Barons of the *Exchequer* there (in the Caſe of *Anneſley* and *Sherlock*, which occaſioned the Reſtraining the Juriſdiction of that Houſe over the Inferior Courts,) 28 *July*, 1719. 5 *Geo.* I.

1719. 5 Geo. I.

Reſolutions of the Houſe of Lords in Ireland.

ON the Motion of *Edward* Earl of *Meath*, and *Cecilia* his Counteſs, on the 11th of *February*, 1703, it was Reſolved by the *Iriſh* Houſe of Lords, *nemine contradicente*, That by the Laws and Statutes of that Kingdom Her Majeſty had an undoubted Juriſdiction and Prerogative of judging, in that Her High Court of Parliament, of all Appeals and Cauſes within that Realm.

That the Determinations of that Houſe were final, and could not be reverſed or ſet aſide by any other Court whatever.

That if any Subject, or Reſiant of that Kingdom, ſhould preſume to move any Cauſe, determined in that High Court, to any other Court, he ſhould be deemed a Betrayer of Her Majeſty's Prerogative, and of the undoubted Rights and Privileges of that Houſe, and of the Subjects of that Kingdom.

And that if any Subject, or Reſiant of that Kingdom, ſhould preſume to put in Execution the Orders of any other Court, contrary to the final Judgment of that Houſe, ſuch Perſon ſhould be deemed a Betrayer of Her Majeſty's Prerogative and Juriſdiction, and the undoubted Rights and Privileges of that Houſe, and of the Subjects of that Kingdom.

1719. 5 Geo. I.

In *September* 1717, a Cauſe between *Sherlock* and *Anneſley* coming by Way of Appeal before the *Iriſh* Houſe of Lords, their Lordſhips Ordered, on the 3d of *October*, the High-Sheriff of the County of *Kildare* to put the Appellant, *Heſter Sherlock*, into the Poſſeſſion of certain Lands in that County; whereupon Mr. *Anneſley* appealed to the Houſe of Lords of *Great Britain*: However, the ſaid *Heſter Sherlock* was put into the Poſſeſſion of the ſaid Lands, by virtue of the ſaid Order of the *Iriſh* Houſe of Lords, on the 16th of *October*, 1717; and remained in Poſſeſſion of them near two Years: But the *Britiſh* Houſe of Peers making a Decree in the mean time in favour of *Anneſly*, ſent Orders to the Lord Chief Baron *Gilbert*, and the reſt of the Barons of the Court of *Exchequer* there, to replace *Anneſley* in the Poſſeſſion of thoſe Lands of which he had been diſpoſſeſſed by virtue of the Decree of the *Iriſh* Houſe of Lords; and the Court of *Exchequer* iſſued their Proceſs accordingly; but the High Sheriff refuſed to obey it: Whereupon ſeveral Fines were ſet upon the Sheriff by the Barons; and he appealed to the *Iriſh* Houſe of Lords, who came to the following Reſolutions, *viz.*

Further Reſolutions of the Iriſh Houſe of Lords;

That the Caſe of *Sherlock* and *Anneſley*, as it lay before the Barons of the *Exchequer*, being not only Matter of Law, but State, ought to have been laid before the King, or the chief Governors of this Kingdom, it ſo nearly concerning His Majeſty's Prerogative, and the Intereſt of the whole Kingdom.

Againſt the Barons of the Exchequer, for executing the Decrees of the Engliſh Houſe of Peers.

That *Jeffrey Gilbert* Eſq; Lord Chief Baron of the *Exchequer*, *John Pocklington* Eſq; and Sir *John St. Leger*, Barons of the ſaid Court, in their Proceedings in the Cauſe between *Sherlock* and *Anneſley*, and againſt *Alexander Burrowes* Eſq; late Sheriff of the County of *Kildare*, have acted contrary to Law, and to the eſtabliſhed Practice of the King's Courts.

That the ſaid Lord Chief Baron and Barons, having taken upon them to put in Execution a pretended Order from another Court (the *Engliſh* Houſe of Peers) contrary to the final Judgment of this High Court of Parliament, in the Cauſe between *Sherlock* and *Anneſley*, are Betrayers of His Majeſty's Prerogative, and the undoubted antient Rights and Privileges of this Houſe, and of the Rights and Liberties of the Subjects of this Kingdom.

1719 5 Geo. I.

The Barons committed.

And it was Ordered, by the Lords Spiritual and Temporal, that the ſaid Lord Chief Baron and Barons ſhould be taken into the Cuſtody of the Black Rod of that Houſe; and they were taken into Cuſtody accordingly.

Theſe Proceedings of the *Iriſh* Houſe of Peers ſo incenſed the Houſe of Lords of *Great Britain*, that they ordered a Bill to be brought in, to diſable the Houſe of Peers of *Ireland* from reverſing or altering any Judgment given in any of the inferior Courts of that Kingdom; which Bill afterwards paſſed into an Act, and was intituled, *An Act for the better Security of the Dependency of the Kingdom of* Ireland *upon the Crown of* Great Britain, and is of the following Tenor, *viz.*

An Act for the Securing the Dependency of Ireland on England.

Whereas the Houſe of Lords of *Ireland* have of late, againſt Law, aſſumed to themſelves a Power and Juriſdiction to examine, correct, and amend the Judgments and Decrees of the Courts of Juſtice in that Kingdom; therefore, for the better ſecuring of the Dependency of *Ireland* upon the Crown of *Great Britain*, it is declared, That the ſaid Kingdom of *Ireland* hath been, is, and of Right ought to be, ſubordinate unto, and dependant upon, the Imperial Crown of *Great Britain*, as being inſeparably united and annexed thereto; and that the King's Majeſty, by and with the Advice and Conſent of the Lords Spiritual and Temporal, and Commons of *Great Britain* in Parliament aſſembled, had, hath, and of Right ought to have, full Power and Authority to make Laws and Statutes of ſufficient Force and Validity to bind the Kingdom and People of *Ireland*.

The Power of the Iriſh Houſe of Lords, in Caſes of Appeal, abrogated.

And it was further declared and enacted, That the Houſe of Lords of *Ireland* have not, nor of Right ought to have, any Juriſdiction to judge, affirm, or reverſe, any Judgment, Sentence, or Decree, given or made in any Court within the ſaid Kingdom; and that all Proceedings before the ſaid Houſe of Lords, upon any ſuch Judgment, Sentence, or Decree, are, and are hereby declared to be, null and void, to all Intents and Purpoſes whatſoever.

1721. 8 Geo. I.

Reaſon and Tranter their Trial.

The Trial of HUGH REASON and ROBERT TRANTER, for *Murder*, at the *King's-Bench* Bar, on the 3d of *February*, 1721. *Hil.* 8 Geo. I.

1721. 8 Geo. I.

The Indictment.

THE Indictment charged, That *Hugh Reaſon* and *Robert Tranter*, on the 17th of *October* then laſt paſt, at the Pariſh of *St. Clement Danes*, in the County of *Middleſex*, feloniouſly, and of their Malice afore-thought, made an Aſſault upon *Edward Lutterell* Eſq; and that the ſaid *Hugh Reaſon*, with a Piſtol charged with Powder and Ball, did ſhoot the ſaid *Edward Lutterell*, giving him one mortal Wound under the Right Pap, of the Breadth of one Inch, and the Depth of nine Inches; of which Wound he languiſhed till Ten o' Clock in the Evening, and then died; and that the ſaid *Robert Tranter* was preſent, aiding and abetting the ſaid *Hugh Reaſon* to commit the ſaid Murder; againſt the King's Peace, *&c.*

The Caſe was thus: As Captain *Lutterell* was going from his Lodgings in *Surry-Street*, to take Water, he was arreſted for 10 *l.* by the Priſoners *Reaſon* and *Tranter*; and he telling them that, if they would go home with him, he would pay the Money, they did ſo; and *Reaſon* went up with the Captain into his Dining-Room, while *Tranter* was ſent for the Attorney's

Bill

1721. 8 Geo. I.

Bill of Charges. In the mean Time Mr. *Lutterell* going up another Pair of Stairs, to fetch the Money, (as 'tis preſumed) and leaving *Reaſon* in the Dining-Room, came down Stairs again with a Brace of loaded Piſtols in his Breaſt; but, upon his Maid's Perſuaſion, laid them down on the Table, and ſaid, he deſigned no Hurt: However, *Tranter* returning again, there were high Words between the Deceaſed and the Bailiffs; and the Deceaſed threatened them, and ſtruck one of them with his Cane; whereupon *Tranter* ran the Deceaſed againſt the Wainſcot, and *Reaſon* ſtabbed him. They alſo got Poſſeſſion of his Piſtols, and ſhot him; and throwing him down upon the Floor, gave him nine or ten Wounds afterwards, with his own and *Reaſon*'s Sword: Whereupon a Cry of Murder was made, and People came in and apprehended the Bailiffs; one of whom was wounded in the Arm with a Brace of Balls, and they had ſome other ſlight Wounds about them.

Mr. *Lutterell* living ſome Hours after this Rencounter, declared before Mr. *Peters*, who adminiſtered the Sacrament to him, and others, as he lay a dying, that the Bailiffs took the Piſtols from his Table, and fired both of them: That the fat Man drew his Sword, and ran him through the Body, and then drew his (*Lutterell*'s) Sword, which he (*Lutterell*) broke in the Bailiff's Hand, and begged for Life: That he (*Lutterell*) neither fired a Piſtol, or made one Puſh: That they both ran him through, though he offered to pay them the Money: But, he ſaid, they had given him abuſive Language, which induced him to ſtrike one of them; and upon that, they immediately ſeized him, tumbled him down, and ſtabbed him: That he begged them to ſpare his Life; but one of them ſaid, Damn him, draw his Sword, and ſtab him.

The Chief Juſtice's Directions to the Jury.

The Chief Juſtice, in ſumming up the Evidence, obſerved, That the Priſoners had been ſo civil on the Arreſt, as to carry Mr. *Lutterell* to his own Lodging; a Circumſtance, he confeſſed, that made ſome Impreſſion on him: It was what Bailiffs were not bound to do; they were uſually rough, and not eaſy to be entreated, unleſs well paid for it: They were too favourable in truſting him in his own Lodging; and it was ſtill a greater Piece of Civility, the ſending *Tranter* for the Attorney's Bill, and ſtaying alone with him; Mr. *Lutterell* might have ſent his own Servant. This was extreme civil Uſage, and was not often done by Men of their Character: Nay, *Reaſon* ſuffers him to go up Stairs into another Room, when his Partner was gone: This ſhews exceſſive Favour to their Priſoner, which they could not in Strictneſs juſtify: And Mr. *Lutterell*'s bringing down a Brace of Piſtols, ſeemed to be an untoward Return for their Civility. Indeed, the Maid Servant depoſed, *That he ſaid he had no Malice towards them, and would not hurt a Hair of their Heads; he only brought down the Piſtols that he might not be impoſed upon:* But he did not know what he meant, when he was in Cuſtody of the Officers, and had been ſo civilly uſed, to bring down a Caſe of Piſtols, to prevent his being ill uſed. It ſeems as if he intended to affright the Officers, that they ſhould not carry him away. It was the Duty of the Bailiffs to carry him off, and he brought down the Piſtols to prevent that; and he owned that he gave one of the Bailiffs a Blow on the Head with his Stick; and the Bailiffs ſay, in their Juſtification, that the Aſſault began on his Side. It was ſtrange that *Tranter*, immediately after he came back, ſhould run him againſt the Wainſcot, and *Reaſon* aſſault him with a Sword, without a Provocation: This Behaviour was not of a Piece with the other. He thought it appeared by the Evidence, beyond Contradiction, that the Piſtols were brought down with a Deſign to prevent his being carried off, and that he did give one of the Bailiffs a Blow with a Stick. Upon the whole, he thought it was plain that the Priſoners at the Bar did kill Mr. *Lutterell*; that when *Tranter* had him againſt the Wall, *Reaſon* ſtabbed him; and when he was lying upon the Floor, *Reaſon* ſtabbed him: And it appeared by another Evidence, that *Reaſon*, the fat Man, ſhot off a Piſtol; ſo that he made no doubt but the Priſoners at the Bar did give Mr. *Lutterell* thoſe Wounds of which he died: The Surgeons had depoſed, that there were eight or nine Wounds with a Sword, one of them mortal; and a Wound with a Bullet that was mortal.

Then the Queſtion was, Whether, upon this Evidence, the Defendants were guilty of Felony? and if guilty, then in what Degree, whether Murder or Manſlaughter?

Bailiffs were Miniſters of Juſtice, armed with the Authority of the Law; and thoſe who reſiſted a Bailiff in the Execution of his Office, reſiſted the Law; and in executing their Warrants, and doing what was neceſſary for that Purpoſe, for the obtaining their Priſoner, or for the Security of their own Perſons, if Death enſued, the Bailiffs having the Authority of the Law on their Side, it was not ſo much as Felony: And it was neceſſary it ſhould be ſo; for without it, all their Properties would be precarious.

Here is Mr. *Lutterell* under an Arreſt, fetches down his Piſtols to prevent his being carried off, and threatens the Bailiffs: He doubted his Threatening muſt have Reference, that he threatened to diſcharge his Piſtols, or draw his Sword upon them; and he did not only threaten them, but gave one of them a Blow with his Cane; whereupon *Tranter* runs him up againſt the Wall, and *Reaſon* ſtabs him. Now, when Piſtols are brought down, Threatenings uſed, and a Blow given, the Officers are not to ſtand ſtill till they are murdered: They could not tell what Mr. *Lutterell*'s Intention was; as he had made an Appearance of Reſiſtance, and had made an Aſſault, the Jury were to conſider, whether this was not a neceſſary Defence of the Officers to ſecure their Priſoner. The Maid ſaid, indeed, when the Piſtols were brought down, at her Perſuaſion, her Maſter laid them on the Table, which was an Indication that no ill Uſe was to be made of them; and it did not appear whether one or both of them were in Mr. *Lutterell*'s Reach: But then it appeared (*I don't ſee where*) that notwithſtanding the running him againſt the Wall, he had, in ſome meaſure, reſcued himſelf from that Force; and there was ſtruggling and throwing down, which ſhewed that he was not ſo in the Power of the Bailiffs, that they could be ſecure of preſerving their Priſoner,

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ſoner, or their own Lives: That it muſt be left to the Jury, whether they believed Mr. *Lutterell* had a Deſign to reſcue himſelf; and if they thought the Bailiffs had a juſt Provocation, and were apprehenſive of loſing their Priſoner, the Law allowed them to do what was neceſſary for their own Security, and the Security of their Priſoner; but if they thought this was done out of Heat and Paſſion by the Bailiffs, when there was no juſt Cauſe to apprehend the Priſoner's being reſcued; then they were guilty of Felony. He confeſſed it looked barbarous, that when a Man was in his Blood upon the Ground, they ſhould follow their Blows, giving him more Wounds: This was carrying the Thing a great Way, and looked like Barbarity. But if Mr. *Lutterell* gave the firſt Provocation, whatever happened afterwards, if done for the Security of their own Lives, and of their Priſoner, would not make them guilty of Felony.

It appeared, that Mr. *Lutterell* had given a Blow: Men of Honour were not to juſtify themſelves, by ſaying, ſaucy Language was given them; and thereby they would be their own Avengers: That to make it Murder in the Bailiffs, it muſt appear to be done maliciouſly, and without Provocation: That Blows had always been allowed to be Provocations; and, in this Caſe, it was accompanied with fetching down Piſtols, and threatening the Bailiffs what he would do: And, if ſo, the Bailiffs would not be guilty of Murder, but Manſlaughter: That they were to aſſert the Authority of the Bailiffs; but then they muſt not incourage the Bailiffs, on a few angry Words, immediately to fall into a Paſſion, and take away the Life of a Man. It appeared that a Blow had been given under untoward Circumſtances, after the Bailiffs had been threatned with a Deſign to prevent his being carried off by them; and, if ſo, the moſt they could make it, would be Manſlaughter.

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Then the Jury withdrew, and returning into Court an Hour afterwards, gave their Verdict that the Priſoners were guilty of *Manſlaughter*: Whereupon they prayed the Benefit of their Clergy, and were immediately burnt in the Hand, and diſcharged.

Convicted of Manſlaughter, and burnt in the Hand.

1721. 8 Geo. I.

Woodburne *and* Coke *their Trial.*

The Trial of JOHN WOODBURNE Labourer, and ARUNDEL COKE Eſq; upon the Statute of *Maiming*, (made the 22d of *Car.* II.) at the Aſſizes held at *St. Edmundsbury* for the County of *Suffolk*, on the 13th of *March*, 1721. 8 *Geo.* I.

1721. 8 Geo. I.

The Indictment.

THE Indictment charged, that the Priſoners *Woodburne* and *Coke*, on the firſt of *January*, in the eighth Year of the King, at *St. Edmundsbury* aforeſaid, on Purpoſe, and of Malice afore-thought, and by lying in wait, did felonioufly make an Aſſault on *Edward Criſpe*, of the ſame Town, Gent. and that the ſaid *John Woodburne*, with a Bill he then held in his Right Hand, did felonioufly ſlit the Noſe of the ſaid *Edward Criſpe*, with an Intent to diſfigure him; and that the ſaid *Arundel Coke* was preſent at the ſame Time, aiding and abetting the ſaid *John Woodburne* to commit the ſaid Felony; againſt the King's Peace, *&c.*

The Caſe.

The Caſe was this: *Criſpe* was poſſeſſed of an Eſtate of 300 *l. per Annum*, and having three Siſters, *Coke* the Priſoner married one of them; and, as Mr. *Criſpe* had no Children, *Coke*, in Right of his Wife, would have been entitled to a third Part of Mr. *Criſpe*'s real Eſtate on his Death: But being too impatient to wait for *Criſpe*'s Death in the natural Way, he tampered with ſeveral poor People to murder *Criſpe*, for certain Rewards he offered them; and at length prevailed on the Priſoner *Woodburne*, after much Importunity, and a Promiſe of twenty Pounds Reward, to undertake it. This *Woodburne* was a labouring Man, who had ten Children, and was very poor; and working ſometimes for *Coke*, had been relieved in his Neceſſity by him, and ſcarce knew how to deny any thing he put him upon.

Woodburne no ſooner conſented to commit the Murder, but *Coke* invited *Criſpe* to Supper with him, on *New-Year's-Day*, 1721-2; and his Houſe being near the Church-Yard in *Bury*, he ordered *Woodburne* to wait for him, in the Porch of a Houſe that ſtood in the Church-Yard, at eight in the Evening, and to ſtay there till he came to him. *Criſpe*, on his Brother *Coke*'s Invitation, came to ſup with him, on *New-Year's-Day* in the Evening; as did alſo Mr. *Brown*, who had married *Coke*'s Siſter: *Coke* before Supper, propoſed to Mr. *Criſpe* the going to ſee one Mrs. *Fanny Monke*, who lived in the Church-Yard; but he did not ſeem inclined to go then: Whereupon *Coke* went out by himſelf; and meeting *Woodburne* in the Church-Yard, who had prepared his Wood-Bill, in order to commit the Fact, *Coke* told him, that *Criſpe* was very merry, and he believed it would be late before he came out; but the later the better, and bid *Woodburne* continue there till they came out——After Supper, about Ten o'Clock, *Coke* called *Criſpe* out of his Parlour; and they went together into the Church-Yard, it being very dark; and having taken two or three Turns before the Houſe of Mrs. *Monke*, already mentioned, *Coke* ſtood ſtill, and hallowed, and immediately *Woodburne* came up to them, and ſtruck *Criſpe* on the Face with his Bill; and giving him four or five Strokes more, he fell down in a Swoon, and *Coke* and *Woodburne* left him there for dead. *Coke* returned out of Breath to his own Houſe; and

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and being asked by Mr. *Brown*, what was become of *Criſpe*, he ſaid, he believed he was gone Home: But they had not ſat above a quarter of an Hour, before *Criſpe*, who had recovered out of his Swoon, came in with almoſt all his Fleſh cut off his Face, and his Cheeks hanging down upon his Breaſt, to the great Surprize of the Family.

The Fact confeſſed.

The Priſoners confeſſing the whole Charge, there is no Occaſion to repeat the Evidence.

Their Defence.

Their principal Defence was, That they did not intend to ſlit *Criſpe*'s Noſe, but to kill him; and if they had no *Intention* to ſlit his Noſe, it was not Felony by the aboveſaid Statute.

To which Mr. Serjeant *Selby*, who was Counſel for the King at this Trial, anſwered, That they could not intend to kill Mr. *Criſpe* with ſuch an Inſtrument as a Wood-bill, without intending to maim him firſt: And where there were two Intentions, and but one executed, there was no Pretence to ſay, that what was executed, was not intended.

The Chief Juſtice directs the Jury.

The Chief Juſtice, in ſumming up the Evidence, obſerved, That the Queſtion on this Indictment, was, Whether *John Woodburne*, did, on Purpoſe, and of Malice fore-thought, and by lying in wait, unlawfully ſlit the Noſe of *Edward Criſpe*, with an Intention to maim or diſfigure him therein? And whether *Arundel Coke* was felonioufly preſent at the Fact, aiding and abetting *Woodburne* in the Commiſſion and Perpetration of it?

That *Woodburne*, in his Defence, did not deny the aſſaulting and wounding of Mr. *Criſpe*; but inſiſted, That what he had done, was by the Solicitation and Procurement of Mr. *Coke*; which was no Juſtification or Excuſe: For no Man was to obey the unlawful Commands, or hearken to the illegal Advices, of any other Perſon whatſoever. That the Defence *Coke* had made, which would ſerve alſo for *Woodburne*, was, That they intended to murder, and not to maim; and, if they did maim, it was with an Intention to kill, and not to diſfigure.

And the Intent of the Party was to be diſcovered by the Facts themſelves; by the precedent, concomitant, and ſubſequent Circumſtances of the Facts; by the Manner of doing, and the like.

There were ſome Caſes, where an unlawful or felonious Intent to do one Act, might be carried over to another Act, done in Proſecution thereof; and ſuch other Act would be Felony, becauſe done in Proſecution of an unlawful or felonious Intent: As, where a Man ſhoots at a wild Fowl, wherein no Man had a Property, and by ſhooting happens unawares to kill a Man; this Homicide was not Felony, but only Miſadventure, or Chance-Medley; becauſe it was an Accident that happened in the doing of a lawful Act: But if this Man had ſhot at a tame Fowl, wherein another Man had Property, but not with Intention to ſteal it, and, by ſuch ſhooting, had accidentally killed a Man, he would then have been guilty of Manſlaughter, becauſe done in Proſecution of an unlawful Action, *viz.* committing a Treſpaſs on another Man's Property: But if he had an Intention to ſteal this tame Fowl, then ſuch accidental killing of a Man would have been Murder, becauſe done in Proſecution of a felonious Intent, *viz.* an Intent to ſteal: So a Man of Malice intends to burn one Houſe, and, in Execution thereof, happens to burn another Houſe; this is a malicious and felonious burning of this other Houſe, becauſe ſprung out of a malicious and felonious Intent: The like might be inſtanced, where Poiſon was intended to be given to one Perſon, and another takes it, and eats it, and thereby dies. And there were other Caſes of the like Nature, where Acts done in Proſecution of felonious Intents, participate of the Nature of their Original, from whence they ſpring.

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That the Indictment on this Statute, was for a certain particular Intent; for purpoſely, maliciouſly, and by lying in wait, ſlitting Mr. *Criſpe*'s Noſe, with an Intention, in ſo doing, to maim or diſfigure. As to the Fact of ſlitting the Noſe, that was directly or poſitively ſworn; there could be no Doubt but it was an unlawful Slitting: But the Defence the Priſoners made, was, That if they did ſlit the Noſe, it was with an Intention to kill, and not with an Intention to maim or diſfigure. Now, if the Intention was to murder, they were to conſider, whether the Means made uſe of to accompliſh that Murder, and the Conſequences of thoſe Means, were not in the Intention and Deſign of the Party? And whether every Blow and Cut, and the Conſequences thereof, were not intended, as well as the End for which it was alledged thoſe Blows and Cuts were given?

And if they were ſatisfied on the Whole, that *Woodburne* did, on Purpoſe, and of Malice fore-thought, and by lying in wait, unlawfully ſlit the Noſe of *Edward Criſpe*, with an Intention, in ſo doing, to maim or diſfigure; and that *Arundel Coke* was felonioufly preſent at the Commiſſion of this Fact, and aiding and abetting therein, they would find them guilty: But if this was not found to their Satisfaction, they were to acquit them.

Here *Coke* objected, That the Noſe could not be ſaid to be ſlit, within the Meaning of the Statute, becauſe the Edge of it was not cut through.

The Chief Juſtice anſwered, It was true, the Edge of the Noſe was not ſlit; but the Cut was croſs the Noſe, which ſeparated the Fleſh of the Noſe, and cut it quite through into the Noſtril; which he took to be a Slitting the Noſe within the Meaning of the Act.

The Priſoners convicted.

The Jury being withdrawn about half an Hour, brought the Priſoners in GUILTY. And the Priſoners were called to receive Sentence on the 14th of *March*: When *Coke* inſiſted, in Arreſt of Judgment, That it was a very penal Statute they were indicted upon, and ought not to be carried beyond the expreſs Letter of it: That all the Circumſtances deſcribed in the Statute, muſt concur, to conſtitute the Crime: And here the Intention to maim and diſfigure, was not proved: Nor was it any Objection, to ſay, That the Crime which was proved, was much worſe than that which was deſcribed by the Statute; for if it was worſe, it could not be the ſame.

The Chief Juſtice anſwered, He did agree, that if any of the Circumſtances preſcribed by the Statute were wanting, then his Caſe was out of the Statute: But whether all the Circumſtances required by the Statute, did not concur in this Caſe, was a Matter of Fact, which the

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Jury, who were proper Judges of it, had tried, and found them all to concur.

Then he claimed the Benefit of the Pardon, offered in the *Gazette*, to any one that ſhould diſcover the Aſſaſſins: But was told, Such a Promiſe could not be pleaded in Arreſt of Judgment, if he was entitled to the Benefit of it; and thereupon Sentence of Death was pronounced; and they were both executed at *St. Edmondsbury*, on *Saturday* the 31ſt of *March*, 1722. *and executed.*

1721. 8 Geo. I.

1722. 9 Geo. I.

Layer's *Trial.*

The Trial of CHRISTOPHER LAYER Eſq; for *High-Treaſon*, at the *King's-Bench* Bar, in *Michaelmas*-Term, 1722. 9 *Geo.* I.

1722. 9 Geo. I.

The Indictment.

THE Indictment was found by an *Eſſex* Grand Jury, and charged the ſaid *Chriſtopher Layer* with High Treaſon, in compaſſing and imagining the Death of the King: And the Overt-Acts laid to prove the ſaid Treaſon, were, 1. That the ſaid *Chriſtopher Layer*, with divers other falſe Traitors, did, on the 25th of *Auguſt*, in the ninth Year of the King; and at divers other Times before and after, at *Layton-Stone*, in the ſaid County of *Eſſex*, conſult and agree to raiſe a Rebellion, and levy War againſt the King. 2. That he did publiſh, at the Time and Place aforeſaid, a certain treaſonable Libel; purporting, among other Things, a Promiſe of Rewards to his Majeſty's Subjects, to incite them to riſe in Arms againſt the King. 3. That he conſulted and agreed to depoſe his Majeſty, and place the Pretender on the Throne. 4. That he liſted Soldiers for the Pretender. 5. And, laſtly, That he conſulted and agreed with the ſaid other falſe Traitors, to ſeize and impriſon the King.

Lynch's *Evidence.*

The principal Witneſs againſt Mr. *Layer* was Mr. *Stephen Lynch*, who had ſerved in the Army abroad: He teſtified, That he came over from *Flanders* in *April* laſt; and was introduced to Mr. *Layer* in *June*, as a Perſon fit to be entruſted in a daring and hazardous Enterprize: And Mr. *Layer* expreſſing an entire Satisfaction in him, propoſed to him the engaging in an Inſurrection in Favour of the Pretender; and told him, that ſeveral of the Army and the Guards, and ſome Noblemen and Gentlemen, would back and ſupport them in it: That he alſo propoſed to the Witneſs the commanding a Party, to ſeize the Lord *Cadogan* the General: And depoſed, that they actually went together, to view the Avenues to the Lord *Cadogan*'s Houſe: And that the Priſoner aſſured the Witneſs, there was a great Man who did not want Courage, Wit, or Reſolution, that would have the Direction of the Enterprize, and give him his Orders at a proper Time: And that he would preſent him (the Witneſs) to that great Man: That he had ſeveral Meetings with the Priſoner at his Lodgings in *Chancery-Lane*, and at the Taverns thereabouts; and their Converſation conſtantly ran upon the Feaſibleneſs of bringing about another Revolution; and on the general Diſaffection of the People: That the Witneſs expreſſing his Uneaſineſs, that the Affair was delayed ſo long; and intimating, that he ſhould be obliged to go beyond Sea again for Want of Money, the Priſoner, gave him at ſeveral Times, eight or ten Guineas; and informed him, they intended to begin the Inſurrrection at the breaking up of the Camp in *Hyde-Park*: And that the *Tower* would be ſeized, and put into their Hands by an Officer of the Guards, who had contrived to mount that Guard at the Time of the Inſurrection, on Purpoſe to facilitate the Attempt: That he met the Priſoner afterwards at a Tavern, with a Perſon he took to be a Serjeant of the Guards by his Habit; and they all drank Succeſs to the Enterprize.

Lynch further teſtified, That on the Day the Biſhop of *Rocheſter* was apprehended, the Priſoner asked him to ride out with him to take the Air, and accordingly they rode out together, about Eleven o'Clock the next Day, through *Whitechapel* into *Eſſex*, and upon the Road the Priſoner ſaid, they would go to the Lord *North and Grey*'s, to whom he would recommend the Witneſs as his Friend; but coming to the *Green Man* at *Layton-Stone*, he ſaid they had better dine there, becauſe Dinner would be over before they could get to my Lord *North and Grey*'s; and while a Beef-Steak was getting ready, they diſcourſed of the Uneaſineſs of the Nation, of the Inclination of the People to another Revolution, and how to bring it about; and the Priſoner ſhewed him the latter Part of a written Paper, wherein the People were incited to riſe, and ſhake off the Oppreſſions they ſuffered under the preſent Adminiſtration; and three Guineas were offered to every Horſeman and Serjeant, two Guineas to every Corporal, and one Guinea to every private Soldier in the Army, to invite them to revolt, with Promiſes of Preferment; and the Earl of *Cadogan* was mentioned as in Cuſtody, to induce People to join them: That the Priſoner talked of the Declaration as of his own Compoſing, and he believed it was his Writing; but there were ſeveral Interlineations, and ſeveral Words daſhed: And the Priſoner ſaid, He wiſhed Matters might be ordered ſo, that the Witneſs might have the ſeizing of ſome Miniſters of State, mentioning the Lords *Townſhend* and *Carteret*, and Mr. *Walpole*; and added, When the Deſign was put in Execution the Army would declare in their Favour, and they would ſend a ſtrong Guard to ſecure the King from any Inſult.—That when the Witneſs ſhewed his Uneaſineſs at the Delay, the Priſoner ſaid, if he could propoſe any Thing more proper, he ſhould do it: That having ſtaid near an Hour at the *Green Man*, they rode to the Lord *North and Grey*'s, where the Priſoner introduced him to his Lordſhip as his Friend: They lay there, and came away after Dinner the next Day; and Mr. *Layer* told

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told the Witneſs, that he had recommended him to his Lordſhip as his particular Friend.——That he went afterwards to the Lord *North and Grey*'s, where he met Mr. *Layer*, and telling him, he was afraid their Hopes were defeated, he bid him not be uneaſy, but prepare to execute the Deſign at the breaking up of the Camp; and at another Time ſaid, Rather than all ſhould fail, he would riſe, and be a ſecond *Maſſinello*.

Plunkett's *Evidence.*

Matthew Plunkett, an old Serjeant of the Guards, teſtified, That Mr. *Layer*, the Priſoner, gave him Money to liſt Men for the Pretender, and that he told him he had twenty-five Men ready to ſerve him; and actually brought one *Child* to Mr. *Layer*, who gave the Witneſs half a Guinea to give *Child* to be a Pretender's Man, to whom Mr. *Layer* gave the Title of King.——That Mr. *Layer*, in Diſcourſe with him (the Witneſs) aſked him, if he knew any Serjeants of the Guards, and ſaid, he wanted ſuch old Soldiers as he was, to diſcipline the Mob; told him the Nation was enſlaved, and the Soldiers had great Injuſtice done them, having unexperienced Men put over their Heads, though they had ſerved abroad. And when the Witneſs aſked who promoted the Inſurrection, the Priſoner mentioned Lord *North* and *Grey*, Lord *Strafford*, General *Primroſe*, and General *Webb*; and ſaid, thoſe who did their King and Country Service on this Occaſion, would be for ever taken care of, and preferred; and added, that there were *Dutch* Forces brought in to take away their Rights and Liberties; they muſt keep a *Dutch* Army, to make War upon themſelves.

Layer's *Papers produced in Evidence againſt him.*

Then a Parcel of Papers was produced in Court, which one Mrs. *Maſon* teſtified the Priſoner left with her, to be kept carefully, and were ſeized by the Meſſengers in her Lodgings; among which one was read, which the King's Counſel denominated, *The Scheme for the Inſurrection*, being of the following Tenor, *(viz)*.

1. Let the General and only one Officer of Note in the Camp agree upon a Day of Execution.

2. Let the Officer that Day put himſelf on the *Tower Guard*.

3. As there are eight Serjeants, (*viz.*) three of the firſt Regiment of Foot-Guards, three of the Second, and two of the Third, all ready to obey Orders: early that Morn, let the Officer ſee a ſingle Perſon, namely *George Wilſon*, who manages theſe Serjeants, and give him Directions to bring them all to ſome convenient Place, at Four in the Afternoon.

4. Then the Officer muſt give each Serjeant Money ſufficient for the Purpoſe, and direct 'em, that each Serjeant order twenty-five Men (making together two hundred, which they have ready) to go ſingly out of the Camp, and meet together at —— Church-Yard, exactly half an Hour paſt Eight in the Evening; when and where another Officer, that they know, muſt meet 'em, and take the Command; give 'em Muſkets ready loaded, and march with them in a Body to the *Tower*-Gate, at Nine that Night exactly.

5. Our Friend, the Officer within, muſt, preciſely at that Hour of Nine, be on the Guard at the *Tower*-Gate; and ſeeing this Body of Men appear, order the Garriſon to let 'em in, as a Recruit ſent to the *Tower-Guard*.

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6. As ſoon as ever they have entered to ſeize the Arms at the *Tower*-Gate, ſhut the Gate up, and ſecure every one in the *Tower* that the Officer on Guard gives them Orders to ſecure; but not ſhed any Blood.

7. The *Tower* being thus ſeized, to leave only a ſmall Guard there, under that Officer who lets 'em in; and then, with all thoſe that join you, march directly to the *Exchange*, where the great Doors muſt be ready opened, and the General there in Perſon.

8. At the exact Hour of Nine, that the *Tower* ſhall be thus ſeized, the Perſons of ſome great Men to be arreſted at their Houſes, brought directly into the City, and delivered to the General.

9. That upon our Meeting at the *Exchange*, the annexed Proclamation to be ſpread about; the Gates of the City to be ſhut up, and Pieces of Cannon brought down againſt 'em; but every Man that deſires to enter the Gates, before any regular Force appear, to be admitted to come in; and after the General has appointed a Guard at each Gate and Inlet of the City, with proper Officers to command there, let him march back to *Tower-Hill* for a Place of general Rendezvous, under the Cannon of the *Tower*, and order the Lord Mayor a good Guard to watch over the Bank; but firſt take Money from thence to the *Tower*, in order to pay the Men.

10. The Artillery in the Camp to be ſeized.

11. The King to be ſecured, and ſent to the *Tower*.

12. Horſe Officers, their Friends in the Camp, to march into the City.

13---18. Four Half-pay Captains to command each a Party; one in *Southwark*, the Second in the *Privy-Garden*, the Third in *St. James's Park*, and the Fourth in *Tothill-Fields*.

19. A Captain to lead the Watermen.

20. Orders to be ſent to their Adherents in the Country to riſe.

21. An Officer to go to *Richmond* to ſeize Prince *Pretty-Man*.

Then one of the Pretender's Receipts was read, which was found among the ſaid Papers, and ſaid to be uſed for taking up Money for this Enterprize, being as follows:

I Acknowledge to have received from the Sum of which Sum I promiſe to repay, with an Intereſt for it, at the Rate of per Ann.

JAMES *R.*

Mr. Stanyan's *Evidence.*

Mr. *Stanyan*, one of the Clerks of the Council, teſtified, That when the Lords of the Council aſked Mr. *Layer* the Meaning of theſe Receipts ſigned by the Pretender, and what Uſe he made of them; he ſaid, that during the Time he was at *Rome*, he had ſettled a Correſpondence with Sir *William Ellys*, according to the Directions he gave him; and he told him, if he could ſend any Receipts, ſigned by his Majeſty, or the King, as he called him, he thought Money might be raiſed upon them for carrying on the Cauſe.

Mr. Delafaye's *Evidence.*

Mr. *Delafaye* teſtified, That Mr. *Layer* confeſſed before the Council, that he received ſuch Receipts from Sir *William Ellys*, and that he intended to have tried his Friends, and to have raiſed

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raiſed Money on thoſe Receipts; and that they had a Precedent for it a little before the Reſtoration, when ſuch Receipts were given by King *Charles* II.

Letters, &c. read in Evidence.

Then ſeveral Letters that paſſed between Sir *William Ellys* and Mr. *Layer*, found in the ſame Parcel, were read; whereby it appeared there was a Correſpondence between Mr. *Layer* and the Pretender's Court at *Rome*; and in one of them a Deſign of engaging ſome Soldiers of the Army in their Intereſt is mentioned, if the Letters that were written in Cypher were rightly interpreted.

Then ſome Liſts were read of the Officers of the Guards, and the Number of Men and Horſes under their Command, and Liſts of the Officers in the *Tower*.

Further Evidence of the Priſoner's Confeſſion.

After which Mr. *Stanyan* teſtified further, That Mr. *Layer* confeſſed before the Council, that he went with Mr. *Lynch* to the Lord *North and Grey*'s; and that they dined at the *Green-Man* at *Layton-ſtone* as they went: That he recommended *Lynch* to the Lord *North and Grey*, as a proper Perſon to be employed in the Inſurrection; and that, *Lynch* having told *Layer* before, that he would ſeize Lord *Cadogan*, *Layer* mentioned *Lynch* to his Lordſhip, as a proper Perſon for ſuch an Undertaking; and that they drank at the Lord *North and Grey*'s the Healths of the Pretender, his Wife, and the young Prince.

Mr. *Stanyan* and Mr. *Delafaye* alſo teſtified, That Mr. *Layer* confeſſed before the Council, That he had been at *Rome*; that he had had two Conferences with the Pretender; that he had acquainted him with the Diſaffection of the Nation, on Account of the Loſſes that had been ſuſtained by the *South-Sea*. He ſaid, in general, the Nation was well-affected towards him; and that he knew Perſons of Eſtate, not Quality, that were in his Intereſt. Then he propoſed to have Credentials, or Tokens, of the Pretender's Regard to him; which was not granted him. Then he deſired the Pretender's Spouſe ſhould ſtand Godmother to his Child: The Pretender ſaid, he would conſider of it; and Colonel *Hay* brought Mr. *Layer* Word that ſhe conſented; and it was agreed, the Dutcheſs of *Ormonde* ſhould repreſent her. And *Layer* deſired to know who was to be the Godfather: To which it was anſwered, the King himſelf, meaning the Pretender. *Layer* then deſired to know who ſhould repreſent him; and it was ſaid, *Layer* would find one, when he came to *England* proper for the Purpoſe. That when he came to *England*, he went to Mr. *Thompſon*, to adviſe with him about it, who went to my Lord *Orrery*, to deſire him to ſtand as Proxy for the Pretender: My Lord *Orrery* declined it; then he went to my Lord *North and Grey*, who accepted it. The Child was chriſtened at *Chelſea*; my Lord *North and Grey* ſtood for the Pretender, and the Dutcheſs of *Ormonde* for the Pretender's Wife.

That Mr. *Layer* alſo confeſſed before the Council, that he recommended Mr. *Lynch* to the Lord *North and Grey*, as a proper Perſon to ſeize the Lord *Cadogan*.

Mr. *Stanyan* added, That when Mr. *Layer* was ſeized, they found in his Bed-chamber two Pair of Piſtols, two Carbines and two Blunderbuſſes, forty or fifty Cartridges, Moulds for making of Bullets, and three or four Swords.

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The Priſoner's Defence by his Counſel.

In the Priſoner's Defence his Counſel inſiſted, That there ought to have been two Witneſſes to prove the Overt-Act that was laid in the County of *Eſſex*, (*viz.*) The Publiſhing the Declaration at the *Green Man*; and that the giving *Lynch* a Piece of Paper to read, could not be deemed the publiſhing a Declaration, or a treaſonable Act.

Then they inſiſted on the Improbability of the Priſoner's entering into a treaſonable Converſation with *Lynch* and *Plunkett*, with whom he had little or no Acquaintance.——They obſerved alſo, That the Scheme itſelf ſeemed rather a chimerical Plan of ſome crazy Politicians, than a Project of Men of Senſe: That there was no Forces raiſed to put this Project in Execution, or any Sums advanced by *Layer*, or any other Perſon, proportionable to the carrying on ſuch a Deſign: That the Papers produced againſt him were none of his Hand; and the Arms found in his Houſe-writing were no more than any Gentleman might keep, for the Defence of his Family, or his Recreations; and his being at *Rome* with the Pretender, though that was made High-Treaſon, was no Evidence of the Treaſon laid in the Indictment.

Witneſſes againſt the Credit of the King's Witneſſes.

Then the Defendant called his Witneſſes, who teſtified that Mr. *Lynch* was a Perſon of very indifferent Reputation; and ſeveral of them ſaid he had a vile infamous Character.

Abundance of Witneſſes gave *Plunkett* the like Character.

Other Witneſſes depoſed, That Mrs. *Maſon*, who pretended to have the Cuſtody of the Priſoner's Papers, was a lewd Woman, a Thief, and a Cheat, and had been in *Bridewell*; from whence the Priſoner inferred, that none of them deſerved any Credit.

Reply of the King's Counſel.

The King's Counſel, in their Reply to the Priſoner, inſiſted, that one Witneſs of one Overt-Act in the County where the Indictment was laid, and another Witneſs of another Overt-Act, of the ſame Species of Treaſon, in another County, were ſufficient to convict him: That the Paper the Priſoner communicated to *Lynch* was certainly a treaſonable Paper, and his ſhewing it to him at the *Green Man*, was a ſufficient Publication; and that there was a treaſonable Conference alſo proved between the Priſoner and *Lynch* at the *Green-Man*; which was another Overt-Act of the Treaſon in *Eſſex*.

That as to the Improbability of his talking Treaſon with *Lynch*, or *Plunkett*, on ſo ſhort an Acquaintance; it was evident, he had been very familiar with them: And where a Fact was poſitively ſworn, Improbabilities were of little Weight; they were only conſidered where a Matter was doubtful.

That though the Scheme had been repreſented as ridiculous and improbable; if the ſeveral Articles were compared together, they would be found conſiſtent: Every Quarter of the Town was provided for, Diſpoſitions made of certain Numbers of Men, and Care taken to preſerve their Commmunication; and it was framed by the Conſpirators, upon the Computation of a Force, of which they thought themſelves aſſured. It was plain they had a Dependance, however ill-founded, upon the Diſcontents raiſed in the

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the Minds of the People, and on corrupting great Numbers in the Army, and had Hopes of receiving foreign Aſſiſtance: That the Priſoner had called ſcarce any Witneſs to contradict the Facts proved by the King's Evidence, but only to the Character and Credit of the Witneſſes; and it was not to be expected that Conſpiracies of this kind ſhould be proved by Perſons of the beſt Characters; and to ſay that ſuch Witneſſes are not to be believed, was in Effect to ſay, that no Evidence of a Plot was to be believed: But whatever their Characters were, their Evidence was abundantly confirmed by the Priſoner's Witneſſes themſelves, and by his own Papers, found in *Maſon*'s Cuſtody; and laſtly, by the Priſoner's own Confeſſion before the Council.

After which, the King's Counſel produced Witneſſes, to ſupport the Teſtimony of thoſe who had given Evidence againſt the Priſoner, and to clear up their Characters.

The Chief Juſtice's Directions to the Jury.

The Chief Juſtice, in his Directions to the Jury, informed them, that the Points of Law were as the King's Counſel had ſtated them, and appeared entirely ſatisfied with the Evidence: Whereupon the Jury, after a Receſs of half an Hour, brought the Priſoner in GUILTY.

The Priſoner convicted.

The Priſoner afterwards moved in Arreſt of Judgment, that there was no Overt-Act of Treaſon found in *Eſſex*; but the whole Bench were of Opinion, that the conſulting and agreeing to levy War, which was one of the Facts proved at the *Green Man*, was an Overt-Act of compaſſing the King's Death.

Exceptions in Arreſt of Judgment.

Then the Priſoner's Counſel objected, That the treaſonable Words in the Declaration ought to have been recited in the Indictment; and cited the Opinion of all the Judges for it in Dr. *Sacheverell*'s Caſe: But the Court anſwered, it was ſufficient to ſet forth the Subſtance, as had been ruled in *Francia*'s Caſe; and Mr Juſtice *Eyre* ſaid, It was indeed the Opinion of the Judges, at Dr. *Sacheverell*'s Trial, that the particular Words ſuppoſed to be criminal, ought to be expreſsly ſpecified in every Indictment; and I can't forbear ſaying, That it was a great Surprize to *Weſtminſter-Hall*, and particularly to thoſe who attended this Court; for we had learned from my Lord Chief Juſtice *Holt*, that a Libel might be deſcribed either by the Senſe and Subſtance, or by the particular Words; and that an Indictment, or Information, in either of theſe Forms, would be good. In the Books of Entries you will find ſeveral Inſtances where Slanders and Perjuries are charged in *Latin* as falſe and ſcandalous Aſſertions, and not in the Words ſpoke. In *Stayley*'s Caſe, who was indicted for treaſonable Words, it was charged in the Indictment, that ſpeaking of the King, he had traitorouſly declared, *Quod ipſe predictus* Stayley *ipſum Dominum Regem interficeret:* And the Fact was, that *Stayley* in Converſation had ſpoke Words to this Effect in *French*, and this was thought ſufficient to convict him of High-Treaſon; and yet the particular Words ſuppoſed and adjudged to be Criminal, were not ſpecified in the Indictment; and I don't find that the ſpecifying the particular Words was ever held to be neceſſary, till this ſudden Opinion was given; and therefore I can't hear it urged as an Authority, without offering my Reaſons to the contrary.

Reſolved, That the obnoxious Words need not be laid in the Indictment.

The following Caſe alſo was put by Serjeant *Pengelly*, *viz.* ſuppoſe a Man ſhould proclaim the Pretender at *Charing-Croſs*, and read his Declaration, exciting the People to revolt; and this Declaration ſhould be carried off, ſo that it could not be recovered, and produced in Evidence, might not that Perſon be indicted for High-Treaſon, without ſetting forth the particular Words he read out of the Declaration?

To which the Priſoner's Counſel anſwered, He might: So that this grand Point of ſpecifying the very obnoxious Words in an Indictment was entirely given up at this Trial, and Sentence was paſſed on the Priſoner as a Traitor; but he was reprieved from Time to Time, till the 16th of *May*, 1723, and then executed at *Tyburn*, his Head ſet upon *Temple-Bar*, but his Body ſuffered to be interred by his Friends.

Sentence paſſed on the Priſoner. Reprived for half a Year, and then executed.

1722. 9 Geo. I.

1723. 9 Geo. I.

Biſhop of Rocheſter's Attainder.

The Attainder of FRANCIS Lord Biſhop of *Rocheſter*, JOHN PLUNKETT, and GEORGE KELLY, *for a Treaſonable Conſpiracy*, in the Month of *May*, 1723. 9 *Geo.* I.

1723. 9 Geo. I.

IT being much too ſoon to make juſt Obſervations on theſe Attainders, I ſhall only take Notice, that ſome great Men having conceived an Opinion, that the Biſhop of *Rocheſter*, Mr. *Plunket*, and Mr. *Kelly*, were concerned with Mr. *Layer* in the Plot to bring in the Pretender; and finding that *Layer* would not become an Evidence againſt them, though he had been reprieved from Time to Time, for ſeveral Months, in Expectation of it, and they had no other *legal* Evidence againſt them, an Act of Parliament was paſſed on purpoſe to attaint them: Yet the Miniſtry, it ſeems, had ſo much Tenderneſs for the Biſhop, in regard of his high Station in the Church, and his inviolable Attachment to the *Hanover* Succeſſion, that they did not think fit to take the Forfeit of his Head, but were content to deprive him of his Preferments, and baniſh him: And *Plunkett* and *Kelly* being in the like Circumſtances, their Lives alſo were ſpared; and they were only doomed to perpetual Impriſonment.

1723. 9 Geo. I.

Preamble of the Act of Attainder.

The Preamble of the Act againſt the Biſhop of *Rocheſter*, is as follows:

Whereas in the Years 1721 and 1722, a deteſtable and horrid Conſpiracy was formed, and carried on by divers Traitors, for invading your Majeſty's Kingdoms with Foreign Forces; for raiſing an Inſurrection and Rebellion againſt your Majeſty; for ſeizing the *Tower* and City of *London*; and for laying violent Hands upon your Majeſty's moſt Sacred Perſon, and upon his Royal Highneſs the Prince of *Wales*, in order to ſubvert our preſent happy Eſtabliſhment in Church and State, by placing a Popiſh Pretender on your Throne: And whereas, for the better concealing and effecting the ſaid Conſpiracy, divers treaſonable Correſpondences were, within the Time aforeſaid, carried on by Letters written in Cyphers, cant Words, and fictitious Names; which Conſpiracy, had it not been diſappointed by the Goodneſs of Almighty God, would have deprived your Majeſty's Kingdoms of the Enjoyment of their Religion, Laws, and Liberties, involved them in Blood and Ruin, and ſubjected your People to the Bondage and Oppreſſion of *Romiſh* Superſtition and Arbitrary Power: For which execrable Treaſon *Chriſtopher Layer* hath been indicted, tried, convicted, and attainted: And whereas *Francis* Lord Biſhop of *Rocheſter*, notwithſtanding the many ſolemn Aſſurances by him given of his Faith and Allegiance to your Majeſty, by taking the Oaths by Law appointed to be taken, inſtead of the Oaths of Allegiance and Supremacy; which Oaths he had likewiſe taken at ſundry Times, during the reſpective Reigns of their late Majeſties King *William* and Queen *Mary*, and of her late Majeſty Queen *Anne*; and notwithſtanding he had frequently abjured the Pretender, hath in direct Violation of his ſaid repeated Oaths and Obligations, and to the great Scandal of Religion and his holy Function, been deeply concerned in forming, directing, and carrying on the ſaid wicked and deteſtable Conſpiracy, and hath been a principal Actor therein, by traitorouſly conſulting and correſponding with divers Perſons to raiſe an Inſurrection and Rebellion againſt your Majeſty within this Kingdom, and to procure a Foreign Force to invade the ſame, in order to depoſe your Majeſty, and place the Pretender on your Throne; and by traitorouſly correſponding with the ſaid Pretender, and Perſons employed by him, knowing them to be ſo employed: Therefore, to manifeſt our juſt Abhorrence of ſo wicked and abominable a Conſpiracy, and our Zeal and tender Regard for the Preſervation of your Majeſty's Perſon and Government, and of the Proteſtant Succeſſion in your Majeſty's Royal Family, the ſolid Foundations of our preſent Happineſs and future Hopes; and *to the End no Conſpirator may by any ſubtil Contrivance or Practice whatſoever eſcape Puniſhment*; and that all others, may by the Juſtice of Parliament, be for ever hereafter deterred from engaging in any traitorous Conſpiracies or Attempts;

1723. 9 Geo. I.

Of what Uſe is the Act for regulating Trials in Caſes of Treaſon, which requires two Witneſſes?

It is enacted, That *Francis* Lord Biſhop of *Rocheſter*, from and after the firſt Day of *June*, 1723, ſhall be deprived of all his Offices, Dignities, Promotions, and Benefices Eccleſiaſtical, as if he was naturally dead, and be diſabled to enjoy any Office, Dignity, Promotion, Benefice, or Employment whatſoever, and ſhall be for ever baniſhed his Majeſty's Dominions: And, if he be found in them after the 25th of *June*, 1723, he ſhall be adjudged guilty of Felony without Benefit of Clergy; as ſhall all Perſons who harbour or conceal him here.

All Perſons correſponding with the Biſhop without Licenſe, are alſo made guilty of Felony, without Benefit of Clergy.

And it was enacted by another Statute, That *John Plunket* ſhould be committed to ſome Jail, or Priſon, by one of the Secretaries of State, and there remain during his Majeſty's Pleaſure.

An Act of the like Tenor paſſed againſt *George Kelly*.

The Biſhop died in *France* 22 *Feb.* 1731-2; *Kelly* made his Eſcape out of the *Tower* *October* 25. 1736; and *Plunkett* ſtill remains a Priſoner there.

The

1734-4. 10 Geo. I. Arnold's *Trial.*

The Trial of EDWARD ARNOLD, *for Felony, in Shooting at and Wounding Thomas* Lord *Onſlow*, at the Aſſizes held at *Kingſton* for the County of *Surry*, on the 20th of *March*, 1723-4. 10 *George* I.

1723-4. 10 Geo. I.

The Indictment.

THE Indictment was founded on the Statute of 9 *Geo.* I. *cap.* 22. called *The Black Act*, and charges, that the Priſoner, *Edward Arnold*, of the Pariſh of *St. Nicholas* in *Guilford*, in the County of *Surry*, on the 28th of *Auguſt*, in the 10th Year of the King, at the Pariſh of *St. Nicholas* aforeſaid, made an Aſſault on *Thomas* Lord *Onſlow*, and felonioufly, and of his Malice aforethought, diſcharged a Gun at the ſaid Lord *Onſlow*, loaden with Shot, giving him thereby one grievous Wound in the Left Shoulder, of the Breadth of ſix Inches, and of the Depth of two Inches; againſt the King's Peace, and the Form of the Statute in that Caſe made and provided.

The Caſe.

The Caſe was this: The Lord *Onſlow*, and ſome other Gentlemen, returning from a Fox Chaſe, through a narrow Lane, within half a Mile of *Guilford*, on the 28th of *Auguſt*, met the Priſoner with a Gun cocked in his Hand, as if he was about to ſhoot flying; and one of the Gentlemen demanding of him, why he held his Piece cocked in that Manner, he made no Anſwer, but ſullenly paſſing by his Lordſhip a few Yards, turned about on a ſudden, and ſhot him in the Shoulder; whereupon he dropped from his Horſe, and the Priſoner walked leiſurely away; but was followed, and taken by ſome of the Company.

The Fact confeſſed.

The Fact was manifeſtly proved; and indeed, neither the Priſoner, or his Friends, denied it:

The Defence.

All that his Friends inſiſted upon was, 1. That the Priſoner was a Lunatick, and out of his Senſes at certain Times. 2. That, if he was in his Senſes, it was not Felony, becauſe his Lordſhip recovered, and was not killed; and the Priſoner was not diſguiſed, as the *Black Act* mentions.

The Priſoner made no Defence himſelf; but gave ſuch Anſwers at his Trial as might be expected from a Madman; and his Relations produced a Multitude of Witneſſes to prove, that both his Words and Actions were at ſome Times very extravagant: But it appeared, that his Friends never thought him ſo diſordered in his Senſes as to reſtrain him of his Liberty, or to put him into the Hands of a Phyſician; or indeed, to take any of thoſe Methods of Cure as are uſually taken with Madmen, though they were People of good Subſtance, and very well able to have paid a Phyſician, if they had really believed him mad: And it was obſerved that he had never done any Miſchief before.

He ſeems to have been one of thoſe Creatures that are between a Madman and a Fool, and capable of being worked up to any Miſchief by others; and had he had any Tincture of Religion, he would have been called an Enthuſiaſt, or Religious Madman.

It was evident, from ſeveral of his Speeches, that ſome People he converſed with about the Time of the preceding Election for the County of *Surry*, had repreſented my Lord *Onſlow* as an Enemy to his Country, and the Occaſion of ſome Mal-Adminiſtration in the Government; and that he believed he ſhould do his Country good Service in deſtroying this Noble Lord; and thereupon formed a Deſign to aſſaſſinate him, endeavouring to have put it in Practice in the Manner above related.

Some Obſervations of his Counſel.

Mr. *Hungerford* inſiſted in the Priſoner's Defence, That admitting he committed the Fact, and was in his Senſes, he could not be guilty of Felony withing the *Black Act*, becauſe he was not in a *Diſguiſe*; for this was to be applied to every Fact mentioned in this Statute to make it Felony. If ſhooting at a Perſon without a Diſguiſe, would make a Man guilty of Felony, then, if two Men fought a Duel, and diſcharged their Piſtols at each other, they would both be guilty of Felony, though neither of them were killed.

That the Title of the Act was, *For the more effectual puniſhing wicked and evil-diſpoſed Perſons going armed in* DISGUISE, *and doing Injuries and Violences to the Perſons and Properties of his Majeſty's Subjects*: And the Preamble of the Act only mentioned the Miſchiefs done by ſuch People in DISGUISE. The Proclamation alſo, for putting the Act in Execution, ſuppoſes ſuch Perſons to be in *Diſguiſe*, to bring them within the Penalty of the Act.

The Opinion of the Court on the Black Act.

To this Mr. Juſtice *Tracy*, who tried the Cauſe, anſwered, Becauſe he knew this Cauſe would come before him, he had a Meeting with his Brethren, to have their Opinion in Relation to this Clauſe in the Act; *viz.* The making it Felony *maliciouſly to ſhoot at any Perſon in any Dwelling-Houſe, or other Place*; and every Judge was of Opinion, this was an entire Clauſe of itſelf, and it had no Relation to the former Clauſe, of being in Diſguiſe; and that he himſelf was of the ſame Opinion before, and was in no manner of Doubt concerning it, and only asked the Opinion of his Brethren for the Satisfaction of other People: Adding, that it was certain the Circumſtance of a Diſguiſe did not extend to the next Clauſe; *viz. The ſending threatening Letters without a Name*, and conſequently the Circumſtance of a *Diſguiſe* did not extend to every Offence mentioned in the Act.

Judge Tracy's Directions to the Jury.

Mr. Juſtice *Tracy*, in his Directions to the Jury, alſo ſaid, That the Act on which the Indictment was founded, was conformable to the antient Law, where, if a Man aſſaulted another, (*with an Intent to kill him, as this Caſe was, I preſume, he means*) though Death did not enſue, it was Felony, and concluded his Directions in this Manner:

Whether

1723-4. 10 Geo. I.

Whether the Priſoner's ſhooting at the Lord *Onſlow* was malicious, depends upon the Sanity of the Man: That he ſhot, and that willfully, is admitted; but whether maliciouſly is the Queſtion; Whether he had the right Uſe of his Reaſon and Senſe? If he was under the Viſitation of God, and could not diſtinguiſh between Good and Evil, and did not know what he did, though he committed the greateſt Offence, yet he could not be guilty of any Offence againſt any Law whatſoever; for Guilt ariſes from the Mind, and the wicked Will and Intention of the Man. If a Man be deprived of his Reaſon, and conſequently of his Intention, he cannot be guilty; and if that be the Caſe, though he had actually killed my Lord *Onſlow*, he is exempted from Puniſhment. Puniſhment is intended for Example, and to deter other Perſons from wicked Deſigns; but the Puniſhment of a Madman, a Perſon that hath no Deſign, can have no Example. This is on one Side: On the other Side we muſt be very cautious: It is not every frantick and idle Humour of a Man, that will exempt him from Juſtice, and the Puniſhment of the Law. When a Man is guilty of a great Offence, it muſt be very plain and clear, before a Man is allowed ſuch an Exemption: Therefore it is not every Kind of frantick Humour, or ſomething unaccountable in a Man's Actions, that points him out to be ſuch a Madman as is to be exempted from Puniſhment: It muſt be a Man that is totally deprived of his Underſtanding and Memory, and doth not know what he is doing, no more than an Infant, than a Brute, or a wild Beaſt; ſuch a one is never the Object of Puniſhment: Therefore I muſt leave it to your Conſideration, Whether the Condition this Man was in, as it is repreſented to you on one Side, or the other, doth ſhew a Man, who knew what he was doing, and was able to diſtinguiſh, whether he was doing Good or Evil, and underſtood what he did? And, it is to be obſerved, they admit he was a Lunatick, and not an Idiot: A Man that is an Idiot, that is born ſo, never recovers: But a Lunatick may, and hath his Intervals; and they admit he was a Lunatick. You are to conſider what he was at this Day, when he committed this Fact: There you have a great many Circumſtances about the buying the Powder and the Shot; his going backward and forward: And if you believe he was ſenſible, and had the Uſe of his Reaſon, and underſtood what he did, then he is not within the Exemptions of the Law, but is as ſubject to Puniſhment as any other Perſon.

1723-4. 10 Geo. I.

Then the Jury withdrew; and after a very ſhort Receſs, brought the Priſoner in GUILTY; and he received Sentence of Death: But at the Interceſſion of the Lord *Onſlow*, he was reprieved from Time to Time; and I do not find he was ever executed.

The Priſoner convicted.

1725. 10 Geo. I.

Maccleſfield's *Trial.*

The Trial of THOMAS Earl of *Macclesfield*, late Lord Chancellor of *Great Britain*, for *High Crimes and Miſdemeanors, in the Execution of his Office*, before the Houſe of Peers, on the 6th of *May*. 1725. 10 *Geo.* I.

1725. 10 Geo. I.

Articles againſt him.

THE Articles preferred againſt this Nobleman, charged him with Corruption and Extortion, in taking of ſeveral of the Maſters in *Chancery* very great and exorbitant Sums of Money, for their Admiſſion into their reſpective Offices; particularly of *Richard Godfrey* Eſq; (who purchaſed the Place of a Maſter of Sir *Thomas Gery* for 5000 *l.*) 840 *l.* of *James Lightboun* Eſq; (who was admitted Maſter on the Death of *Samuel Browning*, Eſq;) 6000 *l.* of *John Borret*, Eſq; (who purchaſed his Place of *John Meller*, Eſq; for 9000 *l.*) 1575 *l.* of *Edward Conway*, Eſq; (who purchaſed his Place of *John Orlebar*, Eſq; for 6000 *l.*) 1500 *l.* of *William Kynaſton*, Eſq; (who purchaſed of *William Rogers*, Eſq; for 6000 *l.*) 1575 *l.* of *Thomas Bennet*, Eſq; (who purchaſed his Place of *John Hiccocks*, Eſq; for 7500 *l.*) 1575 *l.* of *Francis Elde*, Eſq; (who was admitted a Maſter on the Death of *William Fellows*, Eſq;) 5250 *l.* of *Mark Thurſton*, Eſq; who was admitted a Maſter on the Death of *John Borret*, Eſq; 5250 *l.*

They charge him alſo with admitting inſufficient Perſons to theſe Offices, Men of ſmall Subſtance and Abilities, and no ways fit to be entruſted with the great Sums and Effects lodged in their Hands: And that they were allowed to pay for their Places out of the Suitors Money, and to game and traffick with it: That *Fleetwood Dormer*, Eſq; embezzled great Part of the Effects of the Suitors in his Hands, and died 25,000 *l.* indebted to them; which was moſt of it loſt by the Connivance or Contrivance of the Earl, who uſed every Stratagem and Artifice he could deviſe, to prevent an Enquiry into the Deficiencies of the ſeveral Offices, leſt the Value of them ſhould be leſſened and run down: That he unjuſtly and arbitrarily compelled ſeveral of the Maſters to contribute to make good thoſe Deficiencies: That the Earl never required any Security of the Maſters for the Sums in their Hands; but indulged them in a boundleſs Liberty of abuſing their Truſt, as their Avarice or Ambition prompted them.

That his Majeſty having directed an Enquiry into the Accounts of the Maſters in *Chancery*, the Earl, by his Advice and Authority, perſuaded the Maſters to make falſe Repreſentations of their Accounts and Circumſtances to the Privy Council, and to aſſiſt each other with Caſh, to make a falſe Shew and Appearance of their Ability, that a parliamentary Enquiry might be prevented; and obliged them to declare in Writing, at the Foot of their Accounts, That they were willing and able to pay the Ballance, although the Earl knew they were not.

The

1725. 10 Geo. I.

The Commons alſo charge, That when upon *Dormer*'s Misfortunes (which were occaſioned by his trafficking with the Suitors Money, and lending it to Goldſmiths at ten *per Cent.*) it was propoſed to the Earl, to prevent the like Miſchief for the future, that the Maſters might give Security for the Money in their Hands; he would not hearken to it; for then he would have found none that would have given him 6000 *l.* for a vacant Place, or 1500 Guineas for an Admiſſion.

It was further charged, That he had declared from the Bench, that the Maſters were Men of as good Subſtance as ever filled thoſe Places; when it was commonly known, that one third of them had given as much, or more, for their Places and Admiſſions, than they were worth at the Time of the Purchaſe.

He is charged alſo with taking 100 Guineas of Mr. *Bennet*, for Leave to reſign the Office of Clerk of the Cuſtodies, in Order to obtain his Majeſty's Grant of that Office to *Hugh Hammerſley* Eſq; who had purchaſed it of Mr. *Bennet*.

The King's Bounty to the Earl.

And, as an Aggravation of his Crimes, it is charged, That he was guilty of theſe Extortions, after his Majeſty had been ſo bountiful as to beſtow on him 14,000 *l.* granted his Son *George Parker*, a Teller's Place in the *Exchequer*, for Life, worth 1500 *l. per Annum:* To the Earl himſelf a Penſion of 1200 *l. per Annum*; and alſo an Annuity of 4000 *l. per Annum*, beſides the Profits of the Chancellor's Office, which were very great: That, not ſatisfied with this large and ample Revenue, or regarding the Obligation of his Oath, or the Duty of his high and important Office; but entertaining wicked and corrupt Views, to procure an exceſſive and exorbitant Gain, by the aboveſaid unjuſt and oppreſſive Practices; he had illegally, corruptly, and extorſively, taken and received the ſaid Sums to his own private Uſe.

The Earl's Anſwer.

The Earl, in his Anſwer, acknowledged his Majeſty's Bounty to him, as ſet forth in the Articles, and the ſaid Sums for the Maſters Places, and for the Office of Clerk of the Cuſtodies: But ſaid, He received them as Preſents and Perquiſites of his Office: That the receiving them was not prohibited, either by the Common or Statute Law; and that his Predeceſſors had received the like Preſents on the like Occaſions: He denies he admitted inſufficient Perſons to the Offices of Maſters in *Chancery*; or that he allowed or knew of their paying for their Places, or trafficking with the Suitors Money: He denies alſo, that he knew of *Dormer*'s Deficiency, till it was publickly known; nor did he contribute to the Concealment of that Deficiency, or the Deficiencies of any other Maſters; but did all that lay in his Power to repair their Deficiencies: Nor had he uſed any arbitrary Methods, to compel the other Maſters to make good thoſe Deficiencies: That he did not, indeed, require Security of the Maſters, becauſe this had never been required by any former Chancellors: That he neither commanded, or perſuaded the Maſters, to make falſe Repreſentations of their Accounts, or Circumſtances; or to aſſiſt each other with Caſh, to make a falſe Shew of their Ability, to prevent a Parliamentary Enquiry: Nor did he declare, That the preſent Maſters were of as good Subſtance as ever filled thoſe Places. 1725. 10 Geo. I.

And the Earl does further ſay, That he is not guilty of all, or any of the Matters contained in the ſaid Articles, in Manner and Form as they are therein charged againſt him: And does alſo inſiſt on the Benefit of his Majeſty's Pardon, granted by Act of Parliament, in the ſeventh Year of his Reign, in Bar of the ſaid Impeachment; ſo far as the ſame extends to any Offence, or ſuppoſed Offence, committed by him, before the 24th of *July*, 1721: And inſiſts, that no Evidence ought to be given againſt him of any thing done before that Time: And doth aver, that he is not within any of the Exceptions in the ſaid Act contained.

Reply of the Commons.

The Commons replied to the Earl's Anſwer, and averred their Charge to be true; and that he was guilty, in ſuch Manner and Form as he ſtood impeached.

They prove their Charge.

The Managers, having opened the Charge and the Evidence, produced their Witneſſes; and abundantly proved, that the Sums paid by the Maſters to the Earl, were not Preſents, but extorted from them; and that they were moſt of them three Times as much as any former Chancellor had taken on the like Occaſion; and the leaſt Sum was twice as much as ever had been paid on an Admiſſion to the Poſt of Maſter: That he never called the Maſters to Account, as the former Chancellors, the Lords *Cowper* and *Harcourt*, had done: That he connived at the Maſters lending and trafficking with the Suitors Money: And that he practiſed with the Maſters to conceal the Deficiency of *Dormer*, and ſome other Maſters; and there appeared to be a Deficiency of about 100,000 *l.* of the Suitors Money in the whole.

They proved alſo, That he had broken his Oath of Office; and that the ſelling Offices relating to the Adminiſtration of Juſtice, was a Breach both of the Common and Statute Law: And what is a Demonſtration, that the Earl himſelf was conſcious that he had taken too much, is, that he returned two of the Maſters half their Money, when he found there was like to be an Enquiry made into it.

The Obſervations of the Managers on the Evidence.

The Managers of the Commons, in their Obſervations on the Evidence, ſaid, They had now produced a very full and convincing Evidence, in Maintenance of the Impeachment: And that *A wicked and corrupt View, to raiſe and procure to himſelf exceſſive and exorbitant Gain and Profit, was the fatal Principle from which all this Miſchief ſprung:* The gratifying this Avarice engaged his Lordſhip to neglect every other Conſideration; to overlook that Care he owed to the Suitors of the Court; and to admit Perſons of ſmall Abilities, and every Way unqualified for the Diſcharge of ſo great a Truſt: This obliged him to connive at, and permit, the fraudulent Practice of paying the exceſſive Price of their Places, out of the Money belonging to the Suitors of the Court; and that again forced him to ſuffer, or rather to encourage, the purchaſing Maſters, to traffick and game with the Eſtates of the Suitors: There was no other Way by which thoſe liberal Purchaſers could reimburſe themſelves: And when the fatal Effects of this unbounded Liberty, which he permitted the Maſters to enjoy, began to appear; then

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was he compelled to become a Confederate with the deficient Maſters, to prevent its being known to the World.

That they began their Evidence with the 9th Article; which related to his taking 100 Guineas of Mr. *Bennet*, for permitting him to reſign the Office of Clerk of the Cuſtodies to Mr. *Hammerſley*; becauſe this Fact diſcovered the Man, and fully explained what Manner of Mind he muſt be endowed with, who could ſtoop to an Action ſo low and ſordid.——It is difficult, (ſays the Manager) not to feel ſome Indignation riſe, at the bare relating this Meanneſs! Mean it would have been in any Man; but for a Peer of *Great Britain*, an Earl, Lord Chancellor of the Kingdom, and a Chancellor (*ſo obliged, and ſo dearly bought*) to proſtitute ſo many illuſtrious Characters, in ſo low a Manner as to become a Broker for the Hire of 100 Guineas, is aſtoniſhing! But, my Lords, when I conſider, that the Earl was, at the ſame Time, one of the Lords Juſtices of the Kingdom, in a Commiſſion to execute ſome of the Functions of Majeſty itſelf --- I want Words to expreſs ſuch a Tranſaction in its proper Colours.

In ſpeaking of the illegal Sale of ſeveral of the Offices of Maſters in *Chancery*, this Manager obſerved, *That the Money, inſtead of being voluntarily given, was unjuſtly extorted; and that, inſtead of being a Preſent, or uſual Perquiſite, it was an illegal and corrupt Bargain, and Sale of Offices relating to the Adminiſtration and Execution of Juſtice.*

The next Point he mentioned, was, the admitting Perſons to the Office of Maſters who were of mean Subſtance; and obſerved, that their being deficient at this Time was a violent Preſumption that they were of ſmall Subſtance at the Time of their Admiſſion: How elſe is it to be conceived (ſays he) that Maſters, who have been ſo ſhort a Time in their Offices, ſhould be ſo much in Arrear? *Kynaſton* was admitted but in *Auguſt*, 1721, and in 1724, there appears a Deficiency of 26,908 *l.* *Bennet* was admitted but in *June*, 1723, and in little more than a Year there is a Deficiency of 16,075 *l.* And it was remarkable that both theſe Maſters had ſworn, that all they were worth in the World was not ſufficient to pay the vaſt Prices they gave for their Offices: And yet theſe Men were choſen to be truſted, one with near 50,000 *l.* and the other with near 100,000 *l.* of the Money belonging to the Helpleſs and Miſerable; which made it evident *that the Sum the Chancellor himſelf was to receive, was the only Conſideration of admitting them, and therefore his only Care.* Mr. *Bennet* had expreſly declared, that the Earl never once asked him, either before or after his Admiſſion, any one Queſtion, in order to be informed of his private Circumſtances: And yet theſe were the Men the Earl thought fit, in open Court, while he was ſitting in the Sacred Seat of Truth and Juſtice, to declare *Men of as great Fortune, Abilities, and Skill, as ever ſat in that Court.*

But the whole Scheme ſeems obviouſly calculated for no other End or Purpoſe, than to induce Perſons of ſmall Abilities to become Purchaſers, by facilitating and making eaſy the Method of Payment. And, indeed, it was ſo eaſy (ſays the Manager), that I wonder his Lordſhip did not meet with Perſons who would agree to give one half of the Money for an Opportunity of running away with the other: Such a Price might with as much Reaſon be called a Perquiſite, as his condeſcending to take but five or ſix thouſand Guineas, when no one would give more. It is true my Lord *Macclesfield* does, in his Anſwer, ſay, that he was ignorant of this Practice; but I apprehend his Lordſhip to be as much miſtaken in this, as he has been in other Particulars: For, my Lords, it appears by Mr. *Bennet*'s Evidence, that he not only knew of this Practice, but endeavoured to conceal it.

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They who gave ſuch vaſt Prices for the Cuſtody of the Money, did not neglect the Opportunity of employing it for their own Uſe: The Proof is but too viſible; they who are rich confeſs it, and they who are poor dare not deny it: It was the neceſſary Conſequence of his Lordſhip's Extortion, and that put it out of his Power to take thoſe Meaſures that were neceſſary to prevent that Practice. The Misfortunes of the *South-Sea* Year were ſo univerſal, that ſurely any Man, even of common Senſe, would have been upon his Guard. My Lord *Macclesfield* knew that theſe Maſters gamed with the Suitors Money themſelves, or, for an extravagant Intereſt, lent it to thoſe who did: He knew that this was the Occaſion of *Dormer*'s Deficiency; he knew that the other Maſters had it ſtill in their Power to do the ſame; therefore he permitted it: He took no Meaſure to prevent it; therefore he encouraged it.

But what could engage this Earl, (whoſe underſtanding is in no wiſe queſtioned) after ſo fatal a Year, thus to riſque his own Character, and what perhaps he values more, his own Fortunes, not only upon the Underſtanding, the Integrity, but even the good Fortune, of a Parcel of Men whom he had thus picked up, without either Enquiry or Care? My Lords, *As the Borrower is to the Lender, ſo a corrupt Chancellor is the Servant of his Confederate Officers*; he durſt not put a Stop to their Practices, (though his own Eſtate was embarked with theirs) leſt Reſentment and Revenge ſhould make them diſcover the infamous Secrets with which they were entruſted.

The Earl's Defence, by his Counſel.

The Earl's Counſel, in opening his Defence, ſaid, However unanſwerable the Eloquence of the Managers may be, we hope to defend the Earl againſt the Facts they have alledged; and ſhew, that they were either not done, or done with Innocence and Honour: Againſt meer Imaginations nothing can ſecure him, but your Lordſhips' Candour and Juſtice.

The Words Orphans, and Widows, and Lunaticks, have been employed to raiſe Tenderneſs and Compaſſion, and arm your Lordſhips againſt every Argument which we can offer: Well was it commanded by the *Jewiſh* Law, Not to reſpect the Perſon of the Poor in his Cauſe, knowing the Diſpoſition of Human Nature, and the Neceſſity of guarding againſt this generous Weakneſs. This Caution ought particularly to be remembered by *Engliſhmen*, who are allowed to be more ſubject to an Exceſs of it than thoſe of any other Nation.

The learned Managers have very rightly obſerved, how much your Lordſhips' Honour is concerned in this Proſecution. My Lords, It was with the greateſt Satisfaction I heard them ſay it; for I am by it induced to think, that notwithſtanding

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ſtanding the Zeal which has been expreſſed, they will be much pleaſed to find every Member of your Lordſhip's Body innocent.

It appears from the Anſwer, and needs no Proof, that the Noble Earl was once Lord Chief Juſtice of the *King's-Bench*; and his Conduct in that great Station, will, I hope, be ſome Defence.

I may appeal to thoſe Gentlemen who are now Managers againſt him, Whether they have not applauded him with Warmth? Whether they have not commended his Zeal and Intrepidity in the Cauſe of Liberty and our Country? his ſteady Adherence to the Proteſtant Succeſſion? his uninfluenced Behaviour? My Lords, I would ask, Whether then they did not praiſe and love him? Whether they did not eſteem his being placed in that high Station (which he executed with Honour) their Comfort, their Security?

My Lords, I beg Pardon for replacing thoſe Times before your Thoughts, or for deſiring any to conſider, how an Accuſation againſt him, ſupported by meer Refinements, would at that Time have been regarded: My Lords, his experienced Merit would then have ſilenced every Objection.

If there wanted any Evidence of the high Character he bore while in that Station, we might appeal to the great Rewards his Majeſty had beſtowed upon him: Thoſe very Graces which have been exaggerated againſt him, are the nobleſt Teſtimony in his Favour. His Majeſty thought him worthy of the Great Seal, becauſe he had found him faithful in his other Truſts: His Majeſty approved him, becauſe his Subjects had: It was for their Sakes (the conſtant Motive of his Choice) that he appointed him Lord Chancellor.

This once was the Earl's Character, this once his Merit: Theſe were, nay are ſtill, our Obligations to him. My Lords, experienced Worth has a Right to greater Confidence and Credit: This is a Rule of Evidence, and of common Juſtice; and unleſs the moſt convincing Proofs are offered, your Lordſhips never can believe, that one, who has done ſo greatly well, can do ſo baſely as is ſuggeſted by the Charge.

But ſuppoſing, upon ſo very ſtrict an Enquiry into the Conduct of any great Man, ſomething amiſs was found, (for the greateſt are but Men, and muſt have Failings); yet is former Merit not quite to be forgot. Publick Services are thought juſt Reaſons for Remiſſion of the higheſt paſt Offences, though done perhaps meerly with a View of obtaining it: And ſhall thoſe done upon a more generous Principle, ariſing from an honeſt diſintereſted Heart, deſerve a leſs Regard?

His own Defence.

The Earl, as well as his Counſel, ſeems to depend more on the Merit of his paſſed Services to the Crown, than on the Strength of his Defence. I ſhall endeavour (ſays he) to ſhew your Lordſhips, that the ſeveral Things charged upon me are either not true, or not criminal; or if your Lordſhips ſhall judge otherwiſe of them, yet that they were the Effects not of Wickedneſs but of Miſtake; and, *If I have ever done any thing for the Service of my Country, of the Conſtitution, of his Majeſty, and of the Royal Family, and the preſent Eſtabliſhment, and the Adminiſtration of publick Juſtice; it might not be unſuitable to the unparalleled Goodneſs of this Reign, for your Lordſhips to have Compaſſion upon the Errors, Miſtakes, and Weakneſſes of the faithful ſteady Servant of a Prince, whoſe Mercy has been ſo often extended, in ſo great a Degree, to the higheſt Crimes of his bitter Enemies.*

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Then he proceeds to the moſt material Part of his Defence, and ſays:

The Earl endeavours to juſtify the Practice of ſelling Offices.

An Office may be conſidered in two Reſpects: Firſt, with Reſpect to the Duty, that is the Concern of the Publick, that the Perſon be duly qualified to diſcharge the Office well: Secondly, with reſpect to the Profit and Advantage; and that is meerly private, and concerns the Officer only; and whilſt he diſcharges his Duty well, without Extortion, or other Misbehaviour, the Publick is little concerned in it, whether the Profit be more or leſs: As in thoſe Offices, which are very numerous, and of great Conſequence, that may be executed by Deputy; provided the Deputy behave himſelf well, the Publick has never concerned itſelf what his Salary or Allowance from his Principal is, whether it be greater or leſs.

And as the Perſon who is put into a very beneficial Office, ſuch as one of theſe, for his Life, has not any antecedent Right to the Office, and therefore, not to the Profits ariſing thereby, and he that prefers him is not bound to give it him; therefore when he puts him into it, he in Effect grants him all the Profits of the Office for his Life: And if the Officer make him a Preſent for it, either unexpected, by way of Thanks, after he is put in; or expected, which he had told him of before; or give it at the Time, or before that he is admitted; I ſee not any Immorality either in the Giver or Taker: It is Money given for Profits to be received during Life.

The Publick is concerned only in the Goodneſs of the Officer, not how advantageous to him the Grant of the Office is, nor in the Inducement which he that appointed him had to put him in; whether Friendſhip, Acquaintance, Relation, Importunity, great Recommendation, or a Preſent.

I agree, that a Perſon taking a Preſent, and putting in an unfit Perſon, when he knew him to be ſo, or had juſt Ground to believe him ſo, is criminal: Not becauſe he had taken a Preſent, but becauſe he had prejudiced the Publick knowingly: It may be an Aggravation, that he had taken Money; but the Crime is, the Wrong done to the Publick in the Perſon advanced: It had been the ſame Crime, had he done it for the Sake of Kindred, or Friendſhip, or for Recommendation, or any other Reaſon.

But if a Perſon very well qualified be placed in an Office, and the Publick has all the Advantage from him that it can have from an Officer in that Poſt, and ſo I who have placed him have well diſcharged my Duty to the Publick; is it material how well I loved him, how nearly he is related, who it was that perſwaded me to prefer him, or what he gave me on that Account, whether before or after he was put in? Will any of theſe Circumſtances make me criminal in an Action by which I ſerved the Publick well? If the Publick have all the Benefit it can have, where is the Immorality? Where is the Crime, if I have an Advantage too? eſpecially if Uſage has in ſome Sort annexed that Advantage to my Office, which is taken from his?

Obj.

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Obj. I know it may be objected, with great Appearance of Reaſon, that this Practice is dangerous; it leads to Inconveniences; it is a Temptation to him that diſpoſes of Places to make ill Officers, and a Temptation to the Officers to extort Money, and abuſe the Subjects, in order to get up their Money again.

Anſ. But is it therefore a Crime, where the Temptation is reſiſted, and a very good Officer is put in, and he behaves himſelf perfectly well?

The Point of the Charge now under Conſideration reſts ſingly on this, That I took Money for admitting Mr. *Francis Elde* (for inſtance); and though taking Money is a dangerous Practice, and may be a Temptation to let in an ill Man, is it therefore a Crime to put in *Francis Elde*, who is not alledged to be an ill Man, or any Way unfit; and is really an excellent Maſter?

This Argument concludes, only that the allowing it to be generally practiſed is inconvenient, and may, in the Deliberations of the Legiſlature, be properly uſed to prove it fit to be reſtrained by a Law: But is not of Force, in a Court of Juſtice, to prove it to be a Crime in every Inſtance, becauſe it may occaſion a Crime in ſome. But farther, as to the Matter of Temptation to put in one unfit:

The Liberty of preferring Relations to Offices, is a Temptation to put in Perſons unfit; and without doubt has often prevailed. Suppoſing therefore, it might be proper Matter of Deliberation in the Legiſlature, how far a Reſtraint ſhould be put upon it; yet, in the mean Time, is advancing a Relation to an Office which he is fit for, a Crime, becauſe in other Inſtances it has occaſioned a Crime, or may do ſo, or is a Temptation to it? And would it be a ſufficient Charge of a high Crime againſt me, to ſay, that I illegally and corruptly put into ſuch an Office *A. B.* my Son, or my Brother? I apprehend not.

Till a Reſtraint is laid, the Thing may be innocently done.

If a Reſtraint be laid, the Law will operate upon it, ſo far as that Reſtraint extends; but farther than that, and the Conſequences declared to enſue thereupon, it will remain as before.

Conſidering this, therefore, in itſelf, and upon the Reaſon of the Thing, where is the Force of the Argument? You took 5000 *l.* for putting in Mr. *Elde*, or Mr. *Thurſton*, a very fit Perſon, and an excellent Maſter; and therefore you are Criminal, becauſe ſome Body elſe, at another Time, may put in a Maſter not fit, upon his giving a Preſent.

If this, then, be not Criminal in itſelf, how do they prove it to be ſo by the Common Law?

The only Caſe they have inſtanced as any Authority for that Purpoſe, is that of *Stockwith* and *North*, in *Moor*'s Reports. I have looked upon the Caſe as it appears in that Book, and it appears to be thus:

North *was fined in the* Star-Chamber, *for that he, being Sheriff of* Nottingham *in the* 43*d Year of Queen* Elizabeth, *took Money for the Goalerſhip and Bailiwick for that Year: He gave them firſt to his Servants, who ſold them; but he himſelf received the Money. And this was adjudged to be letting to Farm of his Country, contrary to the Statute* 4 Hen. IV. cap. 5. *Yet there note, that the Statute itſelf gives a Penalty certain and pecuniary, and is* Malum prohibitum, non in ſe. *But the Court took it, that in as much as Corruption follows upon the Covetouſneſs of Officers, and they are forced thereto by the Prices which they give for Things which ought not to be ſold; that this putting to Farm, and ſelling of Offices, is* malum in ſe, *and fineable.*

1725. 10 Geo. I.

It appears here, that this was a Proſecution upon the Statute 4 *Hen.* IV. for the Point adjudged was, that this was contrary to that Statute; and therefore, whether what was done, was againſt the Common Law, or *malum in ſe*, or not, was not at all in Judgment before the Court.

So that this looſe Expreſſion mentioned by *Moor*, (coupled too with a groſs Miſtake) not at all to the Point of Judgment, is of very little Force, to prove the Caſe to which it is applyed to be againſt the Common Law; and of leſs, to prove the preſent Caſe to be ſo.

What then is there farther offered? Do they ſhew, that by the Common Cuſtom of *England*, which is properly the Common Law of *England*, the taking Money for Offices has been from Time to Time puniſhed or condemned as Criminal?

No, it is admitted on the one Hand, that there is not one Inſtance of its having been puniſhed, or condemned as Criminal, at the Common Law.

And, on the other Hand, it is notorious, that in Fact the greateſt Offices have anciently been ſold, even by the Kings: And that not in a clandeſtine Manner, but ſo, that the Price and what it was paid for, have been entered upon Record.

My Lords, I have gone through all the ſeveral Articles that have been endeavoured to be ſupported againſt me; and I think I may ſay, as I did in the Beginning, that except thoſe relating to the Diſpoſal of Places, which are of another Kind and another Conſideration, all the reſt muſt, to be made Criminal, turn upon that Aggravation in the Articles, *from my inordinate, wicked, and corrupt Deſigns of procuring to myſelf exceſſive and exorbitant Gains and Profits*, by divers unjuſt and oppreſſive Practices after-mentioned. It is ſuch a corrupt Heart only can change Actions that in themſelves are innocent, and ſome of them, perhaps, commendable, into ſo many Crimes.

And, yet, it is very extraordinary, and ſcarce poſſible to be conceived, but that, if there had been ſuch a corrupt Heart, it muſt have broke out upon ſome other Occaſion of my Life. Not one Inſtance of my whole Life has been yet produced to ſhew it.

Several of thoſe under me have been examined; ſeveral Officers immediately attendant on me, that received conſiderable Profits and Salaries, to the Amount of three or four thouſand Pounds *per Annum*, and more: If I had ſet my Heart upon Gain, a certain Profit might have there been yearly made, amongſt thoſe whom I had wholly at Mercy, and in private. But there has no Appearance been found of any Thing of that Kind: And is it not more likely that I ſhould have laid hold of a certain Profit, than

be

1725. 10 Geo. I.

be laying Schemes for Advantages upon the uncertain Contingency of the Sales of Masters Offices?

The Value of such an Expectation is a mere Trifle; and, with respect to the Probability of its happening, it was exceeding uncertain, whether I should have an Opportunity of putting in one single Master.

Three Masters have happened to dye in my Time; and two of them in less than the Space of a Year: But I think not one in nine Years before.

My Lord *Cowper* admitted but one in the last Time of his being Chancellor, which was four Years; and that was upon a Surrender.

There are twenty-four Cursitors; only one has died in my Time: Thirty Commissioners of Bankrupts; only one died in above six Years.

Surrenders of the Offices of Masters are rarely till after sixteen or seventeen Years, sometimes thirty or forty Years Enjoyment.

My Life was very uncertain: The Office of Chancellor much more so.

Little, therefore, was to be hoped from the Profit to be made by Masters Places.

My Lords, in the next Place, I apprehend that it appears, I did not take the Advantage I might have taken.

When the Time came for me to reap the Fruit of all my Contrivances, all those Schemes and Stratagems, the Work of above three Years, (a great Space in the Time of a Chancellor) see, whether there be the least Mark or Symptom of this *impotent Desire of Gain!*

What I did, proves, beyond all Contradiction, that I never had any such Views, as these they lay to my Charge.

I took not the Advantage I might have done; I took a less Sum, when a greater was offered; and * *Part of the Money was returned again* to Mr. *Elde* and Mr. *Thurston*. And when Mr. *Thurston*'s Money was returned, only for being more than it was expected to be, every Thing was in the same State as when it was paid.

* *Which shews Self-Conviction.*

And possibly your Lordships will think, from some other Evidence given †, that amassing a great Estate was never my View; and that rapacious and base Ways of getting Money are not consistent with my Way of laying it out.

† *Of his Charities.*

As this is a full Answer to the Charge of my Desire of Gain; and the whole Malignity of all I am charged with, arises from that supposed Principle of my Actions; without this, though there should have been Imprudence, Indolence, too great Confidence, perhaps Credulity, Irresolution, or any other Defect or Weakness, there has been nothing wicked.

And if your Lordships are satisfied of this one Thing, I apprehend the Sting of this Impeachmenr is taken out.

To this Defence the Managers replied,

The Reply of the Managers to the Earl's Defence.

The Earl relies upon it, that the whole Charge turns upon *his wicked and corrupt Intent and Views* alledged in the Introduction, which, as he says, has not been made appear.

But these will be apparent from the Proofs of the several Facts charged; which, if they are unlawful and unwarrantable, and do tend to the raising Money by corrupt and extorsive Measures, will manifest that Intent, and prove it as strongly as if he had declared his Designs in open Court; for such Acts cannot be done with a good and honest Intention.

1725. 10 Geo. I.

The main Objection against the Articles is, That there is no Matter of a Criminal Nature contained in the Money Articles; or, if there is a Crime, yet, that there is no Punishment annexed or incident to it, which your Lordships can now inflict upon the Earl, after he is removed from his Office.

In answer to which I shall insist, That the Earl's selling these Offices, or disposing of them for Money, taken by him before the Admission of the succeeding Officers, in the manner alledged and proved, is an Offence at the Common Law, and punishable by Fine and Imprisonment, upon Indictment, or Information; as well, where the Money was taken for an Admission upon a Resignation, as upon a Death.

The ancient Law of *England* was, that none having any Office concerning the Administration of Justice, should take any Fee or Reward of any Subject for the doing of his Office, to the End he might be free, and at Liberty to do Justice.

And several Charters of former Kings, and Statutes declaratory of the Common Law, in that Respect, have been made, to enforce the due Observation thereof.

As to such Offices, which are in the immediate Gift and Disposal of the Crown, they cannot in their own Nature be saleable, or disposed of for Money; because the King himself cannot be supposed to suffer them to be put to Sale.

And the Ministers of the Crown, who have no immediate Right in the Office, and are only to execute and confirm the King's Pleasure in the Disposal of the Office, cannot sell that which is not their own.

Nor ought, nor can they lawfully take any Fee or Reward, for accepting Resignations, or making new Grants or Admissions into Places, or for conferring inferior Offices, with which they are entrusted by Virtue of their own Office; which would be the taking Money, for the doing of their Office, contrary to the Law, and the before-mentioned Statute.

But there is another very good Act of Parliament, which has been read at your Lordships Table, and proves this Practice of selling such Offices, to be an Offence at the Common Law, *viz.* the

12 *Rich.* II. c. 2. intituled, *None shall obtain Offices by Suit, or for Reward.*

Item, *It is accorded, that the Chancellor,* (by expres Name) *Treasurer, Keeper of the Privy-Seal, Steward of the King's House, the King's Chamberlain, Clerk of the Rolls, the Justices of the one Bench, and of the other, Barons of the Exchequer, and all other that shall be called to ordain, name, or make Justices of the Peace, Sheriffs, Escheators, Customers, Comptrollers, or any other Officer, or Minister of the King, shall be firmly sworn, That they shall not ordain, name, or make any such Officers, nor other Officer or Minister, of the King, for any Gift, or Brocage, Favour or Affection.*

The Act proceeds further into a different Form of Expression, and to another Matter.

Nor, that none which pursueth by him, or any other, privily or openly, to be in any Manner of Office, shall be put in the same Office, or any other;

1725. 10 Geo. I. *but that they make all such Officers and Ministers of the best and most lawful Men.*

This Statute takes it for granted, That the contrary Practice of naming subordinate Officers, for Gift or Brokage, was unlawful before, at the Common Law; since it does not create or enact it to be an Offence, but provides an additional Constraint or Obligation upon the superior Officer, by an Oath not to commit the Offence; and it still remains an Offence at the Common Law, and does not depend on that Statute, but is a great Offence, although the Oath be not taken.

Yet, if it should be supposed, by Way of Argument, (which has not been proved, and therefore cannot be admitted) That the Sale of these Offices has been of late tolerated, for the greater Increase of the Perquisites of the first Officer of the Crown, in the principal Court of Justice; *yet the Earl's raising and receiving these exorbitant Sums, above double to any Instance before his own Time*, upon a Pretence, that the Business of the Court of *Chancery* was very much advanced during his Residence there, will be as criminal, as if he had put the Offices to Auction, when no Sum or Fee had ever been taken or heard of.

And in his Method of Practice, there can be no Distinction between a Present and a Price: For he made the most always of his Share or Claim in the Office. When he was only to admit upon a Surrender, he took 1500 Guineas for his good Will and Approbation merely: And when he admitted upon a Death, he took 5000 Guineas at the least, although the Office was greatly in Debt; as in *Borret*'s Case, where the Suitors will lose upwards of 12,000 *l.* of their Effects, by the lowest Computation.

As for the small antient Fees, which have been paid to the Great-Seal for Time immemorial, upon the sealing every Patent; these are out of the present Question: And where Usage, beyond Time of Memory, has allowed the Receipt of these little Sums, it will be presumed, (if there was Occasion for it) that some Act of Parliament had passed, to make it lawful.

And, when it is said, That a good Officer may give Money for his Place, and may resist the Temptation of Extortion; it is what the Law of *England* would not trust to human Frailty: And if all the Actions and Behaviour of the best of the Masters, with Respect to their Fees, their Manner of Proceeding upon References, and their disposing and trafficking with the Money of the Suitors, were to be enquired into more particulary; there can be no Doubt, from what has appeared in Evidence upon this Trial, but that the Temptation and Inclination to Profit, towards reimbursing themselves the Money advanced to the Earl, and the preceding Master, have overcome their most steady Resolutions to Virtue and Self-Denial.

My Lords, I think the impeached Lord has advanced a very dangerous Position upon this Point. He is pleased to say, The Publick has nothing to do to enquire about any thing, but whether the Officer be a good Officer; that if he be so, the Publick is not hurt, though he gives the Chancellor Money for his Place. Here I presume he was sensible that it might be objected, that the same Argument would hold, for taking Money in a Cause before him, provided it was a good Judgment: And therefore was pleased to say, That the Difference between this Case, and taking a Bribe for Judgment in a Cause, is, that in the one Case, the Party has a Right to have Judgment; but in the other Case, no Man has a Right to his Favour or Recommendation, unless upon Terms. This is very extraordinary; and the same Argument would prove, that it is lawful for him to take Money from every Judge that comes into *West-minster-Hall*. It is well known, that the Chancellor generally recommends in that Case; and yet it might there be said, What is the Publick the worse, provided he is a good Judge? Surely, this is such a Doctrine, as is not fit to be proclaimed to the World, and would tend to universal Corruption. 1725. 10 Geo. I.

As to this Point, there is a great Deal of Difference between one Officer selling to another, and a Judge that presides in the Court, whose Duty it is to see, that proper Persons be appointed, according to Law; instead of that, by this Method, he shews them a bad Example on their very Admission into the Office; and introduces them by Corruption, in the first Instance, even by the very Act of administring the Oath to them.

The Year 1720 has been mentioned, both by the Earl, and his Counsel; and it was so fatal a Year, that surely if a Reformation were ever to be made, it should have been upon that Occasion. I think there is but little Difference, whether they traded with the Money themselves, or put it into another's Hands, at high Interest, and permitted them to trade with it. Could any one imagine, that *Dormer* let 24,000 *l.* lie in *Wilson*'s Hands for nothing? Mr. *Cottingham*, upon the Examination of my Lord's own Counsel, gave Evidence, that *Wilson* insisted, he allowed high Interest for it: And, it was well known, it was in the Power of all the Masters, to traffick with the Money; and this after express Warning by one of the Masters, to the Chancellor, not only by Word of Mouth, but by Letter, written (as I take it) in 1722. But every Thing of a Regulation of that Kind was liable to Objection. One Thing that was proposed, was so easy to be done, that there is no Excuse it was not complied with; which is in Relation to the Securities, by placing them in two or three Names; which would have prevented the Masters from disposing of the Securities.

My Lords, He was pleased to make a Distinction between an Answer to Articles of Impeachment, and an Answer to a Bill in *Chancery*; that the Plaintiff, in a Cause, had a right to a full and plain Discovery; but that the Case before your Lordships differs. My Lords, I would beg Leave to mention, that there was an Instance of an Impeachment before your Lordships, in which the Lord now impeached had a great Share in the Reply, wherein he laid very great Stress upon the Insufficiency and Evasions in the Answer *. The Person then impeached, had very hard Names given to him on that Account; and even his Silence was insisted on, as a Confession of his Crimes.

* *Dr.* Sacheverell.

As to the noble Lord's Charities, I beg leave to say, that as it is a great Addition to the Merit

1725. 10 Geo. I. rit of Charity, to have it kept private, it was the more extraordinary theſe Charities ſhould be now publiſhed; becauſe I do not ſee they are any ways material to the Matters before your Lordſhips. Here are plain Facts charged and proved, and if in a Caſe of this Kind theſe Charities are to wipe off the Charge, it is a kind of Commutation that has not been before heard of. My Lords, he that would be the moſt meritoriouſly charitable, ſhould firſt be juſt: The Lord ſhould firſt have conſidered thoſe Suitors he had injured; he ſhould firſt have made Satisfaction to them, and then have offered his Gifts.

Thus we have endeavoured to lay before your Lordſhips the whole Circumſtances of this Caſe; there needs no Eloquence to aggravate the Crimes; I pretend to none; but the Cries of Widows and Orphans will have the moſt perſuaſive Eloquence, and when they have Juſtice on their Side, they will have Weight with your Lordſhips.

My Lords, the Caſe before your Lordſhips is founded on Corruption, and a Series of Fraud to ſupport that Corruption: The People had long murmured at it, but the Grievance increaſed at laſt to ſuch an intolerable Degree, that it became a National Concern, and there was an unavoidable Neceſſity of a Parliamentary Proſecution.

My Lords, the Commons hope they have done their Duty in bringing it here; and we hope your Lordſhips will give ſuch Judgment as will be conſiſtent with your Lorſhips' Honour and Juſtice.

The Arguments being concluded on both Sides, the following Queſtion was put to every Lord, of whom Ninety-three were preſent, (*viz*).

Is *Thomas* Earl of *Macclesfield* guilty of the High Crimes and Miſdemeanors charged upon him by the Impeachment of the Houſe of Commons, or not guilty?

To which the Lord *Walpole*, the youngeſt Peer, and every other Peer afterwards, anſwered, GUILTY *upon my Honour*. There was not one diſſenting Voice; ſo notorious was the Corruption, and the fatal Conſequences of it, that he had not one Friend or Relation in all that Illuſtrious Aſſembly, that opened his Lips in his Favour.

The Houſe ſitting again on *Wedneſday* the 26th of *May*, the Earl was brought to the Bar, when the Lord Chief Juſtice *King*, then Speaker of the Houſe of Lords, informed him, that the Lords had fully conſidered his Caſe, and had unanimouſly found him GUILTY. 1725. 10 Geo. I. *The Earl convicted.*

The Earl thereupon ſaid, he hoped their Lordſhips would conſider what he had ſuffered already, in the Expence he had been at, the Fatigue, and the cruel Diſtemper which his long Attendance had brought upon him; he had paid back ten thouſand eight hundred Pounds of the Money already; he had loſt his Office, and undergone the Cenſure of Parliament, which was of itſelf a very ſevere Puniſhment; and there was not one of the Suitors but had already received five Shillings in the Pounds. *Moves in Mitigation of his Fine.*

The Managers for the Commons interrupted the Earl here, and ſaid, This might have been proper to have offered in his Defence, but was not ſo in Arreſt of Judgment; their Lordſhips had found him guilty of the Fact, and he was now arguing in Defence of it.

The Earl replied, He ſubmitted it to their Lordſhips, whether this was not proper in Mitigation of Damages; however he left himſelf to their Lordſhips' Juſtice and Mercy. Then the Earl and Managers withdrew; and their Lordſhips having ordered the Earl into the Cuſtody of the *Black-Rod*, proceeded to conſider of the Judgment.

On *Thurſday*, the 27th of *May*, 1725, the Commons coming up to the Houſe of Lords, with their Speaker, to demand Judgment, and the Earl being brought to the Bar, the Lord Chief Juſtice *King* pronounced the following Sentence, (*viz*).

Their Lordſhips' Judgment is, and this High Court doth adjudge, that you Thomas *Earl of* Macclesfield *be fined in the Sum of thirty thouſand Pounds to our Sovereign Lord the King; and that you be impriſoned in the* Tower of London *until you ſhall pay the ſaid Fine.* *His Sentence.*

Then the Earl was taken from the Bar, and conveyed to the *Tower*, where he remained a Priſoner a ſhort Time, and then paid his Fine, and was diſcharged, and ſeems to have been in full Favour at Court afterwards.

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APPENDIX,

Of ſome TRIALS omitted; and of others added ſince the Collection at large.

1554. 1 Mar. The Arraignment of Sir THOMAS WIAT, for *High-Treaſon*, on the 14th of *March* 1554. 1 *Mariæ*. 1554. 1 Mar.

Wiat's Arraignment.

The Charge.

THE Priſoner was indicted for High-Treaſon, in levying War againſt the Queen, on the 14th of *February* then laſt paſt, at *Brentford* in the County of *Middleſex*, to which he pleaded Guilty, endeavouring however to extenuate his Crime, and deſiring the Court to interceed for him to the Queen for Mercy.

And Confeſſion.

He ſaid, ſince he had conſidered and reflected on his Offence, he had obſerved, that Rebellion againſt their natural Princes never proſpered long; that *Henry* the IVth. was but a Rebel, and the Crown did not continue long in his Family, but was reſtored again to the right Heirs.

He was once indeed of Opinion, that by Marriage of the Prince of *Spain* with the Queen, the Life of the Princeſs *Elizabeth*, the ſecond Perſon in the Kingdom, would be in Danger; and he, who was free born, ſhould have been reduced with his native Country to a State of Slavery by Foreigners, which induced him to practiſe the Treaſon he had committed: But, now he was better informed, and ſenſible how much this Marriage would be for the Honour, Advantage, and Security of the Kingdom, he had altered his Mind; and if Her Majeſty would extend her Grace to him, he would ſerve her faithfully as long as he lived. He then took an Opportunity of reciting what Services he and his Anceſtors had done the Crown.

The Attorney General anſwered, He had great Reaſon to repent of his Faults, for he had not only undone himſelf, but a great many other Gentlemen whom he had deluded into this Rebellion, particularly the Duke of *Suffolk* and his Family, and had attempted to ſeduce the Princeſs, the ſecond Perſon in the Kingdom, whoſe Honour was thereby brought in Queſtion: What did he mean, when the Rebellion firſt broke out, to write to the Princeſs *Elizabeth* to remove farther from the Queen, and after his Succeſs at *Rocheſter* Bridge over the Lord *Norfolk*'s Men to ſend her the joyful News, for which ſhe returned him Thanks?

To which *Wiat* anſwered, He confeſſed it was true. The Maſter of the Horſe then demanded, if when he and Mr. *Cornwallis* were ſent to him from the Queen, he (*Wiat*) did not inſiſt to have the Queen's Perſon in his Cuſtody in the *Tower*, with ſuch of the Privy Council as he ſhould ſpecify, and the publick Treaſure delivered up to him, ſaying, *He had rather be truſted than truſt?*

The Queen's Counſel alſo demanded, if he was not privy to a Conſpiracy to aſſaſſinate the Queen? though they acknowledged he diſapproved of it: They alſo produced *Wiat*'s Letter to the Duke of *Suffolk*, when he lay with the Rebels in *Southwark*, to meet him at *Kingſton-Bridge*, and ſo march to *London* with him, which *Wiat* acknowledged to be his Hand; he alſo confeſſed, he refuſed to accept the Queen's Pardon when it was firſt offered him; but deſired the Queen's Counſel would not aggravate his Offences, for he had made a full Confeſſion, and thereby ſecured her Majeſty againſt any future Attempts againſt her: He confeſſed, when he had once entered upon that deviliſh and deſperate Enterpriſe, he thought there was no Way but to go through with it: And he took all the Methods he could think of to render it ſucceſsful, ſuch as writing to the Lady *Elizabeth*, and making the Proclamation he had cauſed to be made in *Southwark*; and now, there remained nothing but to throw himſelf upon the Queen's Mercy, though he confeſſed that he deſerved with *Wat Tyler* to be made an Example; and as that was called *Wat Tyler's Rebellion*, this ought to be called *Wiat's Rebellion* to the World's End: However, if the Queen would ſpare him, he would render her the beſt Service he was able; and if ſhe had but two true Men in the Kingom, he would be one of them, and die at her Grace's Feet, imploring the Lords Commiſſioners again to interceed for him to her

1554. 1 Mar. Grace, which the Lords promiſed they would do: But his Countenance ſtill remained dejected, and he let fall Floods of Tears, and indeed he had no manner of Reaſon to expect Mercy, who was at the Head of ſo formidable a Rebellion, wherein he was within a few Hours of ſurprizing the Capital of the Kingdom, with the Queen and Court. 1554. 1 Mar.

He was beheaded the 11th of *April* following.

1615. 13 Jac. I. Hollis, Wentworth, Lumſden.

Proceedings againſt Sir JOHN HOLLES, Sir JOHN WENTWORTH, and Mr. LUMSDEN, in the *Star-Chamber*, for traducing the publick Juſtice of the Nation, 10 *Nov.* 1615. 13 *Jac.* I.

1615. 13 Jac I.

Information Ore tenus.

THE Gentlemen above-mentioned having been committed by Order of Council, and brought before the Court of *Star-Chamber*, the Attorney General, Sir *Francis Bacon*, informed againſt them *Ore tenus*: But before he proceeded to open the Charge, he applauded his Majeſty's Juſtice, in proſecuting the Murderers of Sir *Thomas Overbury*, and not ſparing even the Earl of *Somerſet*, who was, he ſaid, as the Signet upon the King's Right Hand.

Then he declaimed upon the Crime of Poiſoning, obſerved it was eaſily committed, and as eaſily concealed: That this Fact was the more heinous, as it was practiſed upon a Priſoner who was under the Protection of the Law, and often repeated before it took Effect: That it was a Species of Murder there was no guarding againſt, frequently deſigned againſt one Perſon, and deſtroyed many more; and held, it was not of the Growth of our Country, but came from *Rome*.

However Mr. Attorney does not ſeem to charge any of theſe Gentlemen with having a Hand in that Murder; but endeavouring to ſkreen the Lord *Somerſet* from Juſtice, by queſtioning *Weſton*'s Guilt, and reflecting on the Judges, as if they had perverted Juſtice, and extorted that Confeſſion from *Weſton*.

Then he charges Mr. *Lumſden* with getting a Paper put into the King's Hands, reflecting on the Chief Juſtice and Commiſſioners, authorized by his Majeſty to enquire into *Overbury*'s Murder: Sir *John Wentworth* he charges with putting Queſtions to *Weſton* at the Place of Execution, tending to make the People believe he was innocent, and charges Sir *John Holles* with adviſing *Weſton* to diſcharge a good Conſcience, with the like Intent: That Sir *John Holles* alſo ſaid, If he had been upon *Weſton*'s Jury, he doubted whether he ſhould have found him guilty; or to that Effect: And Mr. Attorney inſiſted, that it was criminal to arraign and calumniate either the Court or the Jury, for trying or convicting a Malefactor; eſpecially in this Caſe, where *Weſton* had ſent for both the Father and Mother of Sir *Thomas Overbury*, confeſſed his Guilt, and asked their Pardon: But ſtill theſe Gentlemen pretended to doubt if he was guilty, and endeavoured to make the World believe he was innocent.

Lumſden's *Defence.*

Mr. *Lumſden* ſaid in Anſwer to this Charge, that he was not at *Weſton*'s Arraignment, but had ſet down in Writing what he heard from others in common Diſcourſe, who now denied what they had ſaid; and therefore he confeſſed what he had written was falſe; urged his Ignorance in the Law of *England*, and ſaid he had no ill Intent; but deſired as he was a Gentleman, he might be excuſed from diſcovering the Perſons that ſaid theſe Things to him in Converſation, ſubmitting himſelf to the Cenſure of the Court.

To which Mr. Attorney replied, That he who refuſed to declare his Author, muſt be looked on as the Forger of the Slander.

Went-worth's *Defence.*

Sir *John Wentworth* confeſſed, he asked *Weſton* the Queſtions at the Execution with which he was charged, which he endeavoured to excuſe. 1. Becauſe others had done the ſame. 2. Becauſe he had heard *Weſton* denied the Fact, and deſired to know the Truth of it from himſelf; and if the asking a Man Queſtions who was going to Execution were offenſive to the State, he ſubmitted to the Court.

Holles's *Defence.*

Sir *John Holles* in his Defence ſaid, he confeſſed he had ſaid he ſhould have been in Doubt what Verdict to have given, or to that Effect; and if ſuch Words deſerved Cenſure, he ſubmitted to their Lordſhips: He confeſſed alſo, that ſome bidding *Weſton* ſpeak the Truth, and he anſwering generally *Fact or no Fact I die worthily.* He (Sir *John Holles*) did bid him *ſpeak his Conſcience*, in which he thought he did the Part of a Chriſtian, and intended neither to reflect on the Law, or Juſtice that had paſſed on him.

Here he mentioned his having ſerved Prince *Henry*, and lamented his Death; and ſaid, if their Lordſhips had determined any Thing againſt him, he humbly ſubmitted to their Cenſures.

Sir Edw. Coke's *Speech to the Defendants.*

Then the Lord Chief Juſtice, Sir *Edward Coke*, made a Speech to the Defendants before he pronounced Sentence: Wherein he ſaid, That none were brought in queſtion for poiſoning Sir *Thomas Overbury*, but ſuch as in his Soul and Conſcience were apparently guilty; and obſerved, there were but few Inſtances in our Records, of this Crime committed in *England*: But one he mentioned in the Reign of *Edw.* I. Where a Woman committed Adultery, and afterwards poiſoned her Husband; and that other of *Solomon le Rocke*, a Judge, who was poiſoned by a Monk; and obſerved

1615. 13 Jac. I. observed upon the firſt Caſe, that Poiſon and Adultery go together; and upon the laſt, that Poiſon and Popery go together. But from the Reign of *Edw.* III. to that of *Hen.* VIII. he obſerved, there was no Account of any Man's being poiſoned in *England*; and then a Statute was made that a Poiſoner ſhould be boiled to Death: Another Caſe he remembered afterwards, of one *Squire* a Prieſt, who endeavoured to poiſon Queen *Elizabeth*'s Saddle; and obſerved again, that Poiſoning came firſt from Popery: He added, that the Reaſon *Weſton* denied the Fact laid in the Indictment was, becauſe he could not ſay which of the Poiſons adminiſtered to Sir *Thomas* killed him; but when he was informed that was not material, he made no Scruple to confeſs the Indictment: Then the Chief Juſtice told Mr. *Lumſden* that he was Pander to the Earl of *Somerſet*, and his Favourer, as appeared by his Letters; and reflected ſeverely on him for endeavouring to conceal the Crimes the Earl of *Somerſet* and his Lady were ſo violently ſuſpected of.

The Crime of Sir *John Holles* alſo he ſaid he looked upon to be very great, in queſtioning and counſelling others after a Verdict given: Nor was he pleaſed with what he ſaid at the Bar, *viz. If any Thing were determined againſt him, he humbly ſubmitted himſelf*, as if they were in a Conſpiracy againſt him: But perhaps he thought as ſome others did, that the whole Proſecution was but a Conſpiracy againſt the Earl of *Somerſet*, and adviſed Gentlemen to ſpeak reverently of theſe Matters when they diſcourſed of them in their Chambers, for the Birds of the Air would reveal the Matter: After which, the following Sentence was pronounced, *viz.* 1615. 13 Jac. I.

The Sentence. That *Lumſden* ſhould pay a Fine of 2000 Marks, be impriſoned for a Year, and until the Fine was paid, and till he ſhould ſubmit himſelf at the *King's-Bench* Bar, and declare his Authors.

That Sir *John Holles* ſhould pay a Fine of 1000 *l.* and be impriſoned in the *Tower* for a Year, And

That Sir *John Wentworth* ſhould pay a Fine of 1000 Marks, and be impriſoned in the *Tower* for a Year; and that both of them ſhould make their Submiſſion at the *King's-Bench* Bar.

Lords preſent. The Lords of the *Star-Chamber* preſent were, The Archbiſhop of *Canterbury*, Lord Chamberlain, Earl of *Pembroke*, the Biſhops of *London* and *Winton*, Lord *Zouch*, Lord *Knowles*, Mr. Secretary *Winwood*, the Chancellor of the Dutchy, Sir *Thomas Lake*, the two Chief Juſtices, and the Lord Chief Baron.

The Mock Trial of Sir ROBERT SPOTSWOOD, Secretary of State to King *Charles* I. for pretended Treaſons, before an Aſſembly of the Uſurpers in *Scotland*, who aſſumed the Name of a Parliament there, in *November*, *December*, and *January* 1645, 21 *Car.* I.

1645. 21 Car. I. Spotſwood's *Trial.* 1645. 21 Car. I.

The Charge. THE Dittay, or Indictment, charges Sir *Robert* with abuſing His Majeſty, in purchaſing of him the Office of Secretary of the Kingdom of *Scotland*, and putting the Signet to ſeveral Commiſſions granted to *James Graham* Earl of *Montroſe*, whom their Kirk had excommunicated, and they had declared a Traitor; particularly to a Commiſſion dated the 5th of *June* 1645, conſtituting the ſaid Earl Lieutenant-Governor, and Captain-General of all the Forces of that Kingdom, againſt the Forces raiſed by the Authority of the Eſtates of Parliament in Defence of the ſolemn League and Covenant; and ſigning another Commiſſion, conſtituting the ſaid Earl Commiſſioner to the Parliament; and to a Proclamation, annulling and condemning the Proceedings of this pretended Parliament as Treaſonable. He is alſo charged with joining the ſaid Earl's Forces, and committing divers Acts of Hoſtility, till the Earl was defeated on the 13th of *September* then laſt paſt, when the ſaid Sir *Robert Spotſwood* was taken Priſoner: And they declare that his taking up Arms in this Manner was High Treaſon, by an Act made in the Year 1644; for which he ought to ſuffer the Pains of Death, *&c.* as a Traitor.

His Anſwer to the Charge. To this Charge Sir *Robert* anſwered, That the King had made him a Temporary Secretary in the Abſence of the Earl of *Lanerk*, and that he held it his Duty to ſign ſuch Commiſſions and Acts of State as his Majeſty commanded: That his accompanying the Earl of *Montroſe*, who had the King's Commiſſion, could not be interpreted a taking up Arms againſt the Kingdom: And laſtly, That he was not charged with any thing that was declared Treaſon by Act of Parliament, or any other Law.

The Uſurpers reply. The Counſel for the Uſurpers replied, That it was Criminal to accept any Office without the Conſent of the Eſtates in Parliament: And that his ſigning the ſaid Commiſſion was a Proof that he was Guilty of adviſing the King to iſſue the ſaid Commiſſions, and other Acts of State againſt them. That his joining the Earl of *Montroſe* was a taking up Arms againſt his Country; and by an Act of Parliament, made in the Year 1584, the impugning the Authority of the Eſtates of Parliament was declared to be High Treaſon.

Sir

1645. 21 Car. I. *Sir Robert rejoins.*

Sir *Robert*'s Counſel rejoined and ſaid, That the accepting an Office without the Conſent of Parliament was not ſuch an impugning of their Authority as amounted to High Treaſon; and that he only ſupplied the Place of Secretary for a Time, in the Abſence of the real Secretary: That it could not be inferred from his ſigning the Commiſſions that he adviſed them; for many of thoſe who are appointed to ſign Papers are not of the Council; and they would be looked upon as Intruders if they offered their Advice: That he happened accidentally into the Earl of *Montroſe*'s Army, and was not in Arms, or had any Intention to march with him on any hoſtile Expedition; though he acknowledged he was taken Priſoner in that Battel: That the late Act of Parliament of 1644, on which they charged him with Treaſon, was not made as others were, by his Majeſty and the States jointly, but during a Diviſion between His Majeſty and His Subjects, who were in Arms againſt him, as they acknowledged; and in ſuch fatal Conjunctures, Neceſſity compels all Men to take one Side or other. There was no expreſs Law directing private Men how they ſhould behave in ſuch Exigencies; and it had ever been thought excuſable for Men to follow the Light of their own Conſciences and Judgments, although they might be miſtaken. That he ought to enjoy the Privileges of the Laws of War and of Nations, among which one of the Principal was, That Men ſhould not be judged by the Laws of thoſe againſt whom they had ſided, eſpecially by ſuch Laws as were made during the Conteſt. And he further inſiſted, That he was promiſed Quarter upon his ſurrendering himſelf.

The Uſurpers further reply.

The Counſel for the Uſurpers anſwered, That Sir *Robert* had not only joined the Earl of *Montroſe*, who had been declared a Rebel and Enemy to his Country, but who was an Enemy to their Religion, and the Solemn League and Covenant. Nor was it in the Power of any Officer of the Army to give Quarter, and thereby protect a Rebel againſt the State: That the Eſtates of Parliament, in order to avert God's Wrath, were bound by the Covenant to puniſh the Enemies of their Religion; and if Quarter was to be allowed to other Priſoners, yet not to him, who was declared unpardonable, by the Parliaments both of *Scotland* and *England*.

Sir Robert's further Anſwer.

The Priſoner's Counſel replied, That whoever were taken in the Field, upon Quarter granted them, had a Right to their Lives by the Laws of War, and of all Nations; eſpecially as his Caſe was, who was taken by a Officer belonging to a Nobleman of great Honour and Eminence, both in the State and in the Army; and if Quarter ſhould be denied where it was promiſed, this would open a Door to all manner of Cruelty; and that the Covenant could not oblige them to do what was unjuſt, or contrary to the Laws of War or of Nations.

That though it had been declared in Parliament he was to expect no Pardon, this did not exclude him from the Benefit of Quarter already granted, for ſecuring his Life.

The Committee having heard the Arguments and Evidence on both Sides, made their Report to the Parliament, who thereupon declared, Sir *Robert Spotſwood* had incurred the Capital Puniſhment of Death, by the Act of Parliament of 1584, and that he had incurred the Pain and Puniſhment of Treaſon, and Forfeiture of Lands and Goods, by the ſaid Act, made in the Year 1644; and therefore condemned him, as a Traitor to the Kingdom, and the Eſtates thereof, to forfeit Life, Lands, and Goods, to be applied to the Uſe of the Publick; and that he ſhould be executed, by ſtriking off his Head from his Shoulders, at the Market Croſs at St. *Andrews*, on *Thurſday* the 20th of that Inſtant *January*.

1645. 21 Car. I. *He is declared guilty, and condemned.*

In Purſuance of which Sentence, Sir *Robert* being brought to the Place of Execution, was about to make a Speech to the People, when a zealous Miniſter of the Kirk required the Provoſt to ſilence him. Sir *Robert* having foreſeen this, threw a Paper among the People of the following Tenour, (*viz.*)

The Paper he left behind him.

YE will expect ſomewhat from me of the Cauſe for which I am brought here at this Time to ſuffer in this kind, which I am bound to do, for clearing the Integrity of my own Proceedings, vindicating his Majeſty's juſt and pious Intentions, and withal, to vindicate you that are miſled in Ignorance, and made to believe, that you are tied in Conſcience to ſet forward this unnatural Rebellion, masked under the Covert and Pretext of propagating Religion, and maintaining of the publick Liberties. You perceive that I ſtand here adjudged to die, by this pretended Parliament, as a Traitor to the Eſtates, and an Enemy to my Native Country. This is a Treaſon unheard of before in this Kingdom, againſt the Eſtates; a Thing of late Creation, which, I believe, there be ſome would have erected, in Oppoſition to the juſt and lawful Authority of the King, under which we and our Predeceſſors have been ſo many hundred of Years governed. To come to my treaſonable Demeanour (as they eſteem it) the main one is, That I did docquet and bring down a Commiſſion of Lieutenantry from his Majeſty to the Marquis of *Montroſe*, with a Proclamation for indicting a Parliament by the King's Authority, wherein the ſaid Lord Marquis was to be Commiſſioner. Not to excuſe my ſelf upon the Neceſſity laid upon me to obey His Majeſty's Command in a Buſineſs of that Nature, in regard of the Charge I had about him, I cannot ſo far betray my own Conſcience, as to keep up from you my Judgment of the Thing it ſelf, ſeeing it may tend to the juſtifying the King's Part, and your better Information; for lack whereof, I know many are entangled in this Rebellion unwittingly: And who knoweth, but God in his merciful Providence hath brought us hither, to be Inſtruments of freeing you from the manifold Deluſions that are made uſe of to enſnare you. I ſay then, it was juſt and neceſſary to His Majeſty to grant ſuch Commiſſions, and by Conſequence an Act of Duty in me to perform what he was pleaſed to command me. It is known what Contentment His Majeſty gave to this Kingdom at his laſt being

1645. 21 Car. I

ing here, both in the Affairs of Church and Policy; notwithſtanding whereof, the World ſeeth what Meeting he hath got from us. When the Rebellion burſt forth in *England*, all that he deſired of us was, to ſtand neutral, and not to meddle between him and his Subjects there, of which moderate Deſire of his little Reckoning was made; but on the contrary, at the Requeſt of theſe Rebels, by the Power of their Faction amongſt us, an Army was raiſed and ſent to *England* to aſſiſt them againſt our own Native King: His Majeſty being reduced to this Extremity, what Expedient could he find ſo fair and eaſy, as to make uſe of the Help of ſuch of his Loyal Subjects here, as he knew had ſuch an unparalleled Diſloyalty in Horror and Deteſtation? Amongſt whom, that matchleſs Mirrour of all true Worth and Nobility, the Lord Marquis of *Montroſs* having offered himſelf, it pleaſed His Majeſty to give him a ſubaltern Commiſſion at firſt, which he having executed with ſuch unheardof Succeſs, that his Memory ſhall be had in Honour for it in all Ages: His Majeſty for the better furthering of his own Service, and to countenance and encourage him the more in it, gave him an abſolute and independent one thereafter, which is That I delivered into his Hands by His Majeſty's Command. Herewithal His Majeſty pitying the Miſery of this poor Kingdom, occaſioned by the rebellious Stubbornneſs of a few factious Spirits, thought fit to give Power to the ſaid Lord Marquis to call a Parliament in His Majeſty's Name, to try if by that Means a Remedy might be found againſt the preſent Evils, and to have all his Subjects of this Kingdom reduced, by one Means or other, under his Obedience. In all this, I ſee not what can be juſtly charged upon His Majeſty, or upon me his Servant, who have done nothing againſt any authorized Law in the Kingdom; but have ſerved him faithfully, unto whom by Truſt and natural Allegiance I am ſo much bound.

Whereas I am declared an Enemy to my Native Country, God be ſo propitious to me, as my Thoughts towards it have been always Publick, and tending to the Good and Honour thereof. I do profeſs, ſince the firſt Time I had the Honour of that Noble Marquis's Acquaintance, I have been a Favourer of his Deſigns, knowing them to be both Loyal and Honourable: Beſide that, I knew his Affection towards his Country to be eminent, in this eſpecially, that he did ever ſhow himſelf Paſſionate to vindicate the Honour of this Kingdom, which ſuffereth every where by this ſtrange Combination of theirs with the Rebels of another Kingdom againſt their own Prince; wherein I concurred in Judgment with him, and thought there was no other Way to do it, but by ſetting up a Party of true and Loyal hearted *Scots-men* for His Majeſty; whereby it might be ſeen, that it is not a National Defection, but only ſtirred up by a Faction therein, who, for their own Ends, have diſhonoured their Native Kingdom, and diſturbed the Peace thereof. In enterprizing and proſecuting of which heroical Deſign, God hath ſo favoured that Noble Lord, that he hath righted our Country in the Opinion of all the World, and diſcovered where the Rottenneſs lieth. 1645. 21 Car. I.

Thus far I am content to be accounted a Traitor in their Opinion that have condemned me, being fully aſſured, that God, the righteous Judge of all, who knoweth the Uprightneſs and Integrity of my Intentions, will impute no Fault to me in this kind, ſince to my Knowledge I have carried my ſelf according to the Direction of his Word, and the Practice of all good Chriſtians, before theſe miſerable Times we are fallen into. My Exhortation therefore (which coming from one at the Point I am at, will, I hope, have ſome Weight) ſhall be this unto you, That you will break off your Sins by Repentance, and above all, free yourſelf of this Maſter Sin of Rebellion that reigneth in this Land; whereunto moſt Part are either forced or drawn away unawares, chiefly at the Inſtigation of thoſe who ſhould direct you in the Way of Truth. It cannot be but a great Judgment upon a Land, when God's ſingular Mercies towards it are ſo little valued: He hath not given us a King in his Wrath, but one for Piety, Bounty, and all Virtues, both Chriſtian and Moral, may be a Pattern to all Princes beſides.

How thankful we are to God for ſo great a Bleſſing, our Reſpect towards him manifeſteth: Yet I fear, there is a greater Judgment than this upon it, which occaſioneth all the Miſchiefs that afflict this poor Land, ſuch as was ſent upon *Ahab*: God hath put a lying Spirit in the Mouths of the moſt Part of your Prophets, who, inſtead of the Doctrine of Salvation, labour to draw your Hearts unto the Condemnation of *Core*. God Almighty look upon this poor miſerable Church and Kingdom, and relieve you out of the intolerable Servitude you lie under, which I do heartily wiſh for in your Behalf! So let me have the Aſſiſtance of all your Prayers, that God would be pleaſed to pardon all my Sins in Jeſus Chriſt, and gather my Soul with the Saints and Martyrs, that are gone to their Reſt before. So I bid the World and you Farewell.

Sir *Robert* was not diſturbed at the unmannerly Interruption he met with, when he was about to addreſs himſelf to the People; but turning from them, he wholly applied himſelf to his Devotions and Prayers to Almighty God. The ſame Miniſter then asked, if he would have him and the People to pray for the Salvation of his Soul? He made Anſwer, That he deſired the Prayers of the People, but was not ſollicitous for his Prayers, which he believed were abominable to God; for (added he) of all the Plagues with which the offended Majeſty of God had ſcourged this Nation, this was much the greateſt, (greater than the Sword, Fire, or Peſtilence) that for the Sins of the People, God had ſent *a lying Spirit in the Mouth of the Prophets*. With which Saying, this Preacher finding himſelf touched, fell into ſuch a Paſſion, that he could not forbear ſcandalous and contumelious Language againſt Sir *Robert*'s Father, who had been long dead, and againſt himſelf, who was

21 Car. I. 1645.

now dying; which this Gentleman took no Notice of, having his Mind fixed upon higher Matters. At laſt, with an undaunted Air, he advanced towards the Inſtrument of his Execution, and ſhewing no Alteration, either in Voice or Countenance, he laid down his Neck to the fatal Stroke, and uttered theſe his laſt Words, *Merciful Jeſu, gather my Soul unto thy Saints and Martyrs, who have run before me in this Race!*

All the Remarks I ſhall make on this Piece of Injuſtice and Tyranny are, That, when Uſurpers are ſucceſsful, the beſt and greateſt Men are treated as Malefactors, and the Laws that were made for the Protection of the People, are wreſted to their Deſtruction; and that no Tyrants are more inſupportable than thoſe who are animated by a blind Zeal for a falſe Religion.

1645. 21 Car. I. *Remarks.*

1662. 14 Car. II. Crook's *Trial.*

The Trial of JOHN CROOK, ISAAC GREY, and JOHN BOLTON, Quakers, for not taking the Oaths, at the *Old-Baily, London*, on the 25th of *June* 1662. 14 Car. II.

1662. 14 Car. II.

A partial Narrative of the Quakers.

THIS is denominated a Trial in Conformity with the Editors of the 5th and 6th Volumes of Trials, who were pleaſed to call it ſo; but nothing diſcovers the Negligence or want of Judgment in thoſe that made that Collection, more than the binding up ſuch partial Narratives of the Parties themſelves among the State Trials: It conſiſts chiefly of inſolent Invectives againſt the Adminiſtration and Courts of Juſtice, and Complaints of their being diſturbed at one of their Conventicles, when the Laws prohibited ſuch Meetings: Of their being had before a Juſtice of Peace, then to the Seſſions of *Hicks's-Hall*, and afterwards before the Court of Gaol-Delivery at the *Old-Baily*, where the Oaths being twice tendered them, were as often refuſed, notwithſtanding the Court informed them, that by a ſecond Refuſal they incurred a *Premunire*.

They were then indicted on the 3 *Jac.* for not taking the Oaths, and being arraigned, refuſed to plead for ſome Time; but at length they pleaded Not Guilty, and Witneſſes being produced to prove their Refuſal of the Oaths, they cryed out, That Chriſt's Commands to his Followers were, *Swear not at all*, and were ſo noiſy and ſcurrilous, that the Court was compelled to order their Mouths to be ſtopped: At length, the Jury having brought them in Guilty, the Recorder read a Paper, importing, That the Jury having convicted them of not taking the Oaths they had incurred a *Premunire*, *Which was a Forfeiture of all their real Eſtates for Life, and of their Perſonal Eſtates for ever, put them out of the King's Protection, and made them liable to be impriſoned during Pleaſure*; and this was their Sentence: To which *Crook* anſwered, *We are ſtill under God's Protection.*

They are convicted,

and ſentenced to have incurred a Premunire;

But the Brethren neglect to do the Government that Juſtice to declare, the Crown did not take the Forfeitures they had incurred, but was more merciful to them than their inſolent Behaviour deſerved.

But the Sentence not executed.

1675. 27 Car. II.

Proceedings of the Houſe of Lords and Commons in relation to their reſpective Privileges in the Caſe of CRISPE and DALMAHOY. *Anno* 1675. 27 *Car.* II.

1675. 27 Car. II.

Vote of the Commons.

THE Houſe of Commons Reſolved the ſame Seſſions, in the Caſe of *Shirley* and *Fagg*, *That whoever ſhould appear at the Bar of the Houſe of Lords to proſecute a Suit againſt any Member of the Commons, during the Seſſion and Privilege of Parliament, ſhould be deemed a Breaker and Infringer of the Rights and Privileges of that Houſe: And that it was the undoubted Right of the Commons, That none of their Members be ſummoned to attend the Houſe of Lords, during the Sitting or Privilege of Parliament.*

And *Criſpe* and others, having appealed to the Houſe of Lords againſt a Decree in *Chancery*, made in Favour of Mr. *Dalmahoy*, a Member of the Commons, and others, the Lords ordered the Cauſe to be heard on the 28th of *May* 1675, and Sir *John Churchill*, Mr. Serjeant *Peck*, Mr. Serjeant *Pemberton*, and Mr. *Porter*, were aſſigned Counſel for *Criſpe*, &c. by the Lords, and the Cauſe being accordingly heard at the Lords Bar on the 28th of *May*, the Petition and Decree were diſmiſſed.

Whereupon

1675. 7 Car. II

Whereupon the ſaid Counſel were ordered to attend the Houſe of Commons, and being called in and examined concerning their appearing at the Lords Bar, notwithſtanding the abovesaid Reſolutions of the Commons, the Counſel anſwered, That they had no Notice of the Order or Vote of the Houſe, but what they had heard in common Diſcourſe; and being aſſigned Counſel for the *Criſpe* by the Lords, and Mr. *Dalmahoy* putting in his Anſwer, and not inſiſting on his Privilege, they conceived, they might ſafely appear as Counſel, without Breach of the Commons Order, or invading the Rights or Privileges of the Houſe, which they never intended.

Serjeant Pemberton, and 3 Lawyers more, taken into Cuſtody by the Commons.

But the Counſel being withdrawn, the Commons ordered them to be taken into Cuſtody of the Serjeant at Arms.

Reſolutions of the Lords communicated at a Conference.

A Committee of Lords afterwards, at a Conference with the Commons on the 3d of *June*, took Notice, that the Commons had ordered into the Cuſtody of their Serjeant, Mr. Serjeant *Peck*, Sir *John Churchill*, Mr. Serjeant *Pemberton*, and Mr. Serjeant *Porter*, Counſellors at Law, aſſigned by their Lordſhips to be of Counſel, in an Appeal heard at their Lordſhips Bar in the Caſe of Sir *Nicholas Criſpe*, againſt the Lady *Bowyer*, Mr. *Dalmahoy* and others; and inſiſted, that the Juriſdiction of the Lords in Parliament, where his Majeſty is higheſt in his Royal Eſtate, and where the laſt Reſort of judging upon Writs of Error, and Appeals of Equity in all Cauſes, and over all Perſons, is undoubtedly fixed, and permanently lodged.

It is an unexampled Uſurpation and Breach of Privilege againſt the Houſe of Peers, that their Orders or Judgments ſhould be diſputed, or endeavoured to be controuled, or the Execution thereof obſtructed by the lower Houſe of Parliament, who are no Court, nor have Authority to adminiſter an Oath, or give any Judgment.

It is a tranſcendent Invaſion on the Right and Liberty of the Subject, and againſt *Magna Charta*, the Petition of Right, and many other Laws which have provided, That no Freeman ſhall be impriſoned, or otherwiſe reſtrained of his Liberty, but by due Proceſs of Law.

This tends to the Subverſion of the Government of this Kingdom, and to the introducing of Arbitrarineſs and Diſorder:

Becauſe it is in the Nature of an Injunction from the lower Houſe, (who have no Authority or Power of Judicature over inferior Subjects, much leſs over the King and Lords) againſt the Orders and Judgments of the Supreme Court.

We are further commanded to acquaint you, That the Lords have therefore, out of that Juſtice which they are Diſpenſers of againſt Oppreſſion and Breach of Laws, by Judgment of this Court, ſet at Liberty by the Gentleman-Uſher of the Black-Rod, all the ſaid Serjeants and Counſellors, and prohibited the Lieutenant of the *Tower*, and all other Keepers of Priſons, and Goalers, and all Perſons whatſoever, from arreſting and impriſoning, detaining, or otherwiſe moleſting, or charging the ſaid Gentlemen, or any of them in this Caſe: And if any Perſon of what Degree ſoever ſhall preſume to the contrary, their Lordſhips ſhall exerciſe the Authority with them intruſted, for putting the Laws in Execution.

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Proceedings of the Commons thereupon.

The Commons, notwithſtanding, ordered their Serjeant to go into the Courts of *Weſtminſter-Hall* and take the ſaid Counſellors into Cuſtody again; and the Serjeant intimating he had obeyed the Order, they were committed to the *Tower* by the Speaker's Warrant: And it was ordered, that *John Popham*, Eſq; their Serjeant at Arms, ſhould be protected againſt all Perſons who ſhould moleſt him in the Execution of his Office.

And at a future Conference with the Lords, the Commons declared, they were ſurprized their Lordſhips ſhould aſſume a Power to judge the Orders of the Houſe of Commons for Impriſonment of Mr. Serjeant *Pemberton*, Mr. Serjeant *Peck*, Sir *John Churchill*, and Mr. *Charles Porter*, to be illegal and arbitrary, and the Execution thereof, a great Indignity to the King's Majeſty; with many other high Reflections upon the Houſe of Commons throughout the whole Conference, whereby your Lordſhips have condemned the whole Houſe of Commons as Criminal, which is without Precedent or Example, or any Ground or Reaſon ſo to do.

It is not againſt the King's Dignity, for the Houſe of Commons to puniſh by Impriſonment a Commoner that is guilty of violating their Privileges, that being according to the known Laws and Cuſtoms of Parliament, and the Right of their Privileges declared by the King's Royal Predeceſſors in former Parliaments, and by Himſelf in this.

But your Lordſhips claiming to be the Supreme Court, and that his Majeſty is higheſt in his Royal Eſtate in the Court of Judicature, there is a Diminution of the Dignity of the King, who is higheſt in his Royal Eſtate in full Parliament, and is derogatory to the Authority of the whole Parliament, by appropriating it to your ſelves.

The Commons did not by this Impriſonment infringe any Privileges of the Houſe of Peers, but only defend and maintain their own: On the other Side, your Lordſhips do highly intrench upon the Rights and Privileges of the Houſe of Commons, by denying them to be a Court, or to have any Authority or Power of Judicature; which, if admitted, will leave them without any Power or Authority to preſerve themſelves. As to what your Lordſhips call a tranſcendent Invaſion of the Rights and Liberty of the Subject, and againſt *Magna Charta*, *the Petition of Right*, and many other Laws; the Houſe of Commons preſume that your Lordſhips know that neither the Great Charter, Petition of Right, or any other Laws, do take away the Law and Cuſtom of Parliament, or of either Houſe of Parliament; or elſe your Lordſhips have much forgotten the Great Charter, and thoſe other Laws, in the ſeveral Judgments your Lordſhips have paſſed upon the King's Subjects in Caſes of Privilege. But the Commons cannot find by *Magna Charta*, or by any other Law or ancient Cuſtom of Parliament,

1675. 27 Car. II.

liament, that your Lordships have any Jurisdiction in Cases of Appeals from the Courts of Equity.

We are further commanded to acquaint you, That the Enlargement of those Persons in Prison by Order of the House of Commons, by the Gentleman-Usher of the Black Rod, and the Prohibition which threatens all Officers and other Persons whatsoever not to receive or detain them, is an apparent Breach of the Rights and Privileges of the House of Commons: And they have therefore caused them to be re-taken into the Custody of the Serjeant at Arms attending this House, and have committed them to the *Tower*.

The Houses proceeding to these Extreams, the King ordered them to attend him at *Whitehall*, on the 5th of *June*, when he told them, He was not to suffer these Differences to grow to Disorders in the whole Kingdom, if he could prevent it; and while they were debating about their Privileges, to suffer his own to be invaded. 1675. 27 Car. II.

The Lords then presented an Address to his Majesty, to remove the Lieutenant of the *Tower* for receiving the Lawyers into his Custody, that were committed by the Commons; but his Majesty answered, He did not see how he could in Justice remove him.

Afterwards the two Houses proceeded in their Debates on the Case of *Shirley* and *Fagg*, being of the same Nature, and already recited in this Work: And the King, perceiving there was no Likelihood of their accommodating their Differences, prorogued the Parliament, whereby the Lawyers obtained their Liberty.

1681. 33 Car. II.

Lord Maitland's Trial.

The Trial of CHARLES MAITLAND Lord *Halton*, Lord Treasurer Depute, for *Perjury*, at *Edinburgh*, before the Lords of the Articles, (a Committee of Parliament which prepares Business for the House) in *July* and *August* 1681. 33 *Car.* II.

1681. 33 Car. II.

The Charge.

THE Petition or Charge preferred by Mr. *W. Noble* to his Royal Highness the Duke of *York*, High Commissioner to the Parliament of *Scotland*, and the Lords of the Articles, against the Lord Treasurer Depute, was of the following Tenor, *(viz.)*

That whereas *James Mitchel*, deceased, being brought upon his Trial for attempting to assassinate the Archbishop of St. *Andrew's*, and his Confession before the Duke of *Lauderdale*, his Majesty's High Commissioner, being produced as Evidence against him, the said *Mitchel* in his Defence had affirmed, that his said Confession was made upon an Assurance given him of his Life, and called the said *Charles* Lord *Maitland*, Lord Treasurer Depute, as a Witness to prove it, who testified, *That no Promise or Assurance of Life was given to the said* Mitchel, notwithstanding the said Lord *Maitland*, by Letters under his Hand, had expressly wrote to the late Earl of *Kincardine*, *That the said* Mitchel *had confessed, on Assurance of Life made to him.* Whereupon it was prayed, That the said Lord *Maitland*, Lord Treasurer Depute, might be declared infamous, and suffer such other Pains as were appointed by Law in such Cases.

The Answer.

To this Charge the Lord Deputy answered, That to denominate it Perjury there ought to be two contradictory Oaths, whereas here is only an Oath said to be made four Years ago contradicting his Letters, which could not infer Perjury, but only an Error or Mistake in the Letters: That when he was convinced that he had been mistaken in his Letters, and was called to give Evidence of the Matter afterwards, it was his Duty to testify, according to his Knowledge and the Truth, though it contradicted his Letters, which only contained an indigested Account of News.

He answered further, That the Oath and the Letters were consistent, for *Mitchel* at first denied the Fact before the Council, though he afterwards confessed it privately to the Chancellor when he was withdrawn; and it was generally reported, till the Chancellor testified the contrary, that he had made that Confession upon an Assurance of Life, which was a sufficient Foundation for a Letter of News: But when he came to give Evidence, he could not testify *he heard* any such Confession, that being made in private before the Chancellor (if there was any made) and not before the Council, as the Letters themselves imported: From all which he observes, It was evident that the Charge was an unjust Calumny, and a scandalous Libel; and prays that he may be vindicated and assoiled from it, and the Calumniator be punished and declared infamous, according to the Demerit of his Crime.

Lord Maitland acquitted.

The Lords of the Articles having considered the Matter, declared the Lord Treasurer Depute to be innocent, desiring his Royal Highness, the High Commissioner, to lay the whole Affair before his Majesty, that the Treasurer might be vindicated, and the Author punished.

1684. 36 Car. II. *The Trial between* Neal *and* Ivy.

A Trial in Ejectment between THOMAS NEAL, Esq; Lessor of the Plaintiff, and the Lady IVY, Defendant, in the Court of *King's-Bench*, in *Trinity-Term* 1684. 36 *Car.* II.

1684. 36 Car II.

The Case. THE Case was this: Mr. *Neale*, the Lessor of the Plaintiff, claimed seven Acres of Land in *Shadwell*, as Lessee, of the Dean and Chapter of St. *Paul's*, who had the Inheritance of those Lands; and the Defendant, the Lady *Ivy* claimed the same Lands as Part of *Wapping Marsh*, which had been dreined by one *Vander-Delf*, a *Dutchman*, who had one half of that Marsh, by Act of Parliament, conferred on him and his Heirs as a Reward for that Service. And one *Stephens* had purchased these Lands of the *Dutchman*, under whom the Lady *Ivy* endeavoured to make out her Title.

The sole Question was, Whether these Lands were Part of *Wapping Marsh*, or Part of the Dean and Chapters Estate in *Shadwell*? And it appearing that the Lady *Ivy* had forged several Deeds to support her Pretensions, *Neale*, the Plaintiff, obtained a Verdict: Whereupon an Information of Forgery was preferred against the Lady: But whether there were any Proceedings upon it does not appear.

This being a pure Civil Cause, and only the Trial of a Matter of Fact, which has no Relation to the State, and very little Law in it, I believe the Reader will be better satisfied with this short Abstract than if I had given him the forty folio Pages it takes up in the Collection of Trials. It is evident to me, that this was put in by the Direction of the Booksellers, purely to encrease the Bulk, and enhance the Price of the last two Volumes, there not being one civil Trial more, as I remember, in the whole Collection. By the same Rule they inserted this, they might have bound up a thousand more of the same Kind; and I don't doubt but they will in Time, if they think the Publick will take off such for the Sake of those that are really State Trials, or the Trials of Illustrious Criminals: This is a Misfortune we must submit to, when the Feet govern the Head, and Booksellers set up for Authors, or, which is the same Thing, to direct the Hands they employ, what shall be compiled, and what shall be omitted.

The Reader observes also, that this is very improperly called the Lady *Ivy*'s Trial, as it is only a Trial of a controverted Title beween Party and Party.

1688. 1W.&M. Cavenagh's *Trial.*

The Trial of MAURICE CAVENAGH, EDMUND POOR, and WILLIAM BOWLAND, for Felony, at the Assizes held for the County of in *Ireland*, on the 7th of *March* 1688. 1 *W.* & *M.*

1688. 1W.&M.

An imperfect Piece. *Nothing discovers the Sagacity of those Gentlemen who published the last Edition of State Trials more than their inserting so very imperfect a Piece as this.*

They do not so much as furnish us with the Indictment against the Criminals, the Names of the Prosecutors or Witnesses, or so much as the Name of the Place where they were tried.

The Charge. WE are informed only that a great many People were arraigned for stealing Cows, at some Assizes in *Ireland*, and were acquitted for want of Evidence, the Witnesses being afraid to appear against them, least they should be murdered, or their Houses fired by *Irish* Papists.

But that the Person from whom the above-said *Edmund Poor* had stolen two Cows, appeared against him, and testified, that when he found his Cows in *Poor*'s Custody, *Poor* paid him for them, who made it part of his Defence, that he paid the Prosecutor the Money upon Condition he should not trouble him.

Two Witnesses also testified against *Maurice Cavenagh*, that they found a Skean or *Irish* Dagger in his Custody, a Weapon prohibited to be worn by *Irish* Papists; and *Cavenagh* in his Defence said it was a Butcher's Knife, and when it appeared to be a Skean, *Cavenagh* said, that not only he but the Papists of every Parish were advised by their Priests to provide themselves with half Pikes and Skeans at this Time: But there being no Evidence of his stealing Cows, he was acquitted.

Bowland was convicted of stealing Cattle as well as *Poor*, and both of them praying the Benefit of their Clergy, the Chief Justice *Keating* directed the Ordinary, not to assist them in reading; and the Ordinary thereupon returning *Non legit* as to both of them, the Chief Justice pronounced Sentence of Death upon these two, telling them they must expect no Pardon; these Depredations being so common

Bowland *and* Poor *convicted.*

Sentence of Death against them.

1688. 1W.&M. common at this time, that no Man could enjoy his Goods in quiet.

When Judgment was paſſed on *Poor* and *Bowland*, the Women of their Relations and Acquaintance, ſet up a frightful Howl in Court; whereupon Judge *Keating* obſerved, they did not howl thus when the Cows came home, they were then buſy in killing and powdering them up.

Rapparees protected by the Soldiers. The next Thing the Editors preſent us with is a Protection given to ſome *Iriſh* Rapparees by Enſign *Byrne*.

And laſtly we are entertained with a Letter from the Lord Deputy *Tyrconnel* to the Judges of Aſſize, to promote Subſcriptions for a Loan to King *James*, which Judge *Keating* communicating to the Grand Jury, they wrote an Anſwer to it, ſetting forth the extreme Poverty of their County, by the daily Ruin of the *Engliſh*; and deſiring therefore to be excuſed, which the Court were ſo exaſperated at, that they ordered it to be torn in Pieces.

1688. 1W.&M. *A Letter of Loan by Tyrconnel.*

1695. 7 W.III. Proceedings in the Caſe of THOMAS KENDAL, and RICHARD ROE, committed by a Secretary of State to the Cuſtody of a Meſſenger for *High-Treaſon*, the 31ſt of *October* 1695. 7 *W.* III.

1695. 7 W.III.

Kendal and Roe committed for an Eſcape.

Move to be admitted to Bail;

THE Priſoners *Thomas Kendal* and *Richard Roe*, were committed to *Newgate* by Mr. Secretary *Trumbull*, for being privy to, and aſſiſting the Eſcape of Sir *James Montgomery*, (charged with High-Treaſon) out of the Cuſtody of *William Sutton*, one of his Majeſty's Meſſengers: Whereupon they ſued out Writs of *Habeas Corpus*, and were brought before the Court of *King's-Bench*, on the 31ſt of *October* 1695, when their Council took Exception to the Return made by the Keeper of *Newgate*; for that a Secretary of State, or a Member of the Privy Council, could not commit any Perſon — They inſiſted further, that in Caſe a Secretary might commit, yet the Priſoners ought to be bailed by the *Habeas Corpus* Act, which provided, that Priſoners ſhould be bailed forthwith, unleſs they were committed for Treaſon or Felony, *eſpecially expreſſed* in the Warrant: And here the Nature of the Treaſon Sir *James Montgomery* was committed for, was not expreſſed, That where a Commitment was for Felony *generally*, the Priſoner ought to be bailed by that Act: Nor was the Eſcape of the Priſoner Felony, unleſs he was under a lawful Cuſtody, by a lawful Warrant, expreſſing the Offence; therefore, if the Party commanded receive, or the Perſon to whoſe Cuſtody he was committed was no lawful Officer, the Reſcuer was not guilty of any Capital Offence. It did not appear in this Caſe, what the Warrant was by which Sir *James Montgomery* was committed; nor was the Meſſenger, in whoſe Cuſtody he was, a lawful Gaoler: The Practice of making their Houſes Gaols was but of late Years, our Law-Books took no Notice of him as a legal Officer: Any Man indeed might be commanded to carry another to Priſon, but he did not become a Gaoler thereby, to keep him Nine or Ten Months in Cuſtody, and charge him with ſix Shillings and eight Pence a Day for his Lodging and Diet, as ſome Meſſengers had done: And if a Meſſenger could not legally detain ſuch a Priſoner, the Conſequence was, the Eſcape or Reſcue of ſuch Priſoner could not be either Treaſon or Felony.

becauſe the Eſcape was from a Meſſenger,

and the Treaſon not ſpecially expreſſed.

Nor could the Reſcuer be tried till the Priſoner himſelf was firſt attainted: And in this Caſe Sir *James* was dead, having never been attainted or indicted, which rendered it impoſſible for the Priſoners to be tried for Treaſon; they as Reſcuers could only be fined and impriſoned, as this Caſe was; which was a further Reaſon for their being bailed.

The Reſcuer can't be tried, till the Priſoner is attainted.

To this the King's Counſel anſwered, That the reſcuing one in Cuſtody upon Suſpicion of Treaſon was Treaſon; and as to the Commitment by a Secretary of State, this was no Novelty; the Practice was very ancient, as appeared by 11 *Leon.* They had found in the Tower a Commitment alſo by Mr. Secretary *Morriſon*, in 1660, and there had been many more ſince.

Treaſon to reſcue one committed for Treaſon.

A Commitment to a Meſſenger held good;

The Chief Juſtice declared it to be his Opinion, that a Priſoner might be committed to any Man on his Apprehenſion for a convenient Time till he could be examined; but then he held, it ought to have been ſpecified in the Warrant for what Treaſon Sir *James* was committed; for the Eſcape would be of the ſame Species of Treaſon with that for which the Party reſcued was committed; and therefore they ought to be bailed.

but the Species of Treaſon ought to be expreſſed.

The Priſoners bailed.

The other Judges being of the ſame Opinion, the Priſoners were bailed.

The

1701
13 W. III.

Hurly's *Trial.*

The Trial of PATRICK HURLY, Gentleman, for Perjury and a Cheat, before the Court of *King's-Bench* in *Ireland*, on the 31ſt of *May* 1701. 13 *W.* III.

1701.
13 W III.

Two Indictments.

THE Priſoner was tried on two Indictments; the firſt being for Perjury, in ſwearing before a Juſtice of Peace, of the County of *Clare*, That he was robbed of three hundred forty-five Piſtoles, and other Things of great Value, by four Perſons unknown, whereas he knew them very well, having concerted the Matter with them; neither did they take any thing from him but what was reſtored him.

The ſecond Indictment charged him with conſpiring deceitfully with one *Daniel Hicky*, and others, to oppreſs the Popiſh Inhabitants of the County of *Clare*, and cheat them of a great Sum of Money.

The Evidence.

The Witneſſes being called, *Dean Neptune*, one of his Majeſty's Juſtices of Peace, depoſed, That the Priſoner made Affidavit before him, That on *Sunday* the 3d of *March* 1699, about Eleven o'Clock at Night, ſeveral Perſons unknown, with their Faces masked, broke into his Father's Houſe at *Moughna*, in the ſaid County of *Clare*, and forcing themſelves into the Priſoner's Chambers, ſhot at him, and tied him and his Friend Mr. *Ronane*, to the Bedſtead: That he took them to be *Iriſh* Papiſts by the Tone of their Voices, but he did not know their Perſons: That they broke open ſeveral Trunks, and out of one of them took a Bag of three hundred ſeventy-four Guineas, three hundred forty-five Piſtoles, a Gold Croſs ſet with Diamonds, and ſeveral other Things, the Whole amounting to about thirteen hundred Pounds.

Calaghan Carty, and ſeveral other Witneſſes teſtified, That the Priſoner propoſed their being concerned with him in this ſham Robbery, and that he (this Witneſs) was actually a Party in it: That the Guineas, the Priſoner pretended to loſe, were but Counters; and though they let off ſeveral Piſtols, they were Arms that belonged to the Houſe, and only loaded with Powder.

Others teſtified, That the Priſoner was in Debt, and propoſed by this Stratagem to raiſe a great Sum of Money on the Popiſh Inhabitants of the County of *Clare*, the late Rapparee-Act obliging the Papiſts to make good ſuch Loſſes where the Robbery was committed by *Iriſh* Papiſts.

His Defence.

The Priſoner's Counſel ſaid in his Defence, That he was known to be a Monied Man: That he brought a great deal of Money out of *France*, and had ſeveral large Sums returned lately from thence: That ſome Gentlemen had a Spite againſt him, and had influenced the Grand Jury not to find the Bill for the Robbery: And that the Witneſſes had been bribed and threatened to make them ſwear it a Sham Robbery, and then calling his Witneſſes,

The Priſoner's Witneſſes.

John Hurly, his Brother, depoſed, That he had received great Sums for his Brother from beyond Sea, and that Rewards had been promiſed to ſome of the Witneſſes on Condition they would ſwear it to be a Sham Robbery.

Dorothy Kemp, the Priſoner's Concubine, alſo teſtified, That ſhe was in the Houſe when the Robbery was committed: That ſeveral Piſtols were fired, and the Priſoner and others were bound by the Robbers, who carried off great Sums of current Money and other things; and that ſhe had been tampered with to lay counterfeit Money in the Houſe, to prove the Priſoner a Cheat.

Others depoſed, They had been promiſed Rewards, and threatened to ſwear it a Sham Robbery.

The Priſoner convicted.

The Jury giving no Credit to the Priſoner's Witneſſes, who had but indifferent Characters, after half an Hour's Receſs, brought him in Guilty upon both Indictments; and he was ſentenced to pay a Fine of One Hundred Pounds on the firſt Indictment. The King's Counſel afterwards moved for Judgment on the laſt Indictment, inſiſting, That the Pillory was the Puniſhment for a Cheat; but were anſwered by the Court, That it was ſo, in Caſe he was not able to pay his Fine: But what Judgment was given on the laſt Indictment does not appear in the Collection of Trials.

His Sentence.

The

1711. 10 Annæ.

Haunt's *Trial.*

The Trial of WILLIAM HAUNT, the Dragoon, at *Edinburgh*, before the Lord Juſtice General and Commiſſioners of Juſticiary, on the 19th of *February* 1711. 10 *Annæ.*

1711. 10 Annæ.

Indictment THE Indictment charged, that on the firſt or ſome other Day of *September* then laſt paſſed, there having happened a Tumult in the Town of *Dalkeith*, betwixt ſome Dragoons quartered there, and the Town's People; and a Party of Dragoons having been ſent from the Guard, the Commander of the ſaid Party met the Deceaſed *Henry Mac Millan* Fleſher, in *Dalkeith*; and while he was diſcourſing with him, the ſaid *William Haunt* one of the Party, came behind the ſaid *Henry Mac Millan* and knocked him down with his clubbed Musket, he, the ſaid *Henry* having not given him the leaſt Provocation; of which Stroke the ſaid *Henry Mac Millan* died the Day after, whereby the ſaid *William Haunt* was guilty of Murder, and ought to be puniſhed with Death and Confiſcation of Moveables.

Evidence. The Witneſſes teſtified, that there was a Tumult at *Dalkeith* on a certain Evening in the Month of *September* then laſt paſſed; and that part of Sir *Richard Temple*'s Regiment of Dragroons being quartered there, Serjeant *Plunket* went from the main Guard with a Party of Dragoons, among whom was *William Haunt* the Priſoner, to ſuppreſs the Tumult; and while the Serjeant with his Sword drawn in his Hand, was parlying with the Deceaſed *Henry Mac Millan*, (one of the Ringleaders of the Mob) a Dragoon came behind the ſaid *Henry Mac Millan*, and knocked him down with his clubbed Musket, and his Skull being fractured by the Blow, he died two or three Days after.

Verdict. The Jury being afterwards withdrawn, brought in a Verdict of the following Tenour, *viz.* That, having conſidered the Indictment at the Inſtance of *Elſpeth Johnſon*, Relict of the ſaid *Henry Mac Millan* Fleſher in *Dalkeith*, &c. againſt *William Haunt*, Dragoon in Sir *Richard Temple*'s Regiment of Dragoons, the Depoſitions of the Witneſſes, &c. They unanimouſly find it proved, that the Deceaſed *Mac Millan* was knocked down in the Streets of *Dalkeith*, by one of the Dragroons then preſent, with the Butt End of a Musket; and that the Wound he received was mortal; but they do not find that the Priſoner *William Haunt* gave the Blow: Whereupon the Court acquitted the Priſoner.

The Priſoner acquitted.

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Laidly's *Trial.*

The Trial of WILLIAM LAIDLY *alias* SCOT, of *Moſsphennan*, WALTER LAIDLY his Brother, and JAMES BREDEN, JAMES VEITCH, and JAMES CHEISHOLM, his Servants, before the Court of Juſticiary at *Edinburgh*, on the 21ſt of *January* 1712. 11 *Annæ.*

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Proſecutors. THE Defendants were indicted at the Inſtance of *Donald Mac Pherſon*, Son of *Malcolm Mac Pherſon*, Merchant Drover, and Sir *James Stewart*, Her Majeſty's Advocate, for beating and bruiſing Her Majeſty's Subjects: The Indictment reciting, that the Crimes of violently beating and bruiſing the Leidges to the Effuſion of their Blood, and the wrongouſly ſtopping and hindering the Leidges in the uſe-making of the Ways or ordinary Routs for driving of their Cattle to Mercats, and not only hindering ſuch Cattle with Dogs, and Men on Horſeback, ſo violently, that the Cattle being ruſhed into Præcipies, became there-through utterly diſabled and deſtroyed; but likewiſe that the ſo Invaders, Moleſters, and Hounders, do at their own Hand, ſeize and away take, what of ſuch Cattle they think fit for their own Uſe; and all this in a moſt Maſterful Way of Oppreſſion and Robbery, are Crimes of a high Nature, and ſeverely puniſhable, eſpecially when tending to the Diſcouragement of that Branch of the Trade of this part of *North Britain*, that conſiſts in the driving of Black Cattle to the *Southern* Parts; and which kind of Trade muſt neceſſarily be given up, unleſs duly protected and ſecured againſt ſuch Maſterful Inſults and Abuſes. Nevertheleſs, true it was, and of Verity, that the ſaid *William Laidly* alias *Scot*, and the ſaid *Walter Laidly* his Brother, and the other Perſons above complained of are guilty, as Actors art and part of the foreſaid Crimes; in ſo far as upon the laſt Day

The Indictment.

1712. 11 Annæ. Day of *Auguſt*, 1ſt, 2d and 3d of *September*, or one or other of the Days of the ſaid Months of *Auguſt* or *September* laſt, the ſaid Complainer *Donald Macpherſon*, being in a peaceable manner with his Servants driving his Drove of Cattle towards *England*, was, upon that Place of the Road or Highway that is on the North Side of the Water of *Tweed*, near the Houſe of *Moſsphennan*, violently attacked and aſſaulted, about four or five of the Clock in the Afternoon, by the ſaid *William Laidly* of *Moſsphennan*, *Walter Laidly* his Brother, and other Perſons his Servants and Accomplices, their hounding Dogs at his Cattle, and violently beating and knocking down to the Ground with a Staff, the Perſon of *Hugh Macqueen*, one of the Complainers Servants, and did almoſt cut off the ſaid Servant his Finger with a ſhearing Hook; and not ſatisfied therewith, they the ſaid *William Laidly* of *Moſsphennan*, and *Walter Laidly* his Brother, or one or other of them, and their ſaid Accomplices, did violently aſſault the Complainer, by laſhing him with their Horſewhips, and then violently dragging the Complainer backward by the Hair from off his Horſe to the Ground, to the great Effuſion of his Blood, and Hazard of his Life, till reſcued out of their Hands by People that came from the other Side of *Tweed*, upon the Sight of ſuch barbarous Uſage; and which violent hounding of the Cattle, the ſaid *William Laidly* his Brother, and other of the ſaid Accomplices, not only continued and perſiſted in, ſeveral Miles, to the great wracking and Diſtreſs of the Cattle, by Reaſon of the Precipice and Steepneſs of ſome part of the Way, that eight of them were utterly diſabled and left to him the ſaid *William Laidly* to be accountable; therefore beſide that the ſaid *William* did at his own Hand violently ſeize upon, and away take ſix more of the prime and beſt of the Complainers ſaid Oxen or Cattle by way of plain Robbery, wherethrough, and the Loſs of the ſaid other Cattle ſo diſabled, the Complainer is damnified in no leſs than 42 *l.* Sterling, at 3 *l. per* Piece, being the Rate paid at the *Engliſh* Marcats, for the Remainder of the Complainer's Drove of that ſort: And this attour the loſs of 12 Head of Cattle more, that died of the ſaid Day's Streſs and Violence, before the Complainers Arrival at *Carliſle*: So that the Damages in all is no leſs than 78 *l.* Sterling, attour the perſonal Injury, as aforeſaid, done to the Complainer himſelf and his Servant. Of which Crimes of violent beating, bruiſing, wounding, and blooding the Complainer and his Servant, and wrongouſly moleſting him in his free Uſe of the Highway, and of wrongouſly hounding his Drove with Dogs as aboveſaid, and the diſabling and wracking of ſo many of his Cattle as aforeſaid, and robbing and plundering them as ſaid is, the forenamed Perſons, or one or other of them and their Accomplices, being found guilty as Actors, or art and part, by the Verdict of an Aſſize, they ought to be decerned, conjunctly and ſeverally, and in *ſolidum*, not only in the Sums aforeſaid, as the Value and Price of the Cattle, ſo robbed and diſabled by them, but likewiſe in the Sum of 100 *l.* Sterling more, in Name of Damages and Expence ſuſtained by the Complainer, and otherwiſe puniſhed in their Perſons, to the Terror of others to commit the like in Time coming. 1712. 11 Annæ.

Defence. *William Laidly*, alias *Scot*, and the reſt of the Defendants in Anſwer to this Charge, ſaid, That the Lands of *Moſsphennan* lye on the Side of the Water of *Tweed*, through which there lies a common Highway, from the *North* to *Annandale* and *Carliſle*; and that the Graſs or Paſture Grounds of *Moſsphennan* lies near the the ſaid Highway, through which the Proſecutor *Donald Macpherſon* driving Twenty Score of Black Cattle towards *England*, with about fifteen Servants, they treſpaſſed upon the mowing Graſs, and committed other great Diſorders, and that his Servants only ſet on or hounded a Dog to drive them off the ſaid Graſs; whereupon *Macpherſon* the Proſecutor drew a Piſtol, and threatned his People to ſhoot them, and they were forced to diſarm him in their own Defence; and acknowledges that he did alſo take ſome of the Proſecutors Cattle, to make him Satisfaction for the Damages they had done him, as he legally might; but that his Brother, the Defendant *Walter Laidly*, was grievouſly wounded in the Fray: and the Proſecutors were really the Aggreſſors, and the Occaſion of the Miſchief that was done.

The Evidence. The Witneſſes teſtified, that the Proſecutors were driving their Cattle peaceably along the ſaid Highway, and did not feed or commit any Treſpaſs on the Lands of the Defendant *Moſsphennan* (*William Laidly*), who notwithſtanding hunted the Cattle with the Dogs, drove ſome of them over Precipices whereby they were ſpoiled, and ſeized ſeveral more on pretence of Damages, which occaſioned the Fray between the Proſecutors and the Defendants, in which the Proſecutor *Donald Macpherſon*, was pulled off his Horſe, his Piſtol ſeized, and one of his Men ſeverely beaten.

Verdict. The Jury, having conſidered the Evidence, with one Voice find it proved, that *Walter Laidly*, one of the Defendants, and ſome others with Dogs, did begin to hound, or hunt the Proſecutors Cattle in the Highway; and that eight or nine of them were driven over a Precipice, whereby five or ſix were diſabled: They alſo find that the hounding or hunting was continued by the Defendant *Moſsphennan* (*William Laidly*), and ſome others, for four or five Miles; and that he did drive away and detain ſix of the Proſecutor's Cattle: They find alſo that the Defendant *Walter Laidly* did beat *Macqueen*, one of the Proſecutor's Servants; and that *William Laidly* did laſh the Proſecutor with a Horſe-Whip, pull him by the Hair, and dragg him backwards off his Horſe to the Ground, to the Effuſion of Blood, and that after he was upon the Ground, *Breeden*, one of the Defendants did beat him and ſeize his Piſtol.

Judgment. The Court of Juſticiary, having heard the Verdict, did adjudge, that the Defendants *William* and *Walter Laidly*, ſhould pay a Fine of 35 *l.* Sterling, *viz.* 30 *l.* to the Proſecutor *Donal Macpherſon*, for Damage, and 5 *l.* to

1712. 11 Annæ. the Uſe of Her Majeſty; and adjudged that the Defendant *Moſsphenman* (*William Laidly*) ſhould detain for his own Uſe the ſix Cattle he had ſeized for Damages, and the other Cattle left behind by the Proſecutor, allowing for the Expence of keeping: But that the ſaid *Moſsphenman*, (*William Laidly*) ſhould give 300 Marks Security, not to moleſt the Proſecutor, his Tenants or Servants for the future. And the Court acquitted and diſcharged the reſt of the Defendants. 1712. 11 Annæ.

1721. 8 Geo. I. *Captain Henry's Trial.*

The Trial of Captain MITFORD HENRY, Eſq; on the Statute of *Stabbing*, before Mr. Juſtice *Powel*, at the Summer-Aſſizes for the County of *Nottingham*, in the Year 1721. 8 *Geo.* I. 1721. 8 Geo. I.

The Indictment. THE Indictment charged, That the ſaid *Mitford Henry*, on the 24th of *June* then laſt paſt, at *Elkeſley* in the ſaid County of *Nottingham*, did felonioufly make an Aſſault on one *John Barugh* with a drawn Sword, giving the ſaid *Barugh* one mortal Wound of the Breadth of half an Inch, and of the Depth of eight Inches, the Sword entering at the left Shoulder of the Deceaſed, and coming out at his Left Breaſt; of which Wound the ſaid *John Barugh* then and there inſtantly died; and that the Deceaſed had no Weapon drawn, nor had ſtruck the Priſoner before the ſaid Wound was given.

The Caſe. The Caſe was this: The Priſoner, Captain *Henry*, riding Poſt into the North, was overtaken by the Deceaſed between *Tuxford* and *Bautree*, who asking the Priſoner the Road to *Doncaſter*, (which was the Road they were going) the Priſoner ſuſpecting the Deceaſed to be a Highwayman, directed him another Way, who thereupon left that Road; but finding, by Enquiry, he was wrong, returned, and put into the Road between the Priſoner and the Poſt-boy; whereupon the Priſoner run the Deceaſed through the Back: After which the Priſoner rode on five or ſix Miles, till he came to *Bautree*, where he went before a Juſtice of Peace, and procured a Hue and Cry after the Highwayman, as he called him: But the Caſe will be better underſtood by the following Evidence.

The Evidence. Mr. *Wardman*, a Gentleman of the Lord *Weſtmoreland*'s, teſtified, That the Deceaſed being Nephew to his Lordſhip's Houſe-keeper, ſhe ſent for him into the Country, deſigning to make him her Heir, and he came down accordingly. And he (the Witneſs) carried him to the Houſes of ſeveral Perſons of Quality, and ſhewed him the Paintings and other Curioſities, the young Man having a Taſte for ſuch Things. And when he went from the Lord *Weſtmoreland*'s, he went to viſit another of his Aunts in that Country, in which Journey he was killed upon the Road. That the Deceaſed was a timerous Man, and not likely to give any Offence, for he had neither Sword or Piſtol, or ſo much as Spurs, only a Whip in his Hand. The Witneſs offered him a Sword, but he would not accept of it.

Mr. *Pymont*, another of the Lord *Weſtmoreland*'s Servants, teſtified, That the Deceaſed had neither Sword nor Piſtol when he went from his Lordſhip's Houſe; and that he behaved himſelf extremely well all the Time he was there.

The Poſt-boy teſtified, That as he was riding before the Priſoner, between *Tuxford* and *Bautree*, a Stranger (the Deceaſed) rode up to them upon the Gallop, and asked the Way to *Doncaſter*, and then turning out of the Way, and riding fifteen or ſixteen Score Yards, he returned towards them again upon the Gallop; and the Priſoner ſaying, He believed the Stranger to be a Highwayman, he anſwered, He was but a little one, if he was one; but the Stranger putting into the Road between the Priſoner and him (the Poſt-boy) he was ſcared, and rode on ſtill faſter; and having galloped together about ſix ſcore Yards, the Priſoner run the Deceaſed through the Body, who thereupon ſaid, *Lord have Mercy upon me! What ſhall I do now?*

The Priſoner demanded, If both the Poſt-boy and the Stranger were not better mounted than he was? To which the Boy anſwered, They were both better mounted; and the Priſoner ſuſpecting the Father of the Deceaſed inſtructed the Boy what to ſay, he ſaid, The Gentleman on the Judge's Left Hand made Signs to this Witneſs, he thought: But Mr. *Barugh*, the Father of the Deceaſed, proteſted he made no Signals to the Boy.

Then the Priſoner demanded, if there were not ſeveral other Tracks in the Road beſide that which they were in? To which the Boy anſwered, There were three Tracks. Being asked if the Stranger had Piſtols, he anſwered, He had only a Whip; adding, That the Priſoner, after he had ſtabbed the Stranger, (the Deceaſed) ordered him (the Poſt-boy) to ſay the Stranger had a Piſtol; or he would ſtab him where-ever he met him.

Being asked if he had not told any body that the Stranger had a Piſtol? he anſwered, Yes; he told Captain *Tarborough* ſo; but the Captain ſhook him, and ſcared him, and ſaid, He ſhould be hanged. He confeſſed alſo, That he had ſaid before the Juſtice that the Stranger had a Piſtol; which he did, becauſe the Priſoner had threatned to ſtab him if he did not.

The Priſoner demanded, If he did not enquire for a Juſtice of Peace after this Accident

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dent? To which the Poſt-boy anſwered, The Priſoner did; and he told him there were two at *Bautree*; and thereupon they rode thither; and Mr. *Liſter* took this Witneſs's Examination there: After which Mr. *Liſter* ſent back one with the Witneſs (the Poſt-boy) to ſee after the wounded Man, and make Hue and Cry after him.

Being asked if the wounded Stranger fell immediately? he anſwered, He rode about fifteen ſcore Yards after he was ſtabbed; and that when they came back from the Juſtice's with the Hue and Cry, there were abundance of People gathered about the Deceaſed.

Being asked if the Priſoner called any where to bid the People take Care of the wounded Man, the Poſt-boy anſwered, No, he did not, though there was a Town hard by.

Bradley, the Conſtable of *Elkesley* (the Pariſh where this Accident happened) teſtified, That the Place where the Deceaſed was killed, was in Sight of *Elkesley*, and not above twelve ſcore Yards from it: That he went to ſee the Corps at Five o'Clock in the Afternoon, upon *Midſummer-Day*, being about half an Hour after this Accident happened; but did not ſee any Arms the Deceaſed had.

Thomas Smith, another Poſt-boy, teſtified, That he rode Poſt before the Priſoner between *Mansfield* and *Nottingham*, and becauſe he did not carry the Priſoner the Road he liked, he damned him, and ſaid, He deſerved to be ſtabbed; and he would have been glad to get clear of him.

Other Witneſſes teſtified, That the Deceaſed was an honeſt inoffenſive Man, and a Perſon of excellent Senſe, and that being ſent for into the Country by his Aunt, he bought him a Horſe in *London* for five Guineas. Upon which the Counſel for the Proſecutors obſerved, He was but ill equipped for a Highwayman, mounted upon a Horſe of Five Guineas Price, and without either Sword or Piſtol.

The Priſoner's Defence.

Then the Priſoner, in his Defence, ſaid, My Buſineſs calling me into the North about five Weeks ago, I ſet out on the 23d of *June* in the *Cambridge* Stage-Coach, and got thither about Nine that Evening. I had with me a Warrant for Poſt-horſes and Guides as far as *Durham*, whither I was going to ſolicit my private Affairs, but was unfortunately prevented by this unhappy Accident. On *Saturday* the 24th, between Twelve and One at Noon, I got to *Taxford*, and alighting at the Poſt-houſe there, ordered freſh Horſes to be got ready, and going into a little Room to cool my ſelf, I ſaw Mr. *Robinſon* the Poſtmaſter, who told me I ſhould loſe no Time (while the Horſes were getting ready) if I would refreſh my ſelf with a little Victuals that was then upon the Table; upon which I did ſit down with Mr. *Robinſon* and five or ſix other People, and in that Time went to the Door two or three Times to look after my Portmanteau, and order it to be brought in, there being Things of a conſiderable Value in it: And after I had ſtayed there half an Hour, and paid Eighteen Pence for what I had, I was told the Horſes were ready, upon which I immediately mounted, and purſued my Journey; and when the Boy and I had rode near two Miles, we were overtaken by a Perſon unknown, who came up full Speed between me and the Boſt-boy (who had my Baggage behind him) and asks the Boy, Sirrah, do you know me? and, upon the Boy's telling him No, ſaid, that's well enough: And then perſwading the Boy to ride a Race with him, endeavoured, by whipping his Mare, to force him on. When we came near to *Taxford*-Bridge, the Deceaſed turning to me, asks, Sir, are you going to *Doncaſter*? To which, from the Suſpicion I had already conceived of him, I anſwered, I was not. After this, the Deceaſed continued whipping the Boy's Mare, and bid him ride on, but coming to the parting of the Roads to *Doncaſter* and *Workſop*, the Deceaſed galloped as faſt as he could up the Road to *Workſop*, whilſt the Boy and I kept on our Way in the *Doncaſter* Road; which the Deceaſed perceiving, after he had galloped about fifteen ſcore Yards in the Road he had taken, turned ſhort and quitted it, purſued me and the Poſt-boy croſs the Common as hard as his Mare could carry him; and perceiving him coming again towards us in ſuch a Manner, I declared my Apprehenſions to the Poſt-boy, That I feared he was a Highwayman; to which the Boy anſwered, that he'd warrant him a Rogue, and adviſed me to ride on as faſt as the Horſes would carry us; but the Deceaſed being better mounted, came up with us, croſſing ſeveral Tracks; upon which I pulled my Horſe a little, and let him come in between me and the Poſt-boy, who were within two Horſe-length of each other, and began again his whipping the Boy's Mare, and forcing him on. This confirmed the Suſpicion I had entertained of him, that he was a Highwayman, and that his Deſign was to force the Boy away with my Portmanteau, in which, my Lord, was in a manner my All; and I called out to the Boy to ſtop, to ſee if the Deceaſed would leave us; but the Boy anſwered he could not. After ſome time the Boy recovered the Command of his Mare, which gave me (who was the worſt mounted) an Opportunity of coming up, when I diſcovered the Deceaſed to pull ſomething out of his Pocket on the Right Side, which he held to the Boy, and bid him ride on; at which the Boy looked back, called out to me, *Oh, Sir! Come on, come on!* whereupon the Deceaſed turned towards me, and I perceiving a Piſtol in his Hand, rode at him, and the Deceaſed's Mare being fretted, turned again, which gave me an Opportunity of wounding him. The Deceaſed then rode backwards towards *Elkesley*, and after a little turned again: And I hope upon ſuch ſuſpicious Behaviour of the Deceaſed, what I did cannot be thought to proceed from any previous Malice towards him.

After this, I told the Boy I had wounded him, who anſwered, He's a Rogue, to be ſure: And I bid the Boy ride on to the neareſt Juſtice of Peace. Immediately after the Accident, I ſaw a Man under an Hedge, who I thought might be a Confederate of the Deceaſed, and having my Sword in my Hand, I told him I had wounded a Highwayman, and bid him go and ſee what became of him: We told it alſo to ſeveral other People we met, particu-

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particularly at *Ruſſia-Inn*, where I ſtopt to enquire for a Juſtice of the Peace, and was informed there was none nearer than *Bautree*, (the Stage I was going) whither I made all the haſt that I could, and alighting at Mr. *Liſter*'s Houſe, I acquainted him with what I had done, and ſurrendred my ſelf.

But Mr. *Liſter* being in Court, I deſire he may be heard.

The Priſoner's Witneſſes.

Mr. *Liſter* teſtified, That the Priſoner came to him on the 24th of *June*, informed him, he had wounded a Highwayman, and deſired him to take the Poſt-boy's Examination, which he did; and the Boy gave his Evidence plainly and freely, and was not prompted by the Priſoner, or any Body; which Examination was read in Court, being of the following Tenour.

The Poſt-boys Examination read.

The Information of William Glaſeby *of* Tuxford *Poſt-boy, before* Thomas Liſter, *Eſq; this* 24*th of* June 1721.

William Glaſeby, aged about thirteen Years, Servant to Mr. *Robert Robinſon* Poſt-maſter of *Tuxford*, depoſeth, That as he was riding with a Gentleman, this preſent *Saturday* the 24th of *June* 1721, from his Maſter's Houſe at *Tuxford* towards *Bautree*, a certain Perſon unknown to the Deponent, did ride up to him in the Lane near *Houghton*-Park, and bid him put on ſeveral Times, and whipped his Mare, and perſuaded him to ride a Race with him; which he refuſing, he continued riding ſtill along with him, and asked the Gentleman (with whom this Deponent was going to *Bautree*) if he was going to *Doncaſter*; and upon his ſaying he was not, the ſaid unknown Perſon turned-up another Road, leading towards *Workſop*; but perceiving that this Deponent, and the ſaid Gentleman, kept on the direct Road towards *Bautree*, he left the Road he had taken, and purſued this Deponent and the Gentleman with him, as hard as his Horſe would carry him; and getting between this Deponent and the Gentleman, this Deponent perceived a Piſtol in the Hand of the ſaid unknown Perſon, upon which he called out to the Gentleman, *O, Sir! Come on, come on!* And the ſaid Gentleman coming up to the ſaid unknown Perſon, did, as this Deponent believeth, give him a Wound with his Sword: But the ſaid unknown Perſon did, after that, purſue the Deponent, and the ſaid Gentleman, a little Way, and then turned, and this Deponent knows not what became of him after, but rid on with the ſaid Gentleman to *Bautree*, who went immediately before *Thomas Liſter*, Eſq; one of his Majeſty's Juſtices of the Peace, to give him an Account of the Matter; and this Deponent did verily believe the ſaid unknown Perſon was a Highwayman, and had a Deſign to rob the ſaid Gentleman, who gave no Manner of Diſturbance to the ſaid unknown Perſon, before he drew his Piſtol, but rode peaceably on the Road.

Then the Priſoner deſired the Court would obſerve the Difference between the Information the Poſt-boy gave before the Juſtice, and the Evidence he gave in Court.

Captain *Tarborough* alſo teſtified, That the Poſt-boy related the Fact to him as it was in the Information. 1721. 8 Geo. I.

Mrs. *Murphin*, who kept the Poſthouſe at *Bawtry*, teſtified, That the Poſtboy told her the ſame Story.

Mr. *Reresby*, who went back with the Poſtboy, to find the wounded Man, and make Hue and Cry after him, by Mr. *Liſter*'s Order, teſtified, That the Boy gave him the ſame Account as in the Information; that the Boy heard the Information read over, and ſaid it was true: Being asked, if he was ſure the Boy ſaid, That the deceaſed had a Piſtol? he anſwered, Yes.

The Fact having been committed in *Nottinghamſhire*, and Mr. *Liſter* thinking it proper the Poſt-boy ſhould give another Information before the Juſtices of Peace of that County, the following Information was taken before Brigadier *Sutton*, *John Digby*, and *Leonard Pinkney*, Eſqrs; Juſtices of Peace of the County of *Nottingham*, on the 25th of *June* 1721, *viz.*

Another Examination of the Poſt-boy.

This Deponent ſaith, That on *Saturday* the 24th of this Inſtant *June*, he came out from his Maſter's, Mr. *Robinſon*'s, the Poſtmaſter of *Tuxford*, with a Gentleman, to ride Poſt with him to *Bautree*, that the ſaid Gentleman and this Deponent rid along the Road till they came to *Houghton Bridge*, near *Elkeſley*, at which Place the Deceaſed Perſon asked the Gentleman if he was going to *Doncaſter?* to which the Gentleman anſwered, No: Whereupon the Deceaſed put before the ſaid Gentleman, and asked this Deponent, if he knew him, then went paſt this Deponent, and rode up the Road leading to *Workſop*; but ſeeing the ſaid Gentleman and this Deponent continue in the Road to *Bautree*, he came riding down a *Ley*, and as hard as he could, to meet the ſaid Gentleman and this Deponent, in the ſaid Road to *Bautree*; whereupon the ſaid Gentleman ſaid to this Deponent, that he feared the ſaid Deceaſed was a Highwayman: That the ſaid Deceaſed came up with the ſaid Gentleman and this Deponent, whereupon this Deponent's Mare that he rode on, run away with him, which he believes ſhe did from the Deceaſed's whiping his Mare, for that till that Time ſhe had not run away with him upon the Road before: And this Deponent ſaith, that as his Mare was running away, he looked behind him, and ſaw in the Deceaſed's Hand ſomething beſides a Whip, which he thought was a Piſtol; upon which this Deponent was affrighted, and called to the Gentleman to come on, and thereupon the Gentleman came up to the Deceaſed, and he ſaw the Gentleman's Sword in his Hand, but cannot ſay he either ſaw him run it into the Deceaſed's Body or pull it out; and this Deponent ſaith, that afterwards the Deceaſed turned towards *Elkeſley*, but immediately turned back again towards the Gentleman and this Deponent, and galloped after them about fifteen Score Yards, and the Gentleman bid this Deponent put on as faſt as he could; and what became of the Deceaſed afterwards, this Deponent knows not: And this Deponent ſays, that he did not appre-

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apprehend there was any Quarrel betwixt the Gentleman and the Deceaſed.

Mr. *Pinkney*, one of the ſaid Juſtices of Peace teſtified, That the the Coroner ſaid It was plain wilful Murder, before he heard the Evidence or had ſeen the Body.

Glaſeby, the Father of the Poſt-boy teſtified, That his Son told him he thought the Deceaſed was an Highwayman.

Then the Earl of *Litchfield*, the Lord *Baltimore*, and ſeveral other Perſons of Quality teſtified, That the Priſoner was a ſober, modeſt, peaceable Man, not given to Quarrel.

Mr. *Croe*, teſtified, that he ſaw the Priſoner's Portmantua packed up, and there were in it twelve Shirts, and other Linnen, a ſuit of black Cloaths, a Diamond Ring, a Gold Watch, ſome Gold, Bills for 200 *l.* and the Writings of his Eſtate.

Obſervations of the King's Counſel.

Then the Counſel for the Proſecutor obſerved, That it was very ſtrange the Deceaſed ſhould be taken for a Highwayman, having no Arms and uſing no threatning Language: At this Rate, any Man might be run through the Back upon the Road. It was plain the Boy was terrified by the Captain and his Friends, to ſay what he did before the Juſtices of Peace, by that Expreſſion, *That he did not know what became of the Deceaſed*; for he had owned he knew what became of him, *That he cryed out, Lord have Mercy upon me*, when he fell, and afterwards he ſaw him lye dead in a Barn at *Elkeſley*; and if his Evidence was different, greater Regard was to be had to what he teſtified in Court, than what he ſaid under the Terror and Surprize he was in, before the Juſtice of Peace; and admitting the Latter was to be believed, even thoſe Informations did not ſhew there were any Threats or Violence uſed by the Deceaſed, that could juſtifie the running him through the Back in ſo barbarous a Manner, and then leaving him to periſh without taking any Manner of Care of the wounded Man, though he fell in the Priſoner's Sight. The Priſoner might have gone to *Elkeſley*, a Town juſt by, and have enquired for a Juſtice of Peace, and needed not have travelled five or ſix Miles farther to meet with one; but this he did, that he might have an Opportunity of terrifying the Poſt-boy, and inſtructing him what to ſay. It was evident the Deceaſed had no Arms, for none were found upon him after he was dead.

The Coroner's Evidence.

The Coroner depoſed, That the Boy teſtified before him, that the Priſoner threatned him, and he might ſay when he came to *Elkeſley*, that if the Fact appeared to be as it was repreſented to him, it was wilful Murder; but a Jury was ſworn, and the Witneſs fairly examined before any Verdict was given: Here the Boy's Examination before the Coroner was read, and was as follows, *viz.*

William Glaſeby, a Boy of thirteen Years of Age, *&c.* Guide to a Gentleman that was riding Poſt, ſweareth, That, as they were riding towards *Bautree*, at a Place called *Twiford Bridge*, a Gentleman unknown came galloping after them, and, at the Place aforeſaid, came up and asked the Gentleman that was riding Poſt, if he was for *Doncaſter*? and the Gentleman anſwered No: Then the Perſon unknown rode forward without ſaying any more, and took up the Road that led to *Elkeſley*; but when he ſaw the Poſter and the Boy in another Road, he turned down a Ley Land, into the Road that the Poſter was in, and galloped after the Poſter; and when the Poſter ſaw the deceaſed coming towards them again, he ſaid to the Boy, It is well if this Fellow be not a Highwayman: And further the Boy ſaith, the Poſter ſtopped, and came behind the Man deceaſed, and took an Opportunity to draw his Sword, and ſtabbed the Deceaſed a little below his left Shoulder, and out at his left Breaſt (as appeared by the Wound when viewed by the Jury). The Boy ſays the Sword was bloody from the Point, within a Hand's Breadth of the Hilt, and that this was done in *Elkeſley* Field, where the Deceaſed was found; and further the Boy ſays, that when this was done, the Poſter came up to him with his Sword in his Hand all bloody, and bid him ride on faſter, and did not put up his Sword untill he came to a little Houſe called *Ruſſia-Inn*; and further the Boy ſays, that as they rode along, the Poſter came up to him, and ſaid, Sirrah, did not you ſee a Piſtol in yonder Fellow's Hand? and the Boy anſwered he did not; but Sirrah, ſaid he, *if you do not ſay that you ſaw a Piſtol in his Hand, I will ſtabb you whereſoever I meet you*; and further the Boy ſays, that the Poſter as they rode along, kept telling him what he ſhould ſay when he came before a Juſtice of Peace; and when they came at *Bautree*, he had the Boy before *Thomas Liſter*, Eſq; one of his Majeſty's Juſtices, to be examined; but the Boy upon Oath ſays, that he was ſo frightned, knowing that the Poſter had ſtabbed the other Gentleman, that he durſt not ſpeak the Truth, becauſe he had ſo threatned him of his Life, if he did not ſay as he had told him, and when they came before Mr. *Liſter*, the Boy owns he did ſay, that he ſaw a Piſtol in the Deceaſed's Hand; but what he ſaid there, he owned was out of Fear of the Poſter, becauſe he was there preſent; but now he actually declares that what he ſwore there, was not true upon the Piſtols account, for he ſays, that he did not ſee any Piſtol in the Deceaſed's Hand, and he fully believes, that he had nothing in his Hand but his Hand-Whip: And further the Boy ſays, that the deceaſed Gentleman gave no manner of Abuſe to the Poſter, nor ſaid any Thing to him, either more or leſs, when he came up to him the ſecond Time, but, he thought, had a Mind to ride along with them to *Bautree*, he being a Stranger to the Road.

The Coroner being asked Whether this was drawn up when he took the Inquiſition, or afterwards from his Minutes? the Coroner anſwered, from his Minutes afterwards; and being asked for his Minutes, ſaid they were at Home.

Then the Judge reproved the Coroner for not drawing up the Inquiſition when he took it, but truſting to his Minutes, which ought never to be practiſed in ſuch Caſes.

The Priſoner's Counſel obſerved afterwards, That, if the Evidence the Poſt-boy gave before the Juſtices of Peace was true, the Caſe did not come within the Statute of Stabbing;

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for by this Evidence it appeared the Deceaſed had a Piſtol in his Hand, which was equivalent to the having a Weapon drawn.

Judge Powel's Directions to the Jury.

Judge *Powel* proceeding to ſum up the Evidence ſaid, That the Deceaſed by his imprudent Conduct in galloping up to the Priſoner, and then coming up a ſecond Time and putting between him and the Poſt-Boy, had given Ground of Suſpicion, and he ſhould in the like Circumſtances have thought his Pocket in Danger, and might have been tempted to ſtrike ſuch a one; but the Stabbing him was a raſh Action: However he directed the Jury to bring it in common Manſlaughter, and not Manſlaughter upon the Statute, which was Felony without Benefit of Clergy.

The Jury being withdrawn, after a ſhort Receſs, brought in the Priſoner guilty of Murder; but the Judge telling them, That could not be upon this Indictment, the Priſoner being indicted on the Statute of Stabbing, the Jury ſaid, they found him Guilty of the Charge in the Indictment: But the Judge prevailed on them at length to find the Matter ſpecially for the Opinion of the Judges; and as Mr. Juſtice *Powel* himſelf was of Opinion, the Fact was but common Manſlaughter, I preſume his Brethren were of the ſame Opinion, which brought off the Captain; for though the Widow of the Deceaſed lodged her Appeal, this could not affect the Priſoner, after he was adjudged to have been guilty of Manſlaughter; though the Appeal would have lain, if the Priſoner had been acquitted.

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A Special Verdict.

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Trial of Adams and Long.

The Trial of THOMAS MAC ADAMS Soldier, and JAMES LONG Corporal, in Colonel *Hamilton*'s Regiment of Foot, for *Murder*, before the High Court of Admiralty in *Scotland*, on the 17th of *September*, 1735. 9 *Geo.* II.

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Charge.

THE Information charged the Priſoners with the Murder of *Hugh Frazer* the younger, of *Belnain*, Merchant of *Inverneſs*, in Manner following, *viz.*

That on the 4th of *June* laſt, the ſaid *Hugh Frazer* being then with ſome others, all them unarmed, in an open Boat upon the High-Seas off the Shore of *Nairn*, in Proſecution of their lawful Buſineſs, and offering Violence or Diſturbance to no Man, were made up to by the *Cuſtom-Houſe* Boat, having on Board ſeveral Perſons, and amongſt theſe the Pannels (the Priſoners) who upon their firſt Appearance were diſcovered to be armed with Guns ſcrewed Bayonets, and which Guns afterwards appeared to have been charged, and were then cocked and levelled againſt that Part of the other Boat where the Defunct ſtood: That upon the two Boats coming cloſe together, and ſo ſoon as the ſaid *Thomas Mac Adams* and *James Long* came within reach, without giving the leaſt Intimation of their Deſign, other than what was to be dreaded from their outward Appearance, and without demanding or endeavouring to force Admittance into the other Boat, the firſt Salutation given, was a Thruſt by each of the ſaid Pannels with their ſcrewed Bayonets againſt the Defunct, who then unluckily happened to ſtand on the Side of the other Boat oppoſite to them; though at the ſame Time it is ſaid in the Libel, and will be proved, that how ſoon the two Boats came ſo near as to be in ſpeaking Terms, the Defunct called out to the Pannels to uſe no Violence, and not to fire, for that he and the others in Company with him were in their Will: Notwithſtanding of which, the Pannels in Execution of their premeditate Malice, and contrary to the Advice of their own Companions, did without the leaſt Provocation, Reſiſtance, or ſo much as attempting to board the other Boat, begin the Attack in manner libelled, and by theſe two Thruſts would then have undoubtedly bereaved the Defunct of his Life, had he not found means to evade the Thruſts, at the ſame time catching hold of the two Guns, and holding them up, ſo as to prevent Miſchief in caſe they had diſcharged them; and in the Struggle, which enſued upon this, the two Pannels endeavouring to pull away and recover the Guns, and the Defunct having his Gripe, the *Cuſtom-Houſe* Boat being then on float, the Defunct was either pulled or forced to ſtep into the *Cuſtom-Houſe* Boat, not daring to let go his Hold of the Guns, and ſtand in Chance of other two Thruſts; in which Struggle, or by the Motion of the Boats, all the three fell to the Ground: Whereupon the ſaid *Thomas Mac Adams* did deliberately unſcrew the Bayonet from off his Gun, and therewith gave the Defunct a mortal Wound in the Breaſt, of which he immediately fell down, and probably would have died: But the Pannels, not ſatisfied with the Barbarity already committed, and in further Proſecution of their premeditated Deſign to Murder, did in a moſt cruel and barbarous manner, toſs the Defunct, then in a helpleſs Condition, over board into the Sea; and upon his catching hold of his own Boat, and endeavouring ſo to ſave himſelf from drowning, the Pannel *James Long* ſtruck him down with his Gun with ſuch Violence, that the Iron Ram-rod was broke by the Force of the Stroke; of the which Wound and Stroke the Defunct died in a few Minutes, being taken up

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up into his own Boat. From all which the Libel concludes moſt relevantly, That the Pannels and each of them are Guilty, Actors art and part of the Crime of Murder with which they are charged, and ought therefore to underly the Pains of Law.

Defence. The Pannels (the Priſoners) in their Defence ſaid, That they bore no Malice to the Deceaſed, nor had any Intention to kill him, or any Perſon whatever: And ſhould it be proved, as they believed it would not, that any Stroke or Blow was given by either of them to the Deceaſed, of which he might afterwards die; it was done in their juſt and lawful Defence, and conſequently was not Murder.

The Libel found Relevant. The Judge of the Admiralty having conſidered the ſaid Libel (or Charge) and the Pleadings thereupon, find the Libel, That the Pannels (the Priſoners) or either of them, did kill *Hugh Frazer*, Relevant to infer the Pains of Death, and Confiſcation of Moveables: And ſuſtain the Defence of Self-Defence proponed by the Pannels, That the killing the ſaid *Hugh Frazer* by the Pannels, or either of them, was in the neceſſary Defence of their Lives, and repells the whole other Defences proponed by the Pannels.

Evidence for the Proſecutors. The Witneſſes for the Proſecutors teſtified, That the King's or *Cuſtom-Houſe* Boat came up with the Boat wherein the Deceaſed *Hugh Frazer* was, on the 4th of *June* laſt: That in *Frazer*'s Boat there were thirteen Men, and in the King's Boat ſeven Men and three Soldiers, whereof the Priſoners *Thomas Mac Adams* and *James Long* were two: That when the two Boats met, the Priſoners had their Bayonets ſcrewed upon their Muskets, and levelled them towards that Part of the Boat where *Hugh Frazer* ſtood; whereupon he called out to the Soldiers not to fire, for that he and the reſt in the Boat with him were at their Wills; but the Soldiers never the leſs threatned to fire: Whereupon *Hugh Frazer* ſtanding on the Side of his Boat, took hold of the Muzzles of the Muskets in the Hands of the ſaid *Long* and *Adams*, and they endeavouring to diſengage their Pieces, pulled *Frazer* into the King's Boat, when a Wave of the Sea raiſing up the King's Boat, they all three fell down in the Bottom of it, and *Frazer* happening to fall upon *Long* the Corporal, and *Mac Adams* by the Side of *Long*, he ſaid to *Mac Adams*, *Why don't you ſtick or ſtab the Man above me?* and thereupon *Mac Adams* unſcrewed his Bayonet from the Muzzle of his Piece, and thruſt it into *Hugh Frazer*'s Breaſt, who getting up after he had received the Wound, *Long* alſo got up after him, and puſhed *Frazer* over the Boat-Side into the Sea, and as he was falling *Long* ſtruck him with that Violence with his Musket, that the Iron Ram-rod and the Stock was broke; and that *Hugh Frazer* being taken out of the Water died immediately after: That this Violence occaſioned ſome to ſtep out of *Frazer*'s Boat into the King's Boat to prevent further Miſchief, and one *Kinman* took a Blunderbuſs out of the Hand of Mr. *Townſhend* a Land-Waiter, and threw it into the Sea: But before the Soldiers wounded *Hugh Frazer*, no Perſon went on Board the King's Boat, or offered to make any Defence, but ſubmitted to the King's Officers; nor was there any other Arms on Board *Frazer*'s Boat but two or three Swords, and a broken Piſtol.

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Other Witneſſes depoſed, That when the King's Boat came near *Frazer*'s Boat, *Hugh Frazer* called to the Soldiers to uſe no Violence, for they were willing to permit thoſe in the *Cuſtom-Houſe* Boat to ſeize what Goods were on Board; however, when the King's Boat lay aſide the other Boat, the Soldiers, who had their Muskets cocked, and Bayonets ſcrewed upon them, puſhed at *Hugh Frazer* with their Bayonets, who catching hold of the Muskets that were in the Hands of the Priſoners *Long* and *Adams*, they endeavoured to diſengage and recover their Muskets, and in the Struggle pulled *Hugh Frazer* into the King's Boat, who was killed in the manner the former Witneſſes teſtified.

Another Witneſs depoſed, That there were on Board the Boat where *Hugh Frazer* was, nine Hogſheads and a broken half-Hogſhead: That the half-Hogſhead contained Wine, but what Liquor was in the other Hogſheads he knew not; but they were taken in at *Tarbatneſs*, and were intended to be landed on the *Murray* Side of the *Frith*, near the Place where *Frazer*'s Boat was when the King's Boat came up with them.

Witneſſes for the Priſoners. On the other hand, a Witneſs called by the Priſoners (who was one of the Crew belonging to the *Cuſtom-Houſe* Boat) teſtified, That when the King's Boat approached the Boat where the Deceaſed *Hugh Frazer* was, ſome of *Frazer*'s People threatned to do thoſe in the King's Boat a Miſchief, if they came any nearer; and as ſoon as the King's Boat came up cloſe to the other Boat, *Hugh Frazer* jump'd into the King's Boat, and laid hold of the Priſoners Muskets which they held in their Hands, with the Butt Ends in the bottom of the Boat; and before this there was no Violence or Thruſts offered by the Soldiers, for *Townſhend* the Land-Waiter had cautioned the Soldiers to offer no Violence: That *Hugh Frazer* ſeizing the Muskets in the Soldiers Hands, occaſioned a Struggle, in which all three of them fell to the bottom of the Boat; and that during this Scuffle, one *Mackinnan*, who belonged to *Frazer*'s Boat, entered the King's Boat with a Piſtol, with which he ſtruck *Townſhend* the Land-Waiter over his Head, and inſulted him till two others in the King's Boat came to his Aſſiſtance, and wreſted the Piſtol out of *Mackinnan*'s Hand, and blew the Prime out of the Pan, the Piſtol being whole and prepared for firing: Adding, that the Deceaſed *Hugh Frazer* fell over-board after he got up; but he did not ſee the Soldiers uſe any Violence to him which could occaſion it.

Townſhend the Land-Waiter himſelf depoſed, That the King's Boat coming up with *Frazer*'s Boat on the 4th of *June* laſt, he (the Deponent) required Acceſs to *Frazer*'s Boat, but was refuſed and threatned by ſome of *Frazer*'s People, if they attempted to come on Board; and that *Hugh Frazer* jumped out of his own Boat into the King's

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Boat, and ſeized the Muskets in the Soldiers Hands, as the laſt Witneſs depoſed, and all three fell to the bottom of the Boat; and during this Struggle *Mackinnan* alſo entered the King's Boat and knocked him (the Witneſs) down with a Piſtol, and abuſed him till two in the King's Boat came to his Aſſiſtance, and wreſted the Piſtol from *Mackinnan*; and that two others entered the King's Boat with *Mackinnan*.

That *Hugh Frazer* received a Wound in his Breaſt, of which he died; but how he came by that Wound, or who gave it him, he knows not.

William Ogilvy, Tide-Surveyor of the Cuſtoms at *Inverneſs*, teſtified, That he applied to Captain *Cofield* of Colonel *Hamilton*'s Regiment, to allow him a Corporal and two Soldiers to go on Board the King's Boat, having received Information that a Ship was expected upon the Coaſt, wherein were ſome run Goods; and thereupon Captain *Cofield* gave Orders that Corporal *Long*, *Thomas Mac Adams*, and *John Broad* ſhould wait the Deponent's Orders, and go on Board the King's Boat when required; and that he thereupon ordered them to go on Board the King's Boat.

John Broad the Soldier depoſed, That he was ordered on Board the King's Boat with *Long* and *Adams*, as the laſt Witneſſes teſtified; and that the King's Boat coming up with the Boat in which was the Deceaſed *Hugh Frazer* and ſome other Merchants, the *Cuſtom-houſe* Officers were refuſed Acceſs, and threatned if they attempted to board *Frazer*'s Boat; and when the King's Boat came cloſe to them, the ſaid *Hugh Frazer* jump'd on Board the King's Boat: And that he (the Deponent) was attacked at the ſame Time by ſome of the People of *Frazer*'s Boat, who endeavoured to wreſt his Arms from him; and during this Struggle, he did not obſerve what became of *Hugh Frazer* and the other two Soldiers.

Two more of the Crew belonging to the King's Boat confirmed the Teſtimony of the two laſt Witneſſes.

Then Brigadier *John Moyle*, Commander in Chief of the Forces in *North-Britain*, depoſed, That he had Orders to command the Troops there, that they ſhould, when required, give Aſſiſtance to the Officers of the Revenue in ſeizing of Goods offered to be run: And that when a Soldier upon his Duty is invaded, and an Attempt made to diſarm him, if ſuch Soldier ſhall willingly part with his Arms, and not uſe his beſt Endeavours to have the free Uſe of them, ſuch Soldier is liable to be puniſhed with Death, by a Court Martial.

Major *Mordecai Abbot*, and Major *Edward Pole*, confirmed the Evidence of the Brigadier.

Verdict. The Jury having duly conſidered the Evidence, unanimouſly find it proved, that the Pannels (the Priſoners) *Thomas Mac Adams*, and *James Long*, are both Guilty, art and part, of killing *Hugh Frazer*; and by Plurality of Voices do not find the Defences for the ſaid Pannels proved, *viz.* That the killing the ſaid *Hugh Frazer* was in the neceſſary Defence of their Lives.

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Sentence of Death.

Whereupon the Judge of the Admiralty paſſed the following Sentence, *viz.* That the ſaid *Thomas Mac Adams* and *James Long*, be taken from the *Tolbooth* at *Edinburgh*, to the Sands of *Leith*, within the Flood-Mark, on the third *Wedneſday* of *November* next, being the 19th of the ſaid Month, betwixt the Hours of Two and Four in the Afternoon, and there hanged by the Neck on a Gibbet till they be dead; and ordains all their Moveables, Goods and Gear, to be eſcheat, and in brought to his Majeſty's Uſe.

The Priſoner's petition the Court of Juſticiary to ſuſpend the Sentence.

The Priſoners *James Long* and *Thomas Mac Adams*, appealing to the Court of Juſticiary againſt this Sentence of the Court of Admiralty, ſet forth, That the ſaid *James Long* was Corporal, and the ſaid *Thomas Mac Adams* a Centinel in Colonel *Archibald Hamilton*'s Regiment of Foot, which at the Time mentioned in the Indictment lay at *Inverneſs*, and were ordered by their Superiour Officers to go along with certain Officers of the Cuſtoms in the Execution of their Duty, and for the Diſcovery of Goods ſuppoſed to be run: That upon the 4th Day of *June* laſt in the Afternoon, the King's Boat, on Board of which the Complainers were, gave Chaſe to, and came up with a ſmall Boat wherein the Defunct *Hugh Frazer* was with ſeveral others: That the Officers having demanded Acceſs to ſearch the Boat, the ſame was not only refuſed, but certain Perſons in the other Boat threatned, that if the Officers did not leave them, they ſhould meet with a Miſchief: That the King's Boat with ten Men on Board, having come up along the Side of the other Boat in which there were a greater Number of Men (they being, as it now appears, Thirteen in all) the Deceaſed *Hugh Frazer* did without any Provocation jump into the King's Boat, and did immediately catch hold of the Muzzles of the two Pieces in the Hands of the two Complainers, thereby endeavouring to diſarm them; that in this Struggle the Complainers endeavouring to keep their Arms, and the Deceaſed to diſarm them, all the three fell to the bottom of the Boat: That the Defunct was, preſently after his jumping into the King's Boat, followed by three other Perſons from the other Boat, one of which, *Evan Mac Kinnan*, knocked down one of the Officers with the Butt End of a Piſtol which he brought with him, and wreſted a Blunderbuſs out of the Hands of the ſaid Officer, and threw the ſame into the Sea, and the others attacked the other Perſons in the King's Boat, and would in all Probability have been followed by all thoſe aboard the other Boat; and that poſſibly the Defunct might receive a Wound in this Scuffle. And further the Complainers repreſented, That by the Statute 14 *Car.* II. *cap.* II. Officers of his Majeſty's Cuſtoms and their Deputies, are authorized to go aboard any Ship or Veſſel to ſearch for, and ſeize prohibited and uncuſtomed Goods, as the ſaid Act particularly directs, and a Penalty is thereby inflicted upon every Perſon who ſhall reſiſt, abuſe, beat, or wound any Officers in the Execution of their Office, or ſuch as ſhall act in their Aid or Aſſiſtance, either on Board any Ship or Veſſel, or upon the

1735. 9 Geo. II.

the Land or Water. And likewiſe by the ſame Statute *Sect.* 3. it is enacted, That all Officers belonging to the Admiralty, Captains and Commanders of Ships, Forts, Caſtles, and Block-houſes; as alſo all Juſtices of the Peace, Mayors, Sheriffs, Bailiffs, Conſtables, Headboroughs, and all the King's Magiſtrates, Officers, Miniſters, and Subjects whatſoever, whom it may concern, ſhall be aiding and aſſiſting to all and every Perſon or Perſons, which are or ſhall be appointed by his Majeſty to manage his Cuſtoms, and their reſpective Deputies in the due Execution of all and every Act and Thing, in and by this Act required and enjoined; and all ſuch who ſhall be aiding and aſſiſting unto them in the due Execution thereof, ſhall be defended and ſaved harmleſs by Virtue of this Act: All which Particulars ſtand further confirmed by the Writs of Aſſiſtance granted to the Officers of his Majeſty's Cuſtoms, and which very Writs are founded upon the above-recited Statute, and the other ſubſequent Acts of Parliament which are relative thereto; and where a Number of Men enter by Violence, any Houſe or Ship to diſarm the Perſons within or on Board, and deprive them of their Liberty, they cannot know what further Violence was intended to them; and therefore at this Attempt the Right of Self-Defence begins. From all which the Complainers concluded, That, as the King's Boat was unlawfully invaded, they who were aboard of the ſame, might reſiſt the Invaders, eſpecially ſeeing they had Reaſon to be afraid of their Lives, after being maſtered and diſarmed; and did therefore crave, That the Court would ſuſtain their Defence ariſing from the Facts above-mentioned, *viz.* That they being aboard the *Cuſtom-houſe* Boat, in order to give their Aſſiſtance to the Officers of the Cuſtoms in the Execution of their Duty, the Boat was forcibly invaded and entered into by the Defunct and his Accomplices, and all or ſome of the Perſons therein violently attacked; and that in their ſaid Scuffle the Slaughter mentioned in the Libel enſued, Relevant to Aſſoilzie the Complainers: Notwithſtanding whereof, the ſaid Judge did pronounce the above-ſaid Interloquitor, and remit them and either of them with the Libel and Defence, and the ſeveral Circumſtances and Qualifications of the Defence, and the Facts alledged on by the Purſuers for the eleiding thereof to the Knowledge of an Aſſize, and has alſo ſince pronounced Sentence of Death againſt the Complainers: From all which their Reaſons of Suſpenſion will manifeſtly appear. For *Primo*, It might eaſily appear by the Fact, as laid in the Libel, that this Homicide was, at the very worſt, *Homicidium in Rixa commiſſum*; and ſeeing by the many Circumſtances which accompanied it, it might be Relevant upon the Proof, that there was no Malice even antecedent to the Blow; and therefore this Libel ought not to have been ſuſtained to infer the ordinary Pain, unleſs it had been burdened with a Proof of the Deſign of killing. 2*do*, The Relevant Defence above-mentioned, pled for the Complainers, was repelled by the ſaid Interloquitor, ſeeing nothing was ſuſtained to them but ſingly this Defence, That the killing the ſaid *Hugh Frazer* by the Pannels or either of them, was in the neceſſary Defence of their Lives, and their other Defences were repelled: Whereas it ought to have been explicitly ſuſtained to them, That, the Boat in which they were being forcibly and violently invaded, and they in the utmoſt Danger of being diſarmed and deprived of their Liberty, they were at Liberty to repel Force by Force, though this ſhould terminate in the Death of the Aggreſſor; in the ſame Manner as a Man attacked on the the Highway or in his Houſe, may lawfully defend his Poſſeſſion, if the Aggreſſor obſtinately perſiſts in his Invaſion; wherefore the Interloquitor ought not to have been reſtricted to the neceſſary Defence of their Lives, ſeeing they were entitled to repel Force by Force, by reaſon of the unlawful Invaſion of the Boat and of their Arms; nor were they bound to abandon either the one or the other, though they had not been in any immediate Danger of loſing their Lives. 3*tio*, By circumſcribing the Defence to the Caſe of the neceſſary Defence of their Lives, an Inqueſt might be led to believe, That a reaſonable Fear for their Lives, ſuch as the Complainers were then under, was not within the Deſcription of the Interloquitor, and thereby the Complainers might be deprived of the Benefit of what Proof they might adduce for their being under ſuch reaſonable Fear. And 4*to*, This is ſtill the moſt unjuſt with Regard to the Complainers, that by the Military Law they were liable to the Pains of Death for Cowardice, and abandoning their Duty, if they had ſuffered themſelves to be diſarmed without being overpowered by a ſuperior Force, which would have been the more ignominious in their Caſe, they being in that particular Struggle two againſt one; ſo that That Part of their Defence, that they were upon their Duty, ought to have been ſpecially ſuſtained to them, ſeeing otherwiſe they might have ſuffered Death for neglecting their Duty, and Death for doing it: And the ſaid Lords had undoubted Juriſdiction to ſuſpend Decreits and Acts pronounced in the High Court of Admiralty, in Cauſes Criminal upon Relevant Grounds of Iniquity.

1735. 9 Geo. II.

The Court of Juſticiary having conſidered the ſame Appeal and Premiſſes, Decreed that the Judge of the Admiralty had committed Iniquity, in reſtricting the Defences proponed for the Appellants, to the neceſſary Defence of their Lives, and repelling the hail other Defences proponed for them; and therefore the ſaid Court of Juſticiary did ſuſpend the Interloquitor on the Relevancy, the Verdict returned by the Aſſize, and the Sentence pronounced by the ſaid Judge, with all that might follow thereupon; and diſcharged the Magiſtrates of *Edinburgh*, and all other Officers in the Law, from putting the ſaid Sentence of Death in Execution in all Time coming. *The Sentence ſuſpended.*

The ſaid Court alſo, upon the Petition of the Priſoners, did, with the Conſent of his Majeſty's Advocate, order them to be ſet at Liberty, *The Priſoners diſcharged.*

1735. 9 Geo. II. *The Priſoners diſcharged.*

Liberty, upon their giving 300 Marks Bail to anſwer any Indictment that ſhould be exhibited againſt them, by his Majeſty's Advocate, within the Space of ſix Months; and they found Bail accordingly, and were ſet at Liberty.

1735. 9 Geo. II.

1736. 10 Geo. II. *Trial of* Porteous.

The Trial of JOHN PORTEOUS, Captain-Lieutenant of the City-Guard of *Edinburgh*, for Murdering, Slaughtering, Maiming, and Wounding divers of his Majeſty's Subjects, before the Court of Juſticiary at *Edinburgh*, in the Month of *July*, 1736. 10. *Geo.* II.

1736. 10 Geo. II.

Indictment. THE Indictment charges the Pannel, (the Priſoner) with murdering, ſlaughtering, maiming and wounding his Majeſty's Subjects, by firing with his own Hand, and ordering a Band of armed Men under his Command, to fire upon a Multitude of Innocent People, aſſembled to ſee an Execution in the *Graſs-Market* of *Edinburgh*, on the 14th of *April* then laſt paſt.

It ſets forth more particularly, That at the Time and Place aforeſaid, a Multitude of innocent Perſons, of all Ages and Sexes, being aſſembled to ſee the Execution of *Andrew Wilſon*, who was ſentenced to be hanged; the Priſoner having under his Command a Detachment of 70 armed Men, of the City-Guard, and having conceived a wicked and malicious Purpoſe of deſtroying, maiming, and wounding the Inhabitants of the ſaid City, and others aſſembled to ſee the Execution; without any juſt Cauſe or Neceſſity, ordered the ſaid Detachment under his Command, to fire upon the People ſo aſſembled; and ſome of his Men firing over the Heads of the People (as he thought) he with Threats and Imprecations repeated his Commands, calling out to them *to level their Pieces and be damned*; and at the ſame Time levelling his own Piece at one *Charles Husband*, fired at him, and killed him on the Spot: And that by his Command and Example, ſeveral others of the ſaid Guard, fired upon the ſaid Multitude, whereby ſeveral of the Perſons hereafter ſpecified, were killed, maimed, and wounded. And the Indictment further charges, That the Priſoner not contented with this, after he had marched off his Detachment to the Street, called the *Weſtbow*, ordered his Men to face about and fire upon the People, and at the ſame Time fired again with his own Hand; and ſeveral of the Guard firing by his Example, the reſt of the Perſons mentioned in the Indictment were killed and wounded: The Perſons killed at theſe ſeveral Firings being ſix in Number, *viz.* The aboveſaid *Charles Huſband*, *Archibald Balantine*, *John Anderſon*, *Alexander Mackneil*, *Margaret Gordon*, and *Henry Graham*; and eleven Perſons were wounded, *viz.* *Margaret Arthar*, *Jane Peat*, *David Wallace*, *James Philp*, *David Kidd*, *Patrick Spalding*, *James Lyle*, *Alexander Wallace*, *John Miller*, *David Ogilvie*, and *James Nivan*: And the Indictment concludes in the Scots Form, that the Pannel was Guilty, or Actor, Art and Part, of the Crimes aforeſaid, or one or other of them.

The Defence of Porteous.

To which Indictment the Pannel (*Porteous*) pleaded Not guilty; and though conſcious of his Innocence, he could, he ſaid, ſafely reſt his Trial upon the Denial of the Facts, and upon ſuch Proof as he ſhould bring that he was no ways Inſtrumental in the killing or wounding the ſaid Perſons, but did all that was in his Power to prevent and reſtrain the ſaid firing upon the Multitude; yet, as he was adviſed by his Counſel not to omit or abandon any Defence that was competent to him in Law, and by the Law of *Scotland*, the pleading to an Indictment upon ſuppoſed Facts was no legal Submiſſion of ſuch Facts, and he was at liberty to plead any other Exception that lay againſt the Form of the Indictment; or even to plead, that though ſuch firing had proceeded from his Order or Example, yet, even in that Caſe, ſuch firing and the Conſequences thereof was not ſufficient to ſupport the Charge.

Then his Counſel deſired Leave, before they entred upon his Defence, to ſtate his Caſe and offer a ſhort Relation of what they apprehended to be the Cauſe that the Execution of the ſaid *Andrew Wilſon*, was attended with ſuch an unuſual Confluence of People, and was ordered to be guarded and overſeen by ſuch a numerous and unaccuſtomed armed Force.

They ſaid, That *Andrew Wilſon*, along with one *Robertſon* and others, had been ſentenced to Death by their Lordſhips, for robbing one of the Collectors of his Majeſty's Revenue, of conſiderable Sums of the Money of the Publick; and while they lay under this Sentence they were allowed as uſual to go to the Church adjoining to the Priſon for the Benefit of Divine Service, under the Cuſtody of a ſmall Detachment of the City-Guard. And while the Convicts were thus at Church, *Robertſon*, one of them, found means to eſcape from his Keepers of the Guard, by ſuddenly jumping over a Pew, and getting out of the Door of the Church; his Retreat apparently being favoured by the Mob, or loweſt ſort of the People, he eaſily made his Eſcape, without having been ever ſince overtaken.

From this Eſcape of *Robertſon*'s, ſo favoured by the Mob, and from ſtrong Surmiſes and Suggeſtions

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Suggeſtions that, at the Execution of *Wilſon*, a Reſcue was intended by the Mob, which indeed there was a reaſonable Ground to apprehend, becauſe the Commons had imbibed a pernicious and abſurd Conceit, as if the Robbing of the Publick Money was a Crime more pardonable than a private Robbery: Therefore it was, as the Pannel apprehended, that the Magiſtrates of the City, from a Senſe of their Duty, to prevent the Execution of the Laws being any further defeated by the Reſcue of *Wilſon*, took the ſtrongeſt Precautions that the Execution of him ſhould be made effectual.

In Conſequence whereof, as would ſeem, the Provoſt of the City ſent for the Pannel, in whom, he muſt take the Liberty to ſay, Confidence was generally put, upon thoſe difficult Occaſions, and told him, That there being great Apprehenſions of a Mob at *Andrew Wilſon*'s Execution, that therefore there was a Neceſſity to be well prepared to prevent their Deſigns; and for that End, that he would have the whole City-Guard to attend at the Execution, he having given Orders to the Town-Treaſurer to furniſh the Men with Powder and Shot, and ſuch other Military Ammunition as might be neceſſary for the Uſe of the Men in maintaining the Peace of the Town, and ſupporting the Execution of the Laws. And this Conference with the Provoſt happened upon the *Monday* preceeding the Execution of *Wilſon*, which followed on the *Wedneſday* thereafter. But it ſeems the Magiſtrates of the City not thinking even this Precaution ſufficient, upon the *Tueſday* thereafter, the Provoſt ſent the Pannel with a Letter to General *Moyle*, reſiding near the City, and Chief Commander of the Forces in *Scotland*, telling the Pannel, that the Import of this Letter was to deſire from the General an Order for a Party of the Regiment, lying in the Cannon-Gate, to enter the City, (a Thing very uncommon, except in the Caſe of urgent Neceſſity) in order to over-awe the Mob, and thereby maintain the Peace, during the ſaid Execution.

It ſeems this Letter to the General induced him to ſend a verbal Meſſage in return thereto, by a Perſon of known Honour and Veracity, Major *Pool*, of that Regiment, now lying in the Cannon-Gate, who told the Provoſt, that the General wanted to know of him what Part the King's Troops were to act, and what Precautions had been taken for preventing any Inſult or Invaſion that might be made upon the Troops, or what Length theſe Troops might go in the Caſe of Tumult or Diſturbance. To which the Provoſt made Anſwer, That there was no Reaſon to apprehend any Inconveniency would happen to the King's Troops, becauſe he would have them only to parade for a Terror to the Mob, in a Street called the Lawn-Market, removed from the Sight of the Execution, but at a ſmall Diſtance only, where nevertheleſs they would be ready at a Call in caſe of Neceſſity: But that he had ordered the whole Band of the City-Guard to attend at the Execution itſelf, with proper Arms and Ammunition, namely, Slug-ſhot, with Orders to repel Force by Force, and even to diſcharge their Arms among the Mob in Caſe of Reſiſtance.

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On *Wedneſday*, the Day of the Execution, in the Forenoon, the Pannel attended the Provoſt and told him, That in Obedience to his Commands, the Men were all ordered to be in Readineſs, their Arms put in Order and loaded, whereof the Provoſt approved, and told the Pannel that he was to be ready betwixt two and three in the Afternoon, with his Guard, and not to draw out until the Party of the King's Troops from the Cannon-Gate paſt him, and that ſo ſoon as the King's Troops were drawn up in the Lawn-Market, the Pannel with the City-Guard ſhould forthwith March to the Priſon, and conduct the Priſoner to the Place of Execution, without allowing him firſt to go to the Town's Council-Houſe as uſual; ſtill with Intention, as would ſeem, to prevent an Opportunity of Reſcue or Diſturbance upon that Head. And at this Time in the Forenoon, the Pannel humbly propoſed to the Magiſtrates of the City, that they would ſend a Proclamation through the Town, as a Caution to ſuch innocent unwary People as might by Curioſity be drawn to the Sight of the Execution, warning them of their Danger in Caſe any Diſturbance ſhould happen, or Attack be made upon the Guard. And accordingly *George Lindſay*, one of their Clerks, made a Scroll of the ſaid Proclamation, to be ſent through the Town; but for what Reaſon it was not proclaimed, the Pannel knows not. And at the ſame Time the Pannel remembers ſome one or other of the Common-Council of the City, propoſed, in Caſe of Diſturbance, the reading of the Riot-Act; and for that purpoſe, ſent for a Dozen Copies of the Act to a Bookſeller's Shop, in order to diſtribute them amongſt the proper Officers of the Law authoriſed to read and proclaim ſuch Act: But it ſeems at no Time either of theſe Propoſals were put in Execution; nor at the Time of the ſaid Execution, did any Officer of the Law, authorized to proclaim ſuch Act, attend with the Pannel.

That the Pannel having no Cartridges in his Box when he mounted the Guard, a Corporal furniſhed him with three, with one of which he loaded his Piece, and marched away to Priſon, from whence he conducted the ſaid *Wilſon* to the Scaffold, and ſurrounded the Place with his Detachment.

The Criminal was no ſooner turned off the Ladder, but the City-Bayliffs withdrew, leaving no Officer of the Law to attend with the Pannel: Whereupon the Mob became troubleſome, intending, as he apprehended, to cut down the Criminal and recover him by bleeding, for they preſſed hard upon the Guard, ſtriking them with Sticks, ſeizing their Fire-Arms and Bayonets, and throwing great Stones, one of which cut a Drummer to the Skull, another broke one of his Men's Shoulder-Bones, a Third wounded one of his Men in his Legs, and ſeveral more were wounded and diſabled to do their Duty.

This Inſolence encreaſing, the Pannel ſent a Meſſenger to the Bayliffs, to know if he ſhould ſuffer the Criminal to be cut down, (for no Criminal can be cut down from a Gibbet, but by Order of a City-Bayliff); and they anſwered, he was to hang a Quarter of an Hour more.

Then

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Then the Mob grew very turbulent, and while he was endeavouring to keep them off at one End of the Scaffold, they broke in at the other, and cut the Criminal down; in which Attack it was that ſo many of the Guard were wounded, which ſo alarmed the Pannel, that he confeſſes he did take his Piece and level it at the Mob, threatning to fire amongſt them if they did not leave off attacking his Men, and throwing of Stones: However, he immediately recovered his Piece and did not fire; but one of his Men ſtepped forward immediately after, and paſſing by the Pannel diſcharged his Musket; upon which one of the Crowd dropped, ſuppoſed to be *Charles Husband*, who cut the Criminal down: Another of the Guard near him was going to fire, but the Pannel forbid it, and ſtruck down his Piece; but ſeveral of his Men that were at a Diſtance from him, upon hearing the firſt Shot, fired their Pieces, and he apprehending Miſchief was done, ordered his Men to march off, and was followed by ſome of them in a very diſorderly manner, and he ordered the Serjeants to bring off the reſt, but heard ſome dropping Shots ſtill fired in the Rear; but all this firing from firſt to laſt, by which ſo much Miſchief was done, laſted not above two or three Minutes: Conſidering therefore the Violence of the Mob, and the ſtraggling Situation of the Men of the Guard, they left it to the Court, Whether the Pannel could well have done more for the Safety of the Burgh, having given repeated Orders to the Guard, as would be proved, to reſtrain them from firing, and when he found thoſe Orders ineffectual, marching off his Men with Precipitation? And it was evident to thoſe who ſearched his Piece before the Council, after the Buſineſs was over, that it had never been fired that Day.

The Pannel's Counſel alſo obſerved, That he had often been ſingled out as the fitteſt Perſon to maintain the Peace of the City, by quelling Tumults, and had never diſcovered any imprudent Raſhneſs or cruel Temper hitherto, but had expoſed his Perſon to very great Danger rather than involve the City in Blood, or proceed to Extremities, even when the Law would have entirely juſtified him; nor was it a new Thing for the private Men of the City-Guard, to take upon them to fire without the Command of their Officers; of which he gave ſeveral Inſtances.

That they might be prompted to fire at this Time, partly by Reſentment, *Robinſon* having eſcaped from them as aforeſaid, and partly from the general Order they heard given by the Magiſtrate, to fire in Caſe of Reſiſtance; for ſeveral of them were heard to ſay before they went to *Wilſon*'s Execution, that now they had got Arms and Ammunition, they would not fail to uſe them, in Caſe they were attacked.

They obſerved further, That, as the Pannel had been employed many Years as the Scourge of the Mob, this might be the Occaſion of drawing on him the Reſentment of the lower ſort of People.

Then the Counſel proceeded to anſwer the Particulars charged in the Indictment: And firſt as to Malice; it could not be preſumed, they inſiſted, that he had any Malice againſt a Multitude of People, of whom he had no Knowledge; it was rather to be ſuppoſed, he proceeded on a Principal of Duty in maintaining the Peace of the Place, and ſupporting the Authority of the Law, and guarding the Execution, which was committed to him by lawful Authority.

In the next Place it was objected, That the Indictment was not laid with ſufficient Certainty, the particular Places in the Street, where the Facts were charged to have been committed, not being ſpecified.

It was objected further, that the attacking the Guard by the Mob was ſo violent, many of the Men being bruiſed and wounded while they were doing their Duty, that the Reſiſtance the Guard made was juſtifiable and agreeable to former Precedents; and then they inſtanced in ſeveral Caſes where ſome had been killed on the like Provocation, and the Authors of their Deaths juſtified by this High Court, particularly in the Caſe of the Centinel who killed *Hugh Frazer* and ſome others, which was laid before the Lords when the Caſe of *Porteous* was under their Conſideration, *and immediately precede this Trial.*

If it was alledged, that the Execution was over before any Tumult or Diſturbance was made by the People, and therefore the firing at them was perfectly unneceſſary; the Counſel for the Pannel anſwered, That the Execution of the Pannel's Duty could not be ſaid to be at an End till the Criminal was actually dead, and ordered to be cut down by lawful Authority; unleſs it was the Pannel's Duty, the Moment the Convict was hung up, to let him be cut down and brought to Life by the Mob, who plainly ſeemed to have that Intention; and the preventing this was evidently the Occaſion of the Scuffle: Nor could it with any Juſtice be affirmed, that the Pannel was not in the Execution of his Duty while he and his Guard remained upon the Spot under Arms; for every Perſon was upon his Duty while he was either going to or coming from any lawful Expedition; the Pannel therefore, and the Men under his Command, were in the lawful Execution of their Duty, until they returned and were diſmiſſed from Duty, and then indeed they were reduced to a private Capacity.

They obſerved further, That the Protection of the Hangman, who had received ſeveral Wounds, and was in Danger of being torn in Pieces by the Mob, was a Part of the Pannel's Duty: How then could it be ſaid, that the Pannel could only plead Self-Defence in Excuſe of what was done?

A private Man indeed, when aſſaulted, muſt retire as far as he can with Safety; but if that was the Caſe of the City-Guard; if they were to betake themſelves to their Heels as ſoon as they were invaded, they were maintained for very little Purpoſe: It would be ſtrange if a Guard, kept for the Maintenance of the Peace of the Capital City, ſhould be allowed to plead no higher Privilege than that of Self-Defence in the ſtricteſt Senſe, when they were upon Duty; this muſt be great Diſcouragement

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ment to Perſons in the Service of the Crown or Common-wealth.

And as the Supreme Executive Power was veſted in the King, the Lord Advocate would do well to conſider, how far ſuch an Argument, if preſſed againſt the Pannel, muſt tend to weaken, and even defeat, the Execution of the Laws.

It was rather to be preſumed, that where a Perſon was entruſted with the Execution of the Laws, the ſmalleſt Inſult or Aſſault of him was Criminal; and that every Oppoſition to ſuch an Aſſault was lawful, becauſe no Man was above the Laws; and the Life of the Laws, in which the common Good was concerned, was of more Importance than the Life of any one Man or Number of Men, and ſo ought to be defended at all Hazards: Nor could there be any Inſtance given in this or any other Country, where a Perſon proceeding to Extremities againſt thoſe who aſſaulted him while he was acting in Execution of the Laws ever ſuffered the Pains libelled.

It had been inſinuated indeed, that the Pannel ought to have read the Riot-Act, whereby the innocent part of the Multitude might have had Time to take Care of their own Safety: But it was to be conſidered, that no Perſon was authorized to read that Act but a Juſtice of Peace, Sheriff, Mayor, Bailiff, or Head Officer; and no Perſon under any of theſe Characters was left with the unfortunate Pannel; but he was abandoned, and left to grapple with Occurrences in the beſt manner his own Diſcretion could ſuggeſt to him.

They ſhewed further, That the reading of the Riot-Act would not have anſwered that Exigency; for he muſt have ſtood with his Hands a-croſs an Hour after the reading that Act, before the Mob would have been expoſed to the Penalties contained in it.

They conclude, That if the Pannel was guilty of the Charge, as laid in the Indictment, they were themſelves of Opinion he deſerved to ſuffer; but if on the other hand it ſhould appear he was entirely innocent of the Blood of thoſe Men wherewith he was charged, they thought his Caſe deſerved ſingular Compaſſion; for if Bonds and Impriſonments, Loſs of Employment and Bread, Obloquy and Reproach of Blood, Guilt and Maſſacre, and conſequently Loſs of Character, be Calamities in Human Life, then had he had as great a Share of them as ever attended Innocence.

Subſcribed *James Grahme*, jun.

The Reply of his Majeſty's Advocate.

To this Defence of the Pannel's Counſel, the Lord Advocate replied, That the Libel was as particular as the Law required, deſcribing the Street where the Execution was had.

And though it was true, that the Magiſtrates, upon juſt Apprehenſion of Diſorders, and an Attempt to reſcue the Criminal who was ſentenced to die, had ordered Powder and Ball to be diſtributed to the Guard; had obtained the Aſſiſtance of the regular Troops, with an Aſſurance, that, in Caſe of Neceſſity, they ſhould be ordered to fire, and had directed the Pannel at all Hazards to ſupport the Execution, and prevent a violent Reſcue, and told him, that in Caſe of Neceſſity he was to repel Force by Force; thoſe Orders did not juſtify him, except there had been a Neceſſity, except there had been an Attempt to reſcue the Criminal, which could not have been otherwiſe prevented, and unleſs all proper Precautions for diſſipating the Mob otherwiſe had been previouſly uſed to authorize his firing.

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That no Order from the Civil Magiſtrate, if any ſuch had been given, could juſtify ſo horrid a Barbarity as the firing upon innocent People; nor was he bound to obey ſuch illegal Orders:

But he had no Orders to fire, unleſs Violence, or an Attempt to Reſcue made it neceſſary; and it was a cruel and unjuſtifiable Act to make Uſe of Weapons that were put into the Hands of the Guard, for the Security of the Peace and of the People, to deſtroy ſo many Innocents.

And though the Pannel would excuſe himſelf, under Pretence that Stones were thrown at the Guard; he admitted the Criminal was cut down before this trifling Provocation happened, and his Duty, as far as concerned the Execution of the Sentence, was over: Nor had he ſo much as alledged any Danger; he was not invaded with Fire-Arms or other mortal Weapons that could endanger the deſtroying Seventy diſciplined Men with loaded Pieces and Bayonets upon them: His Allegations therefore, if true, did not point out the leaſt Neceſſity, and conſequently he could not juſtify himſelf by his Orders.

There happened nothing more than uſual on theſe Occaſions; only ſome Dirt and Stones thrown at the Executioner as was cuſtomary, which might have provoked a cholerick Man to have drubbed ſome of the Actors, but could not juſtify ſlaughtering the Offenders; much leſs could the Impertinence of a few Boys, or other idle People, excuſe the firing ſharp Shot upon an innocent Multitude, whereby many of his Majeſty's Subjects were deſtroyed.

The Pannel had cited a late Reſolution of the Court for ſuſpending a Sentence of the Court of Admiralty, where Soldiers happened to kill in the Execution of their Duty; and he did acknowledge, where a Man has by Law Weapons put into his Hand to be employed, not only in Defence of his Life, when attacked, but in Support of the Execution of the Laws, and in Defence of the Property of the Crown or Liberty of any Subject, he, doubtleſs, may uſe thoſe Weapons, not only when his own Life is put ſo far in Danger that he cannot probably eſcape without making uſe of them, but alſo when there is imminent Danger that he may by Violence be diſabled to execute his Truſt without reſorting to the Uſe of thoſe Weapons: But when the Life of the Officer is expoſed to no Danger; when his Duty does not neceſſarily call upon him for the Execution of his Truſt, or for the reſervation of the Property of the Crown, or the Preſervation of the Property or Liberty of the Subject; to make uſe of mortal Weapons, which may deſtroy his Majeſty's Sub-

1736. 10 Geo II. jects, especially Numbers of them who may be Innocent; it is impossible from the Resolution of the Court of Justiciary, hinted at, to expect any Countenance to, or Shelter for the inhuman Act.

And though the Pannel asserted there could be nothing of precedent Malice in the Action, he having no Knowledge of the People that happened to be killed or wounded; yet his Counsel very well knew that firing, and ordering to fire, implyed and was a Proof of Malice, in the Construction both of Law and Reason. Whoever wilfully murdered and destroyed his Majesty's Subjects must be deemed a Murderer, if his malicious Purpose preceeded the Drawing of the Tricker, or giving the Orders, one Moment, as much as if it had been premeditated a whole Year.

As to the Narrative the Pannel had given of his Behaviour, every Circumstance of it might be true; and yet it might also be true, That he with his own Hand fired and killed one or more of the Innocent People, and ordered the Men under his Command to fire.

He might at one Time call out to the Multitude to stand off, and threaten to fire, and might at one Time strike down the Pieces, and prohibit his Men to fire; and yet he might at another Point of Time, give the Word of Command to fire, and fire the Piece in his Hand: Before he lost his Temper, he might threaten only, but might afterwards execute what he had threatned.

None of his Witnesses could pretend they had kept their Eyes so steadily on the Pannel, during the whole Tumult, that they observed every Motion he made: The firing of a Shot, The flinging of a Stone, or the extraordinary Behaviour of any of the Multitude, or the Guard, might imperceptibly draw the Eyes and Attention of any Spectator from the Pannel to that new Object, and prevent his seeing or hearing what he said or did in the mean Time; and therefore no Witness, or Number of Witnesses, that should take upon them to say absolutely the Pannel did not, at any Period of Time during the Tumult, fire, or give Orders to fire, would be credible: At least they could not be credited against such Witnesses as positively attested they saw and heard him give Orders to fire.

And whereas the Prisoner pretended he bid his Men *Not fire*, but was misunderstood by some, who apprehended he bid them fire; the ordering his Men *To level their Pieces and be damned*, sufficiently explained how he would be understood as to firing.

As to that Objection, that his own Piece appeared, Not to have been fired that Day, there was little in it; for another Piece might have been produced to the Magistrates instead of his own, or he might have taken one of his Men's Pieces and fired it: Concluding however, that it was not the Interest of the Crown, or of the Publick, that an Innocent Man should suffer; but it was greatly the Interest of Both, that a fair and strict Enquiry be made where the Guilt lies, when a Massacre so cruel, and so dangerous happens; to the End, that if the Officer, who has Power put into his Hands for the Preservation of the Peace, and for the Protection of the People, should, from any unjust Motive whatever, make use of that Power in Breach of the Laws to the Destruction of the People, he may be made an Examplei to restrain others, in like Circumstances, from such dangerous Abuses for the Future. 1736. 10 Geo II.

Signed *Dun. Forbes.*

The Court of Justiciary having considered the aforesaid Debate, found, That the Pannel having at any of the Times and Places libelled, fired among the People, or given Orders to fire; and he or any of the Soldiers having accordingly fired, and any of the Persons mentioned in the Indictment were thereby killed or wounded; or the Pannel's being Art and Part in any of the aforesaid Crimes; All *separatim* relevant to infer the Pains of Law: But allowed him to produce Evidence of his Behaviour at the said Execution. *The Libel found Relevant.*

The Assize or Jury being afterwards sworn, the Pannel judicially confessed that the several Persons specified in the Indictment were killed and wounded by the firing of the City Guard under his Command. *He confesses the Persons specified were killed, &c.*

Then the Witnesses were produced by his Majesty's Advocate to prove the Facts laid in the Libel: And first, *James Drummond*, Merchant of *Edinburgh*, deposed, That he was present at the Execution of *Andrew Wilson*, and after he had hung upon the Gallows about a quarter of an Hour, he saw the Executioner go up the Ladder, as the Deponent apprehended to cut him down; upon which he saw some small Stones thrown by the Mob at the Executioner, some whereof he believes might fall upon the Guard: Upon which he saw the Pannel advance Westward, resting his Firelock upon his Thigh, as if he was bending it, and afterwards saw him raising it to his Breast, moving it from one Point to another, and soon after heard a Shot from the Place where the Pannel was standing: And he did apprehend that Captain *Porteous* fired at that Time, because he saw him in a firing Posture, and immediately heard a Shot, and saw a Man in a few Minutes afterwards, when the Mob dispersed, lying in the Street upon a Line from the Place he saw the Captain's Piece directed: And much about the Time the Captain fired, he observed one of the Soldiers go out of his Rank Westward, beyond the Place where the Captain stood, and levelled his Piece; but could not see whether he fired it, or not. *Evidence of the Prosecutors.*

Sir *William Forbes*, Advocate, deposed, That after *Wilson* had hung about 25 Minutes on the Gallows, the Deponent from a House opposite to the Gallows, saw the Executioner go up a Ladder (as he thought) to cut down the Deceased, and Stones were thereupon thrown at the Executioner; whereupon he retired to the Guard, and the Mob continued throwing of Stones, some of which he believed might touch the Guards; and soon after he saw the Pannel advance Westward and fire his Gun among the People, and observed the Fire and Smoak issue out of his Piece to the best of his Observation; and this was the first Shot the Deponent heard: But he imagined then, that the Pannel fired the Shot high, and that he after-

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afterwards heard about Twenty dropping Shots.

Mr. *William Fraſer*, ſon of the Lord *Saltoun*, who ſtood at the ſame Window, made the like Depoſition as the laſt Witneſs; only he did not ſay, that the Pannel fired the Shot high.

William Urquhart, gave the like Teſtimony as Sir *William Forbes*; only he did not depoſe, he ſaw the Smoak or Fire iſſue out of the Pannel's Piece.

James De War teſtified, That he ſaw the Hangman go up ſome Steps of the Ladder, after *Wilſon* had hung ſometime, and ſaw the Mob throw Stones, one of which hurt the Executioner in the Face; whereupon he came down the Ladder, and the Pannel then preſented his Piece, and fired, which was the firſt Shot he heard or ſaw: That he ſaw the Fire of the Powder in the Pan, and heard the Report of the Shot, and that when the Pannel fired, *Wilſon* was cut down by ſome that ſtood at the Foot of the Gallows, and not by the Hangman: And being asked what kind of Cloaths *Porteous* had on, he ſaid, he could not be poſitive, but believed red Cloaths, and was poſitive he knew the Face of Captain *Porteous* when he ſaw him fire.

George Drummond, Eſq; one of the Commiſſioners of the Cuſtoms, depoſed, That fifteen or ſixteen Minutes after *Wilſon* was turned off, the Executioner was going up the Ladder, but ſeveral Stones being thrown at him, he was forced to return, and his Noſe was bloody: That mixing with the Soldiers, the throwing of Stones continued, and ſome fell among them; and he obſerved one of the Soldiers advance before Captain *Porteous* with a Gun, which he preſented, and immediately after the Deponent heard a Shot, which he imagined proceeded from the Soldier's Piece; but did not ſee either Smoak or Fire, and was poſitive this was the firſt Shot that was fired, but he did not think the Stones that were thrown, gave any juſt Cauſe for firing: That at the ſame Time, he ſaw *Porteous* levelling his Piece, and after the firſt Shot, within a Minute, he heard eighteen or twenty: That ſome Minutes after, there was a ſecond Firing: That the dropping Shots in the firſt Firing, were by the Soldiers, who ſtood immediately behind the Pannel, and the Pannel's Face, and all the Soldiers behind him were looking Weſtward.

William Johnſon, Druggiſt, of *Edinburgh*, depoſed, That he obſerved the Pannel take a Gun out of a Soldier's Hand, and advance ſome Steps Weſtward, level his Gun, and fire it amongſt the Multitude, and did obſerve the Smoak come out of the Gun: That this was the firſt Shot he heard, and was made immediately after the Criminal was cut down, by one ſtanding at the Foot of the Gibbet: That when the Pannel took the Gun out of the Soldier's Hand, he was in a Paſſion, and it was ſome ſhort Time before he was Maſter of the Gun: That to the beſt of his Remembrance the Pannel was cloathed in Red; but he being well acquainted with the Pannel's Face, was poſitive he was the Perſon that took the Gun and fired as aforeſaid; and believes there were about thirty Yards between the Windows, where he (the Witneſs) ſtood, and the Pannel to the firſt firing.

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Mark Sprot, Skinner, one of the Conſtables of *Edinburgh*, depoſed, That he ſaw *Wilſon* cut down, but did not obſerve any greater Diſturbance than uſual at Executions: But a little after the Criminal was cut down, he obſerved the Pannel advance towards the Soldiers, and fire his Piece towards the Weſt, and the Smoak Iſſue out at the Mouth of his Gun; and this was the firſt Shot that was fired. That immediately after a Tall Man in his own Hair, about the Third behind the Pannel, fired his Piece towards the Weſt, but up in the Air, over the Heads of the Multitude, and ſeveral dropping Shots followed ſoon after; and when the People fell back and opened, the Deponent obſerved a young Man lying upon the Ground as dead, directly oppoſite to the Place where the Pannel fired.

George-Campbell Wright, of *Edinburgh*, depoſed, That he ſtood at a Window, directly oppoſite to the Gibbet: That a very little after *Wilſon* was cut down, he obſerved the Pannel with four or five of his Men about him; and as he pointed his Piece to and fro towards the Multitude, he obſerved him receive a Stroke by a Stone, thrown from behind the Scaffold, off of which it rebounded and ſtruck him: Whereupon he immediately fired his Piece, but whether this was the firſt Shot or not, he could not tell, there being three or four fired about the ſame Time: But that the Pannel fired he was ſure, for he ſaw the Fire and Smoak iſſue from his Piece; and upon theſe Shots he ſaw a Man fall down on his Back in the Street: That after this, he ſaw the Pannel raiſe his Musket, and put his Hand to his Cartrage-Box, as if he intended to load again; but what followed he did not know, becauſe he immediately loſt Sight of him.

James Bald, Merchant of *Edinburgh*, depoſed, That he ſtood at the ſame Window the laſt Witneſs did; that a little after *Wilſon* was cut down, he ſaw the Pannel advance and fire his Piece to the Weſtward; but ſaw none of the Soldiers near him, nor obſerved any other Fire but his; And before there was any more firing, when the Multitude fell back, he ſaw a Man lying dead towards the Place the Pannel pointed his Piece; and he was ſure the Captain fired, becauſe he ſaw the Fire and Smoak iſſue out of his Piece.

Andrew Daw, depoſed, That immediately after *Wilſon* was cut down, the Pannel fired his Piece, and thereupon *Charles Husband*, a Baxter in the Abby, dropt juſt by the Deponent, and the Deponent's Coat was torn in the Shoulder by the ſame Shot; he was ſure it was the Pannel that fired, becauſe he ſaw no other Piece preſented at the ſame Time: And the Deponent was not the Length of an ordinary Room diſtant from the Pannel when he fired; and this was the firſt Shot he heard fired that Day.

Walter Shergold, of *Edinburgh*, depoſed, That he ſaw Captain *Porteous* fire his Gun, holding the ſame ſtrait-out at the Multitude, and he was not then three Yards from him: That, after he had fired himſelf, he heard the Captain ſay *Fire*! and then ſome other Shots were

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were made: That the Shot the Captain made, was the first he heard fired, and he was so near as to see the Fire fly out of the Gun.

John Ritchie and *Thomas Crookshanks* also testified, That they saw Captain *Porteous* fire among the Multitude.

James Neilson deposed, That he saw the Smoak issue from the Captain's Piece, and that five or six Soldiers fired after the Captain; and when the Multitude was beaten off, the Deponent saw a Boy with black Hair lying within ten Yards of the Turnpike, where the Deponent stood, and he was bloody at the Ear, and he saw four other Persons lying at different Places in the Street.

William Gordon testified, He saw the Fire and Smoak come out of the Muzzle of the Captain's Piece, which was the first Shot that was made, and he heard several other Shot afterwards.

John Nasmith deposed, That he heard the Captain say several Times to his Soldiers, *Fire, and be damned!* and at the same Time saw him advancing with his Piece presented in his Hand, and soon after the Captain had said the Words aforesaid, he heard several Shot go off.

David Brown testified, That he heard the Captain give his Soldiers Orders to fire, and thereupon several Shot were made.

Matthew Kidd deposed, That he saw the Captain fire, and afterwards give the Soldiers Orders to fire; and that he called to them to level their Pieces, and he saw the Soldiers fire, and the Shot fired by the Captain was either the first or the second.

James Maxwell testified, That the Mob threw Stones among the Guard, and immediately after the Captain bid the Soldiers *Fire, and be damned!* and that he saw the Captain fire the first Shot himself.

William Douglas testified, That there were several Stones thrown among the Guard, and he heard the Captain say to the Soldiers, *Be damned to you, Bougars, Fire!*

Archibald Yeates deposed, That a little after *Wilson* was cut down, he saw the Captain fire his Piece among the Multitude, and immediately heard him say to his Men, *Level your Pieces and fire, and be damned!* whereupon a great many Shot were fired by them, and he saw the Captain take a Gun from one of his Men which he fired, and he (the Witness) was within six Yards of the Captain, when he fired and spoke the abovesaid Words: And that between the Time the Captain fired his own Piece, and his taking the Gun from the Soldier might be about eight Minutes: That at the Time he fired the second Gun, there were several other Guns fired; and that the second Shot fired by the Captain was near the Place where he fired the first.

William Murray testified, He observed two Soldiers fire their Guns up into the Air, but that the Captain afterwards fired his Gun among the Multitude, whereupon he saw a Boy drop; and he heard the Captain call out to the Soldiers, *Damn them for Bougars, why did they not fire even forward, and clean the Street?* and that after the first firing, he saw the Captain take a Gun out of a Soldier's Hand and fire again, directing it towards a Man he pursued thirty or forty Yards, and upon fireing, he saw the Person so pursued fall down; and being asked, how long he had been dull of Hearing? he answered seven Years.

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James Nicoll deposed, He saw the Captain fire among the Multitude.

William Jameson testified, He saw the Captain fire, and heard him order his Men to fire.

John Moffat deposed, He saw the Captain fire his own Piece, and the Soldiers who stood behind him fired their Pieces up into the Air; and that he also saw the Captain take one of the Soldiers Pieces and fire.

John Stewart testified, That the Captain took a Gun out of a Soldier's Hand, with which he pushed back the Multitude, and receiving a Blow as he was in the Rear of his Men, he suddenly turned about, and waived his Piece to and again without firing; but a very little after that he turned about all at once, and stepping some Steps forward, he fired off his Piece Westward towards the Croud.

John Gibb deposed, That he thought the Captain fired, for he saw the Powder flash in the Pan, and he heard at the same Time the Report of several Guns, and one *Neil* dropped down at the *Meuse-well*.

The Witnesses produced for Captain *Porteous*. *Witnesses for the Captain.*

George Smeiton, Writer, deposed, That when the Executioner was doing his Duty, he saw Captain *Porteous* come off the Scaffold, because the Mob crowded upon the Guard; and one of them endeavoured to grasp the Captain, but a Gentleman in Green Cloaths kept him off, and then the Captain returned to the Scaffold: About the Time the Criminal was cut down the Captain went off the Scaffold again, and Stones were thrown by the Mob at the Hangman and the Guard; after which, he observed a Soldier make a Shot, and after this followed three or four Shot more: That the Captain presented his Piece at the same Time, and stood pretty near the Soldier that fired first.

Thomas Horton, Surgeon of the *Welch* Fusileers testified, That he saw several Stones thrown at the Guard, big enough to kill a Man, and this continued for some Time: That while the Criminal was hanging, he saw a Man press upon the Captain, whereupon he held up his Hand in a threatning Manner: That the Captain had no Gun in his Hand upon the Scaffold, but when he came off he took a Gun from a Soldier, and endeavoured to get his Men together, which he could not well do, they being so mixed with the Mob, who continuing to throw Stones, the Captain waived his Piece from Side to Side to frighten them: At the same Time a Soldier came up on the Right Hand of the Captain and fired, which was the first Shot the Deponent observed: That he did not see the Captain fire, though he had his Eyes upon him all the Time, and he was very well assured he did not fire at that Time; and that afterwards he endeavoured to carry off his Men.

David Ranine deposed, That after the first Fireings were over, he saw the Captain draw off his Men, and heard some Soldiers fire in the Rear.

John

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John Clerk, Serjeant of the *Welch* Fuſileers depoſed, That he was ſent by the Captain who commanded the Detachment of the King's Forces in the *Lawn-Market*, to the Place of Execution, to get Orders from the Magiſtrates or Captain *Porteous*; and being upon the Scaffold, he ſaw a Stone thrown at the Executioner which cut his Noſe, and another of the Bigneſs of his two Fiſts at the ſame Time hit the Deponent's Legs: Whereupon he came down from the Scaffold, and ſaw Captain *Porteous* moving his Fuzee to keep off the Crowd, who preſſed upon the Guard, and drove them four or five Yards from the Place where they were poſted: That Captain *Porteous* threatned to fire upon the Mob, but none fired at that Time: He ſaw a Soldier afterwards advance on the right Hand of Captain *Porteous* and fire among the Crowd, which was the firſt Shot he heard; and he ſaw two Soldiers afterwards fire into the Air, and four or five Shots more were made, but he did not ſee Captain *Porteous* fire, or give Orders to fire, though he had his Eyes fixed upon thoſe that fired; and that on the firſt Shot that was fired, he ſaw a Man drop.

Colin Campbell depoſed, That he ſaw Stones thrown at the Hangman and the Guard, and the Captain with his Fuſee keeping off the Mob; and one of the Soldiers being ſtruck with a Stone fired, and another fired immediately after him.

William Meaine, Serjeant of the City-Guard, depoſed, That there were Showers of Stones thrown at the Guard after the Execution, one he ſaw of 3 *lb.* weight; the Drummer was cut in the Head with a Stone, and one of the Soldiers had his Shoulder-Blade broke; and before this, the Deponent was drawing off the Men by the Captain's Orders: That he held the Captain's Fuſee, and returned it to him when the Sign was given to cut down *Wilſon*; and it was the ſame Fuſee the Pannel uſed to carry upon Duty.

Alexander Campbell depoſed, He ſaw Stones thrown at the Guard, and two Soldiers ſtep aſide from the reſt and fire, which were the two firſt Shots he heard.

Matthew Howet, a Soldier of the City-Guard depoſed, That a great many Stones were thrown at the Guard; that he ſaw the Captain wave his Piece, but he did not preſent it; but he ſaw two or three Soldiers fire their Pieces into the Air: Then he heard ſome Soldiers ſay, *Fire, or we ſhall be knocked down!* and more Stones being thrown, ſeveral of them did fire, though he heard the Captain ſay before, *Do not fire!* That he was one of the Soldiers that followed the Captain, and did not ſee him fire as he marched to the *Bow*.

David Martine depoſed, He was one of the City-Guard, and had his Shoulder-Blade disjointed by a Blow of a Stone, before there was any firing, and heard Captain *Porteous* call to the Men *Not to fire*.

William Eyles, Soldier of the City-Guard, teſtified, That he attended the Execution of *Wilſon*, and did not hear Captain *Porteous* give any Orders to fire; but after the firing ſeveral Shots, the Captain called to the Soldiers to fall into their Ranks and follow him, which the Deponent and the reſt did, as they were able.

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James Armour, Writer to the Signet, depoſed, That after the Criminal was cut down, the People threw Stones, upon which he heard two or three Shots; and afterwards when the Captain and his Party were retiring, which they did in great Confuſion, the Crowd purſued them, and renewed their throwing of Stones; upon which ſome of the Soldiers marched back eight or ten Paces, and he heard a good number of Shot, which to his Grief he ſaw did great Execution.

John Robinſon Stabler, depoſed, That he heard the Captain ſay, *Fire*, or *I will fire*, he did not know which; and immediately a Man ſtepped 3 or 4 Paces before the Captain, and fired his Piece, and he verily believed that the People who fell near his Cloſe, got their Wounds by that Shot.

George Vint depoſed, He ſaw a Soldier, a black Man, ſtep before the Captain and fire his Piece, whereupon the Captain puſhed him into his Rank, and he did not ſee the Captain fire all the Time.

Alexander Thomſon a Town Officer, depoſed, That the Captain ſent him from the Scaffold to the Magiſtrates to know how long the Criminal ſhould yet hang, and the Magiſtrates anſwered, he ſhould ſtill hang a quarter of an Hour; but before half that Time expired, he was cut down.

Peter Colſtoun depoſed, He ſaw the Captain march with his Men up the *Weſt-Bow*, and ſaw ſeveral in the Rear fire.

John Kennedy Surgeon depoſed, That after the Execution of *Andrew Wilſon*, he attended the following Perſons of the Town-Guard, *viz.* *Alexander Muſhot*, the Spine of whoſe Shoulder-Bone was cruſhed, and *Alexander Braid*, who had a Contuſion in his right Foot, and both of them informed him they received their Hurts at the Execution of *Andrew Wilſon*, and the laſt of them was lame to that Day.

The Verdict.

The Aſſize (or Jury) then went out, and having conſidered the Evidence, they all in one Voice found it proven, that the ſaid *John Porteous*, Pannel, fired a Gun among the People aſſembled at the Place of Execution and Time libelled; as alſo that he gave Orders to the Soldiers under his Command to fire, and upon his and their ſo firing, the Perſons mentioned in the Indictment were killed and wounded: And found it proven, that the Pannel and his Guard were attacked and beat, by ſeveral Stones of a conſiderable Bigneſs thrown at them by the Multitude, whereby ſeveral of the Soldiers were bruiſed and wounded.

Sentence of Death.

Whereupon the Court of Juſticiary decerned and adjudged the ſaid *John Porteous* to be taken from the *Tolbooth* of *Edinburgh*, upon *Wedneſday* the 8th Day of *September* next, to come to the *Graſs-Mercate* of *Edinburgh*, the common Place of Execution of the ſaid Burgh, betwixt the Hours of 2 and 4 of the Clock in the Afternoon of the ſaid Day, and there to be hanged by the Neck upon a Gibbet by the Hands of the Executioner untill he be dead, and ordained all his moveable

1736. 10 Geo. II. Goods and Gear to be eſcheat and in-brought to his Majeſty's Uſe; which was pronounced for Doom.

Sic Sub.

And. Fletcher.
Ja. Mackenzie. } Lords of the
Na. Pringle. } Juſticiary.
Gilb. Elliot.

A Letter to reprieve the Captain.

At a Court held on the 3d of *December*, the Lord Juſtice Clerk produceda Letter from his Grace the Duke of *Newcaſtle*, one of his Majeſty's Principal Secretarys of State, of the following Tenor.

Whitehall, Auguſt 26, 1736.

My Lords,

Application having been made to Her Majeſty in the Behalf of *John Porteous*, late Captain-Lieutenant of the City-Guard of *Edinburgh*, a Priſoner under Sentence of Death, in the Goal of that City: I am commanded to ſignify to your Lordſhips, Her Majeſty's Pleaſure, That the Execution of the Sentence pronounced againſt the ſaid *John Porteous*, be Reſpited for ſix Weeks, from the Time appointed for his Execution. I am, my Lords, your Lordſhips moſt obedient humble Servant.

Sic Sub. Holles Newcastle.

Directed on the Back thus: To the Right Honourable the Lord Juſtice General, Juſtice Clerk, and other Lords of the Juſticiary at *Edinburgh*.

He is reprieved.

After which the Lords gave their Warrant for ſtopping the ſaid Execution, prohibiting all Magiſtrates and Officers to put the ſaid Sentence of Death in Execution untill the 20th of *October* next, Upon which Day they were ordered to put the ſaid Sentence in Execution.

Taken out of Priſon, and executed by the Mob.

But on the 7th of *September*, about 10 at Night, a Body of Men entred the City of *Edinburgh*, ſeized all the Fire-Arms, Battle-Axes, and Fire-Arms belonging to the Town-Guard, and being joined by the Mob within, ſecured all the City-Gates, and with Drums beat the Alarm: Then attempted to break open the Priſon Doors, but not being able, they ſet fire to them, and entring the Priſon, made the Under-keeper open the double Locks of the Apartment where Captain *Porteous* was kept, who begged they would ſpare him till next Day, (the Day firſt appointed for his Execution: But they hurried him away out of the Priſon about Eleven that Night, marching with lighted Torches before them, and coming to the uſual Place of Execution, they threw a Rope over a Sign-Poſt, and having faſtned it about his Neck, drew him up in his Night-Gown and Cap as they found him; but he getting his Hands between his Neck and the Rope, they let him down again, and the Captain having two Shirts on, they wrapped one of them about his Face, and tied up his Arms in his Night-Gown, and without giving him Time to ſay his Prayers, pulled him up again, where he hung till Day-light the next Morning. 1736. 10 Geo. II.

The Arms and Drums being left on the Place of Execution, were found there alſo next Morning; but during the Tumult, Parties of Armed Men with Drums, patroled in the different Streets, to prevent any Surprize by the King's Forces, quartered in the Suburbs; and after the Execution was over, they went to the Lord Provoſt's Houſe (who does not appear to have made any Attempt towards ſuppreſſing the Tumult) and told him they were ſatisfied: After which all was quiet.

The Captain's Petition.

What is moſt remarkable in the Petition of Captain *Porteous*, to the Queen, for Mercy, is, That he inſiſts it was not proved that he fired himſelf or commanded his Men to fire; and if he did, That he was aſſaulted firſt by the Mob, and only repelled Force by Force.

A Bill brought into the Houſe of Lords, to puniſh the Provoſt, &c.

The whole Matter being laid before the Houſe of Lords, the laſt Seſſion, a Bill was brought into that Houſe, and paſſed, to diſable *Alexander Wilſon*, late Provoſt of *Edinburgh*, from taking, holding and enjoying any Office, or Place of Magiſtracy in the City of *Edinburgh*, or elſewhere, and for impriſoning the ſaid *Alexander Wilſon*, and for aboliſhing the Guard kept up in the ſaid City, commonly called the Town-Guard, and for taking away the Gates of the *Neither Bow-Port* of the ſaid City, and keeping open the ſame.

Altered by the Commons.

This Bill being ſent down to the Houſe of Commons, received great Alterations there; for the Clauſes for Impriſoning the Provoſt, aboliſhing the City-Guard, and taking away the Gates of the *Neither Bow*, were dropped, upon a Diviſion, when 131 Voted for theſe Alterations, and 130 againſt them; and when the Act paſſed the Commons, It went no further than the diſabling the Provoſt, *Alexander Wilſon*, from holding any Office, and laying a Fine of 2000 *l.* upon the City of *Edinburgh*.

The Reaſon of ſhewing this Reſentment againſt the Provoſt and the City of *Edinburgh*, was their not uſing their beſt Endeavours to ſuppreſs the Mob, either at the Execution of *Andrew Wilſon*, or when Captain *Porteous* was taken out of Priſon and murdered.

Another Act relating to Porteous.

Another Act alſo paſſed this Seſſion for bringing to Juſtice the Perſons concerned in the barbarous Murder of Captain *John Porteous*, and puniſhing ſuch as ſhould knowingly conceal any of the ſaid Offenders.

FINIS.

AN

ALPHABETICAL and CHRONOLOGICAL

TABLE

OF THE

TRIALS, &c.

A.

1586. 28 *Eliz.* — *Abington, Edward*, tried for High Treaſon. Executed. 26

1679. 31 *Car.* II. — *Anderſon, Lionel*, a *Romiſh* Prieſt,—for High Treaſon. Reprieved. 373

1693. 5 *W.* & *M.* — *Anderton, William*, — for High Treaſon. Executed. 648

1650 2 *Car.* II. — *Andrewe*, Col. *Euſebius*, — for a pretended High Treaſon. Beheaded. 232

1667. 19 *Car.* II. — *Appletree, Thomas*, — for High Treaſon. Pardoned. 304

1660-1. 13 & 14 *Car.* II. — *Argyle, Archibald* Marquis of,— for High Treaſon. Beheaded. 281

1681. 33 *Car.* II. — *Argyle, Archibald* Earl of, — for High Treaſon. Beheaded. 440

1684. 36 *Car.* II. — *Armſtrong*, Sir *Thomas*, Proceedings on the Outlawry againſt him, for High Treaſon. Executed. 515

1723-4. 10 *Geo.* I. — *Arnold, Edward*, tried for Felony, in ſhooting *Thomas* Lord *Onſlow*. Pardoned. 883

1589. 31 *Eliz.* — *Arundel, Philip* Earl of, — for High Treaſon. Reprieved. 37

1703. 2 & 3 *An.* — *Aſhby* and *White*. The Caſe of Elections. 778

1690. 2 *W.* & *M.* — *Aſton, John*, Gent. tried for High Treaſon. Executed. 627

1678-9. 31 *Car.* II. — *Atkins, Samuel*, Gent. — for the Murder of Sir *E. B. Godfrey*. Acquitted. 341

1679. 31 *Car.* II. — *Atkins, William*, Clerk,—for High Treaſon. Condemned. 368

1723. 9 *Geo.* I. — *Atterbury, Francis*, D. D. Biſhop of *Rocheſter*, attainted by Act of Parliament, for a treaſonable Conſpiracy. Baniſhed. 881

1631. 7 *Car.* I. — *Audley, Mervin* Lord, Earl of *Caſtlehaven*, tried for a Rape and Sodomy. Beheaded. 122

1660. 12 *Car.* II. — *Axtel, Daniel*, a Regicide, — for High Treaſon. Executed. 271

B

1586. 28 *Eliz.* — *Babington, Anthony*, tried for High Treaſon. Executed 26

1620. 19 *Jac.* I. — *Bacon, Francis* Lord, Proceedings in Parliament againſt him, for Bribery and Corruption. Fined 40,000 *l.* &c. 73

1703. 2 *Annæ.* — *Baillie, David*, tried for Leaſing-making, ſentenced to the Pillory, and Baniſhment for Life. Both remitted. 797

1684. 36 *Car.* II. — *Baillie, Robert*, — for High Treaſon. Executed. 528

1586. 28 *Eliz.* — *Ballard, John*, — for High Treaſon. Executed. 26

1609. 7 *Jac.* I. — *Balmerino, John* Lord, —for High Treaſon. Pardoned. 59

1634. 10 *Car.* I. — *Balmerino, John* Lord,—for a treaſonable Libel. Pardoned. 129

1701. 13 *W.* III. — *Barlicorn, Richard*, — for Piracy. Acquitted. 737

1674. 26 *Car.* II. — *Barnardiſton*, Sir *Samuel*, Bart. and Sir *William Soame*, Knight. Trial on a controverted Election. 310

1683. 36 *Car.* II. — *Barnardiſton*, Sir *Samuel*, Bart tried for a Miſdemeanor. Fined 10,000 *l.* &c. 488

1586. 28 *Eliz.* — *Barnwell, Robert*, — for High Treaſon. Executed. 26

1637. 13 *Car.* I. — *Baſtwick, John*, M. D. —for a ſeditious Libel. Pilloried, Ears cut off, and impriſoned. 131

1685. 1 *Jac.* II. — *Bateman, Charles*, Surgeon, — for High Treaſon. Executed. 555

1605. 3 *Jac.* I. — *Bates, Thomas*, — for High Treaſon. Executed. 57

1703. 2 *Annæ.* — *Bathurſt, Charles*, Eſq; Proceedings in the Houſe of Lords and Commons, in the Caſe between him and *Thomas* Lord *Wharton*. 796

1701. 13 *W.* III. — *Bayard*, Col. *Nicholas*, tried for High Treaſon. Reprieved. 751

1702. 2 *Annæ.* — *Baynton, Sarah*, — for aſſiſting in a forcible Marriage. Pardoned. 761

1668. 20 *Car.* II. — *Beaſly, Richard*, —for High Treaſon. Executed. 304

1668. 20 *Car.* II. — *Bedle, Edward*, — for High Treaſon. Acquitted. 304

Bellamy, Jerome,—for High Treaſon. Executed. 26

1637. 13 *Car.* I. — *Berkley*, Sir *Robert*, a Juſtice of the *King's-Bench*, impeached of High Treaſon. 153

1660. 12 *Car.* II. — *Berkſtead, John*, a Regicide, taken upon an Outlawry, and executed. 276

1678-9. 31 *Car.* II. — *Berry, Henry*, tried for the Murder of Sir *E. B. Godfrey*. Executed. 336

1681. 33 *Car.* II. — *Bethel, Slingsby*, Eſq; — for an Aſſault and Battery. Fined 5 Marks. 435

1683. 35 *Car.* II. — *Bethel, Slingsby*, Eſq; —for a Riot, &c. Fined 1000 Marks. 450

1702. 2 *Annæ.* — *Binkes, William*, D. D. his Sermon on the 30th of *January* cenſured by the Houſe of Lords. 774

1696. 8 *W.* III. — *Biſhop, William*, tried for Piracy. Executed. 713

1688. 4 *Jac.* II. — *Biſhops*, the Seven, — for a Libel. Acquitted. 582

1683. 35 *Car.* II. — *Blague*, Captain *William*, — for Treaſon. Acquitted. 462

1601. 43 *Eliz.* — *Blunt*, Sir *Chriſtopher*, — for High High Treaſon. Beheaded. 47

1662. 14 *Car.* II. — *Bolton, John*, a *Quaker*, — for not taking the Oaths. *Premunire*. The Sentence not executed. 898

1718. 5 *Geo.* I. — *Bonnet*, and 33 of his Crew, —for Piracy, in *South Carolina*. Executed. 872

1681. 34 *Car.* II. — *Boroski, Charles-George*, — for the Murder of *Thomas Thynn*, Eſq; Executed. 443

1554. 1 *Mar.* — *Bothwell, James* Earl, — for the Murder of *Henry* King of *Scots*. Acquitted. 21

1703. 2 *Annæ.* — *Boucher, James*, Gent. —for High Treaſon. Reprieved. 777

1683. 36 *Car.* II. — *Braddon, Lawrence*, Gent. — for a Miſdemeanor. Fined and impriſoned 483

1688. 4 *Jac.* II. — *Bradſhaw, Dearing*, Gent. — for the Murder of Sir *Charles Pym*. Acquitted. 608

1388. 11 *Ric.* II. — *Brambre*, Sir *Nicholas*, —for High Treaſon. Executed. 1

1663-4. 15 *Car.* II. — *Brewſter, Thomas*, Bookſeller, — for Miſdemeanors. Pilloried, and fined 100 Marks. 297

1703-4. 2 & 3 *An.* — *Briton, Richard*, Gent. — for an Aſſault and Conſpiracy Fined 100 *l.* 797

1631. 7 *Car* I — *Brodway, Giles*,—for a Rape Executed. 123

1679 31 *Car.* II. — *Bromwich, Andrew*, Clerk,— for High Treaſon Convicted. 368

1603. 1 *Jac.* I. — *Brooke, George*, Eſq; — for High Treaſon. Executed. 48

An Alphabetical *and* Chronological TABLE

1603. 1 *Jac.* I. *Brookesby, Bartholomew*, Esq; — for High Treason. Reprieved. 48

1663-4. 15 *Car.* II. *Brooks, Nathan*, Bookbinder, — for publishing a Libel. Fined 40 Marks, imprisoned, *&c.* 298

1633. 9 *Car.* I. *Buckner, William*, — for Licensing a Libel. Fined 50*l.* 127

1637. 13 *Car.* I. *Burton, Henry*, Clerk, — for a Libel. Pilloried, Ears cut off, and imprisoned. 131

1681. 33 *Car.* II. *Busby, George*, Clerk, — for High Treason. Reprieved. 423

1699. 11 *W.* III. *Butler, Mary*, for Forgery. Fined 500*l.* 737

C

1686. 3 *Jac.* II. *Cambridge*, Proceedings against the University of, for not obeying the King's Mandate. The Vice-Chancellor deprived, *&c.* and the University reprimanded. 573

1680. 32 *Car.* II. *Care, Henry*, tried for a Misdemeanor, in publishing a Libel. Pilloried, fined, and imprisoned. 392

1660. 12 *Car.* II. *Carew, John*, Regicide, — for High Treason. Executed. 265

1715. 2 *Geo.* I. *Carnwath, Robert* Earl of, — for High Treason. Pardoned. 861

Carr. See *Somerset.*

1680. 32 *Car.* II. *Castlemaine, Roger* Earl of, — for High Treason. Acquitted. 384

1689. 1 *W.* & *M.* *Castlemaine*, Earl of, Proceedings of the House of Commons against him. 613

1688. 4 *Jac.* II. *Cave, Ambrose*, Gent. tried for the Murder of Sir *Charles Pym.* Acquitted. 608

1688. 1 *W.* & *M.* *Cavenash, Maurice*, and others, — for Felony. Acquitted. 901

1680. 33 *Car* II. *Cellier, Elizabeth*, — for High Treason. Acquitted. 391

1680. 32 *Car.* II. *Cellier, Elizabeth*, — for a Misdemeanor. Pilloried, fined, *&c.* 396

1637. 13 *Car.* I. *Charles* I. King, against *John Hampden*, Esq; for Ship-money. 133

1648. 24 *Car.* I. *Charles* I. King of *England*, his Trial. Murdered. 218

1586. 28 *Eliz.* *Charnock, John*, tried for High Treason. Executed. 26

1695. 8 *W.* III. *Charnock, Robert*, Gent. — for High Treason. Executed. 650

1682. 34 *Car.* II. *Charnock, Robert* and *Anne*, — for Misdemeanors. Convicted; but no Judgment given. 447

1701. 13 *W.* III. *Churchill, Nicholas*, — for Piracy. Condemned. 739

1667. 19 *Car.* II. *Clarendon, Edward* Earl of, impeached of High Treason and other High Crimes. Banished. 302

1603. 1 *Jac* I. *Clarke, William*, Priest, tried for High Treason. Executed. 48

1660. 12 *Car.* II. *Clement, Gregory*, a Regicide, — for High Treason. Executed. 267

1721. 8 *Geo* I. *Coke, Arundel*, Esq; — for Felony, in maiming Mr. *Crispe.* 876

1692. 4 *W.* & *M.* *Cole, John*, — for the Murder of Dr. *Clench.* Acquitted. 636

1678. 30 *Car.* II. *Coleman, Edward*, Esq; — for High Treason. Executed. 325

1681. 33 *Car.* II. *Colledge Stephen*, — for High Treason. Executed. 424

1686. 2 *Jac.* II. *Compton Henry*, D. D. Bishop of *London*, Proceedings against him before the Lords Commissioners for Ecclesiastical Affairs. Suspended. 571

1681. 34 *Car.* II. *Coningsmark, Charles-John* Count, tried for the Murder of *Thomas Thynn*, Esq; Acquitted. 443

1702. 1 *Annæ.* *Constable*, Capt. *John*, — for Cowardice, *&c.* Cashiered, and imprisoned. 755

1660. 12 *Car.* II. *Cook, John*, Regicide, — for High Treason. Executed. 267

1696. 8 *W.* III. *Cook, Peter*, Gent. — for High Treason. Pardoned. 672

1603. 1 *Jac.* I. *Copley, Anthony*, — for High Treason. Reprieved. 48

1627. 3 *Car.* I. *Corbett*, Sir *John*, Proceedings upon the *Habeas Corpus* brought by him. 79

1660. 12 *Car.* II. *Corbet, Miles*, Regicide, taken upon an Outlawry, and executed. 276

1679. 31 *Car.* II. *Corker, James*, a *Benedictine* Monk, tried for High Treason. Acquitted. 362

1679. 31 *Car.* II. *Corker, James*, (the same) — for High Treason. Reprieved. 373

1683. 35 *Car.* II. *Cornish, Henry*, Esq; Alderman of *London*, — for a Riot, *&c.* Fined 1000 Marks. 450

1685. 1 *Jac.* II. *Cornish, Henry*, (the same) — for High Treason. Executed. 554

1678. 30 *Car.* II. *Cornwallis, Charles* Lord, — for the Murder of *Robert Clark.* Acquitted. 342

1668. 20 *Car.* II. *Cotton, Edward*, — for High Treason. Executed. 304

1699. 11 *W.* III. *Cowper, Spencer*, Esq; — for the Murder of Mrs. *Sarah Stout.* Acquitted. 717

1696. 8 *W.* III. *Cranburne, Charles*, — for High Treason. Executed. 666

Creighton, Robert, Esq; See *Sanquire*, Baron of.

1675. 27 *Car.* II. *Crispe*, Sir *Nicholas*, and Mr. *Dalmahoy*, Proceedings of the Lords and Commons in Relation to their respective Privileges. 889

1662. 14 *Car.* II. *Crook, John*, a *Quaker*, tried for not taking the Oaths, Premunire. Sentence not executed. 896

1600. 43 *Eliz.* *Cuffe, Henry*, tried for High Treason. Executed. 47

1670. 32 *Car.* II. *Curtis, Jane*, prosecuted for publishing a Libel. Found Guilty. 380

D

Dalmahoy. See *Crispe.*

1710. 9 *Annæ.* *Dammaree, Daniel*, tried for High Treason. Pardoned. 844

1678. 30 *Car.* II. *Danby, Thomas* Earl of, Lord High Treasurer, impeached of High Treason, and other High Crimes and Misdemeanors. Pardoned. 330

1647. 23 *Car.* I. *Darby, Leonard*, tried for Forgery. Fined 400*l.* imprisoned, *&c.* 225

1627. 3 *Car.* I. *Darnel*, Sir *Thomas*, Proceedings upon the *Habeas Corpus* brought by him. 79

1600. 43 *Eliz.* *Davers*, Sir *Charles*, tried for High Treason. Beheaded. 47

1600. 43 *Eliz.* *Davis*, Sir *John*, — for High Treason. Pardoned. 47

1587. 30 *Eliz.* *Davison, William*, Esq; — for a Misdemeanor. Fined 10,000 Marks, and imprisoned. 31

1696. 8 *W.* III. *Dawson, Joseph*, — for Piracy. Executed. 713

1683. 35 *Car.* II. *Deagle, John*, — for a Riot. Fined 400 Marks. 450

1685. 1 *Jac.* II. *Delamere, Henry* Lord, — for High Treason. Acquitted. 557

1703-4. 2 & 3 *An.* *Denew, Nathanael*, — for an Assault and Conspiracy. Fined 200 Marks. 797

1715. 2 *Geo.* I. *Derwentwater, James* Earl of, — for High Treason. Beheaded. 861

1605. 3 *Jac.* I. *Digby*, Sir *Everard*, — for High Treason. Executed. 57

1684. 36 *Car.* II. *Disney, William*, Esq; — for High Treason. Executed. 530

1586. 28 *Eliz.* *Donn, Henry*, — for High Treason. Executed. 26

1663-4. 15 *Car.* II. *Dover, Simon*, — for printing a Libel. Pilloried, and fined 40 Marks. 298

1660. 12 *Car.* II. *Downes, John*, Regicide, — for High Treason. Convicted. 275

1702. 2 *Annæ.* *Drake, James*, M. D. Resolutions of the House of Peers in relation to some Books of his. 774

E

1627. 3 *Car.* I. EARL, Sir *Walter*, Proceedings upon the *Habeas Corpus* brought by him. 79

1668. 20 *Car.* II. *Earles, John*, tried for High Treason. Acquitted. 304

1683. 35 *Car.* II. *East-India* Company against *Thomas Sandys.* Judgment for the Plaintiffs. 490

1629. 5 *Car.* I. *Elliot*, Sir *John*, Knt. Proceedings against him for seditious Words in Parliament, and an Assault upon the Speaker. 103

1615. 13 *Jac.* I. *Elvis*, Sir *Jervis*, tried for the Murder of Sir *Thomas Overbury.* Executed. 63

1600. 43 *Eliz.* *Essex, Robert* Earl of, — for High Treason. Beheaded. 44

1613. 11 *Jac.* I. *Essex, Robert* Earl of, and the Lady *Frances* his Wife, Proceedings relating to their Divorce. 60

1600. 43 *Eliz.* *Eviot, Peter*, tried for High Treason in *Scotland.* Lands and Honours forfeited. 40

F

1675. 27 *Car.* II. FAGG, Sir *John*, Proceedings of both Houses of Parliament in the Case between him and Dr. *Thomas Shirley.* 317

1668. 20 *Car.* II. *Farrel, Richard*, tried for High Treason. Acquitted. 304

1682. 34 *Car.* II. *Farwell, John*, — for publishing a Libel. Pilloried, and fined 100*l.* 447

1652. 4 *Car.* II. *Faulconer, Richard*, — for Perjury. Convicted; but no Judgment given. 241

1605. 3 *Jac.* I. *Fawkes, Guy*, — for High Treason. Executed. 57

Fenwicke,

1696. 8 *W.* III. — *Fenwicke*, Sir *John*, Proceedings againſt him, on a Bill to attaint him of High Treaſon. Beheaded. 683

1678. 30 *Car.* II. — *Fenwicke*, *John*, Procurator for the *Engliſh* Jeſuits, tried for High Treaſon. Reſerved for another Trial. 328

1679. 31 *Car.* II. — *Fenwicke*, *John*, (the ſame) — for High Treaſon. Executed. 350

1685. 1 *Jac.* II. — *Fernly*, *John*, Barber-Surgeon, — for High Treaſon. Executed. 549

1706. 5 *Annæ.* — *Fielding*, *Robert*, Eſq; — for Bigamy. Convicted of Felony. Pardoned. His Marriage with the Dutcheſs of *Cleveland* annulled. 814

1643. 19 *Car.* I. — *Fiennes*, Col. *Nathanael*, — for Cowardice. Sentenced to be beheaded; but pardoned. 196

1640. 16 *Car.* II. — *Finch*, *John* Lord, Baron of *Fordwich*, Lord Keeper of the Great Seal, impeached of High Treaſon. Fled. 160

1681. 33 *Car.* II. — *Fitz-Harris*, *Edward*, Eſq; tried for High Treaſon. Executed. 409

1631. 7 *Car.* I. — *Fitz-Patrick*, *Lawrence*, — for Somy. Executed. 123

1660. 12 *Car.* II. — *Fleetwood*, *George*, Regicide, — for High Treaſon. Reprieved. 275

1701. 1 *Annæ.* — *Fogg*, Captain *Chriſtopher*, — for Cowardice, &c. Suſpended. 755

1668. 20 *Car.* II. — *Ford*, *William*, — for High Treaſon. Acquitted. 304

1696. 8 *W.* III. — *Forſeith*, *Edward*, — for Piracy. Executed. 713

1603-4. 1 *Jac.* I. — *Forteſcue*, Sir *John*, the Caſe between him and Sir *Francis Goodwin*, about the Return of a Knight of the Shire. 52

1654. 6 *Car.* II. — *Fox*, *Somerſet*, tried for High Treaſon againſt *Oliver Cromwell*. Pardoned. 251

1716. 3 *Geo.* I. — *Francia*, *Francis*, — for High Treaſon. Acquitted. 864

1615. 13 *Jac.* I. — *Franklin*, *James*, Apothecary, — for the Murder of Sir *Thomas Overbury*. Executed. 64

1683. 35 *Car.* II. — *Freeman*, *Richard*, — for a Riot, &c. Fined 300 Marks. 450

1695. 8 *W.* III. — *Friend*, Sir *John*, Knt. — for High Treaſon. Executed. 656

1702. 1 *Annæ.* — *Fuller*, *William*, — for publiſhing ſcandalous Libels. Pilloried, fined 1000 Marks, and impriſoned. 754

G

1586. 28 *Eliz.* — GAGE, *Robert*, tried for High Treaſon. Executed. 26

1660. 12 *Car.* II. — *Garland*, *Auguſtine*, Regicide, — for High Treaſon. Impriſoned, and confiſcated. 275

1606. 3 *Jac.* I. — *Garnet*, *Henry*, Superior of the Jeſuits, — for High Treaſon. Executed. 57

1679. 32 *Car.* II. — *Gaſcoigne*, Sir *Thomas*, Bart. — for High Treaſon. Acquitted. 380

1679. 31 *Car.* II. — *Gavan*, (alias *Gawen*) *John*, a Jeſuit, — for High Treaſon. Executed. 350

1685. 1 *Jac.* II. — *Gaunt*, *Elizabeth*, — for High Treaſon. Burned. 551

1654. 6 *Car.* II. — *Gerhard*, *John*, — for High Treaſon againſt *Oliver Cromwell*. Beheaded. 251

1692. 4 *W.* & *M.* — *Germaine*, Sir *John*, an Action of Treſpaſs on the Caſe brought againſt him by *Henry* Duke of *Norfolk*. 100,000 *l.* Damages laid, 100 Marks given. 737

1651. 3 *Car.* II. — *Gibbons*, *John*, tried for a pretended High Treaſon. Executed. 240

1662. 14 *Car.* II. — *Gibbs*, *Nathanael*, — for High Treaſon. Executed. 291

1719. 5 *Geo.* I. — *Gilbert*, *Jeffery*, Eſq; Lord Chief Baron, Proceedings againſt him, and other Barons of the *Exchequer* in *Ireland*. 873

1680. 13 *Car.* II. — *Giles*, *John*, tried for an Aſſault. Pilloried, fined 500 *l.* impriſoned, &c. 393

1683. 35 *Car.* II. — *Goodenough*, *Richard*, — for a Riot. Fined 500 Marks. 450

1686. 2 *Jac.* II. — *Goodwin*, *Arthur*, againſt Sir *Edward Hales*, Bart. for not taking the Oaths. 566

1603-4. 1 *Jac.* I. — *Goodwin*, Sir *Francis*, the Caſe between him and Sir *John Forteſcue*, about the Return of a Knight of a Shire. 52

1600. 2 *W.* & *M.* — *Gowrie*, *John* late Earl of, his Attainder in the Parliament of *Scotland* for High Treaſon. Eſtates and Honours forfeited. 40

1690. 2 *W.* & *M.* — *Grahme*, Sir *Richard*, Bart. Viſcount *Preſton*, tried for High Treaſon. Pardoned. 614

1605. 3 *Jac.* I. — *Grant*, *John*, — for High Treaſon. Executed. 57

1678-9. 31 *Car.* II. — *Green*, *Robert*, — for the Murder of Sir *E. B. Godfrey*. 336

1705. 4 *Annæ.* — *Green*, Capt. *Thomas*, and his Crew, — for Piracy in *Scotland*. Executed. 809

1668. 20 *Car.* II. — *Green*, *William*, — for High Treaſon. Acquitted by a ſpecial Verdict. 304

1682. 34 *Car.* II. — *Grey* of *Werk*, *Ford* Lord, — for a Miſdemeanor. Convicted, but no Judgment given. 447

1683. 35 *Car.* II. — *Grey* of *Werk*, *Ford* Lord, — for a Riot, &c. Fined 10:0 Marks. 450

1662. 14 *Car.* II. — *Grey*, *Iſaac*, a *Quaker*, for not taking the Oaths. Premunire. Sentence not executed. 898

1678. 30 *Car.* II. — *Grove*, *John*, — for High Treaſon. Executed. 328

H.

1660. 12 *Car.* II. — HACKER, *Francis*, Regicide, tried for High Treaſon. Executed. 272

1686. 2 *Jac.* II. — *Hales*, Sir *Edward*, at the Suit of *Arthur Goodwin*, for neglecting to take the Oaths. 566

1588. 31 *Eliz.* — *Hales*, Mr. tried for ſeditious Libels. Fined and impriſoned. 34

1701. 13 *W.* III. — *Halifax*, *Charles* Lord, impeached of High Crimes and Miſdemeanors. Impeachment diſmiſſed. 744

1648-9. 1 *Car.* II. — *Hamilton*, *James* Duke of, tried for High Treaſon by the Uſurpers. 222

1627. 3 *Car.* I. — *Hampden*, Sir *Edmund*, Proceedings upon the *Habeas Corpus* brought by him. 79

1637. 13 *Car.* I. — *Hampden*, *John*, Eſq; the Trial between King *Charles* I. and him, upon the aſſeſſing Ship-money. Judgment given againſt him. 133

1684. 36 *Car.* II. — *Hampden*, *John*, Eſq; tried for an High Miſdemeanor. Fined 40,000 *l.* 500

1685. 1 *Jac.* II. — *Hampden*, *John*, Eſq; (the ſame) — for High Treaſon. Pardoned. 656

1679. 31 *Car.* II. — *Harcourt*, *William*, — for High Treaſon. Executed. 350

1679. 31 *Car.* II. — *Harris*, *Benjamin*, Bookſeller, — for a Miſdemeanor. Pilloried, fined 500 *l.* &c. 379

1647. 23 *Car.* I. — *Harris*, *John*, — for Forgery. Fined 400 *l.* impriſoned, &c. 225

1692. 4 *W.* & *M.* — *Harriſon*, *Henry*, Gent. — for the Murder of Dr. *Clench*. Executed. 636

1638. 14 *Car.* I. — *Harriſon*, *Thomas*, Clerk, — for a Contempt. Fined 5000 *l.* impriſoned, &c. 160

1660. 12 *Car.* II. — *Harriſon*, *Thomas*, Regicide, — for High Treaſon. Executed. 264

1702. 1 *Annæ.* — *Hartwell*, *John*, — for aſſiſting in a forcible Marriage. Acquitted. 757

1660. 12 *Car.* II. — *Harvey*, *Edmund*, Regicide, — for High Treaſon. Pardoned. 273

1702. 2 *Annæ.* — *Hathaway*, *Richard*, — as an Impoſtor. Convicted. 766

1702. 2 *Annæ.* — *Hathaway*, *Richard* (the ſame) — for a Riot and Aſſault. Pilloried, fined, and impriſoned. 772

1701. 13 *W.* III. — *Haverſham*, *John* Lord, the Charge of the Houſe of Commons againſt him, for reflecting Words, diſmiſſed. 748

1711. 10 *Annæ.* — *Haunt*, *William*, tried for Murder. Acquitted. 904

1668-9. 20 *Car.* II. — *Hawkins*, *Robert*, Clerk, tried for Felony acquitted. 306

1684. 36 *Car.* II. — *Hayes*, *Joſeph*, Citizen of *London*, — for High Treaſon. Acquitted. 509

1660. 12 *Car.* II. — *Hertford*, *William* Marquis of, reſtored to the Title of Duke of *Somerſet*. 18

1620. 19 *Jac.* I. — *Heveningham*, Sir *John*, Proceedings upon the *Habeas Corpus* brought by him. 79

1660. 12 *Car.* II. — *Heveningham*, *William*, Regicide, tried for High Treaſon. Condemned; but no Order given for his Execution. 275

1658. 10 *Car.* II. — *Hewet*, *John*, D. D. — for a pretended High Treaſon. Beheaded. 262

1571. 14 *Eliz.* — *Hickford*, *Robert*, — for High Treaſon. Pardoned. 26

1678-9. 31 *Car.* II. — *Hill*, *Laurence*, — for the Murder of Sir *E. B. Godfrey*. Executed. 336

1662. 14 *Car.* II. — *Hind*, *James*, — for High Treaſon. Pardoned. 291

1629. 5 *Car.* I. — *Holles*, *Denzil*, Eſq; Proceedings againſt him for ſeditious Words in Parliament, and an Aſſault upon the Speaker. 103

1615. 13 *Jac.* I. — *Holles*, Sir *John*, Proceedings againſt him in the *Star-Chamber* for traducing Publick Juſtice. Fined 100 *l.* and impriſoned. 894

1684. 36 *Car.* II. — *Holloway*, *James*, Proceedings, on the Outlawry againſt him, for High Treaſon. Executed. 512

Hone,

An Alphabetical *and* Chronological TABLE

1683. 35 *Car.* II. *Hone, William.* tried for High Treaſon. Executed. 460

Howard, Philip. See *Arundel,* (Earl of).

Howard, Thomas. See *Norfolk,* (Duke of).

1701. 13 *W.* III. *Howe, James,* tried for Piracy. Condemned. 739

1660. 12 *Car.* II. *Hulet, William,* a Regicide,—for High Treaſon. Convicted; but not condemned, the Evidence being held deficient. 272

1701. 10 *W.* III. *Hurly, Patrick,*--for Perjury, *&c.* Fined 100 *l.* 903

I.

1662. 14 *Car.* II. JAMES, *John,* tried for High Treaſon. Executed. 290

1683. 35 *Car.* II. *Jekyll, John,* —for a Riot, *&c.* Fined 200 Marks. 450

1701. 13 *W.* III. *Jenkins, William,* — for Piracy. Acquitted. 739

1676. 27 *Car.* II. *Jenks, Francis,* his Commitment for ſeditious Words. Admitted to Bail, and further Proſecution dropped. 319

1683. 35 *Car.* II. *Jenks, Francis,* tried for a Riot. Fined 300 Marks. 450

1686. 2 *Jac.* II. *Johnſon, Samuel,* — for a Miſdemeanor. Fined 500 Marks, degraded, pilloried, and whipped. 571

Johnſon. See *Kelly.*

1682. 34 *Car.* II. *Jones, David,* tried for a Miſdemeanor. Convicted; but no Judgment given. 447

1586. 28 *Eliz.* *Jones, Edward,*—for High Treaſon. Executed. 26

1682. 34 *Car.* II. *Jones, Francis,*—for a Miſdemeanor. Convicted; but no Judgment given. 447

1660. 12 *Car.* II. *Jones, John,* a Regicide, — for High Treaſon. Executed. 267

1682. 34 *Car.* II. *Jones, Rebecca,* — for a Miſdemeanor. Acquitted. 447

1689. 1 *W.* & *M.* *Jones,* Sir *Thomas,* Proceedings of the Houſe of Commons againſt him. 644

1388. 11 *Ric.* II. *Ireland, Robert Vere* Duke of, Proceedings againſt him, for High Treaſon. He fled. 1

1678. 30 *Car.* II. *Ireland, William,* tried for High Treaſon. Executed. 328

K

1664. 16 *Car.* II. KEACH, *Benjamin,* tried for a Miſdemeanor. Pilloried, fined 20 *l.* *&c.* 299

1723. 9 *Geo* I. *Kelly,* alias *Johnſon, George,* the Attainder of him for a Treaſonable Conſpiracy. Impriſoned for Life. 881

1695. 7 *W.* III. *Kendal, Thomas,* and *Richard Roe,* committed for High Treaſon. Bailed. 902

1715. 2 *Geo.* I. *Kenmure, William* Viſcount, tried for High Treaſon. Beheaded. 861

1688. 4 *Jac.* II. *Ken, Thomas,* D.D. Biſhop of *Bath* and *Wells,* — for a Libel. Acquitted. 582

1679. 31 *Car.* II. *Kerne, Charles,* Clerk,—for High Treaſon. Acquitted. 367

1683. 35 *Car.* II. *Key, Robert,* —for a Riot. Fined 100 Marks. 451

1605. 3 *Jac.* I. *Keyes, Robert,* —for High Treaſon. Executed. 57

1695. 8 *W.* III. *Keyes, Thomas,* —for High Treaſon. Executed. 650

1701. 13 *W.* III. *Kidd,* Capt. *William,* —for Murder. Convicted. 738

1701. 13 *W.* III. *Kidd,* Capt. *William,* (the ſame) — for Piracy. Executed. 739

1695. 8 *W.* III. *King, Edward,* Gent. —for High Treaſon. Executed. 650

1701. 1 *Annæ.* *Kirby,* Colonel *Richard,* — for Cowardice, *&c.* Shot to Death. 755

1696. 8 *W.* III. *Knightley, Alexander,* Gent. — for High Treaſon. Executed. 672

1588. 31 *Eliz.* *Knightley,* Sir *Richard,* — for a Libel. Fined 2090 *l.* and impriſoned. 34

1697. 8 *W.* III. *Knollys, Charles,* Eſq; commonly called Earl of *Banbury,* Proceedings againſt him, for the Murder of *Philip Lawſon,* Gent. 716

1679. 31 *Car.* II. *Knox, Thomas,* tried for a Miſdemeanor. Fined 200 Marks, pilloried, and impriſoned. 370

L

1688. 4 *Jac.* II. LAKE, *John,* D. D. Biſhop of *Chicheſter,* tried for a Libel. Acquitted. 582

1701. 13 *W.* III. *Lamley, Robert,* — for Piracy. Acquitted. 739

1679. 31 *Car.* II. *Lane, John,* —for a Miſdemeanor. Fined 100 Marks, pilloried, and impriſoned. 370

1679. 31 *Car.* II. *Langhorn, Richard,* Eſq; — for High Treaſon. Executed. 355

1668. 20 *Car.* II. *Latimer, Richard,* — for High Treaſon. Pardoned. 304

1643. 19 *Car.* I. *Laud, William,* Lord Archbiſhop of *Canterbury,*—for High Treaſon. Beheaded. 198

1722. 9 *Geo.* I. *Layer, Chriſtopher,* Eſq; — for High Treaſon. Executed 878

1600. 43 *Eliz.* *Lea,* Capt. *Thomas,* — for High Treaſon. Executed. 45

1679. 31 *Car.* II. *Lewis, David,* Prieſt, —for High Treaſon. Executed. 343

1696. 8 *W.* III. *Lewis, James,* —for Felony and Piracy. Executed.

1637. 13 *Car.* I. *Lilburn, John,* — for publiſhing ſeditious Books. Pilloried, whipped, and fined 500 *l.* 158

1649. 1 *Car.* II. *Lilburn,* Lieut. Col. *John,* (the ſame)—for High Treaſon. Acquitted. 228

1660. 12 *Car.* II. *Lilburne, Robert,* a Regicide,—for High Treaſon. Condemned; but Execution ſuſpended. 274

1668. 20 *Car.* II. *Limerick, Thomas,* — for High Treaſon. Executed. 304

1704. 3 *Annæ.* *Lindſay, David,* Gent. —for High Treaſon. Pardoned. 798

1685. 1 *Jac.* II. *Liſle, Alice,* Widow, —for High Treaſon. Beheaded. 544

1688. 4 *Jac.* II. *Lloyd, William,* D. D. Biſhop of *St. Aſaph,* — for a Libel. 582

1702. 2 *Annæ.* *Lloyd, William,* D. D. (the ſame) Biſhop of *Worceſter,* Proceedings of the Houſe of Commons againſt him and his Son. 775

1701. 13 *W.* III. *Loffe, Gabriel,* tried for Piracy. Condemned. 739

1609. 7 *Jac.* I. *Logan, Robert,* — for High Treaſon. 58

1682-3. 35 *Car.* II. *London,* the Trial between the King and the City of, on a *Quo Warranto.* Charter forfeited. 452

1629. 5 *Car.* I. *Long, Walter,* Eſq; Proceedings againſt him, on bringing his Writ of *Habeas Corpus* to be bailed in the *King's-Bench.* Impriſoned. 96

1651. 3 *Car.* II. *Love, Chriſtopher,* Clerk, tried for a pretended High Treaſon. Beheaded. 237

1696. 8 *W.* III. *Lowick,* Major *Robert,*—for High Treaſon. Executed. 667

1615. 13 *Jac.* I. *Lumſden,* Mr. Proceedings againſt him for traducing Publick Juſtice. Fined 2000 Marks, and impriſoned. 894

1679. 31 *Car.* II. *Lumſden, Alexander,* a Popiſh Prieſt, tried for High Treaſon. Acquitted. 373

M

1735. 9 *Geo.* II. MAc-*Adams, Thomas,* tried for Murder. Condemned; but the Sentence ſuſpended. 910

1725. 10 *Geo.* I. *Macclesfield, Thomas* Earl of, — for High Crimes and Miſdemeanors. Fined 30,000 *l.* 884

1644. 19 *Car.* I. *Macguire, Connor* Lord, — for High Treaſon. Executed. 216

1687. 3 *Jac.* II. *Magdalen-College* in *Oxford,* Proceedings againſt them. Preſident, Fellows, *&c.* expelled. 575

1681. 33 *Car.* II. *Maitland, Charles,* Lord *Halton,* —for Perjury. Acquitted. 900

1603. 1 *Jac* I. *Markham,* Sir *Griffin,* Knt. — for High Treaſon. Reprieved. 48

1679. 31 *Car.* II. *Marſhall, William,* a *Benedictine* Monk — for High Treaſon. Acquitted. 362

1679. 31 *Car.* II. *Marſhall, William,* (the ſame) — for High Treaſon. Reprieved. 373

1660. 12 *Car.* II. *Marten, Henry,* a Regicide, — for High Treaſon. Reprieved. 274

1699. 11 *W.* III. *Maſon, John,* Gent. — for the Murder of Mrs. *Sarah Stout.* Acquitted. 717

1696. 8 *W.* III. *May, William,* — for Felony and Piracy. Executed. 713

1670. 22 *Car.* II. *Mead, William,* — for a Riot, and Conſpiracy. Acquitted. 309

1600. 43 *Eliz.* *Merrick,* Sir *Gilly,* — for High Treaſon. Executed. 47

1703-4. 2 & 3 *An.* *Merriam, John,* Gent. — for an Aſſault and Conſpiracy. Not guilty. 797

1668. 20 *Car.* II. *Meſſenger, Peter,* — for High Treaſon. Executed. 304

1660. 12 *Car.* II. *Meyne, Simon,* a Regicide, — for High Treaſon. Reprieved. 275

1660. 12 *Car.* II. *Mildmay,* Sir *Henry,* a Regicide,— Drawn on a Sledge to the Gallows, and his Eſtate confiſcated. 276

1660. 12 *Car.* II. *Millington, Gilbert,* a Regicide,--for High Treaſon. Reprieved. 274

1677-8. 29 *Car.* II. *Mitchel, James,* — for an Attempt to murder the Archbiſhop of *St. Andrews.* Executed. 334

Moders,

1663. 15 *Car.* II. — *Moders*, alias *Stedman*, *Mary*, (the *German* Princeſs) — for Bigamy. Acquitted. 293

1692. 4 *W.* & *M.* — *Mohun*, *Charles* Lord, — for the Murder of *William Mountford*, Gent. Acquitted. 636

1699. 11 *W.* III. — *Mohun*, *Charles* Lord, (the ſame) and others, — for the Murder of Captain *Richard Coote*. Acquitted. 717

1600. 43 *Eliz.* — *Moncreif*, *Hugh*, the Attainder of him for High Treaſon. Lands and Honours forfeited. 40

1658. 10 *Car.* II. — *Mordant*, *John*, Eſq; tried for a pretended High Treaſon. Acquited. 262

1535. 26 *H.* VIII. — *More*, Sir *Thomas*, — for High Treaſon. Beheaded. 10

1666. 18 *Car.* II. — *Morley*, *Thomas* Lord, — for the Murder of Mr. *Haſtings*. Manſlaughter. 299

1649. 1 *Car.* II. — *Morris*, Col. *John*, — for High Treaſon, by the Uſurpers Judges. Executed. 226

1649. 23 *Car.* I. — *Morris*, alias *Poyntz*, *John*, and *Mary* his Wife, — for Forgery. Fined, impriſoned, &c. 225

1661. 13 *Car.* II. — *Mounſon*, Lord, a Regicide degraded, drawn on a Sledge to *Tyburn*, and his Eſtate confiſcated. 276

1701. 13 *W.* III. — *Mullens*, *Darby*, — for Piracy. Pardoned. 739

N.

1715. 2 *Geo.* I. — NAIRN, *William* Lord, tried for High Treaſon. Pardoned. 861

1656. 8 *Car.* II. — *Naylor*, *James*, — for Blaſphemy. Pilloried, whipped, branded, &c. 254

1684. 36 *Car.* II. — *Neal*, *Thomas*, Eſq; a Trial in Ejectment between him and the Lady *Ivy*. Verdict for the Plaintiff. 901

1388. 11 *Ric.* II. — *Nevil*, *Alexander*, Archbiſhop of *York*, Proceedings againſt him for High Treaſon. He fled. 1

1715. 2 *Geo.* II. — *Nithiſdale*, *William* Earl of, tried for High Treaſon. He made his Eſcape. 861

1571. 14 *Eliz.* — *Norfolk*, *Thomas* Duke of, — for High Treaſon. Beheaded. 22

1691. 1692. 1700. — *Norfolk*, *Henry* and *Mary* Duke and Dutcheſs of, Proceedings for a Divorce. A Divorce obtained. 737

O

1684. 36 *Car.* II. — OATES, *Titus*, Clerk, Proceedings againſt him upon the Statute *de Scand' Mag'*. Damages 100,000 *l.* 519

1685. 1 *Jac.* II. — *Oates*, *Titus*, (the ſame) two Trials of him for Perjury. Fined, pilloried, whipped, &c. 530, 538

1615. 13 *Jac.* I. — *Ogilvie*, *John*, tried for High Treaſon. Executed. 68

1660. 12 *Car.* II. — *Okey*, *John*, a Regicide, taken upon an Outlawry for High Treaſon, and executed. 276

1413. 1 *Hen.* V. — *Oldcaſtle*, Sir *John*, Lord *Cobham*, tried for Hereſy. Hanged, and burned. 9

1693. 5 *W.* & *M.* — *Oldys*, *William*, L. L. D. the King's Advocate, Proceedings againſt him, for refuſing to proſecute Traitors and Pirates. Diſplaced. 649

1701. 13 *W.* III. — *Orford*, *Edward* Earl of, impeached of a Miſdemeanor. Acquitted. 744

1701. 13 *W.* III. — *Owens*, *Abel*, tried for Piracy. Condemned. 739

1717. 3 *Geo.* I. — *Oxford*, *Robert* Earl of, and Earl *Mortimer*, impeached of High Treaſon, and High Crimes. Acquitted. 866

P.

1682. 34 *Car.* II. — PAIN, *William*, tried for Libels. Fined. 447

1702. 1 *Annæ*. — *Pakington*, Sir *John*, his Complaint in the Houſe of Commons againſt the Biſhop of *Worceſter*. 775

1684. 36 *Car.* II. — *Papillon*, *Thomas*, Eſq; at the Suit of Sir *William Pritchard*, for a falſe Arreſt. Damages 10,000 *l.* Coſts 4 Marks. 519

1603. 1 *Jac.* I. — *Parham*, Sir *Edward*, Knt. tried for High Treaſon. Reprieved. 48

1679. 31 *Car.* II. — *Paris*, *Charles*, — for High Treaſon, in being a *Romiſh* Prieſt. Condemned; but reprieved. 373

1701. 13 *W.* III. — *Parrot*, *Hugh*, — for Piracy. Reprieved. 739

1584. 26 *Eliz.* — *Parry*, *William*, L. L. D. — for High Treaſon. Executed. 26

1686. 2 *Jac.* II. — *Peachel*, *John*, D. D. Vice-Chancellor of *Cambridge*, ſuſpended. 574

1689. 1 *W.* & *M.* — *Pemberton*, Sir *Francis*, a Juſtice of the *King's-Bench*, Proceedings of the Houſe of Commons againſt him. 644

1678. 30 *Car.* II. — *Pembroke* and *Montgomery*, *Philip* Earl of, tried for the Murder of *Nathanael Cony*, Gent. Manſlaughter. 321

1670. 22 *Car.* II. — *Penn*, *William*, — for a Riot and Conſpiracy. Acquitted. 309

1660. 12 *Car.* II. — *Pennington*, *Iſaac*, a Regicide, — for High Treaſon. Reprieved. 274

1655. 7 *Car.* II. — *Penruddock*, Col. *John*, — for a pretended High Treaſon. Beheaded. 252

1695. 8 *W.* III. — *Perkins*, Sir *William*, Knt. — for High Treaſon. Executed. 658

1592. 34 *Eliz.* — *Perrot*, Sir *John*, — for High Treaſon. Reprieved from Time to Time, till he died in the *Tower*. 39

1660. 12 *Car.* II. — *Peters*, *Hugh*, a Regicide, — for High Treaſon. Executed. 269

1662. 14 *Car.* II. — *Philips*, *George*, — for High Treaſon. Executed. 291

1678. 30 *Car.* II. — *Pickering*, *Thomas*, — for High Treaſon. Executed. 328

1683. 35 *Car.* II. — *Pilkington*, *Thomas*, Sheriff of *London*, — for a Riot, &c. Fined 500 *l.* 450

1683. 35 *Car.* II. — *Player*, Sir *Thomas*, Chamberlain of *London*, — for a Riot. Fined 500 Marks. 450

1723. 9 *Geo.* I. — *Plunket*, *John*, the Attainder of of him for a treaſonable Conſpiracy. 881

1681. 33 *Car.* II. — *Plunket*, Dr. *Oliver*, tried for High Treaſon. Executed. 420

1719. 5 *Geo.* I. — *Pocklington*, *John*, Eſq; Baron of the *Exchequer* in *Ireland*, Proceedings againſt him, in the Cauſe of *Anneſley* and *Sherlock*. 873

De la Pole, *Michael*. See *Suffolk* (Earl of).

1654. 6 *Car.* II. — *Pordage*, *John*, D. D. proſecuted for Heretical Doctrines. Ejected. 252

1736. 10 *Geo.* II. — *Porteous*, Captain *John*, tried for Murder. Condemned; but reprieved: Executed by the Mob. 914

1701. 13 *W.* III. — *Portland*, *William* Earl of, Proceedings againſt him for High Miſdemeanors. Acquitted. 744

1660. 12 *Car.* II. — *Potter*, *Vincent*, a Regicide, tried for High Treaſon. Reprieved. 275

Poyntz. See *Morris*.

1680. 13 *Car.* II. — *Preſſicks*, *Mary*, tried for High Treaſon. Acquitted. 394

Preſton, Viſcount. See *Grahme*.

1679. 32 *Car.* II. — *Price*, *Anne*, tried for Subornation of Perjury. Fined 200 *l.* 376

1689. 1 *W.* & *M.* — *Price*, *John*, Eſq; and 100 other Proteſtants, arraigned for High Treaſon. Diſmiſſed. 614

1684. 36 *Car.* II. — *Pritchard*, Sir *William*, againſt *Thomas Papillon*, Eſq; Verdict for the Plaintiff. Damages 10,000 *l.* Coſts 4 Marks. 519

1633. 9 *Car.* I. — *Prynne*, *William*, Eſq; tried for a Libel. Degraded, pilloried, and fined 5000 *l.* 127

1637. 13 *Car.* I. — *Prynne*, *William*, Eſq; (the ſame) — for another ſeditious Libel. Pilloried, Ears cut off, and impriſoned. 131

1710. 9 *Annæ*. — *Purchaſe*, *George*, — for High Treaſon. Pardoned. 855

Q

1704. 3 *Annæ*. — QUELCH, *John*, &c. tried for Piracy, Robbery, and Murder, in *New England*. Executed. 798

R

1603. 1 *Jac.* I. — RALEGH, Sir *Walter*, tried for High Treaſon. Beheaded. 49

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1660. 12 *Car.* II. *Temple, Peter,* a Regicide, — for High Treaſon. Reprieved. 275

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1586. 28 *Eliz.* *Titchburn, Chidiock,* — for High Treaſon. Executed. 26

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